A
DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS, 1862—1909,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1836—1909,

WITH AN INDEX OF CASES,

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B D BOSE

OF THE INNER TEMPLE BARRISTER AT LAW; ADVOCATE OF THE HIGH COURT CALCUTTA
AND EDITOR OF THE INDIAN LAW REPORTS CALCUTTA SERIES

IN SIX VOLUMES

VOLUME IV N—R

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING INDIA
1912

Price, Nine Rupees
English Price Thirteen Shillings Six Pence.

Agents for the sale of Books published by the Superintendent of Government Printing India Calcutta

IN LONDON

Constable & Co 10 Orange St Leicester Square W C.
Kegan Paul Trench Trübner & Co. 68-74 Carter Lane E C
Bernard Quaritch 11 Grafton Street New Bond Street, W
P S King & Son, 2 and 4 Great Smith Street Westminster
H S King & Co 65 Cornhill and 9 Pall Mall London

Grindlay & Co., 54 Parliament Street London, S W
T Fisher Unwin 1 Adelphi Terrace London W C.
W Thacker & Co. 2 Creed Lane London E C.
Deighton Bell & Co. Cambridge
B H Blackwell 50 and 51 Broad Street Oxford
Luzac & Co 46, Great Russell Street London, W C.

ON THE CONTINENT

Otto Harrassowitz, Leipzig
Karl W Hiersemann, Leipzig
R Friedlander & Sohn Berlin W N Carlstrasse 11

Ernest Leroux 28 Rue Bonaparte Paris
Martinus Nijhoff The Hague Holland

IN INDIA

Thacker Spink & Co., Calcutta and Simla.
Newman & Co Calcutta
R. Cambray & Co Calcutta
S. K. Lahiri & Co., Calcutta
B. Banerjee & Co., Calcutta
The Calcutta School Book and Useful Literature Society 309 Bow Bazar Street Calcutta.
Butterworth & Co (India) Limited Calcutta.
The Weldon Library 18 5 Chowringhee Road, Calcutta
Higginbotham & Co Madras
V Kalyanarama Iyer & Co., Madras
G A Natesan & Co., Madras.
S Murthy & Co., Madras
Thompson & Co., Madras.
Temple & Co., Madras.
Combridge & Co., Madras.
P R Rama Iyer & Co., Madras.
Thacker & Co., Ld., Bombay
A J Combridge & Co., Bombay
D B Taraporevala Sons & Co., Bombay
Radhabai Atmaram Sagoon, Bombay
Sunder Pandurang Bombay
Gopal Narayan & Co., Bombay
Ram Chandra Govind & Son, Bombay

Superintendent American Baptist Mission Press, Rangoon
Rai Sahib M Gulab Singh & Sons, Mufid-i-Am Press Lahore and Calcutta
N B Mathur Superintendent, Nazair Kanun Hind Press Allahabad
A Chand & Co Punjab
A M and J Ferguson Ceylon
Babu S C Talukdar Proprietor Students & Co Cooch Behar
Manager Educational Book Depots Nagpur and Jubbulpore *
Manager of the Imperial Book Depot Chandney Chauk Street Delhi *
Manager *East Coast News* Vizagapatam *
Manager The Agra Medical Hall and Co-operative Association Limited (Successors to A John & Co Agra) *
T K Seetharama Aiyar Kumbakonam *
Superintendent, Basel Mission Book and Tract Depository, Mangalore *
P Varadachary & Co., Madras *
H Liddell Printer etc, 7 South Road, Allahabad *
D C Anand & Sons Peshawar *
A. Kur Proprietor, Law [illegible] Calcutta *

* Agents for sale of the Legislative Department publications

TABLE

OF

HEADINGS, SUB HEADINGS AND CROSS REFERENCES

The headings and sub-headings under which the cases are arranged are printed in this table in capitals, the headings in black type and the sub-headings in small capitals The cross references are printed in ordinary type

Agents for the sale of Books published by the Superintendent of Government Printing, India, Calcutta

In London

Constable & Co 10, Orange St Leicester Square W C
Kegan Paul Trench Trubner & Co 68 74 Carter Lane E C
Bernard Quaritch 11 Grafton Street New Bond Street W
P S King & Son, 2 and 4 Great Smith Street Westminster
H S King & Co 65 Cornhill, and 9, Pall Mall London
Grindlay & Co, 54, Parliament Street, London, S W
T Fisher Unwin 1, Adelphi Terrace, London W C
W Thacker & Co 2 Creed Lane London E C
Deighton, Bell & Co Cambridge
B H Blackwell 50 and 51 Broad Street Oxford.
Luzac & Co 46, Great Russell Street London, W C.

On the Continent

Otto Harrassowitz Leipzig
Karl W Hiersemann Leipzig
R Friedlander & Sohn, Berlin W N, Carlstrasse 11
Ernest Leroux 28 Rue Bonaparte Paris
Martinus Nijhoff The Hague, Holland

In India

Thacker Spink & Co Calcutta and Simla.
Newman & Co Calcutta
P Cambray & Co Calcutta
S K. Lahiri & Co Calcutta
B Banerjee & Co Calcutta
The Calcutta School Book and Useful Literature Society 309 Bow Bazar Street Calcutta
Butterworth & Co (India) Limited Calcutta.
The Weldon Library 18 5 Chowringhee Road Calcutta
Higginbotham & Co Madras
V Kalyanarama Iyer & Co Madras
G A Natesan & Co Madras
S Murthy & Co Madras
Thompson & Co Madras
Temple & Co Madras
Combridge & Co Madras
P R Rama Iyer & Co Madras
Thacker & Co Ld Bombay
A. J Combridge & Co Bombay
D B Taraporevala Sons & Co Bombay
Radhabai Atmaram Sagoon Bombay
Sundar Pandurang Bombay
Gopal Narayan & Co Bombay
Ram Chandra Govind & Son Bombay
Superintendent American Baptist Mission Press Rangoon
Rai Sahib M Gulab Singh & Sons Mufid i Am Press Lahore and Calcutta
N B Mathur Superintendent Nazair Kanun Hind Press Allahabad
A Chand & Co Punjab
A M and J Ferguson Ceylon
Babu S C Talukdar Proprietor Students & Co Cooch Behar
Manager Educational Book Depots Nagpur and Jubbulpore *
Manager of the Imperial Book Depot 63 Chandney Chauk Street Delhi *
Manager *East Coast News* Vizagapatam *
Manager The Agra Medical Hall and Co operative Association Limited (Successors to A John & Co Agra)*
T K. Seetharama Aiyar Kumbakonam *
Superintendent Basel Mission Book and Tract Depository Mangalore *
P Varadachary & Co Madras *
H Liddell Printer etc 7 South Road Allahabad *
D C Anand & Sons Peshawar *
A. Kur Proprietor Law Book Society, Calcutta *

*Agents for sale of the Legislative Department publications.

TABLE

OF

HEADINGS, SUB HEADINGS AND CROSS REFERENCES

The headings and sub-headings under which the cases are arranged are printed in this table in capitals, the headings in black type and the sub-headings in small capitals The cross references are printed in ordinary type

A DIGEST

OF

THE HIGH COURT REPORTS,

1862-1909,

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1836-1909

N

NADARS AND SHANARS

See HINDU LAW—WORSHIP
I L R 31 Mad 236

NADI BHARTI

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—RIVERS OR CHANGE IN COURSE OF RIVERS
3 B L R Ap 116

NAIB

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS
1 W R 56
2 W R 155 225
3 W R Act X 1
7 W R 394

NAKDI.

See SECOND APPEAL.
I L R 33 Calc 200

NAME REGISTRATION OF—

See DECLARATORY DECREE SUIT FOR—REGISTRATION OF NAMES BY COLLECTOR.

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES

See RIGHT OF SUIT—REGISTRATION OF NAME.

See SALE FOR ARREARS OF RENT—UNDER TENURES SALE OF
12 B L R F B 484
3 C L R 231
I L R 27 Calc 789

NARVA TENURE

———— *Its history and incidents —Grant of narva village in inam—Alienations by narvadars—Bzharkhali—Gammajmun—Patimaj mun—Revenue survey in a narva village—Suit by inamder to recover r nt as settled by the survey —Landlord and tenant* The narva tenure and its incidents discussed and explained The inamdar of the narva village of Dakor de ires that the revenue survey should be introduced into it The usual measurements and assessments were made and the Superintend nt of the Revenue Survey following the analogy of the system prevalent in Government villages held a con ference with the narvadars and drew up a cheme to which the narvadars a sented for the future management of the village and for settling the future relations between the narvadars and the inamdars as representing the fiscal interests of the [illegible]
their [illegible]
upon [illegible]
they [illegible]
aliened from the several narva shares on the understanding that the inamdar was to levy from the tenants one fourth of the difference between the quit rent actually paid and the full assessment as ascertained by the survey The narvadars and their tenant the actual holders of the baharkhali land having refused to pay this one fourth the inamdar sued them to recover it or the full assessment as ascertained by the survey *Held* that the inamdar was entitled to recover the one fourth according to the scheme which was binding on the [illegible]

[illegible]

ment except where a contract stands in the way, and he can raise the assessment to a limit [illegible] is fair and equitable according to the cust[illegible]

NARVA TENURE—concld

country As between the narvadars and the Government there is nothing to prevent the former from consenting to the exclusion of any part of the village lands from the contract The severance of such parts makes it immediately subject to full taxation on ordinary principles and any agreement with an incumbrancer in limitation of the narvadar s [illegible] ground of
MANO
[illegible] ITHABHAI
I L R 6 Bom 347

NATIVE CHRISTIANS

See CONVERTS

See DIVORCE ACT s 2
I L R 14 Mad 382
I L R 18 Calc 252

See SUCCESSION ACT s 331 7 Mad 121
I L R 2 Mad 209
I L R 19 Bom 783

——— *Converts from Hindu religion—Joint family—Co parcenership—Inheritance—Indian Succession Act (X of 1865) s 93—Intestate and testamentary succession* Parcenership can be a part of the law governing the rights of a Christian family converted from the Hindu religion *Tellis* v *Saldanha I L R 10 Mad 69* disapproved The [illegible]

Navroji Manockji Wadia v *Perozbai I L R 23 Bom 80* referred to The distinction between co partnership and inheritance is that in the case of inheritance property devolves on death it survives in the case of co parcenership on inheritance new rights are acquired on survivorship the enjoyment of existing rights is increased by the removal of one from the body of co sharers. FRANCIS GHOSAL v CABRI GHOSAL (1906) I L R 31 Bom 25

NATIVE CONVERTS MARRIAGE DISSOLUTION ACT (XXI OF 1866)

See DIVORCE ACT s 2
I L R 18 Calc 252

NATIVE INDIAN SUBJECTS

See JURISDICTION OF CRIMINAL COURT—NATIVE INDIAN SUBJECTS
I L R 16 Bom. 178

——— legal status of—

See FOREIGN COURT JUDGMENT OF
5 C W N 741

——— offence committed by out of British India—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION
I L R 24 All. 256

NATIVE OF INDIA

——— application of Negotiable Instruments Act 1881, to—

See NEGOTIABLE INSTRUMENTS ACT
I L R 26 Mad 526

NATIVE RULER

——— suit against—

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS

——— suit by—

See CIVIL PROCEDURE CODE 1882 s 432
I L R 25 All 635

NATIVE STATE

See APPEAL. I L R 35 Calc 648

See TIPPERAH RAJ
I L R 35 Calc 777

——— decree of Court of—

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES
I L R 15 Bom. 216

——— in alliance—

See CIVIL PROCEDURE CODE 1882 ss 387 391 (1859 s 177)
2 B L R A C 73
10 W R 385

——— jurisdiction of Justice of the Peace in—

See FOREIGN JURISDICTION ACT 1879 ss 4 6 AND 8
I L R 26 Mad. 607

——— Magistrate or Police officer in—

See EVIDENCE ACT s 26
I L R 22 Bom. 235

——— person domiciled in—

See LETTERS OF ADMINISTRATION
I L R 21 Calc 911

——— record of Court attested by Judicial Officer of—

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R 12 All 595
I L R 22 Bom 235

1 ——— *Law of Native State—Law of British India—Difference—Burden of proof* It lies on him who asserts it to prove that the law of the Native State differs from the law in British India and in the absence of such proof it must be held that no difference exists except possibly so far as the law in British India rests on specific Acts of the Legislature RAGHUNATH v VARJIVANDAS (1906)
I L R 30 Bom 578

2 ——— *Kathiawar States—Whether British territory—Relation of British India*

NATIVE STATE—*contd*

with Native States how ascertained—Sovereign powers of the Governor of Bombay in Council—Exercise in Native States through Political Agent—Courts of Political Agent and Assistant Political Agents if King's Courts—Function of Governor in Council on appeal whether judicial—Appeal to Privy Council The rights and powers of contract possessed and exercised over the Native States in India by the British Indian Government with the corresponding restrictions upon the independent action of those States are to some extent the necessary consequence of the suzerainty vested in the predominant power But apart from this general source rights of very varying kinds have been [illegible]

or extent of such rights becomes the subject of consideration, enquiry has to be made into the circumstances of the particular case *Sayad Muhammad Yusuf ud-din* v *The Queen Empress* 2 *C W N 1 sc L R 24 I A 137* referred to On a view of the relation of the Kathiawar States and their people to British India and the character of the control exercised by the British Indian Government over those States and particularly with relation *to the administration of justice —Held that* the Kathiawar States are not included within the King's dominions Large as has been the political control exercised over them any assertion of territorial sovereignty has been avoided No legislative power over them has ever been claimed The intervention in their affairs has never been carried further than was judged necessary in the emergency for the maintenance of peace good order and security The position of the Chiefs has always been respected and at least in the case of the more important among them many of the functions commonly regarded attributes of sovereignty have been preserved to them The form adopted in establishing and regulating tribunals in the province has been that which [illegible] British [illegible] if it [illegible] *L R* [illegible] explained if a court administering justice on the King's behalf makes an order judicial in its nature by which some one is injuriously affected the person aggrieved is not precluded from applying to the King in Council to redress his wrong merely by the fact that he is not the King's subject The jurisdiction exercised by the Courts of the Assistant Political Agents and the Political Agent in Kathiawar and by the Governor of Bombay in Council on appeal is political and not judicial No appeal lies to His Majesty in Council from the Courts in Kathiawar or from the decision of the Governor of Bombay in Council on appeal HEMCHAND DEVCHAND *v* AZAM SAKARLAL CHHOTAMLAL (1905) I L R 33 Calc 219 s c 10 C W N 361 L R 33 I A 1

3 ——————— *Native State location of British troops in—Power of cantonment authorities as to grant or user of land—Treaty absence of—Power restricted to military purposes—Land belongs to State—Parsi Tower of Silence grant of land for—Control of cantonment authorities* The Hyderabad Subsidiary Force which had its head quarters in the Secunderabad cantonment was a force in the employment of the East India Company and commanded by Company's officers but maintained by agreement in Hyderabad territory for the protection of the Nizam There never was in existence any treaty prescribing the limits of the powers of the Nizam's officers on the one hand and the military commander commanding the Hyderabad Subsidiary Force on the other with respect to the management control and disposition of the cantonment and the land comprised in it When the Nizam's government admitted a British force within its territory and allotted to it Secunderabad cantonment as its head quarters it no doubt by necessary implication conveyed to the military authorities all powers of jurisdiction control and management incident to maintaining the efficiency and the discipline of the troops the peace and good order and convenient use of the cantonment But it would be going a long way beyond this to hold that the officer commanding the troops was empowered to alienate in perpetuity land forming part of the cantonment and undoubtedly Hyderabad territory for a purpose wholly unconnected with military requirements The appellants who were members of the Parsi community claimed that the founders of the Parsi Tower of Silence which stands on a portion of certain land situated in the Secunderabad cantonment were in their lifetime owners of the land in question and that the property had devolved upon them elves as descendants and representatives in title of the original founders The respondents who were also members of the Parsi community contended that the land in question had been granted to the whole Parsi community for a public purpose and to enure for the benefit of the community generally for all time by the cantonment authority The most important document relied upon by the appellants was issued by an officer of the Hyderabad State and purporting to express a transaction by which the State had assented to the grant of the land in question to the founders and directed possession of it to be delivered to them Another document in evidence also obtained on behalf of the founders through their agent purported to be issued by the authority of the Brigadier Commanding the Hyderabad Subsidiary Force and to certify that the Parsis of Secunderabad had permission to enclose the land in question which was given for a tower to be built on it. *Held* that the consideration set out above must be borne in mind in estimating the effect of the two documents that the first emanating from the State purported to deal with, and enforce a grant of the land to the founders by name and the delivery of possession to them that the second document emanating from the Cantonment authorities, did not deal with title or possession, but gave permission to use the land, already conveyed, for the particular purpose of a Tower of Silence and to

NATIVE STATE—*contd*

enclose the land which were matters obviously within the discretion of the commanding officer and that the effect of the two documents was to allow a good title in the founders and not in the Parsi community PESTONJI JIVANJI v SHAPURJI EDULJI CHINOY (1907) I L R 35 Calc 478
s c 12 C W N 465
L R 35 I A 7

NATURE OF TENANCY

See LANDLORD AND TENANT—NATURE OF TENANCY

NAVIGABLE RIVER

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—CHURS OR ISLANDS IN NAVIGABLE RIVERS

See FISHERY RIGHT OF
W R 1864 108 243
15 W R 212
11 C L R 11
I L R 4 Calc 53
I L R 8 Mad 467
I L R 11 Calc 434
I L R 12 Mad 43
I L R 17 Calc 963
I L R 22 Calc 252
12 C W N 105 304 559
I L R 35 Calc 117

NAWAB NAZIM OF BENGAL DEBTS ACT (XVII OF 1873)

See SUPERINTENDENCE OF HIGH COURT —CHARTER ACT cl 15—CIVIL CASES
24 W R 311

1 ———— Right of appeal Act XVII of 1873 was not intended to deprive the Nawab Nizam of Moorshedabad of any right of appeal to the High Court which he had before it was passed. NAWAB NIZAM OF BENGAL v AMRAO BEGUM
21 W R 59

2 ———— Submission of decree of Court as a claim to Commissioners—*Power of High Court* Certain judgment creditors were held to have committed an error of judgment in submit

Commissioners expressed their opinion upon the matter involved (although it had already been determined) the High Court *Held* that it had no authority to enquire into their award OMRAO BEGUM v COMMISSIONERS APPOINTED UNDER ACT XVII OF 1873
24 W R 394

———— s 11—*Agreement for appropriation of payments—Contract Act (IX of 1872) s 60—Suit for rent* So far as the Nawab Nazim s Debts Act is concerned, rent due by the Nawab is on the same footing as any other debt incurred by him and before his property can be made liable to satisfy such rent debt the consent of the Governor General in [Council] must be obtained to the issue of execu

NAWAB NAZIM OF BENGAL DEBTS ACT (XVII OF 1873)—*contd*

tion ROOKMINY BULLUB ROY v MULK JAMANIA BEGUM I L R 9 Calc 914 12 C L R 534

1 ———— s 12—*Jurisdiction of Commissioners—Parties* The Commissioners appointed under the Nawab Nazim s Debt Act (VII of 1873) (an Act to provide for the liquidation of the debts of the Nawab Nazim and for his protection from legal process) having ascertained and certified that a
ld by
the
the
ng of
the Act been conveyed by the Nawab Nazim to his son did not deprive the Commissioners of jurisdiction to deal with the question The plain language of s 12 of the Act is not controlled by any word in the preamble A suit brought by a claimant against the Government and the grantee to recover the property without the Nawab Nazim having been joined as a party could not proceed OMRAO BEGUM v GOVERNMENT OF INDIA
I L R 9 Calc 704 12 C L R 595
L R 10 I A 39

2 ———— Award of Commissioners conclusive—*Construction of documents not establishing a charge on immoveable property* Commissioners appointed under Act XVII of 1873 by their award found that an estate was in the possession of the Government for the purpose of upholding the dignity of the Nawab Nazim for the time being a finding within their competence to make of which the effect was that the Government held the property freed and discharged from all claims In a suit against the Government it was alleged that the estate when in the hands of the Nawab had been charged with payment of an annuity and arrears in favour of the plaintiff s father on his abandoning the title which he had set up to the property *Held* that the above award under the Act would have been a sufficient answer to the claim even if the charge had originally attached to the estate But in equity no charge could be created unless there was an intent to charge Here the documents showed that the payment had not been legally charged upon the property neither party having contemplated this result and there having been only a mandate by the Nawab for payment of the annuity out of his treasury OMRAO BEGUM v SECRETARY OF STATE FOR INDIA
I L R 19 Calc 584
L R 19 I A 95

3 ———— Commissioners award of—*Power of Commissioners notwithstanding alienation of State lands* In a suit by the son of the Nawab Nazim of Moorshidabad to recover from a person wrongfully in possession land which had been found to be a portion of State lands —*Held* that the Commissioners appointed under the Nawab Nazim s Debts Act had jurisdiction to declare the land claimed in the suit to be State property notwithstanding the fact

NAWAB NAZIM OF BENGAL DEBTS ACT (XVII OF 1873)—*concld*

that an alienation of such land had taken place before the date of the Commissioners award *Omrao Begum v Government of India I L R 9 Calc 704* followed. HASSAN ALI *v* CHUTTERPUT SINGH DUGARH I L R 19 Calc 742

NAWAB OF CARNATIC ACT (XXX OF 1858)

——— Claims against Nawab—*Onus of proof* Act XXX of 1858 of the Legislative Council of India for the administration of the estate and payment of the debts of the late Nawab of the Carnatic empowered the Supreme Court at Madras to investigate in a summary manner claims against the Nawab's estate *Held* that the provisions of the Act not only limited the extraordinary remedy which it gave to certain defined classes of debt but threw upon a claimant more than the ordinary burden of proof by compelling the holder of any written acknowledgment or security to prove the actual consideration given for it and upon those claiming the price of the goods delivered proof of the fair and actual value of such goods GHOOLUM MOORTAZAH KHAN *v* GOVERNMENT 9 Moo I A 456

NAWAB OF SURAT

——— administration of private estate of—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS 5 Moo I A 499

1 ——— Nawab of Surat Act (XVIII of 1848)—*Sanction of Government to bring suit* The permission of Government in 1858 to the Agent for the Governor of Bombay at Surat to pay certain moneys of the widow of the late Nawab of Surat to whomsoever a certificate of heirship to her might be granted by the Civil Court is not a sufficient authority under Act XVIII of 1848 for the institution against her grand daughters of a general civil suit under Regulation IV of 1827 or Act VIII of 18[illegible] [illegible]

2 ——— *Sue forth meaning of—Sanction obtained after suit filed.* The expression sue forth in s 1 of Act XVIII of 1848 does not mean to sue for and to obtain so as to make the consent of the Governor a condition precedent to the institution of a suit Accordingly [illegible]

that the suit was rightly instituted such a consent not being a condition precedent to the filing of the suit ZIAUNNISSA BEGUM *v* MOTIRAM I L R 129 Bom. 46

NAZIR

See GUARDIAN—APPOINTMENT I L R 12 Bom 553

——— misappropriation by—

See SURETY—LIABILITY OF SURETY 9 B L R Ap 26

——— of mosque—

See MAHOMEDAN LAW—ENDOWMENT I L R 18 Bom 401

——— power of—

See PENAL CODE s 186 I L R 22 Calc 596 759

1 ——— Guardian—*Minors Act XX of 1864—Bombay Civil Courts Acts (XIV of 1869 and X of 1876)—Officer of Government—Civil Procedure Code 1877 s 456* The Nazir of a Civil Court who is appointed guardian of the estate of a minor under Act XX of 1864 is not an officer of Government within the meaning of s 32 of Act XIV of 1869 as amended by s 15 of Act X of 1876 An officer of Government in order to come within those enactments must be a party to a suit in his official capacity A Subordinate Judge who under s 456 of the Civil Procedure Code (Act X) of 1877 as amended by s 73 of Act XII of 1879 appoints the Nazir or any other officer of his Court to act as guardian of a minor plaintiff or defendant in a suit in his Court has no jurisdiction to hear it and pass a decree against that officer as guardian *ad litem* of the minor *Trimbak Nimbaji v Shivram I L R 4 Bom 642 note* followed MOHAN ISHWAR *v* HARU RUPA I L R 4 Bom 638

2 ——— Liability of Nazir—*Avoidance of responsibility* A Nazir is the head of an important department and must be solely responsible for the truth of what he reports or admits He cannot be permitted to avoid responsibility by urging that his mohurrir deceived him QUEEN *v* TOFUZZAL ALI 7 W R Cr 109

3 ——— *Attachment of property in execution of decree—Failure to return property attached in satisfaction of decree—Beng Act V of 1865 ss 1 and 8* In a suit brought against the plaintiff in the Collector's Court for arrears of rent a decree was obtained and a warrant was issued for the attachment of certain moveable property belonging to the plaintiff The warrant was addressed to the Nazir of the Collector's Court and was by him delivered to one of the registered peons of the Court for execution. The peon reported to the Nazir that he had attached the property in question and had placed it in charge of certain persons, whose receipt for it he produced and filed. Subsequently the plaintiff paid the amount of the decree into Court and an order was made releasing his property from the attachment. A peon was sent to restore the property to the plaintiff but the persons in whose charge it was said to have been left alleged that they had never taken possession of the property and the peon was

NAZIR—*contd*

unable to restore the property to the plaintiff In a suit brought by the plaintiff again t the Nazir to recover the property or its value —*Held* that the Nazir was not liable Bengal Act V of 1863 having altered the relation which formerly existed between the Nazir and the peons of the Revenue Courts and put them in the position of paid servants of Government KALEE COOMER CHATTERJI v SIDDHESSUR MUNDUL

11 B L R 256 19 W R 335

4 ———————— *Warrant of arre t of judgment debtor—Escape of debtor—Negligence* The plaintiff sued out a warrant for the arrest of his judgment debtor on the 4th December 1876 The warrant was lodged with the Nazir on the 16th December and was to be in force till the 4th January 1877 On the 22nd December 1876 the Nazir was informed that the judgment debtor was already in the civil jail under a writ of execution i sued by another creditor The Nazir then returned the warrant to the Subordinate Judge who had issued it On the 29th December the Subordinate Judge again sent it to the Nazir s office where it was duly received by the Nazir s karkun (defendant No 2) This fact was not reported by the karkun to the Nazir (defendant No 1) until the 4th January 1877 On the 1st January 1877 the judgment debtor s debt was paid by Government and he was relea ed in honour of Her Majesty s as umption of the title of Empress of India The judgment debtor thereupon left the district and could not be found and the plaintiff s warrant remained unexecuted The plaintiff sued the Nazir and his karkun for allowing his judgment debtor to escape *Held* that the Nazir ought not to have sent the warrant back to the Subordinate Judge and that there was no necessity for a fresh order on it until the time which it had to run had expired *Held* further that if the Nazir forgot the existence of this un executed warrant on the 1st January 1877 and thus allowed the debtor to be released from the former process when he ought to have been re arrested under the plaintiff s warrant there was actual negligence on his part making him liable in damages to the plaintiff *Quære* Whether or not the Nazir could have been made responsible for the negligence of the karkun who was not his servant but the servant of and paid by the Govern ment and appointed by the District Judge if the warrant had been lodged with the karkun in the first instance and that fact had never been com municated to the Nazir and if he had never known of the existence of the warrant KASTURCHAND v PARVJI SADASHIV I L R 4 Bom 65

5 ———————— *Misrepresentation of sol ency of* [illegible]

NAZIR—*concld*

ance of M at the enquiry into his insolvency The defendant attested the bond and wrote in the attestation that G was a solvent person In con sequence of the non appearance of M the plaintiff sought to execute his decree against the surety G who on his arrest also applied for his discharge on the ground of his insolvency and was discharged after inquiry The plaintiff thereupon sued the defendant for the amount of his decree and cost of execution on the ground of his representation in the attestation that G was solvent *Quære* Whether the Nazir was liable to the plaintiff for negligence in not taking a proper surety NAGO MAHADEV v NARAYAN RAMCHANDRA I L R 4 Bom 465

6 ———— Nazir of Small Cause Court —*Power to receive plaints* A Nazir of a Court of Small Cau es is not authorized to receive plaints RAJ CHUNDER GOPE v JOOGAL GOPE

18 W R 172

NECESSARIES

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS 3 W R 217
I L R 20 Bom 61

See MINOR I L R 35 Calc 320

———— bond executed for—

See MINOR—LIABILITY OF MINOR ON AND RIGHT TO ENFORCE CONTRACTS
5 W R 2
I L R 21 Calc 872

———— expenses of legal proceedings as—

See MINOR—REPRESENTATION OF MINOR IN SUITS I L R 7 Calc 140
I L R 17 Mad 257

See PLEADER—REMUNERATION
I L R 17 Mad 306

———— what are—

See MINOR I L R 36 Calc 768

NECESSITY FOR ALIENATION

See HINDU LAW—

ALIENATION—ALIENATION BY WIDOW—

ALIENATION FOR LEGAL NECES SITY

WHAT CONSTITUTES LEGAL NECESSITY

ENDOWMENT—ALIENATION OF EN DOWED PROPERTY

JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—MANAGER

I L R 29 Calc 797

See ONUS OF PROOF—HINDU LAW—ALIENATION

[N]EGATIVE COVENANT

See CONTRACT I L R 36 Calc 354

[N]EGLIGENCE

See ADMINISTRATOR
I L R 17 Bom 637

See BILL OF LADING
I L R 30 Mad 79

See CALCUTTA MUNICIPAL ACT 1863 ss 151 226 8 B L R 265 433

See CARRIERS

See CARRIERS ACT s 6
I L R 24 Calc 786
I L R 26 Calc 398

See CAUSING DEATH BY NEGLIGENCE
I L R 16 All 472

See CIVIL PROCEDURE CODE 1882 s 102
I L R 22 Calc 8

See CIVIL PROCEDURE CODE 1882 ss 568 623 I L R 31 Bom 381

See COLLISION 11 C W N 173

See CONTRIBUTORY NEGLIGENCE

See CULPABLE HOMICIDE

See HUNDI—ENDORSEMENT
5 C W N 313

See HURT—GRIEVOUS HURT
2 Mad Ap 32
I L R 18 Calc 49

See LANDLORD AND TENANT—DAMAGE TO PREMISES LET
3 B L R A C 277
5 B L R 401

See MADRAS HARBOUR TRUST ACT s ,0
I L R 22 Mad 524

See MINOR—REPRESENTATION OF MINOR IN SUITS I L R 29 Calc 735

See MORTGAGE—MARSHALLING
I L R 12 Mad 424 429
I L R 13 Mad 383
I L R 15 Mad 268

See ONUS OF PROOF—BAILMENTS
I L R 9 All 398

See ONUS OF PROOF—PROFITS SUITS FOR
I L R 12 All 301

See PENAL CODE s ,04 A

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL 6 C W N 429

See PUBLIC HEALTH OFFENCE AFFECTING
I L R 7 Mad 276
I L R 11 Bom 59
I L R 24 Calc 494

See RAILWAY COMPANY

See RASH AND NEGLIGENT ACT
5 C W N 376

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, 1882 s 6--
I L R 9 All 398

NEGLIGENCE—*contd*

See ZAMINDAR DUTY OF
14 B L R 209

———— contributory—

See ENCROACHMENT
I L R 17 Mad 368

See NEGLIGENCE I L R 16 Bom 254

1 ———— **Requisites for action for negligence**—*Act contrary to law* To sustain an action for negligence there must be an obligation on the part of the defendant to use care and a breach of that obligation to the plaintiff s injury is an act contrary to law SVAMI NAYUDU v SUBRAMANIA MUDALI 2 Mad 158

2 ———— **Sending goods by railway company**—*Carrier—Duty of persons sending goods of a dangerous nature—Notice—Act XVIII of 185 s 1—Action for compensation for destruction of life* *Held* (PEARSON J dissenting) that a person who sends an article of a dangerous and explosive nature to a railway company to be carried by such company without notifying to the servants of the company the dangerous nature of the article is liable for the consequences of an explosion whether it occurs in a manner which he could not have foreseen as probable or not *Held* also (PEARSON J dissenting) that such a person is liable for the consequences of an explosion occurring in a manner which could not have foreseen if he omits to take reasonable precautions to preclude the risk of explosion LYELL v GANGA DAI
I L R 1 All 60

3 ———— **Railway Company**—*Injury to persons travelling* The plaintiff was a passenger travelling on the defendants railway and received severe injuries from a fall which he experienced in stepping upon the platform when the train stopped *Held* that the Railway Company was guilty of neg[illegible] ghted and al o were caused by the negligence in question and that the plaintiff did not by his own want of care contribute to the accident WOODHOUSE v CALCUTTA AND SOUTH EASTERN RAILWAY COMPANY
9 W R 73

4 ———— **Hire of boats**—*Damage—Liability of bailee* *A* contracted with *B* for the hire of certain cargo boats While being towed by a steamer which *A* had chartered according to agreement the boats sustained great damage by reason of gross negligence on the part of *C* whom *A* had placed in charge *Held* that *A* must be held responsible to *B* for the negligence of *C* GREESH CHUNDER BANNERJEE v COLLINS 2 Hyde 79

5 ———— **Damages for personal injuries**—*Unfenced hole—Licensee—Contractor* The plaintiff claimed to recover R63,00 from the defendants as damages for injuries sustained by him by reason of his having fallen into a hole which had been dug upon certain land of the defendants

NEGLIGENCE—*contd*

on the 1st September 1885 The land in question was the property of the first defendants (the Port Trustees) and was in their possession at the date of the accident to the plaintiff but an agreement had been made whereby it was to be leased by them to the second defendant who was accordingly let into possession in January 1886 For some years the first defendants had been in the habit of letting out the greater part of the land for tenting purposes in lots marked out with pegs but the tents were taken down each monsoon For two or three years previously to the accident people had been accustomed to cross the land without any hindrance or prohibition The plaintiff himself had used the path across the land as a short cut for a period of eighteen months This path led across the tenting ground to a gate which was generally open and which opened upon the high road No express permission had ever been given to any of the person who were in the habit of using this path It was a mere beaten track and so far from being a public way it was from time to time obstructed in the tenting season by the ropes and pegs of the tents The plaintiff had for some time been in occupation of a bungalow belonging to the first defendants which was situated in that part of the land which was furthest away from the high road. There was a regularly constructed roadway from the bungalow to the high road which the plaintiff might have used but as a short cut he and others were in the habit of using the beaten track. For this he had merely a tacit permission On the morning of the 1st September 1885 he left his bungalow and went to his business as usual by the short cut across the land When returning by the same way at about 11 o clock at night he fell into the hole which had been dug in the afternoon of that day and sustained the injuries complained of The hole was several feet deep and was dug right across the pathway The plaintiff had no notice of the hole being dug or of any intention to dig it The night was very dark and there was no negligence on the part of the plaintiff nor any want of ordinary care and caution There was no watchman and no fence nor was there any light which might enable persons using the path to avoid the danger The second defendant as above stated had agreed to take the said land from the first defendants on lease for building purposes On the day of the accident some months before the execution of the lease the second defendant through his engineer and contractor *H* applied to the first defendants for permission to make borings in the land which permission was given *H* thereupon caused the hole in question to be dug In their written statement the first defendants contended that in using the short cut across their land the plaintiff was a trespasser and that he had used it without their knowledge or consent that the hole was dug without their knowledge and that the borings for which they had given permission were merely small holes of a diameter of six inches or thereabout which could not have been a source of danger

NEGLIGENCE—*con'd*

The second defendant pleaded that at the time of the accident he was not in possession of the land but had merely entered into an agreement for a lease of it that he had employed a competent engineer and contractor *H* to make borings in order to ascertain of what the sub soil consisted and that *H* contracted to do the work and obtain leave from the first defendants to enter on the land that the said *H* subsequently entered on the land and according to his own discretion and without any control or interference from him (the second defendant) took such steps as he thought necessary to ascertain the nature of the said sub soil and he (the second defendant) contended that if there had been negligence in the performance of the work he was not liable *Held* (i) that there was negligence in digging the hole across a path used by several licensees and in not placing any person or light to warn passengers of the danger arising from the hole and the excavated earth which was heaped up near it *Held* (ii) that the first defendants were not liable to the plaintiff. The permission which they had given to *H* was a permission to make borings only and the hole which was actually dug by *H* was dug without their knowledge or permission *H* was not shown to be in any sense their servant or agent The plaintiff was a bare licensee and the first defendants were under no obligation to him to keep the path in a safe state or in good order *Held* (iii) that the second defendant was liable to the plaintiff *H* was not a contractor in the legal sense so as to exempt the second defendant from responsibility but was the servant of the second defendant *pro hac vice* and that the digging of the hole was within the course of his employment or within the scope of his authority The Court of first instance awarded as damages a sum of R33 000 which on appeal was reduced to R17 000 EVANS *v* TRUSTEES OF THE PORT OF BOMBAY

I L R 11 Bom 329

8 ———— Suit for damages by parents of a child killed by negligence—*Act XIII of 1855—Death by negligence—Contributory negligence—Liability for negligence of servants—Damages Assessment of—Deduction for maintenance of child—Funeral expenses* The plaintiffs unmarried daughter a child of between five and six years old fell into an open manhole of a sewer in a lane in Bombay on the 20th August 1880 between 4½ and 5 o clock P M. and when her body was recovered life was extinct The sewer was vested in the Municipality of Bombay and was under the control of the Municipal Commissioner by virtue of ss 290 and 289 of the Bombay Municipal Act of 1888 When such manholes are opened it is the duty of the Municipal Commissioner under s 321 of that Act to have them properly fenced and guarded On the 28th August 1890 the manhole in question was opened for the purpose of inserting a flushing door in the sewer From the time the manhole was opened until the occurrence of the accident the deceased child s mother was seated at the corner of the

NEGLIGENCE—*contd*

street selling cucumbers about four yards from the manhole in question. The hole was at first properly fenced with four timber hurdles about 4 feet high set upright round it at a distance of 2 feet from the hole secured at the corners with ropes Soon after 4 30 P M the superintendent in charge of the work gave orders to cease work and close the manhole for the night. The accident took place almost immediately afterwards The Judge found on the evidence that the child fell into the open hole in the interval that elapsed between the taking down of the fence and putting the cover on the hole What she was doing the instant before she fell there was nothing to show She was seen running and playing about the street during the afternoon Her mother who was sitting close by did not see the accident her attention being at the moment occupied by some customers She admitted that before the accident occurred she knew the fence was down and the hole open and she would not have left the child go to it had she

[illegible]

child might have been guilty of negligence which contributed to the accident yet if the defendants could by the exercise of ordinary care and diligence have avoided the mischief which happened her negligence would not excuse them (iii) that as regards damages in cases of this nature distinct evidence of the loss sustained or benefit expected is not necessary The jury may look at all the circumstances of the case and especially at the position of the parents and age of the child and call in aid their own experience in arriving at their conclusions Where damages are allowed a reasonable sum should be deducted on account of the maintenance for such period as the child might reasonably have been expected to live with her parents In an action under Act XIII of 1855 no sum can be awarded in respect of funeral expenses whether for removal or disposal of the body or for outlay—for ceremonial or religious purposes NARAYEN JETHA *v* MUNICIPAL COMMISSIONERS OF BOMBAY **I L R 16 Bom 254**

7 ——— **Liability of principal for acts of contractor**—*Right of support of house by adjoining soil—Principal and Agent or Contractor* The plaintiffs were owners of a house consisting of a ground floor and upper storey and measuring 27 feet in length On the south side of the house was a gully 3 feet 6 inches wide separating it from another upper storied house The plaintiffs in the suit complained that in January 1891 the defendant by his servants dug a trench 8 feet deep along the whole length of the gully for the purpose of laying a drain pipe and that the work was done so negligently that the plaintiffs house was injured and became in such a dangerous condition that it had to be pulled down. The plaintiffs claimed R3 996 as damages. The defendant denied the negligence and alleged that the work was not done by his servants or agents but by a contractor *Held* that the defendant was liable for the act of his contractor The work was necessarily attended with risk and the defendant could not free himself from liability by employing a contractor The defendant as well as the contractor was liable to the plaintiffs DHONDIBA KRISHNAJI *v* MUNICIPAL COMMISSIONERS OF BOMBAY **I L R 17 Bom 307**

8 ——— **Loss by fire**—*Sale set aside—Decree in favour of vendor—Possession—Purchaser in possession after decree and pending appeal—Accident—Liability for damage—Maxim Volenti non fit injuria* The plaintiff and the second defendant *A* were brothers and worked a cotton press in partnership In August 1884 *A* sold the press for R35 000 to *F* (the first defendant) who paid *A* R5 000 earnest money and was put into possession The plaintiff then brought a suit (No 327 of 1884) against *A* praying for a dissolution of the partnership *F* was also a party defendant to that suit The plaintiff alleged that R35 000 was much too low a price for the press and he objected to the sale He prayed that *F* might be restrained from continuing in possession of the press and working it and that a receiver might be appointed to take possession of it until further order On the 21st April 1885 on a motion the Court refused to grant an injunction and receiver but ordered *F* to pay R30 000 (*i e* the balance of the purchase money) to the solicitors of the parties for investment until the hearing of the suit and directed that if that sum was not paid by the 21st May 1885 a receiver should be appointed to take possession of the press The suit (*i e* No 327 of 1884) was heard on the 15th February 1887 when it was held by the Court that the sale by *A* to *F* was without authority that the defendant *F* took nothing under it and that the plaintiff was entitled to have it set aside Certain matters still remained to be decided but on the 28th February 1887 the decree in the suit was made giving effect to the findings already arrived at on the 15th February The decree by consent directed various accounts to be taken and among others an account of the profits realized by the working of the press by the defendant *F* since his possession thereof credit being given to him for all sums expended by him in the repairs maintenance

[illegible]

said defendant *F* do forthwith ...

decree The minutes were spoken to on the 31st March 1887 the decree was sealed on the 13th April 1887 Meantime on the 6th April 1887 and while the defendant *F* was still in possession a fire broke out in the press and much damage was done Subsequently to the sealing of the decree as above stated the press in its damaged

NEGLIGENCE—*contd*

condition was handed over to the plaintiff s firm by I who also de isted from prosecuting his appeal the injury to press having made it contrary to his interest to appeal In May 1887 the plaintiff filed the pre ent suit claiming to recover R50 000 from the defendant I as the value of the press or such further sum as might be neces ary to rebuild and restore it He alleged that the fire was caused by the working of the

sioned by the fire *Held* that independently of negligence the defendant I was not liable to the plaintiff for the lo occa ioned by the fire Down to the decree of the 28th February 1887 the defendant in keeping po session of the pre s and working it was no doubt a trespa er but sub e quently to that decree he remained in possession and worked the press with the consent of the plaintiff The maxim *volenti non fit injuria* applied to the circumstanc s of the case *Held* al o that no negligence having been proved again t the defendant the suit must be dismi sed JAMSETJI BURJORJI BAHADURJI v EBRAHIM VADINA

I L R 13 Bom 183

9 ———— Penal Code s 286—*Negligent dealing with explosive—Probable danger to human life—Loaded gun left n open place* C having re turned to his hou e after dawn from watching his crop at night with a loaded gun and finding his hou e door locked placed the gun loaded with the hammer down on the cap on a cot outside his house and went for a short time to a neighbouring house *A* the child of a neighbour four years old was killed by the gun exploding *C* was convicted under s 286 of the Penal Code for negligently omitting to take order with the gun ufficient to guard against probable danger to human life *Held* that the conviction was bad in law QUEEN EMPRESS v CHENCHUGADU I L R 8 Mad 421

10 ———— Penal Code s 289—*Negli gence with respect to animal* To sustain a charge under s 289 of the Penal Code there should be

11. ———————— *Pony negligently tied up in la ar* The High Court refu ed to interfere ith an or l r pa ed under s 289 of the Penal Code by a Magi trate fining the owner of a pony which had been tied negligently which was

d thereby

that sec

ut to any

19 W R Cr 1

12. ———— Negligent act by Govern ment official—*Absence of malicious intention—*

NEGLIGENCE—*contd*

Premature closing of water supply by mistake of Revenue officer—Right of action—Parties Plaintiff a Government *raiyat* occupied lands the cultivation of which depended upon a supply of water from a Government channel which was ordinarily kept open until a specified date when it was closed Defend ant a Revenue officer employed by the Govern ment negligently but without malice and without any intention of harming plaintiff cau ed the channel to be clo ed at an earl er date than was customary thereby cau ing damage to plaintiff s crops It was part of defendant s duty to ee that the channel was clo ed at a certain date but he had on this occasion closed it too soon by mistake Plaintiff ued defendant for the damages which he had thereby uffered *Held* that inasmuch as plaintiff s right to a supply of water was founded on contract a right of action in ca e of the water being improperly withheld might exi t as against the Government but that there was none as against the defendant by whom no l gal injury had been committed *Semble* That if malicious intention on the defendant s part had been proved plaintiff might have had a cau e of action *Kri hna Ayyan v Venkatachella Mudali* ~ *Mad H C* 60 and *Ramachandra v Narayanasami I L R 16 Mad 333* referred to CHINNAPPA MUDALIAR v SIKKA NAIKAN (1900) I L R 24 Mad 36

or consignee as per scale of charges

and is also to be at liberty until delivery to store the goods or any part thereof

In all ca es and under all circum tances the liability of the Company hall ab olutely cease when the goods are free of the hip s tackle and thereupon the goods shall be at the ri k for all purposes and in every respect of the hipper or consignee The hip arrived at Tuticorin on the 23rd October and began di charging goods on the 24th. Heavy rains commenced on the 27th and continued till the 30th but the di harge of the goods was not stopped and continued till the 30th. The bag got wet while being landed and became damaged by remaining on the foreshore without

their being landed and it was al o found that *B* had not taken any precautions to protect the bag On the above facts —*Held* that *B* was bound to take reasonable care and that his landing and stacking the goods uncovered on the foreshore during rainy weather amounted to actionable negli gence *Per* SUBRAHMANIA AYYAR J that the first of the two conditions in the bill of lading did not

NEGLIGENCE—*contd*

apply to the landing of the goods and that the second condition did not exempt the defendants from liability for negligence as bailees till actual delivery on land *Per* MILLER J (*contra*) The second condition in the bill of lading applied to all stages of the transaction covered by the contract including the stages of landing and storing and the defendant were thereby exempted from liability for their negligence on such operations If the second condition should be struck out the defendants will still be protected from liability by the first condition SHEIK MAHAMAD PAVUTHAR v THE BRITISH INDIA STEAM NAVIGATION COMPANY (1906)
I L R 30 Mad 79

14. ———— Misfeasance on the part of Municipality—*The Municipality not keeping a ditch and sluices at a dam in proper order—Collection of the storm water in the ditch—The water passing over lands of another and doing damage* The plaintiff sued to recover damages from the defendant Municipality for injury done to his property by storm water The water had collected in an adjoining ditch which the Municipality had not kept in a state of repair but had allowed it to be choked with the rubbish of the town They constructed a dam in the adjoining creek but allowed the sluices at the dam to be choked up with weeds sedges and silt The consequence was that the storm water which had collected in the creek passed on to the plaintiff s land and did damage *Held* that there was misfeasance on the part of the Municipality for they had turned their works by their negligence into a nuisance so as to throw the water collected on their property—the creek—on to the plaintiff s land and that therefore they were liable for the damage caused thereby *Borough of Bathurst* v *Macpherson 4 App Cas* 256 followed RAJENDRALAL v SURAT CITY MUNICIPALITY (1908)
I L R 33 Bom 393

15 ———— Negligence of carrier—*Carrier liable unless exempted by clear and unambiguous words—Bill of lading construction of—Burden of proof—Contract by carrier exempting himself from liability for negligence is legal and not void as opposed to public policy—Letters Patent cl 15—Whole case open on appeal* The defendant carried 4 000 bags of rice and other goods consigned to plaintiffs from Rangoon to Tuticorin under a bill of lading which contained *inter alia* the following general condition — The said goods to be carried and delivered subject to the terms and conditions hereof including those at the foot of this bill of lading in the like good order and condition at the port of Tuticorin the Act of God the Queen s enemies
accidents loss or damage from vermin
accidents of sea land of whatsoever kind and accidents loss or damage from any act neglect or default of whatsoever of the pilot master mariners or other servants of the company excepted Among the conditions at the foot of the bill of lading was the following — The company is to have the option of delivering the goods or any part thereof into receiving ship or landing them at the expense and risk of the shipper or the consignee as per scale of charges to be seen at the Agent s office and is also to be at liberty until delivery to store the goods in receiving ship godown or upon any wharf the usual charges therefor being payable by the shipper or consignee In all cases and under all circumstances the liability of the company shall cease absolutely when the goods are free of the ship s tackle and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee The ship arrived at Tuticorin and the defendants under the powers reserved to them by the last recited clause landed the cargo In a suit brought by the consignees (plaintiffs) to recover damages caused to the goods by the negligence of

and the general negligence clause in the body of the document and that they were not exempted from liability for negligence Exemption of shipowners from liability for negligence must be provided for in clear and unambiguous terms and must not be left to inference from general words The words in all cases and under all circumstances in the last clause though as wide and general as possible will not cover the case of negligence which must be expressly provided for Under the contract and the circumstances of the case the defendants had to prove that the goods were ready for delivery before they became damaged *Per* WALLIS J—The bill of lading sufficiently protected the defendants from liability for negligence during the discharge of the cargo The general condition in the bill will by itself limit the shipowner s liability during the whole time he was in possession of the goods and will apply during the loading and discharge of the goods The last clause cannot be considered as imposing on the shipowner at that stage a liability for negligence which had been already generally stipulated for The artificial rule of construction laid down by WALTON J cannot be applied where the exemption clause does not stand by itself but occurs in a bill of lading containing complicated stipulation as the bill under consideration In the latter case the document must be considered as a whole The last recited clause must be read with the general condition in the body of the bill and so read clearly exempted the defendants from liability The plaintiff s suit was not for non-delivery but for failure to deliver in proper order and condition and the plaintiffs were bound to prove when they were delivered and also that the bags were in a bad condition at such time *Per* CHIEF JUSTICE and WALLIS J—In England it is competent to a shipowner to protect himself by express con

NEGLIGENCE—*concld*

tract from liability for the negligence of himself of his servants This is also the law applicable in India. *Per* SANKARAN NAIR J—The rule of English law which allows shipowners to exempt themselves by express contract from liability for negligence cannot be applied in India as it is inconsistent with the provisions of the Indian Contract Act and the manifest intention of the Legislature in enacting such provisions S 148 of the Contract Act includes bailments for carriage and the shipowner is a bailee in respect of the goods entrusted to him S 151 of the Act lays down the absolute minimum of care required of bailees Having regard to the provision of s 152 which allows a bailee to undertake a higher responsibility and to the absence of provisions allowing a bailee to limit such liability the amount of care required by s 151 is irreducible by any contract between the parties A contract limiting such liability will be opposed to public policy and void under s 23 of the Contract Act as it will be against the interests of the mercantile community and not necessary in the interest of the shipowners *Price & Co v Union Lighterage Company [1903] 1 K B 750* referred to *Rathbone Brothers & Co v MacIver Sons & Co (1903) 2 K B 378* referred to *Nelson Line (Liverpool) Limited v James Nelson & Sons Limited [1908] A C 16* referred to *Jellicoe v The British India Steam Navigation Company I L R 10 Calc 489* referred to *The Irrawaddy Flotilla Company v Bugwandas I L R 10 Calc 620* referred to *Per Curiam* In an appeal under clause 15 of the Letters Patent from the judgments of two Judges who have differed in opinion the appeal is not confined to the point on which the learned Judges differed and the whole case is open on the appeal *Kunhunni v Sri Vallabhan 11 Mad L J 10* followed SHEIK MAHAMAD RAVUTHER v THE BRITISH INDIA STEAM NAVIGATION COMPANY LD (1908) I L R 32 Mad 95

NEGOTIABLE INSTRUMENTS

See NEGOTIABLE INSTRUMENTS ACT

See PROMISSORY NOTES

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS

——— suit on—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENT

See LIMITATION ACT 1877 SCH II ART 159 I L R 23 Calc 573

[Act V of 1866 mentioned in the following cases paras 1 to 11 was repealed and its provisions re enacted in the Civil Procedure Code *see* CIVIL PROCEDURE CODE (Act XIV of 1882) ss 532 to 538]

NEGOTIABLE INSTRUMENTS—*contd*

1. ——— Return of summons—*Procedure* In a suit under Act V of 1866 the summons should be returned in the usual way and after the expiration of the required time an order of the Court or a decree should be obtained SCHILLER v MARI ER 1 Ind Jur N S 283

2 ——— Time to obtain leave to defend—*Act V of 1866 s 3* Although Act V of 1866 s 3 only gives the defendant seven days to get leave to come in and defend an action on a bill note e c the Court must be satisfied before granting a decree that the defendant has had a full opportunity to obtain leave to defend CROFT v PALMER 1 Ind Jur N S 395

3 ——— *Extension of time for appearance—Jurisdiction* Where in a suit under Act V of 1866 the defendant is at such a distance as would make it impossible for him to put in an appearance within the seven days allowed by the Act the Court will stay execution for a time long enough to allow him to appear Suits cannot be brought under this Act against persons resident out of the jurisdiction CHANDRAKANT ROY v POGOSE 3 B L R O C 83

4 ——— Leave to appear and defend—*Practice—Costs* The Court ... defen ... V of ... real ... of the ... be or ... directed to be given The Court has in giving leave to ... terms

... LINTZOY v NARAYAN SING 6 B L R Ap 64

5 ——— Leave to defend In an action on a promissory note under this Act the defendant was allowed to come in and defend after the plaintiff had obtained a decree the decree was set aside and written statements ordered JOSEPH v SOLANO 9 B L R 441 18 W R 424

6 ——— Notarial protest—*Evidence of dishonour—Hundi—Bill of exchange.* A notarial protest of any bill of exchange noted at any time after the passing of Act V of 1866 is *prima facie* evidence that the bill has been dishonoured under s 13 of that Act although the sections relating to summary procedure on bills of exchange did not come into operation till May 1st 1866 A hundi which contains a direction on sufficient consideration to the drawee and accepted by him is within the terms of the Act and ... is assignable ... ment if suffic... of an endorser

NEGOTIABLE INSTRUMENTS—*contd*

EAST INDIA BANK *v* KHOJAH VULLIE GOOLWANY **1 Ind Jur N S 247**

7 ———— **Decree**—*Right of plaintiff suing under the Act* Under the summary procedure on Bills of Exchange Act (V of 1866) the plaintiff is entitled to claim by his summons and obtain by his decree whatever sum principal and interest is on the legal construction of the instrument demandable DESOUZA *v* RANGAIAN **6 Mad. 257**

8 ———————— *Promissory note —Consideration—Evidence* In a suit under the Bills of Exchange Act to recover R1 200 on a promissory note the Court gave a decree for R700 only that being shown to have been the full consideration received for the note RAMLAL MOOKERJEE *v* HARAN CHANDRA DHAR **3 B L R O C 130 12 W R O C 9**

9 ———— **Endorsement struck out**—*Promissory note—Evidence* A plaint was presented under Act V of 1866 by the endorsees of a promissory note endorsed as follows Received from the Chartered Mercantile Bank —J M Reid Agent The note had not been paid when presented and the endorsement was struck out Admission of the plaint was refused unless evidence was given that the note had been paid and to explain why the endorsement was struck out As under Act V of 1866 evidence could not be received the plaint was not admitted CHARTERED MERCANTILE BANK *v* SECONDI **3 B L R O C 146**

10 ———— **Suit on promissory note payable by instalments** Where a promissory note is payable by instalments and contains a stipulation that on default in payment of the first instalment the whole amount is to become due a suit to recover the whole amount on default made in payment of the first instalment cannot be brought under Act V of 1866 PENIFFY *v* SHILLINGFORD **I L R 1 Calc 130**

11 ———— **Costs**—*Suit under R500—Jurisdiction of Small Cause Court* In an undefended suit brought under Act V of 1866 on a promissory note for R510 there was nothing in the petition to show that the suit could not have been brought in the Small Cause Court the High Court gave a decree for amount of note and costs DUFF *v* FISHER **8 B L R Ap 10**

12 ———— **Summary procedure on**—*Civil Procedure Code (Act XIV of 1882) Ch XXXIX—Leave to defend extention of time to apply for—Limitation Act (XV of 1877) s 4 and Sch II Art 159* In a suit under Ch. XXXIX Civil Procedure Code 1882 the Court has no power after the time fixed by the summons for obtaining leave to appear and defend has expired to extend the time. *Quære* Whether the Court has power to grant an extension of time if an application for such extension be made before the time fixed by the summons has expired. QUAZIE MAHMUDAR ROHMAN *v* SARAT CHANDRA DUTT (1900) **5 C W N 259**

NEGOTIABLE INSTRUMENTS—*concld*

13 ———— **Payment**—*Contract of purchase —Hundi taken in part payment* Defendants agreed to sell paddy to plaintiff on the term that the balance of the price after giving credit for an advance of R1 000 should be paid by plaintiff on delivery at a place mentioned It was agreed that an assignment of a debt for R100 and a hundi for R900 should be accepted as payment of the advance Defendants sold the paddy to a third party at a higher price and plaintiff now sued for damages for breach of contract *Held* that plaintiff was entitled to damages As the R100 assigned and the hundi for R900 were agreed to be the payment of the advance of R1 000 the acceptance of the hundi operated as payment though it might be only conditional and the right to receive the R900 as part of the price might revive if the hundi should be dishonoured and notice of dishonour duly given *Held* also that the property in the paddy had passed to the buyer under s 78 of the Contract Act and under s 95 of that Act the defendants as vendors would have a lien on the goods and would not be bound to deliver until the price had been paid including the R900 due under the hundi if the letter were dishonoured KUTTAYAN CHETTI *v* PALANIAPPA CHETTY (1904) **I L R 27 Mad. 540**

14 ———— **Fraud**—*Forged indorsement —Holder in due course—Onus of proof—Negotiable Instruments Act (XXVI of 1881) ss 9 46 58 59* No person can claim a title to a negotiable instrument through a forged indorsement Such an indorsement is a nullity and must be taken as if no such indorsement was on the instrument *Chandra Kali Dabee* v *E P Champan I L R 32 Calc 99* not followed *Hunsraj Purmanand* v *Puttonji Walji I L R 24 Bom 65* followed Where a plaintiff establishes the fact that a negotiable instrument was obtained from its lawful owner by means of fraud the onus of proving that a third party was a holder in due course lies on the defendant BANKU BEHARI SIKDER *v* SECRETARY OF STATE FOR INDIA (1908) **I L R 36 Calc 239**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)

See HUNDI.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION **I. L R. 20 Bom. 133**

See NEGOTIABLE INSTRUMENTS

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882) **I. L. R. 31 Mad. 364**

———————— *Local usage—Applicability of Act XXVI of 1881 to natives of India.* The provisions of the Negotiable Instruments Act are strictly applicable to natives Where any local usage is relied on under s. 1 of the Act it should be alleged and established by

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*contd*

the party who relies upon it JAMBU CHETTY v PALANIAPPA CHETTIAR (1902)
I L R 26 Mad 526

——— ss 4 and 13—

See PROMISSORY NOTE—FORM
I L R 16 Bom 689
I L R 21 Mad 49

——— ss 4 26 27 28—

See JOINT FAMILY LIABILITY OF
11 C W N 139

——— ss 7 32 53 64 115 134—*Bills of exchange drawn on defendant and endorsed over to plaintiff by the Bank in whose favour they were drawn—Failure of defendant to pay—Suits to recover on the bills—Plaintiff's capacity—Holder deriving title from holder in due course—Bills accepted need not be dishonoured and protested—Acceptor liable at maturity—Assent not signed on the bills but on copies—Assent not valid* The plaintiff sued to recover on certain bills drawn on the defendant and endorsed over to the plaintiff by the Banks in whose favour they were drawn The suits were dismissed on the grounds that (1) the suits were defective in form inasmuch as the plaintiff was suing as agent without disclosing his principals and (2) the suits were not competant as the bills had never been dishonoured and protested *Held* (1) that the bills were endorsed over to the plaintiff by the Banks in whose favour they were drawn so that he was a holder

[illegible]

t

Bombay Therefore under ss 134 and 32 of the Act the acceptor became liable at the maturity of the bills and the suits were not bad because the bills had not been dishonoured and protested. S 115 of the Act merely enacts that a bill is not dishonoured until it has been dishonoured by the drawee in case of need where such drawee is named in the bill Presentment is not necessary to charge the acceptor The acceptor is the principal debtor and his liability is independent of the presentment the acceptance having been signed on the copies of the bills and not upon the bills or upon one of their parts in accordance with s 7 of the Act *Held* that a material requirement of law had been omitted with the result that there was no valid acceptance ARDESHIR SORABSHA v KHUSHALDAS (1907)
I L R 32 Bom 247

——— ss 8 and 9—

See PROMISSORY NOTES—ASSIGNMENT OF AND SUITS ON PROMISSORY NOTES
I L R 11 Mad 280
I L R 17 Mad 461
2 C W N 286

——— ss 8 32, 78—

See LIMITATION I L R 28 Mad 205

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*contd*

1 ——— ss 8 78—*In a suit by a payee named in a negotiable instrument or an indorsee plea that such payee or indorsee is benamidar not allowable* According to the law merchant which governed negotiable instruments in this country before the passing of the Negotiable Instruments Act no person could sue on a negoti[illegible] therein as [illegible] or bearer [illegible]iments Act [illegible] before the passing of the Act The general provisions of the Indian Contract Act as regards the rights and liabilities of undisclosed principals were not intended to alter these well established rules as to negotiable instruments In a suit on a negotiable instrument by the payee named therein or the indorsee it is not open to the defendant to plead that such payee or indorsee is a mere benamidar *Ganapati Naiken v Saminatha Pillay C R P No 578 of 1895* unreported *Gurumurti v Sitayya I L R 21 Mad 391* overruled SUBBA NARAYANA VATHIYAR v RAMASWAMI AIYAR (1906)
I L R 30 Mad 88

2 ——— *Right of indorser indorsing for collection—Indorser on regaining possession of bill may strike out name of indorsee and himself sue on the bill* The holder of a negotiable instrument within the meaning of s 8 of the Negotiable Instruments Act to whom payment must be made under s 78 of the Act is the person who *on the face of such instrument is entitled in his own name* to the possession thereof and to receive or recover the amount due therefor from the parties thereto *Subba Narayana Vathiyar v Ramaswami Aiyar I L R 30 Mad 88* referred to Where the drawer or indorser take up a bill by paying the holder he is entitled to strike out subsequent parties and maintain a suit on such bill against the parties antecedent to himself Where a bill is indorsed for collection and is returned by the indorsee to the indorser the former ceases to be the holder within the meaning of s 8 of the Act and the latter can maintain a suit on the bill by striking out the name of the indorsee English and American cases on the subject considered. SUBRAMANIA CHETTY v ALAGAPPA CHETTY (1907) I L R 30 Mad 441

——— s 9—*Hundi—Holder in due course—*

[illegible]

sented to the payees that a certain firm known as Har Sahai Mal Keder Nath was willing to purchase [illegible]

[illegible]

last mentioned firms were fictitious. The hundis were then sold as by the last endorsees to Mahbub

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*contd*

——— s 9—*concld*

Bakhsh Muhammad Husain who realized the amounts thereof from the drawee *Held* on a suit by the payee against the last endorsees and the broker that the last endorsees were not protected as holders in due course and the plaintiffs could recover *Hunsraj Purmanand* v *Ruttonji Walji* *I L P 24 Bom 65* and *Arnold* v *The Cheque Bank L R 1 C P D 578* followed JAI NARAIN v MAHBUB BUKSH (1906) I L R 28 All. 428

——— ss 9 58—

See LIMITATION ACT 1877 s 10 ART 48 I L R 32 Calc 799

——— ss 9 46 58 59—

See NEGOTIABLE INSTRUMENTS I L R 36 Calc 239

——— s 13—*Negotiable instrument—Promissory note—Reference in the note to collateral security effect of—Deposit of title-deeds* An instrument signed and bearing a 1 anna stamp was in the following terms *viz* On deposit of title deeds named hereinbelow for value received by me I promise to pay three months after date R160 to *A B* or order then followed the details of the title deeds. *Held* that the instrument was a negotiable instrument PAMA v SESHA I L R 17 Mad 85

——— s 17—

See BILL OF EXCHANGE I L R 15 Bom 267

——— s 30—

See HUNDI—NOTICE OF DISHONOUR I L R 30 Calc 977

——— ss 30 39—*Hundi payable at sight—Liability of drawer where holder agrees to an arrangement with acceptor for payment—Notice of dishonour omission to give—Discharge of drawer* Where the acceptor of a *hundi* payable at sight at first accepted the *hundi* unconditionally but subsequently said he would pay in three days time and the holder of the *hundi* agreed to this arrangement of which however he did not give any notice to the drawer and where the acceptor having failed to pay the amount of the *hundi* within the three days the holder did not give notice of dishonour till after ten days *Held* that the conduct of the holder discharged the drawer from his liability under the *hundi* according to the terms of s. 30 39 and 80 of the Negotiable Instruments Act ASKARAM BAID v PIR BUX (1908) 12 C W N 644

——— s 35—

See DECREE—FORM OF DECREE—BILL OF EXCHANGE I L R 16 Calc. 804

——— ss 35 43—

See MAJORITY AGE OF I L R 7 All. 490

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*contd*

——— ss 37 39—

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY I L R 13 Mad 172

——— s 46 -

See PROMISSORY NOTE—ASSIGNMENT OF AND SUITS ON PROMISSORY NOTES I L R 17 Mad 197

——— s 51—

See PROMISSORY NOTES—ASSIGNMENT OF AND SUITS ON PROMISSORY NOTES I L R 24 Mad 654

——— ss 64, 66—

See PROMISSORY NOTE—ASSIGNMENT OF AND SUITS OF PROMISSORY NOTES I L R 21 All 450

——— s 66—

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY I L R 13 Mad 172

——— ss 79 80—

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—CONTRACTS I L 23 Mad 18

——— s 80—

See INTEREST I L R 29 All. 33 L R 34 I A. 6

——— s 80—*Collateral agreement to pay interest—Construction* S 80 of the Negotiable Instruments Act (XXVI of 1881) confers a right to interest in the absence of any specified rate but does not take away a right otherwise existing by

I L R 29 All. 33 s c L R 34 I A. 6

——— s 93—

See HUNDI—NOTICE OF DISHONOUR I L R. 30 Calc 977

——— s 94—

See HUNDI—NOTICE OF DISHONOUR I L R. 26 Mad 526

——— s 98—

See HUNDI—NOTICE OF DISHONOUR I. L R. 30 Calc 977

——— Cl (c)—*Damage suffered by drawer by omission to give notice of dishonour—Onus of proof—Partnership between drawer and acceptor—Acceptor also drawer—Discharge of acceptor by him later on—Effect on liability of drawer* When the endorsee of a bill sues the drawer to recover the amount due under the bill and relies upon s. 98 (c) of the Negotiable Instruments Act to excuse the omission to give

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*concld*

——— s 98—*concld*

notice of dishonour the *onus* lies on the endorsee to establish that the drawer could not have suffered damage by the omission The mere fact that the drawer and acceptor of a bill are partners does not give rise to the presumption that they are partners in respect of the drawing of the bill or that the bill was drawn by one of them on behalf of both. In such a case the acceptor is not also a drawer so as to render notice of dishonour unnecessary under s 98 (*e*) The fact that the acceptor of a bill is not liable (because he was joined as a party to the suit after the period of limitation had expired) does not discharge the drawer from his liability where the suit has been instituted as against him in time JAMBU RAMASWAMY BHAGAVATHAR *v* SUNDARARAJA CHETTI (1902)
I L R 26 Mad. 239

——— s 118—

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS EXECUTION OF AND CONSIDERATION FOR ETC
I L R 20 Bom. 367

NEGOTIABLE SECURITY

See COSTS I L R 30 Bom 27

NEPAL.

——— Whether in India—*Criminal Procedure Code (Act V of 1898) s 503—Evidence taken on commission in Nepal—Conviction under s 411 Indian Penal Code on such evidence—General Clauses Act (X of 1897) s 3 cl (27)—Burden of proving if Nepal is in India* In a case where a commission was issued under s 503 Criminal Procedure Code for the taking of evidence of witnesses in Nepal and accused was convicted on such evidence —*Held* that the *onus* of proving that Nepal is in India as defined by the General Clauses Act s 3 cl (27) lies on the party who alleges that the evidence taken there is proper evidence and on their failing to do so the conviction must be set aside *Quære* Whether Nepal is in India SANGBIR LAMA *v* EMPEROR (1902)
7 C W N 635

NEPHEW

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—NEPHEW

NEW POINT

See PRIVY COUNCIL PRACTICE OF
I L R 34 Calc 709
L. R 34 I A 164

NEW TRIAL.

See CIVIL PROCEDURE CODE 1882 s. 108
I. L. R. 21 Calc 269

See EVIDENCE ACT s. 167
I. L. R. 19 Bom. 749
I. L. R 31 Calc 871

NEW TRIAL—*contd*

See JOINT TRIAL I L R 31 Calc 1053

See JURISDICTION I L R 31 Calc 340

See SMALL CAUSE COURT MOFUSSIL—PRACTICE AND PROCEDURE—NEW TRIALS

See SMALL CAUSE COURT MOFUSSIL—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT 3 B L R A C 135
17 W R 518

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIALS

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT
7 Bom O C 180
12 B L R 34 37
I L R 4 Calc 298
I L R 15 Mad. 179
I L R 20 Mad 358

See WITHDRAWAL OF SUIT
I L R 29 Calc 239

——— application for—

See PLEADER—APPOINTMENT AND APPEARANCE I. L. R. 20 Bom 293

——— in criminal case—

See CHARGE TO JURY—MISDIRECTION
I L R 29 Calc 782

See CRIMINAL PROCEDURE CODES s 376 (1872 s 283) I L R 1 Bom. 639

See CRIMINAL PROCEDURE CODE s 403
6 C W N 640

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF AND MODE OF DEALING WITH EVIDENCE 6 C W N 921

See REVISION—CRIMINAL CASES—REVIVAL OF COMPLAINT AND RE TRIAL.
24 W R 24
I L R 1 Calc 282
I L R 2 Calc 405
3 C W N 332
4 C W N 576

See REVISION—CRIMINAL CASES—SENTENCES
B L R Sup Vol 488
18 W R Cr 8 23 38
4 Bom Cr 3

See REVISION—CRIMINAL CASES—VERDICT OF JURY AND MISDIRECTION
B L R Sup Vol 459
I L R 30 Calc 485

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS
I L R 19 Bom. 749
I L R 25 Calc 711

——— Conditions of Where no case of fraud or surprise having been made out a party to the suit sought for a new trial on the

NEW TRIAL—*concld*

ground of discovery after judgment of an important document, which was in the possession of the opposite party but of which the party first named had neglected to obtain discovery before judgment —*Held* that a new trial should not lightly be granted and in the present case it ought not to be granted TURNBULL & Co *v* DUVAL (1902) 6 C W N 809

NEW ZEALAND

——— native appellate Court of—

See PRIVY COUNCIL 12 C W N 1081

NEWSPAPER

——— *Printing Presses and Newspaper Act (XXV of 1867) s 3—Name of printer and publisher* A new paper was printed and published bearing the following words Printed and published at Cochin for the Malabar Economic Company at the Company's Goshree Vilasam Press *Held* that these words did not satisfy the requirements of Act XXV of 1867 s 3 QUEEN EMPRESS *v* HARI SHENOY

I L R 16 Mad 443

NEWSPAPER ARTICLE

See LIBEL I L R 35 Calc 495

NEWSPAPER LIBEL

See LIBEL I L R 35 Calc 495

NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT (VII OF 1908)

——— s 3—*Nature of offences under the Act—Incitement to assassination—Incitement meaning of—Direct or indirect incitement—General incitement not addressed to particular persons—Construction of offensive article* The question of the intention or knowledge of an individual may determine his criminal liability under the ordinary law of abetment by incitement by means of words written or spoken but under the Newspapers (Incitements to Offences) Act no question of the intention of the writer printer or publisher arises and no personal liability is imputed to any particular person The order thereunder is not one against any person but is purely restrictive and directed against the use or intended use of a press for the purpose of printing or publishing a newspaper containing any incitement to murder or to any offence under the Explosive Substances Act (VI of 1908) or to any act of violence The words *any incitement* in s 3 (1) of the Newspapers Act include direct and indirect incitement and need not be addressed to any particular person nor expressed in violent and outrageous terms. To incite means to move to action to stir up to stimulate to instigate or to encourage and a newspaper article comes within the scope of s. 3 if it is as a matter of fact calculated, directly or indirectly to produce that effect *Per* RIVES J —There can be no hard and fast canon as to what words or given set of words constitute

NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT (VII OF 1908)—*concld*

——— s 3—*concld*

incitement It is a question of fact in each case and must usually depend largely on concomitant circumstances The articles must be read as a whole and as far as possible in the sense in which it was read by the section of the public to which it was primarily addressed and also considered with regard to the occasion and place of publication and the class or status of persons likely to be affected by it GIRIJA SUNDAR CHUCKERBUTTY *v* EMPEROR (1908)

I L R 36 Calc 405

NEXT FRIEND

See CIVIL PROCEDURE CODE 1882 s 461
I L R 35 Calc 561

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE
I L R 17 All 531

See LUNATIC I L R 13 Bom 656
I L R 19 Bom 135
I L R 23 Bom 653
I L R 20 All. 2

See MINOR—REPRESENTATION OF MINOR IN SUITS I L R 17 Calc 488
I L R 13 Mad 197
I L R 21 Calc 866
I L R 17 Mad 257
I L R 21 Bom 88
I L R 23 Calc 374
I L R 29 Calc 735
I L R 30 Calc 1021

See PRACTICE—CIVIL CASES—NEXT FRIEND

——— negligence of—
See CIVIL PROCEDURE CODE 1882 s. 102.
I L R 22 Calc 8

——— suit by minor without—
See WAIVER I L R 19 Mad 127

——— suit instituted by—
See PRACTICE—CIVIL CASES—PARTIES
I L R 22 Calc 270

NEXT OF KIN

——— creditor of—
See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT

——— liability of share of for barred debt—
See ADMINISTRATION I L R 2 Bom. 75

——— purchaser from—
See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT
I L R 4 Calc 360

NIBANDHA.

See JURISDICTION I L R 33 Bom. 373

NIMAK SAYAR MEHAL.

See BETTIAH RAJ 13 C W N 454

NOABAD MEHAL

1 ———————— *Noabad mehal in Chittagong district—Incidents—Taraf and Noabad property distinguished—Noabad taraf what is—Settlement whether permanent or temporary* Where the question was whether a certain mahal known as mahal *Noabad taraf* Joy Narain Ghosal in the district of Chittagong was a part of the permanently settled *taraf* of the proprietor or consisted merely of ordinary *Noabad* lands temporarily settled and liable to periodical re settlement and annexed to the proprietor s *taraf* for convenience only —*Held* that the pecial history of the tenure from 1763 when it was created showed that the mahal was neither the one nor the other The mere fact that a mehal is a *Noabad* mehal does not necessarily attach to it the incidents of ordinary *Noabad* properties of later creation All *Noabad* mehals of Chittagong have this in common that the proprietors have to pay rent or revenue to Government But the incidents of different *Noabad* mahals may vary very greatly The incidents of the present mehal determined and *held* mainly upon the basis of a *kabuliyat* executed by the proprietors in favour of the Government in 1802 that the revenue was fixed in perpetuity on the *hasila* area only RAM SUNDAR SAHA *v* THE SECRETARY OF STATE FOR INDIA (1907) 11 C W N 928

2 ———————— *Noabad Taluk—Temporary Settlement—Re settlement—Area of must be same—Preferential right of former holder to have settlement* There is no legal obligation on Government at re settlement to include any lands in a Noabad taluldari tenure according to the boundaries or dags of any former survey *Prasunno Kumar Roy v The Secretary of State for India 3 C W N 695 s c I L R 26 Calc 792* followed A temporary settlement holder specially an intermediate holder for 10 years is not entitled to a settlement of the same area at the same rate though he may have a preferential right to the fresh settlement the Government makes at the expiry of the old settlement HAIDAR ALI SIKDAR *v* SECRETARY OF STATE FOR INDIA (1908) 13 C W N 235

NON ACCEPTANCE

See CONTRACT—CONSTRUCTION OF CONTRACTS

NON APPEARANCE

——— effect of—

See APPEAL—
DEFAULT IN APPEARANCE
EX PARTE CASES

See CIVIL PROCEDURE CODE 1882—
ss. 98 99
s 100
ss. 102 103 AND 108
s. 108
ss. 158 177

NON APPEARANCE—*concld*

——— effect of—*concld*

See CIVIL PROCEDURE CODE 1882 s 249 (1859 s 217) 5 B L R Ap 65

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL 4 Mad. Ap 8
6 Mad. Ap 8
I L R 6 Calc 523
4 C W N 46

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL

See CONTEMPT OF COURT—PENAL CODE s 174 5 C W N 131

See INSOLVENCY ACT s 86
8 B L R Ap 57
7 C L R 378

See PRACTICE—CIVIL CASES—NON APPEARANCE OF PLAINTIFF

See RECOGNIZANCE TO APPEAR
I L R 30 Calc 10

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS 5 B L R 64
I L R 9 Calc 426
I L R 5 Bom 496
I L R 6 Bom 477
I L R 16 Calc 98
L R 15 I A 156
I L R 21 Bom 91
I L R 12 All 539
I L R 24 Bom 251

NON ATTENDANCE

——— of juror—

See JURY—JURY IN SESSIONS CASES
6 C W N 887

NON DELIVERY

See BAILMENT 1 B L R O C 68

See CONTRACT I L R 25 All 38
I L R 29 Calc 461

See CONTRACT ACT s 39
I L R 4 Calc 252
1 Mad. 162

See CONTRACT ACT s 51
I L R 4 Calc 252

NON OCCUPANCY RAIYAT

See LIMITATION ACT—SUIT
I L R 31 Calc 647

See REGULATION XI OF 1825 s 4
13 C W N 267 269

1. ——— Heritability—*Right of non occupancy raiyat whether heritable—Custom and contract—Bengal Tenancy Act (VIII of 1885) s 5 (2) 79 89 160 (e)* *Held* by the Full Bench (BRETT and MITRA JJ dissenting) that the right of a non occupancy raiyat has not been made heritable by the Bengal Tenancy Act but if such right were heritable by the time of the

NON OCCUPANCY RAIYAT—*concld*

passing of that Act it has not been taken away by it *Per* GEIDT *J*—The Legislature has not by any enactment express or implied conferred the right of inheritance on non occupancy raiyats and apart from custom or contract the right of a non occupancy raiyat is not heritable LAKHAN NARAIN DAS *v* JAINATH PANDAY (1907)
I L R 34 Cal 516

2 ———— *Non occupancy holding if heritable and transferable—Conflict of authorities—Bengal Tenancy Act (VIII of 1885) ss 21 23 178 (3) 183 Illustrations* The state of the authorities on the question whether a non occupancy holding is heritable or not is not satisfactory The Full Bench in *Lakhan Narain Das v Jainath Panday I L R 34 Calc 516* leaves the question undecided. *Karim Choudhry v Sunder Bewa I L R 24 Calc 207* referred to UDAY CHANDRA DAS BAIRAGI *v* HARI DAS BAIRAGI (1909) 13 C W N 937

NON RESIDENT

———— proceeding against by Magistrate—

See CRIMINAL PROCEDURE CODE s 107
13 C W N 580

NON SUIT

———— Power to non suit a plaintiff *Semble* The Courts in India have powers to pass judgment of non suit PARSOTAM GIR *v* NARBADA GIR I L R 22 All 505
3 C W N 517

NON TRANSFERABLE RIGHT

See LANDLORD AND TENANT
I L R 34 Calc 689

NON USER

See EASEMENT I L R 35 Calc 889

NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873)

———— s 45—

See JURISDICTION OF CIVIL COURT—N W P RENT AND REVENUE SUITS
I L R 22 All 139
I L R 25 All 527

See NORTH WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873) s 189 241
8 C W N 121

NORTH WESTERN PROVINCES (AND OUDH) ACTS

———— 1866—XXVI—

See OUDH SUB SETTLEMENT ACT

———— 1869—I—

See OUDH ESTATES ACT

———— 1873—VIII—

See NORTHERN INDIA CANAL AND DRAINAGE ACT

NORTH WESTERN PROVINCES (AND OUDH) ACTS—*concld*

———— 1873—XV—

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT

———— 1873—XVIII—

See NORTH WESTERN PROVINCES RENT ACT

———— 1873—XIX—

See NORTH WESTERN PROVINCES LAND REVENUE ACT

See AGRA LAND REVENUE ACT

———— 1881—XII—

See NORTH WESTERN PROVINCES RENT ACT

———— 1886—XIV—

See NORTH WESTERN PROVINCES RENT (AMENDMENT) ACT

———— 1889—IX—

See NORTH WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS ACT

———— 1891—I—

See NORTH WESTERN PROVINCES AND OUDH WATER WORKS ACT

———— 1892—I—

See NORTH WESTERN PROVINCES AND OUDH LODGING HOUSES ACT

———— 1899—III—

See UNITED PROVINCES COURT OF WARDS ACT

———— 1900—I—

See UNITED PROVINCES MUNICIPALITIES ACT

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT

———— 1901—II—

See AGRA TENANCY ACT

See NORTH WESTERN PROVINCES TENANCY ACT

———— 1901—III—

See UNITED PROVINCES LAND REVENUE ACT

NORTH WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873)

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N W P

See JURISDICTION OF REVENUE COURT—N W P RENT AND REVENUE CASES

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS I L R 7 All 224

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901)

NORTH WESTERN PROVINCES LAND REVENUE ACT (XIX of 1873)—contd

——— s 124—

See PARTITION—MODE OF EFFECTING PARTITION I L R. 22 All 329

——— s 125—

See CO SHARERS—ENJOYMENT OF JOINT PROPERTY—CULTIVATION
I L R 3 All 818
I L R 4 All 515

——— *Private Partition* S 125 of Act XIX of 1873 does not apply to a partition by private agreement *Gaya Singh* v *Udit Singh I L R 13 All 396* referred to *Ram Prasad* v *Dina Kuar I L R 4 All 515* dissented from by KNOX and BANERJI JJ KASHI PRASAD v KEDAR NATH SAHU I L R 20 All 219

——— ss 131 132—

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION
I L R 9 All 429

——— ss 132 241—*Act (Local) No III of 1901 (United Provinces Land Revenue Act) s 233 (k)—Partition—Civil and Revenue Courts—Jurisdiction* A plaintiff came into Court upon the allegation that a certain grove had upon partition been wrongly allotted to the defendants mahal whereas it should have been allotted to his (the plaintiff s) mahal and he claimed a decree for a declaration of his title or for possession *Held* that s 203 (k) of the United Provinces Land Revenue Act 1901 barred the cognizance of such a suit by a Civil Court *Kishen Prasad v Kadher Mal All Weekly Notes (1900) 11* distinguished. JAGAN NATH v TIRBENI SAHAI (1908) I L R 31 All 41

——— s. 135—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION 7 N W 346
I L R 10 All. 5

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION
I L R 10 All 5

——— s 146—

See SALE FOR ARREARS OF REVENUE—SALE PROCEEDS I L R 6 All. 112

——— ss 146 148—

See CO SHARERS—GENERAL RIGHTS IN JOINT PROPERTY
I L R 14 All. 273

——— s 148—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF REVENUE.
I L R 23 All. 5

——— s 154—

See MAHOMEDAN LAW—GIFT—VALIDITY
I L R. 21 All. 165

NORTH WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873)—contd

——— ss 154 190—*Mahal taken under direct management—Rent of sir land fixed by Collector—Sale of mahal before release from direct management* A mahal was taken by the Collector under direct management and the late proprietor was recorded as ex proprietary tenant of the *sir* land and his rent was fixed by the Collector under the provisions of s 190 of Act No XIX of 1873 While still under direct management the mahal was sold The purchaser paid up the arrears of land revenue due thereon and possession was given to him *Held* that the purchaser was entitled to claim from the ex proprietary tenant the rent fixed by the Collector it was not incumbent upon him to get the rent fixed again HASAN ALI KHAN v MAZHAR UL HASAN (1907)
I L R 29 All 318

——— ss 166 167 168—

See PRE EMPTION—RIGHT OF PRE EMPTION
I L R 13 All 224

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—N W P LAND REVENUE ACT I L R 22 All 321

——— s 184—

See BENAMI TRANSACTION—CERTIFIED PURCHASES—N W P LAND REVENUE ACT
I L R 21 All 29

——— ss 185 186—

See RIGHT OF SUIT—SALE FOR ARREARS OF REVENUE I L R 21 All 137

——— s 188—

See PRE EMPTION—RIGHT OF PRE EMPTION
I L R 1 All 277
I L R. 13 All. 224

——— ss 189 241—*Northern India Canal and Drainage Act (VIII of 1873) s 45—Canal dues money paid as under a mistake and without protest—Suit to recover if maintainable—Claim realisable as revenue—Limitation Act (XV of 1877) Sch II Arts 14 96* A suit in a Civil Court to recover money paid as canal dues under a mistake (and without protest) does not lie by reason of s 241 of the North Western Provinces Land Revenue Act and s 45 of the Northern India Canal and Drainage Act BALWANT SINGH v THE SECRETARY OF STATE FOR INDIA 8 C W N 121

——— s 190—

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT
I L R. 6 All. 52

——— s 191—

See PRE EMPTION—CONSTRUCTION OF WAJIB UL ARZ I L R. 22 All 1

NORTH WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873)—*contd*

——— ss 194 195 (Act VIII of 1879 s 20—

See COURT OF WARDS
I L R 7 All 687

——— ss 194 (g) 203—*Act (Local) No III of 1899 (Court of Wards Act) ss 9 35 and 47—Power of Court of Wards to sell property under its superintendence* The estate of a Muhammadan lady named Hawa Begam was at her own request taken under the superintendence of the Court of Wards under s 194 cl (g) of Act No XIX of 1873 This was in 1896 In 1902 the Court of Wards sold a portion of Hawa Begam s property as was alleged without her consent *Held* on suit by persons claiming title through Hawa Begam to recover the property so sold that the Court of Wards was under the circumstances entitled to sell even without the owner s consent and that its discretion could not be questioned in any Civil Court *Semble* That if the property had been placed under the superintendence of the Court of Wards under s 9 of Local Act No III of 1899 and if the sale had been made without the consent of the proprietor otherwise than on the ground set out in the concluding paragraph of s 35 the sale would have been a bad sale and the Civil Court could have entertained a suit to question the power of the Court of Wards to sell MOHSAN SHAH *v* MAHBUB ILAHI (1907)
I L R 29 All 589

——— s 195—

See LUNATIC I L R 1 All 476

——— ss 203 205B—

See MINOR—LIABILITY OF MINOR ON AND RIGHT TO ENFORCE CONTRACTS
I L R 23 All 288

——— ss 205 205B—

See GUARDIAN—DISQUALIFIED PROPRIETORS
I L R 5 All 284 487
I L R 22 All 364

See GUARDIAN—DISQUALIFIED PROPRIETORS
I L R 24 All 136

——— ss 214 219—

See APPEAL—N W P ACTS—N W P LAND REVENUE ACT
I L R 18 All 210

——— ss 220 231—

See N W P RENT ACTS s 1
I L R 6 All 170

——— s 221—

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N W P LAND REVENUE ACT I L R 14 All 347

NORTH WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873)—*concld*

——— ss 222 231—

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N W P LAND REVENUE ACT I L R 18 All 172

——— s 241—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N W P

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION
I L R 25 All 19

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION
I L R 9 All 429
I L R 10 All 5
I L R 20 All 75
I L R 23 All 291

——— s 241 cl (l)—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS
I L R 25 All 527

——— s 243—

See RULES MADE UNDER ACTS—CIVIL PROCEDURE CODE s 320
I L R 12 All 564

——— s 257—

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY
I L R 22 All 220

See PRE EMPTION—RIGHT OF PRE EMPTION I L R 17 All 226

NORTH WESTERN PROVINCES LAND REVENUE ACT (VIII OF 1879)

——— s 20—

See COURT OF WARDS
I L R 7 All 687

NORTH WESTERN PROVINCES LOCAL RATES ACT (III OF 1878)

——— (*Kanungo and Patwaris Act (IX of 1889)—Cesses—Assignment of Government revenue—Assignees not entitled to cesses* *Held* that an assignee of the Government revenue as assessed on a certain *patti* was not entitled to receive *patwari* rates and local cesses from the *zamindar* such rates and cesses have to be paid by the *zamindar* to the Government KESHO DAS *v* NARAIN SINGH (1901) I L R 23 All 505

NORTH WESTERN PROVINCES MUNICIPAL IMPROVEMENTS ACT (VI OF 1868)

——— s 12—

See N W P AND OUDH MUNICIPALITIES ACT 1883 ss 69 71
I L R 8 All 677

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—N W P RENT ACT
I L R 2 All 119

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N W P

See JURISDICTION OF REVENUE COURT—N W P RENT AND REVENUE CASES

See LANDLORD AND TENANT—PAYMENT OF RENT—NON PAYMENT
I L R 18 All 290

1 ———— s 1—*Application of the Civil Procedure Code to suits in the Revenue Courts—Civil Procedure Code 1877 ss 43 373—Suit withdrawal of—Relinquishment of part of claim* *Held* by the Full Bench (STUART *C J* dissenting) that the Courts of Revenue in the North Western Provinces in those matters of procedure upon which the Rent Act of those Provinces (Act XII of 1881) is silent are governed by the provisions of the Civil Procedure Code The principle of decision in *Nilmoni Singh Deo* v *Taranath Mukerjee I L R 9 Calc 295* followed *Held* therefore that the procedure provided by ss 43 and 373 of the Civil Procedure Code is applicable to suits tried under the N W P Rent Act 1881 MADHO PRAKASH SINGH v MURLI MANOHAR HIRA SINGH v MAKUND SINGH
I L R 5 All 406

2 ———— *Application of the Civil Procedure Code to suits in the Revenue Court—Judgment in accordance with award—Appeal—N W P Land Revenue Act (XIX of 1873) ss 220 231* The provisions of the Civil Procedure Code relating to awards are not applicable to suits under the N W P Rent Act 1881 the matters in [illegible]

1 ———— s 2—*Procedure—Case begun while Act XVIII of 1873 was in force* The question whether land held by a person whose proprietary rights in a mehal have been sold in execution of a decree while Act XVIII of 1873 was in force was held by him as *sir* at the time of such sale must be determined by that Act HARI DAS v GHANSHAM NARAIN
I L R 6 All 286

2 ———— and s 9—*Procedure—Landholder and tenant—Sale of occupancy right in execution of decree* *Held* that a landholder who had attached the occupancy right of an occupancy tenant in certain land in execution of a decree before Act XII of 1881 came into force was not entitled under s 2 of that Act to bring such right to sale after that Act came into force that section not saving the right of a landholder to bring such a right to sale in execution of a decree and s 9 of that Act expressly

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*cont'd*

———— s 2—*concld*

prohibiting the sale of such a right in execution of a decree NAIK RAM SINGH v MURLI DHAR
I L R 4 All 371

MURLI RAI v LEDRI I L R 7 All 851

———— s 3—*Sir land—Settlement* Land recorded as *sir* during the progress of a settlement of the district in which it is situate is not *sir* land as defined in s 3 (4) of Act XVIII of 1873 Such land does not become *sir* land within the meaning of that definition until the settlement is closed and confirmed HARI DAS v GHANSHAM NARAIN
I L R 6 All 286

———— ss 5 and 6—

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT ETC —VARIATION BY CHANGE IN NATURE OF RENT ETC
I L R 1 All 301

———— s 7—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND
I L R 8 All 467
I L R 9 All 88

See LANDLORD AND TENANT—TRANSFER BY LANDLORD I L R 8 All 189

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT

1 ———— *Ex proprietary tenant—Possession of sir land right to* Since Act XVIII of 1873 came into force a co sharer entitled to obtain by pre emption the proprietary right of another co sharer is not entitled ordinarily to a decree against the vendor for possession of the *sir* but only for the possession of the proprietary right in the *sir* He is however entitled to possession of the *sir* land as against the vendee BALDEO PANDEY v JHARI KUAR
7 N W 334

2 ———— *Usufructuary mortgage—Ex proprietary tenant—Sir land* *Held* by the Full Bench (OLDFIELD and BRODHURST *JJ* dissenting) that a person who creates a usufructuary mortgage of zamindari property becomes an ex proprietary or occupancy tenant of the *sir* land under s 7 of the N W P Rent Act (XII of 1881) *Per* PETHERAM *C J*—A usufructuary mortgagee is for the time being the proprietor of the property inasmuch as a proprietor is the person entitled to exclusive possession at the time and the intention of the Legislature as expressed in s 7 of the Rent Act is that when a zamindar ceases to be entitled to occupy the *sir* land as proprietor he shall have the right to occupy it as an ex proprietary tenant under s 5 *Bhagwan Singh* v *Murli Singh I L R 1 All 459* dissented from. *Per* STRAIGHT *J*—The words lose and part with in s 7 of the Rent Act were intended to cover all cases in which a proprietor of land has either voluntarily or by operation of law deprived himself permanently or tem-

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*contd*

——— s 7—*contd*

porarily of the power to exercise full proprietary right over his property *Per* MAHMOOD *J*—The meaning of the words proprietary rights in s 7 of the Rent Act is equivalent to that of the term full ownership corresponding to *dominium* in the Roman law and fee simple estate in English law The right of a usufructuary mortgagee cannot be called proprietorship and having regard to s 58 of the Transfer of Property Act the execution of a usufructuary mortgage does not amount to a transfer of the proprietary right The word lose as used in s 7 of the Rent Act means the transfer of proprietary rights otherwise than by the will of the owner in consequence of some incident of law The term part with is a general expression including both absolute and temporary alienation and a usufructuary mortgage is a parting with some of the incidents of ownership and falls within the purview of s 7 inasmuch as the rights of possession and of the enjoyment of the usufruct are transferred from the mortgagor to the mortgagee though such a transfer does not amount to a total alienation of proprietorship *Bhagwan Singh* v *Murli Singh I L R 1 All 459* dissented from *Gopal Pandey* v *Parsotam Das I L R 5 All 121* *Ganga Din* v *Dhurandhar Singh I L R 5 All 495* and *Gulab Rai* v *Indar Singh I L R 6 All 54* referred to *Per* OLDFIELD *J*—The words loss or part with his proprietary rights in any mehal in s 7 of the Rent Act mean a loss or parting which divests absolutely of all proprietary right leaving no interest of a proprietary kind in the mehal this does not happen in a usufructuary mortgage and therefore the latter is not a loss of or parting with proprietary rights within the meaning of s 7 *Bhagwan Singh* v *Murli Singh I L R 1 All 459* approved *Per* BRODHURST *J*—The word lose in s 7 of the Rent Act means involuntarily lose as for instance by auction sale and part with means voluntarily and entirely divested of by means *e g* of gift or private sale Proprietary rights means the whole of the proprietary rights and a usufructuary mortgagor of zamindari property cannot be said to have lost or parted with his proprietary right therein and therefore does not under the provisions of s 7 of the Rent Act become an ex proprietary or occupancy tenant of the *sir* land INDAR SEN *v* NAUBAT SINGH

I L R 7 All 553

3 ——— *Usufructuary mortgage of zamindari including sir—Losing or parting with proprietary right in mehal—Ex proprietary tenant* A zamindar who makes a usufructuary mortgage of his zamindari including his *sir* land does not so lose or part with his proprietary rights within the meaning of s 7 of Act XII of 1881 as to become an ex proprietary tenant of his *sir* land *Bhagwan Singh* v *Murli Singh I L R 1 All 459* and *Indar Sen* v *Naubat Singh I L R 7 All 553* referred to and the judgments of the minority of the Court in the latter case approved *Khiali Ram* v *Nathu Lal I L R 15 All 219* and *Jarao Bibi* v *Kifayat Ali Khan All Weekly Notes (1892) 177* referred to MADHO BHARTHI *v* BARTI SINGH

I L R 16 All 337

4 ——— *Ex proprietary tenant—Ex proprietary tenancy arising on sale of part of the zamindar s share* In order that the provisions of s 7 of Act XII of 1881 may come into operation it is not necessary that the zamindar should lose or part with his proprietary rights in respect of the whole of his interest in the mehal BHAWANI PRASAD *v* GHULAM MUHAMMED

I L R 18 All 121

MURLIDHAR *v* PEMRAJ I L R 22 All 205

5 ——— *Ex proprietary tenancy* The words held by him as *sir* in s 7 of Act XII of 1881 (N W P Rent Act) must be construed to mean land belonging to him or to which he was entitled as *sir* and as literal an interpretation should be placed upon these words as is consistent with the canons of construction In 1879 one of the defendants sold a one third share of certain *sir* land in a village to the plaintiff who at that time was in cultivatory possession thereof under a deed of mortgage executed in his favour by the same defendant in 1877 The plaintiff alleged that after the sale he continued in possession of the *sir* land till 1884 when he was dispossessed thereof by the defendants He sued for recovery of possession of the land *Held* that the defendants being ex proprietary tenants of the land in dispute were entitled to hold possession thereof by operation of law with reference to the terms of s 7 of the N W P Rent Act and the plaintiff s contention that because for four or five years the defendants failed to assert their ex proprietary tenant rights they were debarred from doing so could only be well founded if there had been any provision either in the Limitation Act or the Rent Act creating such a disability *Held* also that notwithstanding the [illegible] of the land and [illegible] must [illegible] the time of the sale of his proprietary interest within the meaning of s. 7 of the Rent Act HARJAS *v* RADHA KISHAN

I L R 8 All 256

6 ——— *Transfer of Property Act (IV of 1882) ss 41 48—Transfer by ostensible owner—Meaning of held—Statute Construction of—Retrospective effect—Mortgage of sir land before passing of Act XVIII of 1873—Sale of mortgagor s rights while that Act was in force—Right of mortgagee.* In 1869 *A* and *J* two co sharers of a moiety of a 10 biswas share in a village (*F* and *W* being also co sharers in the same moiety) joined with *H* the holder of the other moiety in giving to *K* a usufructuary mortgage of 87 bighas of land

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*contd*

———— s 7—*contd*

payment of the mortgage money and to receive profits in lieu of interest and he obtained possession accordingly In 1872 *F W* and *A* gave to other persons usufructuary mortgage of their 5

alleging that the mortgagees under the deed of 1872 and the purchasers under the execution sale of 1876 had dispossessed him and that his mortgage debt had not been paid sued to recover possession of the 87 bighas of *sir* land by virtue of his mortgage deed of 1869 The Court of first instance held that

that to give the plaintiff possession thereof would be contrary to the provisions of s 7 of Act XVIII of 1873 (N W P Rent Act) *Held* that inasmuch as it was clear that at the time when the mortgage deed of 1869 was executed *F* and *W* were aware of the transaction which made *A* the mortgagee under the deed of the whole property and that knowing this they allowed the possession of *A J* and *H* to appear as if covering the entire zamindari rights in the 10 biswas share of the *sir* land and inasmuch as the statements contained in the mortgagee deed of 1872 were an admission on the part of *F* and *W* that the mortgage of 1869 was executed with their consent the equitable doctrine contained in s 4 of the Transfer of Property Act applied to the case and *F* and *W* had no defence either in law or in equity to the plaintiff s suit with reference to their shares and for the purpose of obviating the h n of 1869 *Ramcoomar Koondoo v Macqueen* *11 B L R 46* referred to *Per* MAHMOOD *J* with reference to the effect of the execution sale of November 1876 in regard to the provisions of s 7 of Act XVIII of 1873 that the general rule that statutory provisions have no retrospective operation did not apply to the case that by reason of the sale *H* who had proprietary rights in the mehal and held the 5 biswas share of the *sir* as such (the word *held* as used in 7 of the Rent Act not being confined to manual or physical holding) lost his proprietary rights and so became an ex proprietary tenant of the land belonging to him at that time that although the mortgage of 1869 must not be so affected as to deprive the mortgagee of all his rights yet by the terms of s 7 of Act XVIII of 1873 and by virtue of the sale his means of benefiting by the mortgage were necessarily changed that neither the preamble nor s 1 of the Act contained any saving clause which would justify the interpretation that all the conditions included in a usufructuary mortgage are to be exempted from the operation of the Act or of s 7 in particular merely because the mortgage was a subsisting one

the mortgage of 1869 and that by virtue of the rule enunciated in s 48 of the Transfer of Property Act the rights of the mortgagees under the deed of 1872 must give way to the incidents of the prior deed of 1869 both mortgages being usufructuary *Tulshi v Radha Kishan All Weekly Notes (1886) 74* referred to Per TYRRELL *J* that in 1876 by reason of the execution sale the *sir* rights and interest of *H* mortgaged by him in 1869 as such went out of existence and assumed a different character that over that tenure in its altered character the plaintiff though he still had his mortgage charge had not in the existing state of the law a right to physical possession of the actual land and that subject to this new right of *H* s the plaintiff retained his mortgage charge of 1869 over the zamindari interest in the portion of the land acquired by *H* s vendees KARAMAT KHAN *v* SAMI UD DIN

I L R 8 All 409

7 ———— **and s 14**—*Suit for profit —Ex proprietary tenant—Sir land held equally* A certain mehal of which the plaintiff in this suit claimed a one third share of the profits for a certain year belonged in equal shares to the defendant (lambardar) and *S* and *R* his two brothers who had certain *sir* land in partnership The plaintiff had acquired the share of *S* by auction purchase *S* thus becoming an ex proprietary tenant The *sir* land was not included in the rent roll of the mehal but was admitted by the defendant to be assessable with rent at a certain rate per bigha *Held* that whatever might be the course proper to be taken for the purpose of assessing such *sir* land or *S* s share of it with rent and notwithstanding that such course had not been taken the plaintiff was entitled in this suit to claim and obtain his share in the profits of the *sir* land MUHAMMAD ALI *v* KALIAN SINGH

I L R 1 All 659

———— s 8—

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION

7 N W 318
I L R 4 All 157

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—SUBJECT OF ACQUISITION

I L R 7 All 588

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*contd*

——— ss 8 and 9—

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT I L R 7 All 866

——— s 9—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT
I L R 10 All 130 132 note

See LANDLORD AND TENANT—ABANDONMENT RELINQUISHMENT OR SURRENDER OF TENURE I L R 7 All 847
I L R 13 All 396

See LANDLORD AND TENANT—EJECTMENT—GENERALLY
I L R 10 All 615

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND
I L R 6 All 19
I L R 9 All 88
I L R 10 All 159
I L R 21 All 297

See LANDLORD AND TENANT—TRANSFER BY TENANT I L R 12 All 419
I L R 15 All 219 231
I L R 16 All 398

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION
I L R 17 All 33

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT

——— s 10—

See RIGHT OF SUIT—ACCRUAL OF RIGHT
I L R 15 All 399

——— s 14—*Determination of rent—Landlord and tenant—May apply* The words may apply in s 14 of Act XII of 1881 mean shall apply if the landholder wants to procure such a determination of his tenant s rent as would give him a title to sue his tenant under that Act for arrears of rent and if he cannot get the rent arranged between him elf and his tenant by other legitimate means uch as an amicable settlement between themselves or the like RAM PARSAD RAI *v* DINA KUAR I L R 4 All 515

——— ss 18 31 34—

See LANDLORD AND TENANT—ACCRETION TO TENURE I L R 5 All 260

——— s 21—

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT I L R 3 All 365

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*contd*

——— s 29—

See PLAINT—RETURN OF PLAINT
I L R 3 All 766

——— s 30—

See GRANT—POWER TO GRANT
I L R 2 All 545 732

——— s 31—

See LANDLORD AND TENANT—ABANDONMENT RELINQUISHMENT OR SURRENDER OF TENURE I L R 7 All 847
I L R 13 All 396

See LANDLORD AND TENANT—TRANSFER BY TENANT I L R 18 All 354

——— s 34—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT
I L R 18 All 240

——— s 36—

See ESTOPPEL—ESTOPPEL BY CONDUCT
I L R 15 All 189
I L R 22 All 83 93

——— ss 36 39—

See RES JUDICATA—COMPETENT COURTS—REVENUE COURTS
I L R 3 All 63 81
I L R 4 All 1
I L R 6 All 295
I L R 18 All 270

——— ss 36 39 and 40—

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT
I L R 10 All 13

——— s 39—

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS
I L R 2 All 428
I L R 3 All 81 521
I L R 18 All 270

——— s 42—*Assessment of price of crop belonging to an evicted tenant—Effect of such assessment* *Held* that where a landholder having ejected a tenant upon who e holding there are growing crop applies under s 42 cl (c) of Act XII of 1881, for assessment of the price he is bound by the assessment which the Revenue Court may make and cannot afterwards refuse to pay the price fixed SHAM LAL *v* CHOKHE I L R 19 All 68

Affirmed on appeal under the Letters Patent SHAM LAL *v* CHOKHE I L R 19 All 414

——— s 44—

See LANDLORD AND TENANT—ALTERATION OF CONDITION OF TENANCY—DIGGING WELLS OR TANKS
I L R 21 All 388

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*contd*

——— s 56—

See VENDOR AND PURCHASER—LIEN
I L R 3 All 433

Landholder and tenant —Landholder s lien for rent— Rent payable —' Arrear of rent due The first paragraph of s 56 of Act No XII of 1881 applies not

except the landlord wishes to bring to sale the produce of a cultivator he must in order to avoid the prohibition contained in s 56 of Act XII of 1881 tender to the immediate landlord of the cultivator the amount if any for which the landlord might on the next ensuing sale day distrain the produce for arrears of rent JAGAN NATH PRASAD v BHIKA RAM I L R 15 All 375

——— s 84—

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS
I L R 10 All 347

——— s 93—

See CO SHARERS—GENERAL RIGHTS IN JOINT PROPERTY
I L R 14 All 273

See CO SHARERS—SUITS BY CO SHARERS WITH RESPECT TO JOINT PROPERTY—MISCELLANEOUS SUITS
I L R 16 All 28 333
I L R 20 All 73
I L R 17 All 423
I L R 2 All 334

See INTEREST—MISCELLANEOUS CASES—MESNE PROFITS I L R 1 All 261

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N W P

See JURISDICTION OF REVENUE COURT—N W P RENT AND REVENUE CASES

See LANDLORD AND TENANT—TRANSFER BY TENANT I L R 12 All 419

See ONUS OF PROOF—PROFITS SUITS FOR
I L R 12 All 301

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT I L R 7 All 691
I L R 9 All 244

See SUBORDINATE JUDGE JURISDICTION OF
I L R 16 All 363

See VALUATION OF SUIT—APPEALS
I L R 15 All 363

1 ——— s 93(h)— *Recorded co sharer* *Held* that a co sharer of a mehal whose share was recorded in shamilat with all the other pattidars but was not specially defined in the khewat in a

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*contd*

——— s 93(h)—*contd*

fractional or separate form was a recorded co sharer within the meaning of s 93 (*h*) of the N W P Rent Act (XII of 1881) SHIB SHANKAR LAL v BANARSI DAS I L R 7 All 891

2 ——— *Village expenses —Expenses of cultivating sir land held in partnership by plaintiff and defendant* A recorded co sharer of a mehal sued the lambardar for his share of the profits of the mehals for the year 1286 Fasli At the time of the institution of the suit the profits for 1287 and 1288 also were due but no claim was then made in respect of them The suit was struck off on account of the non appearance of the parties under s 140 of Act XII of 1881 (N W P Rent Act) with leave to the plaintiff to bring a fresh suit Subsequently the plaintiff brought a suit against the same defendant for his share of the profits of the mehals for 1287 and 1288 Fasli *Held* that the Courts below had properly refused to deduct from the plaintiff s claim as village expenses within the meaning of s 93 (*h*) of the Rent Act certain charges on account of the expenses of cultivation of *sir* land held in partnership by the plaintiff and the defendant MULCHAND v BHIKARI DAS
I L R 7 All 624

——— s 94—

See CO SHARERS—SUITS BY CO SHARERS WITH RESPECT TO JOINT PROPERTY—MISCELLANEOUS SUITS
I L R 16 All 28 333
I L R 22 All 334

——— *Act XIX of 1873 s 3 cl 8—Limitation—Expiration of agricultural year—Suit by co sharer for profits—Date of taking*

the hands of the lambardar unless by agreement or custom a date is fixed for taking the accounts and dividing the profits in which case any divisible surplus which may have accrued prior to that date is due on that date and the divisible profits in respect of any arrears which may be collected after that date are due when they reach the hands of the lambardar or his agent *Held per* STUART C J and SPANKIE J —That where by agreement or custom there is no date fixed for dividing such profits the share of a co sharer becomes due on the last day of the agricultural year as fixed by Acts XVIII and XIX of 1873 BHIKHAN KHAN v RATAN KUAR
I L R 1 All 512

——— s 95—

See GRANT—POWER TO GRANT
I L R 2 All 545 732

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881) —*contd*

——— s 95—*concld*

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS I L R 19 All 101

See LANDLORD AND TENANT—EJECTMENT—GENERALLY I L R 10 All 615

See LANDLORD AND TENANT—TRANSFER BY LANDLORD I L R 8 All 189

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS
I L R 2 All 200
I L R 3 All 51
I L R 6 All 295 403
I L R 18 All 270

——— s 106—

See CO SHARERS—SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY—RENT I L R 2 All 264
I L R 6 All 576

——— s 118—

See PARTIES—PARTIES TO SUITS—RENT SUITS FOR AND INTERVENORS IN SUCH SUITS I L R 9 All 394

——— ss 128 (a) 140—*Judgment by default—Appeal* S 128 (a) Act XII of 1881 (N W P Rent Act) refers to the procedure described in ss 124 125 126 when no appearance has been put in on the day fixed by the summons or proclamation for the appearance of the defendant or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial and not to subsequent non appearance of parties on a day fixed for trial of issues to which s 140 relates MUHAMMAD ABDUL RAHMAN KHAN *v* MUHAMMAD QUTAB UD DIN
I L R 6 All 446

——— s 148—

See APPEAL—N W P ACT
I L R 3 All 63
I L R 4 All 237
I L R 13 All 364

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS
I L R 10 All 347

——— s 149—

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT I L R 7 All 691

——— ss 171 177 and s 93 (i)—*Government revenue assignee of—Mehal not charged where the revenue is assigned—Act XIX of 1873 s 167* Muafidars or assignees of Government revenue are not in precisely the same position as Government itself would have been and possessed of identical rights and powers in respect of the recovery of

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*contd*

——— s 171—*concld*

arrears of revenue due to them An arrear of assigned revenue is not a prior charge on the property in respect of which it is payable against all the world The effect of the provisions of ss 93 (i) 171 and 177 of the N W P Rent Act (XII of 1881) is to show that what the Legislature contemplated was to place the revenue assigned to a muafidar upon the same footing as rent that therefore in order to recover an arrear of revenue a muafidar must bring a suit in the Revenue Court that upon obtaining a decree he may apply for execution against the immoveable property of the judgment debtor that where such property is a mehal the Collector may make certain arrangements for discharge of the debt and that failing such arrangement such immoveable property may be sold subject to any incumbrances there may be upon it BITHAL DASS *v* HARPHUL I L R 6 All 503

——— s 177—

See PRE EMPTION—RIGHT OF PRE EMPTION I L R 1 All 277
I L R 13 All 224

——— ss 177, 178 188—

See CO SHARERS—GENERAL RIGHTS IN JOINT PROPERTY
I L R 14 All 273

——— s 181 and s 179—*Objection dis*

quence of which a suit has been brought in a Civil Court may be an order made not on the merits but in default of prosecution of his objection by the objector *Sardhari Lal* v *Ambika Persahd I L R 15 Calc 521 L R 15 I A 123 Khub Lal* v *Ram Lochun Koer I L R 17 Calc 260 Kaminee Debia* v *Issur Chunder Roy Chowdhry 22 W R 39* and *Sadut Ali* v *Ram Dhone Misser 12 C L R 40* referred to *Kallu Mal* v *Brown I L R 3 All 504* discussed LUCHMI NARAIN *v* MARTINDELL
I L R 19 All 253

——— s 183—

See APPEAL—N W P ACTS—N W P RENT ACT I L R 4 All 237

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622
I L R 12 All 198

——— s 185—

See REVIEW—GROUND FOR REVIEW
I L R 19 All 52

——— s 189—

See APPEAL—N W P ACTS—N W P RENT ACT

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*contd*

———— s 190—

See APPEAL—ORDERS
I L R 16 All 375

———— s 191—

See APPEAL—N W P ACTS—N W P RENT ACT
I L R 5 All 309

———— s 199—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622
I L R 12 All 198

———— s 203—*Suit for profits—Limitation Act (XV of 1877) s 5—General Clauses Act (I of 1868) s 7* *Held* that a suit for profits under s 93 (*h*) of Act XII of 1881 the period of limitation for the filing of which expired in respect of a portion of the claim on a day when the court was closed could not be brought on the day when the Court re opened but so far as that portion was concerned was barred by limitation MUHAMMAD HUSEN *v* MUZAFFER HUSEN I L R 21 All 22

———— s 206—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—JURISDICTION
7 N W 49
I L R 12 All 419

———— ss 206 207 208—

See SUBORDINATE JUDGE JURISDICTION OF
I L R 6 All 36 295
I L R 16 All 363

———— s 207—

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL
I L R 6 All 440

———— s 208—

See REMAND—GROUND FOR REMAND
I L R 5 All 438
I L R 6 All 378 440
I L R 10 All 31

———— ———— *Remand—Suit not tried on the merits in the Court of first instance—Jurisdiction of Civil or Revenue Court* *Held* that the application by an Appellate Court of the provisions of s 208 of Act XII of 1881 is not precluded by the fact that the Court of first instance has dismissed the suit on a preliminary point without any trial of it on its merits BHOLAI KHAN *v* ABU JAFAR I L R 21 All 267

———— s 209—

See ONUS OF PROOF—PROFITS SUIT FOR
I L R 12 All 301

1 ———— *Land in mehal held by the lambardar as khud kasht at a nominal rent—Liability of lambardar to co-sharer for profits* The land in a certain mehal was recorded as held by

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*concld*

———— s 209—*concld*

M the lambardar as khud kasht at a certain nominal rental For two years in succession *M* sub let such land in part or in whole for a less amount than such nominal rental the third year such land lay fallow Certain persons sued as co sharers in the mehal to recover from *M* their share of the profits on account of such years *M* set up as a defence to the suit that there were no profits—on the contrary a small loss The lower Courts held *M* answerable for the rental recorded. *Held* that it was doubtful whether the provisions of s 209 of Act XVIII of 1873 were applicable in the present case and that even if such provisions were applicable the lower Courts having neither found that more was realized from the land than had been accounted for by *M* nor that the failure to realize more was owing to gross negligence or misconduct on his part the decree of the lower Courts could not be sustained. MANGAL KHAN *v* MUMTAZ ALI
I L R 2 All 239

2 ———— *Suit by co sharer for profits—Burden of proof* When a co sharer claims a dividend on the full rental of the mehal and the lambardar pleads in reply that the actual collection fell short of that rental the burden of proof lies on the co sharer to show that the deficient collection was attributable to the conduct of the lambardar in the sense of s 209 of the N W Provinces Rent Act (XII of 1881) before he can succeed in getting a decree for a sum in excess of the actual collections DHANAK SINGH *v* CHAIN SUKH
I L R 8 All 61

NORTH WESTERN PROVINCES RENT ACT (XII OF 1881)

———— s 1—

See JURISDICTION—SUITS FOR LAND—RENT I L R 23 All 282

———— Ch II (ss 4 to 55A) and s 93—*Landholder and tenant—Suit for rent—Plea of custom allowing deductions on account of land rendered unculturable by action of river—Such deduction not an abatement of rent within the meaning of the Act* An abatement of rent in the sense of Ch II of the North Western Provinces Rent Act (XII of 1881) implies the reduction of the rent payable for the holding if not permanently at all events for an indeterminate period the rent as abated being substituted for the original rent and continuing to be the rent of the holding until altered by agreement or by further order A tenant cannot apply under Ch II on any ground for a reduction or revision of rent for a particular year only and having no effect beyond that year on the rent payable for the holding In a suit for arrears of rent under s. 93 (*a*) of the North Western Provinces Rent Act 1881 the defendant proved a local custom whereby a tenant was entitled to a proportionate deduction from

NORTH WESTERN PROVINCES RENT ACT (XII OF 1881)—*contd*

——— s 1—*concld*

the rent for any year for such lands as were in that year owing to fluvial action unculturable by being submerged by water or covered by sand No application for abatement of rent had been made under Ch II of the Act *Held* that inasmuch as the defendant did not by his plea seek for an abatement of rent in the sense of Ch II namely a reduction permanently or for an indeterminate period of the rent payable for his holding but only a remission or deduction from such rent for a particular year and in respect of such portions of the holding as were unculturable in that year and inasmuch as no such remission could have been obtained in proceedings under Ch II the custom did not override any of the provisions of the Act and must be given effect to by the Court trying the suit *Radha Prasad Singh v Baldeo Misr All Weekly Notes (189) 9* distinguished BENI PRASAD KUARI v DUKKHI RAI (1901) I L R 23 All 270

1 ——— s 9—*Occupancy tenant—Transfer—Usufructuary mortgage of occupancy holding* *Held* that the second paragraph of s 9 of the N W P Rent Act 1881 is no bar to the creation of a usufructuary mortgage of an occupancy holding by the tenant having a right of occupancy *Khiali Ram v Nathu Lal I L R 15 All 219* followed *Ganga Din v Dhurandhar Singh I L R 5 All 195* and *Abadi Husain v Jurawan Lal I L R 7 All 866* referred to BRIJ MOHAN DAS v ALGU (1904) I L R 26 All 78

2 ——— *Agra Tenancy Act (II of 1901) ss 22 32 (2)—Occupancy holding—Succession—Suit for declaration of right to a share in an occupancy holding—Civil and Revenue Courts—Jurisdiction* *Held* that a suit in a Civil Court for a declaration of the plaintiff s right to a share in an occupancy holding is not precluded by s 32 (2) of the Agra Tenancy Act *Held* also that there was nothing in the Rent Act of 1881 to prevent a woman becoming an occupancy tenant and if she did so on her death the tenancy would pass to her heirs and not the heirs of her husband. AYUB ALI KHAN v MASHUQ ALI KHAN (1908) I L R 31 All 51

——— s 10—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—N W PROVINCES I L R 23 All 481

——— s 23—*Suspension of revenue and consequent suspension of rent—Lessee entitled to the benefit of suspension of rent* *Held* that when the Local Government under s 23 of the North Western Provinces Rent Act suspends payment of revenue and when suspension of rent has in consequence been ordered a lessee is entitled to the benefit of the latter suspension MADAN MOHAN LAL v DILDAR HUSAIN (1902) I L R 24 All 465

NORTH WESTERN PROVINCES RENT ACT (XII OF 1881)—*contd*

——— s 31—

See LANDLORD AND TENANT—ABANDONMENT RELINQUISHMENT OR SURRENDER OF TENANCY I L R 25 All 77

See MORTGAGE—POSSESSION UNDER MORTGAGE I L R 24 All 538

——— s 35—*Decree for rent—Execution decree—Application to eject tenant—Limitation—Limitation Act (XV of 1877) Sch II Art 179—Agra Tenancy Act (II of 1901) s 1/5 et seq—Appeal* A landholder obtained under Act XII of 1881 s 35 a decree for arrears of rent against certain tenants The decree holder did not attempt to execute this decree against the tenants until more than three years had elapsed from the date thereof but meanwhile she did apply for and obtained the ejectment of the tenants *Held* that execution of the decree was barred and that the decree holder s application for ejectment could not operate to save limitation *Sed quære* whether any appeal lay from the order of the first Court (Assistant Collector) disallowing execution *Kharag Singh v Pola Ram I L R 27 All 31* doubted MAHARANI OF DUMRAON v BUDDHA KURMI (1905) I L R 28 All 131

——— ss 42 95 and 206—*Landholder and tenant—Ejectment—Appraisement of tenant s crop—Assignment of right to receive price of crops—Mode in which such price can be realised—Jurisdiction—Civil and Revenue Courts—Actionable claim—Act IV of 1882 s 135* A zamindar ejected a tenant and having done so caused the value of the tenant s crops standing on the land to be assessed in the manner provided for by s 42 of the North Western Provinces Rent Act The tenant assigned his right to get the assessed value of the crops from the zamindar to a third person *Held* on suit by the assignee to recover the amount of the assessment (i) that the assignee s proper remedy was by suit in a Court of Revenue and not by application to execute the order awarding compensation (ii) that the suit was not a suit of the nature cognizable by a Court of Small Causes and (iii) that the assignment to the plaintiff after the award had [illegible]

——— s 43—*Landholder and tenant—Suit to recover rent in kind—Duty of officer appointed to divide produce or appraise standing crops—Res judicata* Where under s 43 of the North Western Provinces Rent Act 1881 an officer is appointed to divide produce or estimate or appraise standing crop as between a landholder and alleged tenant such officer is not empowered to come to any decision as to the liability of the tenant to pay rent if such liability is denied therefore an officer appointed for the purposes of s. 43 should take upon himself to determine any question as to the liability of the tenant to pay re[illegible]

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*contd*

——— s 190—

See APPEAL—ORDERS
I L R 16 All 375

——— s 191—

See APPEAL—N W P ACTS—N W P RENT ACT
I L R 5 All 309

——— s 199—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622
I L R 12 All 198

——— s 203—*Suit for profits—Limitation Act (XV of 1877) s 5—General Clauses Act (I of 1887) s 7* *Held* that a suit for profits under s 93 (h) of Act XII of 1881 the period of limitation for the filing of which expired in respect of a portion of the claim on a day when the court was closed could not be brought on the day when the Court re opened but so far as that portion was concerned was barred by limitation MUHAMMAD HUSEN *v* MUZAFFER HUSEN
I L R 21 All 22

——— s 206—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—JURISDICTION
7 N W 49
I L R 12 All 419

——— ss 206 207 208—

See SUBORDINATE JUDGE JURISDICTION OF
I L R 6 All 36 295
I L R 16 All 363

——— s 207—

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL
I L R 6 All 440

——— s 208—

See REMAND—GROUND FOR REMAND
I L R 5 All 438
I L R 6 All 378 440
I L R 10 All 31

——— *Remand—Suit not tried on the merits in the Court of first instance—Jurisdiction of Civil or Revenue Court* *Held* that the application by an Appellate Court of the provisions of s 208 of Act XII of 1881 is not precluded by the fact that the Court of first instance has dismissed the suit on a preliminary point without any trial of it on its merits. BHOLAI KHAN *v* ABU JAFAR
I L R 21 All 267

——— s 209—

See ONUS OF PROOF—PROFITS SUIT FOR
I L R 12 All 301

1 ——— *Land in mehal held by the lambardar as khud kasht at a nominal rental—Liability of lambardar to co sharer for profits* The land in a certain mehal was recorded as held by

NORTH WESTERN PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*concld*

——— s 209—*concld*

M the lambardar as khud kasht at a certain nominal rental. For two years in succession M sub let such land in part or in whole for a less amount than such nominal rental the third year such land lay fallow Certain persons sued as co sharers in the mehal to recover from M their share of the profits on account of such years M set up as a defence to the suit that there were no profits—on the contrary a small loss The lower Courts held M answerable for the rental recorded *H H* that it was doubtful whether the provisions of s 209 of Act XVIII of [illegible]

nor that the failure to realize more was owing to gross negligence or misconduct on his part the decree of the lower Courts could not be sustained. MANGAL KHAN *v* MUMTAZ ALI
I L R 2 All 239

2 ——— *Suit by co sharer for profits—Burden of proof* When a co sharer claims a dividend on the full rental of the mehal and the lambardar pleads in reply that the actual collection fell short of that rental the burden of proof lies on the co sharer to show that the deficient collection was attributable to the conduct of the lambardar in the sense of s 209 of the N W Provinces Rent Act (XII of 1881) before he can succeed in getting a decree for a sum in excess of the actual collections DHANAK SINGH *v* CHAIN SUKH
I L R 8 All 61

NORTH WESTERN PROVINCES RENT ACT (XII OF 1881)

——— s 1—

See JURISDICTION—SUITS FOR LAND—RENT
I L R 23 All 282

——— **Ch II (ss 4 to 55A) and s 93—** *Landholder and tenant—Suit for rent—Plea of custom allowing deductions on account of land rendered unculturable by action of river—Such deduction not an abatement of rent within the meaning of the Act* An abatement of rent in the sense of Ch. II of the North Western Provinces Rent Act (XII of 1881) implies the reduction of the rent payable for the holding if not permanently at all events for an indeterminate period the rent as abated being substituted for the original rent and continuing to be the rent of the holding until altered by agreement or by further order A tenant cannot apply under Ch II on any ground for a reduction or revision of rent for a particular year only and having no effect beyond that year on the rent payable for the holding In a suit for arrears of rent under s. 93 (a) of the North Western Provinces Rent Act 1881 the defendant proved a local custom whereby a tenant was entitled to a proportionate deduction from

NORTH WESTERN PROVINCES RENT ACT (XII OF 1881)—*contd*

———— s 1—*concld*

the rent for any year for such lands as were in that year owing to fluvial action unculturable by being submerged by water or covered by sand No application for abatement of rent had been made under Ch II of the Act *Held* that inasmuch as the defendant did not by his plea seek for an abatement of rent in the sense of Ch II namely a reduction permanently or for an indeterminate period of the rent payable for his holding but only a remission or deduction from such rent for a particular year and in respect of such portions of the holding as were unculturable in that year and inasmuch as no such remission could have been obtained in proceedings under Ch II the custom did not override any of the provisions of the Act and must be given effect to by the Court trying the suit *Radha Prasad Singh* v *Baldeo Misr All Weekly Notes (189) 99* distinguished BENI PRASAD KUARI v DUKKHI RAI (1901) **I L R 23 All 270**

1 ———— s 9—*Occupancy tenant—Transfer—Usufructuary mortgage of occupancy holding* *Held* that the second paragraph of s 9 of the N W P Rent Act 1881 is no bar to the creation of a usufructuary mortgage of an occupancy holding by the tenant having a right of occupancy *Khiali Ram* v *Nathu Lal I L R 15 All 219* followed *Ganga Din* v *Dhurandhar Singh I L R 5 All 195* and *Abadi Husain* v *Jawahar Lal I L R 7 All 866* referred to BRIJ MOHAN DAS v ALGU (1904) **I L R 26 All 78**

2 ———————— *Agra Tenancy Act (II of 1901) ss 22 32 (2)—Occupancy holding—Succession—Suit for declaration of right to a share in an occupancy holding—Civil and Revenue Courts—Jurisdiction* *Held* that a suit in a Civil Court for a declaration of the plaintiff s right to a share in an occupancy holding is not precluded by s 32 (2) of the Agra Tenancy Act *Held* also that there was nothing in the Rent Act of 1881 to prevent a woman becoming an occupancy tenant and if she did so on her death the tenancy would pass to her heirs and not the heirs of her husband. AYUB ALI KHAN v MASHUQ ALI KHAN (1908) **I L R 31 All. 51**

———— s 10—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—N W PROVINCES **I L R 23 All. 481**

———— s 23—*Suspension of revenue and consequent suspension of rent—Lessee entitled to the benefit of suspension of rent* *Held* that when the Local Government under s 23 of the North Western Provinces Rent Act suspends payment of revenue and when suspension of rent has in consequence been ordered a lessee is entitled to the benefit of the latter suspension MADAN MOHAN LAL v DILDAR HUSAIN (1902) **I. L. R. 24 All. 465**

NORTH WESTERN PROVINCES RENT ACT (XII OF 1881)—*contd*

———— s 31—

See LANDLORD AND TENANT—ABANDONMENT RELINQUISHMENT OR SURRENDER OF TENANCY **I L R 25 All 77**

See MORTGAGE—POSSESSION UNDER MORTGAGE **I L R 24 All 538**

———— s 35—*Decree for rent—Execution decree—Application to eject tenant—Limitation—Limitation Act (XV of 1877) Sch II Art 179—Agra Tenancy Act (II of 1901) s 175 et seq—Appeal* A landholder obtained under Act XII of 1881 s 35 a decree for arrears of rent against certain tenant The decree holder did not attempt to execute this decree against the tenants until more than three years had elapsed from the date thereof but meanwhile she did apply for and obtained the ejectment of the tenants *Held* that execution of the decree was barred and that the decree holder s application for ejectment could not operate to save limitation *Sed quære* whether any appeal lay from the order of the first Court (Assistant Collector) disallowing execution *Kharag Singh* v *Pola Ram I L R 27 All 31* doubted MAHARANI OF DUMRAON v BUDDHA KURMI (1905) **I L R 28 All. 131**

———— ss 42 95 and 206—*Landholder and tenant—Ejectment—Appraisement of tenant s crop—Assignment of right to receive price of crops—Mode in which such price can be realised—Jurisdiction—Civil and Revenue Courts—Actionable claim—Act IV of 1882 s 13* A zamindar ejected a tenant and having done so caused the value of the tenant s crops standing on the land to be assessed in the manner provided for by s 42 of the North Western Provinces Rent Act The tenant assigned his right to get the assessed value of the crops from the zamindar to a third person *Held* on suit by the assignee to recover the amount of the assessment [illegible] suit [illegible] to [illegible] hat [illegible] ble by a Court of Small Causes and (ii) that the assignment to the plaintiff after the award had [illegible]

———— s 43—*Landholder and tenant—Suit to recover rent in kind—Duty of officer appointed to divide produce or appraise standing crops—Res judicata* Where under s 43 of the North Western Provinces Rent Act 1881 an officer is appointed to divide produce or estimate or appraise standing crop as between a landholder and alleged tenant such officer is not empowered to come to any decision as to the liability of the tenant to pay rent if such liability is denied. [illegible] therefore an officer appointed for the purposes of s. 43 should take upon himself to determine any question as to the liability of the tenant to pay [illegible]

NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1873)—*concld*

———— s 43—*concld*

and *Chunder Sikhur Bundopadhya* v *Obhoy Churn Bagchi I L R 6 Calc 8* referred to BRIJ MOHAN SINGH v COLLECTOR OF ALLAHABAD

I L R. 4 All. 102

Hel[illegible]
DUTH [illegible]
that [illegible]
provis[illegible]

and not to those in which compensation was not claimed. *Held* also by the Full Bench (confirming the decision of STUART C J) that the refusal of the Municipal Committee to allow the plaintiffs lessee to establish the market gave them a cause of action BRIJ MOHON SINGH v COLLECTOR OF ALLAHABAD

I L R. 4 All. 339

NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883)

———— s 46—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT 1883 I L R. 22 All. 111

1 ———— s 55—*Municipal Board—Power of Municipal Boards to frame bye laws—N W P and Oudh Municipalities Act (XV of 1873) s 22 —Nuisance.* Cl. (c) of s 55 of Act XV of 1883 was not intended to empower a Municipal Board to make rules which would enable it to confiscate private rights without making any compensation or to treat as nuisances acts which are not in law or with regard to public health or convenience capable of being considered nuisances The clause was meant to give to Municipal Boards power to make rules for prohibiting the establishment of markets that is to prevent new markets being established and to give them power to control the maintenance of existing markets or of markets which might be established with their sanction By maintenance is meant the keeping up of a market in such a manner as would make it a fit place for the carrying on of a market having regard to public health and public convenience GANGA NARAIN v MUNICIPAL BOARD OF CAWNPORE I L R. 19 All. 313

2 ———— — ———— *Municipal bye law presumption as to validity of* Where a person was tried for and convicted of a breach of certain bye laws purporting to have been duly passed by a Municipal Board *Held* that the presumption was that such bye laws had been passed with due regard to the necessary procedure and were not illegal and that it lay upon the accused to object to their validity and was no part of the duty of a

NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883)—*contd*

———— s 55—*concld*

Court exercising appellate or revisional jurisdiction to enter of its own motion into the question whether such rules had been properly framed in accordance with the provisions of the law on that subject *Municipality of Sholapur* v *Sholapur Spinning and Weaving Co I L R 20 Bom 732* referred to QUEEN EMPRESS v RAM CHANDAR

I L R. 19 All 493

1 ———— s 69—*Complaint of offence against Municipal bye law—Power of Municipal Board to give a general authority to institute complaints on its behalf* *Held* that s 69 of the N W P and Oudh Municipalities Act 1883 confers upon Municipal Boards in the N W P and Oudh the power to delegate generally their authority to make complaints in respect of municipal offences and this general delegation includes not merely the giving of authority to do the formal act of presenting a complaint to a Court but the exercise of discretion as to whether in any given case a complaint shall or shall not be made POWELL v MUNICIPAL BOARD OF MUSSOORIE

I L R 22 All. 123

2 ———— and s 71—*Municipal rules —Infringement of rules—Prosecutions—N W P Government Notification No 865 dated the 3rd November 1869—Rule VI legality of* Municipal Boards and Magistrates should see that before prosecutions are instituted under the municipal rules care is taken that the requirements of s 69 of Act XV of 1883 (N W P and Oudh Municipalities Act) are satisfied. A District Magistrate who was also Chairman of a Municipal Board having information that a certain person had evaded the payment of octroi duty directed his prosecution for breach of municipal rules The Magistrate in thus causing proceedings to be taken acted wholly of his own motion and authority The accused was tried and convicted under Rule 6 Government N W P Notification No 865 dated the 3rd November 1869 read with s 45 of Act XV of 1873 (N W P and Oudh Municipalities Act) This rule provided that any person evading or abetting the evasion of the octroi duties specified in a schedule should be deemed to have committed an infringement of a bye law It purported to have been made under s. 12 of Act VI of 1868 (Municipal Improvements Act N W P) which authorized the making of rules as to the persons by whom and the manner in which any assessment of taxes under this Act shall be confirmed and for the collection of such taxes *Held* that assuming the rule to have been legally made under s 12 of Act VI of 1868 which was not clear and that it was saved by s 2 of Act XV of 1873 it would as declared in s 71 of Act XV of 1883 (N W P and Oudh Municipalities Act) continue in force until repealed by new rules made under such last mentioned Act and be deemed to have been made under that Act and its operation was therefore subject to the provisions of that Act

NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883)—*concld*

——— ss 69 and 71—*concld*

[illegible]

the Magistrate of the district in connection with s 69 was neither better nor worse than that of any other member of the Board and unless he had been duly authorized by the Board as a Board he had no more *locus standi* to cause a prosecution to be insti [illegible]

was illegal and must be set aside QUEEN EMPRESS *v* YUSUF KHAN I L R 8 All 677

NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (I OF 1900)

——— ss 3 and 87—*Municipal Board—By laws—Interpretation of statutes* Where a rule framed by a Municipal Board forbade the erection or re erection of any building in the Civil station except with the previous sanction of the Board it was *held* that such prohibition could not apply to the inclosing by means of a canvas screen of a certain space adjoining a house KAMTA NATH *v* MUNICIPAL BOARD OF ALLAHABAD (1905)
I. L. R. 28 All. 199

——— s 47—*Contract—Mode of execution by Board* Where a contract entered into with a Municipal Board for the supply of material for road making was endorsed both by the Secretary and the Vice Chairman of the Board and this endorsement referred to the contents of the con tract and its confirmation *Held* that this was a sufficient compliance with the requirements of s 47 of the Municipalities Act MUNICIPAL BOARD OF NAJIBABAD *v* SHEO NARAIN (1907)
I L R 29 All. 346

——— s 49—*Suit against a Municipal Board—Notice of suit—Whether notice necessary in the case of a suit for an injunction against an act threatened* *Held* by AIKMAN J (KNOX J *dissentiente*) that where a suit is brought against a Municipal Board to which the North Western Pro vinces and Oudh Municipalities Act 1900 is appli cable to obtain an injunction prohibiting the Board from levying a tax which the Board has threatened to levy on the plaintiff the service of such notice as is prescribed by s 49 of the said Act is a con dition precedent to the maintainability of the suit. *The Municipal Committee of Moradabad* v *Chatri Singh I L R 1 All 269* *Manni Kasaundhan* v *Crooke I L R 2 All 296* and *Brij Mohan Singh* v *The Collector of Allahabad I L R 4 All 10 338* distinguished. KNOX J (*contra*) —Where the suit is for an injunction merely no previous notice

NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (I OF 1900)—*contd*

——— s 49—*concld*

is necessary *Shahebzadi Shahunshah Begum* v *Fergusson I L R 7 Calc 499* referred to GREENWAY *v* MUNICIPAL BOARD OF CAWNPORE (1906) I L. R. 28 All. 600

——— s 128—*Ss 128 (c) 132—Municipal Board powers of—By law—By law held to be unreasonable and its enforcement refused* The English law as to the necessity of by laws being reasonable is applicable to by laws framed in the exercise of their statutory powers by Muni cipal Boards in India The Municipal Board of Naini Tal passed a by law under the powers con *ferred upon it by s 128 cl (c) of N & O Act* I of 1900 to the following effect namely — No coolie whether bearing loads or not no servant [illegible] prosti [illegible] of two [illegible] of the [illegible] at as regards the words no servant except in attend ance on his master this was under the circum stances an unreasonable by law and the Court declined to give effect to it EMPEROR *v* BAL KIS HAN (1902) I L. R 24 All 439

——— s 147—*By laws of Municipality—Continuing breach—Recurring fine—Imposition of fine in advance* *Held* that where as in s 147 of N & O Act I of 1900 it is directed that a breach of some law may be punished with a fine of a certain sum *per diem* so long as the breach conti nues it is not competent to the Court to im pose such fine in advance whilst sentencing an offender in respect of the original breach but there must be proof of the continuing breach having been committed. *Ram Krishna Biswas* v *Mohendra Nath Mozumdar I L R 27 Calc 565* followed EMPEROR *v* WAZIR AHMAD (1902)
I. L. R. 24 All. 309

——— s 152—*Order of Municipal Board under s 87 for removal of building erected without permission—Disobedience of order—Finality of order* No prohibition notice or order issued by a [illegible] P and Oudh [illegible] o be called in [illegible] of an appeal [illegible] SHADI (1904)
[illegible] 26 All. 386

——— s 167—

See PENAL CODE ss 425 426
I. L. R. 29 All. 565

——— s 183—*Jurisdiction of Civil Courts* A Municipal Board granted permission to *B* to build a temple The District Magistrate acting under s 183 of the Municipalities Act made an order cancelling the permission given by the Municipal Board and the Local Government con firmed this order of the District Magistrate *B* brought a suit for a declaration that he had a

NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (I OF 1900)—*concld*

———— s 183—*concld*

right to build the temple. *Held* that the suit was not maintainable *Held* further that the Civil Court had no power to disturb the order of the District Magistrate who acted within his jurisdiction and whose order had been duly confirmed by the Local Government. *Abdul A iz v Municipal Board of Pilibhit 2 All L J 222* followed. BULAKI DAS v SECRETARY OF STATE FOR INDIA (1909) I L R 31 All 371

———— s 187—*Rules framed by Local Government for the regulation of Municipal Elections—*

he does so it is competent to the party against whom costs are awarded to sue in a Civil Court to have as much of the Magistrate s order as relates to costs set aside CHANDRA BHAN v GIRWAR LAL (1906) I L R 28 All 475

NORTH WESTERN PROVINCES AND OUDH WATER WORKS ACT (I OF 1891)

———— ss 34 40 and 41—*Construction of Statutes—Omission to give notice of re-occupation of house—Water rate paid during period of non occupation. Held* that the provisions of s 41 of the North Western Provinces and Oudh Water Works

I L R 28 All 375

NOTARY PUBLIC

See POWER OF ATTORNEY I L R 33 Calc 625

NOTES OF EVIDENCE.

See TRANSFER OF CRIMINAL CASE—GENERAL CASES 15 B L R Ap 14 I L R 1 Calc 354

NOTICE

See APPEAL 13 C W N 142

See CIVIL PROCEDURE CODE 1882 s 424 I L R 29 All 567

See CIVIL PROCEDURE CODE, 1882 s 59, I L R 35 Calc 618

See COMPENSATION I L R 34 Calc 470

See COURT OF WARDS 12 C W N 1065

See EJECTMENT I L R 31 Calc 932

See LANDLORD AND TENANT 12 C W N 1059

NOTICE—*contd*

See LAND REVENUE CODE I L R 32 Bom 78

See LEASE I L R 30 All 82

See MORTGAGE 12 C W N 911

See MORTGAGOR AND MORTGAGEE I L R 33 Bom 1

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881) ss 30 39 12 C W N 644

See PENAL CODE (ACT XLV OF 1860) ss 182 211 I L R 30 All 52

See PROSECUTION I L R 34 Calc 909

See PUBLIC DEMANDS RECOVERY ACT ss 8 10 I L R 34 Calc 811

See PUTNI SALE 11 C W N 729

See RAILWAYS ACT ss 77 140 I L R 31 Bom 534

See RAILWAYS ACT (IX OF 1890) ss 77 140

See SALE FOR ARREARS OF REVENUE I L R 35 Calc 636

See VENDOR AND PURCHASER I L R 31 Bom 566

———— before making of order—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES 7 C W N 114

———— before sanction—

See SANCTION FOR PROSECUTION—NOTICE OF SANCTION I L R 26 Mad 592

———— before suit—

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT 7 C W N 108

———— by municipality—

See BENGAL MUNICIPAL ACT 1884 s 85 2 C W N 689

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 11 I L R 20 Bom 732

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 21 I L R 21 Bom 630

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 42 I L R 19 Bom 212

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 74 I L R 2 Bom 527

See BOMBAY MUNICIPAL ACT 1872 s 220 I L R 8 Bom 151

See BOMBAY MUNICIPAL ACT 1888 s 249 I L R 24 Bom 75

See BOMBAY MUNICIPAL ACT 1888 s 353 I L R 19 Bom 372

See BOMBAY MUNICIPAL ACT 1888 s 381 I L R 24 Bom. 125

NOTICE—*contd*

——— constructive—

See PARTIES—PARTIES TO SUITS—MORTGAGES SUITS CONCERNING
I L R 21 Calc 116

See PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS
I L R 19 Mad 471

See PRE EMPTION—RIGHT OF PRE EMPTION
I L R 16 Mad 301

See REGISTRATION ACT (III OF 1877) SS 50 AND 17 I L R 27 Bom 452

See RES JUDICATA—MATTERS IN ISSUE
I L R 19 Mad 145

See TRANSFER OF PROPERTY ACT S 3—NOTICE 7 C W N 11

——— date of—

See BOMBAY TRAMWAYS ACT
I L R 28 Bom 502

See LIMITATION ACT 1877 SCH II ART 179(5) I L R 28 Bom. 416

See MORTGAGE 8 C W N 332

——— duty of serving when on insolvent and when on creditors—

See INSOLVENT ACT (11 & 12 VICT c 21)
I L R. 26 Bom 171

——— effect of non service of—

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880) ss 8 10 12
5 C W N 86

——— in the alternative sufficiency of—

See BENGAL TENANCY ACT s 155
I L R. 30 Calc 1063

——— of abandonment—

See INSURANCE—MARINE INSURANCE
1 Ind. Jur N S 406
6 B L R 218
7 B L R. 347
Bourke O C 391

——— of acquisition of land—

See BOMBAY CITY IMPROVEMENT ACT
I L R 27 Bom. 424

——— of allotment—

See COMPANY—WINDING UP—GENERAL CASES I L R 9 All. 366

——— of annulment of incumbrances—

See SALE FOR ARREARS OF RENT—INCUMBRANCES 5 C W N 272

——— of appeal—

See APPEAL—ACTS—COMPANIES ACT
I L R 18 All 215
I L R. 30 Calc 758

NOTICE—*contd*

——— of appeal—*concld*

See COMPANY—WINDING UP—GENERAL CASES I L R 4 Calc 704

See LETTERS PATENT, HIGH COURT N W P CL. 10
I L R 17 All 438

See PRACTICE—CIVIL CASES—NOTICE RE ISSUE OF W R Mis 37

See PROCESS SERVICE OF
15 W R 31
I L R 16 Bom 117

——— of application—

See ACT—1863—XX s 18
I L R 24 Mad 685

See CIVIL PROCEDURE CODE 1882 s 100
I L R 18 Bom 59

See CLAIM TO ATTACHED PROPERTY
I L R. 16 Bom. 700

See COMPANIES ACT s 169
I L R 25 Mad 576

See CUSTODY OF CHILDREN
I L R 18 Calc 473

See DIVORCE ACT s 16
4 B L R O C 52
I L R. 18 Calc 443 539

See EXECUTION OF DECREE—STAY OF EXECUTION I L R 15 Bom 536

See MORTGAGE—POWER OF SALE
22 W R. 47

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES I L R. 26 Mad. 41

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY
I L R. 25 Mad. 506

——— of assignment—

See DEBTOR AND CREDITOR
I L R. 26 Bom 577

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION
I L R 12 Mad. 505

See REGISTRATION ACT 1877—
ss 49 AND 50
s 50
s 50 AND s 17

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT I L R. 24 Calc. 642

See TRANSFER OF PROPERTY ACT s 131
I L R. 12 Calc 505
I L R. 10 All. 20
I L R. 10 Mad. 289
I L R. 24 Bom. 502

See TRANSFER OF PROPERTY ACT s 132
I L R. 21 Bom 60

See VENDOR AND PURCHASER—NOTICE

NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (I OF 1900)—*concld*

———— s 183—*concld*

right to build the temple. *Held* that the suit was not maintainable *Held* further that the Civil Court had no power to disturb the order of the District Magistrate who acted within his jurisdiction and whose order had been duly confirmed by the Local Government *Abdul Aziz v Municipal Board of Pilibhit 2 All L J 22?* followed. BULAKI DAS *v* SECRETARY OF STATE FOR INDIA (1909)
I L R 31 All 371

———— s 187—*Rules framed by Local Government for the regulation of Municipal Elections—Procedure—Power to award costs—Suit to set aside order awarding costs—Jurisdiction* A Magistrate trying a petition to set aside the election of a member of a Municipal Board is not empowered to award costs against the unsuccessful party and if he does so it is competent to the party against whom costs are awarded to sue in a Civil Court to have as much of the Magistrate s order as relates to costs set aside CHANDRA BHAN *v* GIRWAR LAL (1906)
I L R 28 All 475

NORTH WESTERN PROVINCES AND OUDH WATER WORKS ACT (I OF 1891)

———— ss 34 40 and 41—*Construction of Statutes—Omission to give notice of re occupation of house—Water rate paid during period of non-occupation* *Held* that the provisions of s 41 of the North Western Provinces and Oudh Water Works Act 1891 [illegible]
I L R [illegible] All 375

NOTARY PUBLIC

See POWER OF ATTORNEY
I L R 33 Calc 625

NOTES OF EVIDENCE

See TRANSFER OF CRIMINAL CASE—GENERAL CASES 15 B L R Ap 14
I L R 1 Calc 354

NOTICE

See APPEAL 13 C W N 142

See CIVIL PROCEDURE CODE 188? s 424
I L R 29 All 567

See CIVIL PROCEDURE CODE 1882 s 595
I L R 35 Calc 618

See COMPENSATION
I L R 34 Calc 470

See COURT OF WARDS
12 C W N 1065

See EJECTMENT I L R 31 Calc 932

See LANDLORD AND TENANT
12 C W N 1059

NOTICE—*contd*

See LAND REVENUE CODE
I L R 32 Bom 78

See LEASE I L R 30 All 82

See MORTGAGE 12 C W N 911

See MORTGAGOR AND MORTGAGEE
I L R 33 Bom 1

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881) ss 30 39
12 C W N 644

See PENAL CODE (ACT XLV OF 1860) ss 182 211 I L R 30 All 52

See PROSECUTION
I L R 34 Calc 909

See PUBLIC DEMANDS RECOVERY ACT ss 8 10 I L R 34 Calc 811

See PUTNI SALE 11 C W N 729

See RAILWAYS ACT ss 77 140
I L R 31 Bom 534

See RAILWAYS ACT (IX OF 1890) ss 77 140

See SALE FOR ARREARS OF REVENUE
I L R 35 Calc 636

See VENDOR AND PURCHASER
I L R 31 Bom 566

———— before making of order—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES 7 C W N 114

———— before sanction—

See SANCTION FOR PROSECUTION—NOTICE OF SANCTION I L R 26 Mad 592

———— before suit—

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT
7 C W N 108

———— by municipality—

See BENGAL MUNICIPAL ACT, 1884 s 85
2 C W N 689

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 11 I L R 20 Bom 732

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 21 I L R 21 Bom 630

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 42 I L R 19 Bom 212

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 74 I L R 2 Bom 527

See BOMBAY MUNICIPAL ACT 1872 s 220
I L R 8 Bom 151

See BOMBAY MUNICIPAL ACT 1888 s 249
I L R 24 Bom 75

See BOMBAY MUNICIPAL ACT 1888 s 353
I L R 19 Bom 372

See BOMBAY MUNICIPAL ACT 1888 s 381
I L R 24 Bom 125

NOTICE—*contd*

——— constructive—

See PARTIES—PARTIES TO SUITS—MORTGAGES SUITS CONCERNING
I L R 21 Calc 116

See PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS
I L R 19 Mad 471

See PRE EMPTION—RIGHT OF PRE EMPTION I L R 16 Mad 301

See REGISTRATION ACT (III OF 1877) ss 50 AND 17 I L R 27 Bom 452

See RES JUDICATA—MATTERS IN ISSUE
I L R 19 Mad 145

See TRANSFER OF PROPERTY ACT s 3—NOTICE 7 C W N 11

——— date of—

See BOMBAY TRAMWAYS ACT
I L R 28 Bom 502

See LIMITATION ACT 1877 SCH II ART 179(>) I L R 28 Bom. 416

See MORTGAGE 8 C W N 332

——— duty of serving when on insolvent and when on creditors—

See INSOLVENT ACT (11 & 12 VICT c 21)
I L R 26 Bom 171

——— effect of non service of—

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880) ss 8 10 12
5 C W N 86

——— in the alternative sufficiency of—

See BENGAL TENANCY ACT s 15.
I L R 30 Calc 1063

——— of abandonment—

See INSURANCE—MARINE INSURANCE
1 Ind. Jur N S 406
6 B L R 218
7 B L R. 347
Bourke O C 391

——— of acquisition of land—

See BOMBAY CITY IMPROVEMENT ACT
I L R 27 Bom. 424

——— of allotment—

See COMPANY—WINDING UP—GENERAL CASES I. L. R 9 All. 366

——— of annulment of incumbrances—

See SALE FOR ARREARS OF RENT—INCUMBRANCES 5 C W N 272

——— of appeal—

See APPEAL—ACTS—COMPANIES ACT
I L R 18 All 215
I L R. 30 Calc 758

NOTICE—*contd*

——— of appeal—*concld*

See COMPANY—WINDING UP—GENERAL CASES I L R 4 Calc 704

See LETTERS PATENT HIGH COURT N W P CL 10
I L R 17 All 438

See PRACTICE—CIVIL CASES—NOTICE RE ISSUE OF W R Mis 37

See PROCESS SERVICE OF
15 W R 31
I L R 16 Bom 117

——— of application—

See ACT—1863—XX s 18
I L R 24 Mad 685

See CIVIL PROCEDURE CODE 1882 s 100
I L R 18 Bom 59

See CLAIM TO ATTACHED PROPERTY
I L R 16 Bom. 700

See COMPANIES ACT s 169
I L R 25 Mad 576

See CUSTODY OF CHILDREN
I L R 18 Calc 473

See DIVORCE ACT s 16
4 B L R. O C 52
I L R 18 Calc 443 539

See EXECUTION OF DECREE—STAY OF EXECUTION I L R 15 Bom 536

See MORTGAGE—POWER OF SALE
22 W R. 47

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES I L R. 26 Mad. 41

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY
I L R. 25 Mad. 506

——— of assignment—

See DEBTOR AND CREDITOR
I. L. R. 26 Bom 577

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION
I. L. R 12 Mad. 505

See REGISTRATION ACT 1877—
ss. 49 AND 50
s 50
s 50 AND s 17

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT I. L. R. 24 Calc 642

See TRANSFER OF PROPERTY ACT s 131
I. L. R. 12 Calc. 505
I. L. R. 10 All. 20
I L R. 10 Mad. 289
I. L. R. 24 Bom. 502

See TRANSFER OF PROPERTY ACT s 132
I. L. R. 21 Bom 60

See VENDOR AND PURCHASER—NOTICE

NOTICE—*contd*

——— of foreclosure—

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE

——— of inability to perform contract—

See CONTRACT—BREACH OF CONTRACT
I L R 30 Calc 477

——— of insolvency effect of irregularity in posting—

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE
5 C W N 91

——— of intentions to build—

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 33 I L R 19 Bom 27

——— of meeting—

See BOMBAY DISTRICT MUNICIPALITIES ACT s 11 I L R 7 Bom 399

——— of motion—

See SUIT RESTORATION OF
I L R 31 Calc 1050

——— of prior incumbrance—

See REGISTRATION ACT s 50
I L R 25 All 366

——— of proceedings—

See COMPANY—WINDING UP—GENERAL CASES L R 5 Bom 223
I L R 11 Bom 241

See FOREIGN COURT JUDGMENT OF
I L R 11 Bom 241

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE
I L R 11 Mad 136

See POSSESSION ORDER OF CRIMINAL COURT AS TO—NOTICE OF PARTIES

See REVIEW—PROCEDURE ON RE HEARING OF CASE I L R 11 Bom 591

See SECURITY FOR GOOD BEHAVIOUR
I L R 25 All 375

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 188 s. 622
I L R 11 Mad 144
I L R 20 All 474

See SURVEY AWARD 3 W R 7

——— of relinquishment—

See RELINQUISHMENT OF TENURE
7 B L R Ap 11
W R 1864 Act X 9
8 W R 220
11 W R 456

——— of resumption—

See CANTONMENT PROPERTY
I L R 30 Bom 187

NOTICE—*contd*

——— of sale—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE OF SALE
I L R 20 All 86
L R 17 I A 191

See MORTGAGE—POWER OF SALE
I L R 11 Mad 201

See PUBLIC DEMANDS RECOVERY ACT s 2
I L R 21 Calc 350 350 note
I L R 26 Calc 414
3 C W N 233

See PUBLIC DEMANDS RECOVERY ACT ss 6 7 AND 10
I L R 12 Calc 603
I L R 13 Calc 208
I L R 23 Calc 775
L R 23 I A 45
I L R 26 Calc 172
2 C W N 363

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS 6 C W N 877
7 C W N 386

SETTING ASIDE SALE
I L R 24 Mad 307

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY
I L R 30 Calc 1

——— of suit—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE OF SUIT
8 W R 425
I L R 1 All 269

See BENGAL ACT IX OF 1871 s 27
I L R 15 Calc 259

See BENGAL MUNICIPAL ACT 1864 ss 77 81 87 7 W R 92
9 W R 279 562

See BOMBAY CITY IMPROVEMENT ACT
I L R 27 Bom 424

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888) s 527
I L R 25 Bom 387

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 86 I L R 7 Bom 399
I L R 8 Bom 142

See BOMBAY DISTRICT MUNICIPAL ACT (BOM ACT II OF 1884) s 48
I L R 25 Bom 142

See BOMBAY MUNICIPAL ACT 1888 s 298
I L R 19 Bom 407

See BOMBAY MUNICIPAL ACT 1888 s 527
I L R 17 Bom 307

NOTICE—*contd*

—— of suit—*concld*

See CALCUTTA MUNICIPAL ACT 1863 s 226 8 B L R 265

See CALCUTTA MUNICIPAL ACT 1876 s 357 I L R 18 Calc 91

See CIVIL PROCEDURE CODE 1882 s 424 13 C L R 195
I L R 20 Bom 697
I L R 24 Calc 584
I L R 25 Calc 239

See COLLECTOR I L R 11 Mad 317
I L R 13 Bom 343

See COMPANY—WINDING UP—GENERAL CASES I L R 5 Bom 223
I L R 11 Bom 241

See FOREIGN COURT JUDGMENT OF I L R 13 Mad. 496

See MADRAS LOCAL BOARDS ACT s 27 I L R 16 Mad 317

See MADRAS MUNICIPAL ACT 1884 s 433 I L R 14 Mad 386
I L R 18 Mad. 503

See MADRAS TOWNS IMPROVEMENT ACT 1871 s 168 I L R 2 Mad 124

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT s 43 I L R 1 All. 269

See OFFICIAL TRUSTEE I L R 7 Calc 499

See PUBLIC OFFICER I L R 14 Bom 395
I L R 26 Bom 809

See RAILWAYS ACT s 77 I L R 24 Calc 306
I L R 22 Mad 137

See SECRETARY OF STATE FOR INDIA. I L R 27 Bom. 189

—— of title—

See VENDOR AND PURCHASER—NOTICE.

—— of transfer—

See LANDLORD AND TENANT—TRANSFER BY LANDLORD 7 C W N 454

See TRANSFER OF CRIMINAL CASE—GENERAL CASES I L R 24 Mad 317

—— of transfer of cases—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES I L R 1 Calc 356

—— of trust—

See LIMITATION ACT 1877 ART 134 (1871 ART 134) I L R 1 Bom 269

—— of valuation—

See BENGAL CESS ACT (BENGAL ACT IX OF 1880) s 50 I L R 16 Calc 237

NOTICE—*contd*

—— of withdrawal from association—

See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS I L R 19 Mad 85

—— parties entitled to—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPUTE AS TO RIGHT OF WAY WATER ETC. I L R 21 Calc 727

See POSSESSION ORDER OF CRIMINAL COURT AS TO—NOTICE TO PARTIES

See POSSESSION ORDER TO CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS I L R 21 Calc 915, 916 note

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE MONEY I L R 18 Bom 59

—— pleadings not operating as—

See RES JUDICATA—CAUSE OF ACTION—CONTINUING GUARANTEE I L R 27 Bom. 418

—— possession when equivalent to registration for purposes of—

See REGISTRATION ACT (III OF 1877) ss. 49 AND 50 I L R 27 Bom 408

—— service of—

See CIVIL PROCEDURE CODE 1882 s 80 I L R 30 Bom 623
10 C W N 297

See DECREE I L R 33 Calc 306

See ENHANCEMENT OF RENT—NOTICE OF ENHANCEMENT—SERVICE OF NOTICE

See LAND ACQUISITION ACT (X OF 1870) ss 9 16 40 I L R 30 Calc 576

See LIMITATION ACT 1877 SCH II ART 179 10 C W N 303

See MADRAS RENT RECOVERY ACT s 39 I L R 3 Mad. 114
I L R 18 Mad 30

See MORTGAGE 10 C W N 276

See NOTICE I L R 35 Calc 286

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE I L R 12 Mad. 475

See PROCESS SERVICE OF

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT I OF 1895) 6 C W N 630

See REVENUE SALE LAW s. 33 10 C W N 137

—— sufficiency of—

See BENGAL TENANCY ACT s 155 I L R 22 Calc 77

See COMMISSION—CIVIL CASES 6 C W N 927

NOTICE—*contd*

——— to accused—

See COMPLAINT—DISMISSAL OF COMPLAINT —EFFECT OF DISMISSAL. I L R 29 Calc 457

See CRIMINAL PROCEDURE CODE s 437

See FURTHER INQUIRY 11 C W N 173

See SANCTION FOR PROSECUTION—NOTICE OF SANCTION

——— to agent binding principal—

See DECLARATORY DECREE SUIT FOR—SUITS CONCERNING DOCUMENTS L. R. 29 I A 203

——— to complete sale—

See SPECIFIC PERFORMANCE—SPECIAL CASES I L R 12 Bom 658

——— to parties—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—NOTICE TO PARTIES

EJECTMENT—NOTICE TO QUIT

See RULES MADE UNDER ACTS—BENGAL TENANCY ACT I. L. R 28 Calc 590

——— to quit—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE TO QUIT
I L. R. 9 Mad 346
1 C L R 421
I. L. R 18 Bom 110

See BENGAL TENANCY ACT s 5 8 C W N 454

See CIVIL PROCEDURE CODE 1882 s. 424 I L. R 26 All 220

See LANDLORD AND TENANT—NOTICE TO QUIT 13 C W N 146

See LANDLORD AND TENANT—FORFEITURE —DENIAL OF TITLE.
I. L. R. 13 Calc 3 248
I. L. R 10 Bom 669
I. L. R. 17 Mad. 218
I L. R 20 Bom. 354
I. L. R. 33 Calc 339
I. L. R. 34 Calc. 104
I. L. R. 36 Calc 927
13 C W N 949

See LANDLORD AND TENANT—

TRANSFER BY TENANT 6 C W N 916 919

See LEASE 11 C W N 1124
I. L. R. 35 Calc. 675

See RAILWAYS ACT (IX OF 1890) ss 77 AND 80 I. L. R. 26 All. 207

See SALE 8 C W N 649 757

NOTICE—*contd*

——— to quit—*concld*

See SERVICE TENURE
I L R 8 Mad 72
I L. R 22 Calc 938
11 C W N 46

See SMALL CAUSE COURT PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY RECOVERY OF I L. R 17 Mad 216

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.
I L R 18 Bom 110
3 C W N 215

See TRANSFER OF PROPERTY ACT ss 106 AND 116 8 C W N 901 904
10 C W N 841
I L R. 30 Mad. 109

——— to remove nuisance or obstruction—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

See PENAL CODE s. 188
I L R 16 Calc 9
I L. R 12 Mad. 475
I L. R 20 Mad. 1

——— to Revenue authorities of alleged transfer, effect of—

See TRANSFER OF PROPERTY L. R. 28 I A 46

——— to show cause—

See CRIMINAL PROCEDURE CODE s. 437
I L. R. 6 All. 367
I. L. R 9 All. 52
I. L. R. 10 Calc 207
I. L. R. 20 All. 339

See SANCTION FOR PROSECUTION—NATURE FORM AND SUFFICIENCY OF SANCTION I. L. R. 18 All. 358

1. ——— Calcutta Municipal Act (Beng III of 1899) ss 406 407 408 and 474—*Notice under s 408—Standard plan—Necessity of attaching a copy of the plan to the notice—Bustee improvement—Power and duty of the Corporation in respect thereof* The duty of the Corporation in improving *bustees* is a most important one and they have been invested with the most ample power but when certain penal sections enforced by the criminal law are put in motion on the report of the servants of the municipality it is incumbent on the Magistrate and the authorities of the Corporation to see that the legal procedure which is a condition precedent to any conviction, is strictly and properly carried out. Where a letter was issued by the Deputy Chairman requiring the petitioners to do certain works, but no notice under s. 408 was issued directing them to

NOTICE—*contd*

specifically carry out the works *Held* that the conviction of the petitioners under s [illegible] of Beng Act III of 1899 for neglecting to carry out the works cannot stand When the Municipality directs one of several owners of a *bustee* to carry out certain improvements and issues a general notice under s 408 of Beng Act III of 1899 it is the duty of the Municipality to serve him with a copy of the standard plan approved by the General Committee under s 407 and point out to him on that plan what work he is to do KANAI LAL JALAN v THE CORPORATION OF CALCUTTA (1906)

11 C W N 508

2 ——— **Public Demands Recovery Act (Beng Act I of 1895) s 10**—*Non service of notice effect of— Adult —Sale—Suit to set aside sale—Procedure—Limitation—Civil Procedure Code (Act XIV of 1882) ss 244 312—Limitation Act (XV of 1877) Sch II Art 12 (b)* Where it is alleged that notice has not been served under s 10 of the Public Demands Recovery Act the onus is on the party alleging want of notice *Rakhal Chandra Rai Choudhuri v Secretary of State I L R 12 Calc 603* referred to It is not sufficient that such notice should be actually served it must be served in accordance with the provisions of s. 31 of the Act Adult in that section does not mean a person who has attained majority within the meaning of the Majority Act but a person of such an age as to be capable and responsible for the due communication of the notice to the member of the family for whom it is intended A duly made certificate has on its filing the force and effect of a decree. Until however service of notice under s 10 which has the effect of an attachment no particular property is bound by the decree A sale without prior attachment is irregular but not a nullity *Kishory Mohun Roy v Mahomed Mujaffar Hossein I L R 18 Calc 188* referred to The due making and filing of the certificate gives it the effect of a decree and therefore non service of notice under s 10 does not affect the validity of the certificate itself A suit to set aside a sale on the sole ground that the decree under which it was held was an invalid decree simply because of absence of notice under s 10 fails because such absence of notice does not affect the validity of the decree *Baijnath Sahai v Ramgut Singh I L R 23 Calc 775* followed. *Saroda Charan Bandopadhya v Kista Mohun Bhattacharjee 1 C W N 516 Chunder Kumar Mukerjee v The Secretary of State I L R 27 Calc 698 Gopal Das v Hardeo Das 5 C W N 86 Ambica Prosad v Gapal Buksh Das 1 C L J 550 Ramrup Sahay v Khushal Misser 6 C W N 630 Srinath Hore v Bishan Chandra Das 2 C L J 504 Unid Ali Bi yan v Raj Lakshmi Debya I L R 33 Calc 84 Ramrup Sahai v Kushal Misser 3 C L J 280 Sham Lal Madal v Nilmani Das 5 C L J 385 387* not followed. The Certificate Officer has jurisdiction to transfer the execution of the decree The Collector of the 24 Parganas is *ex officio* Collector of Calcutta The Collector of the 24 Parganas may in his capacity of Certificate Officer sell immoveable property in Calcutta Ss 244 and 312 of the Civil Procedure Code apply to execution proceedings under the Public Demands Recovery Act Art 12 (b) Sch II of the Limitation Act bars the suit HARI CHARAN SINGH v CHANDRA KUMAR DEY (1907)

I L R 34 Calc 787

3 ——— *Adult meaning of—Public Demands Recovery Act (Bengal Act I of 1895) s 10 12 31—The Collector of 24 Parganas—Certificate Officer* A person above the age of sixteen years at the date of the service of notice is an Adult within the meaning of s. 31 of the Public Demands Recovery Act When a notice under s 10 of the Public Demands Recovery Act actually reaches the judgment debtor and he contests the claim it cannot be said that the notice was not validly served because the person on whom the service was made is not proved to be residing with the judgment debtor [illegible]

SINGH v CHANDRA KUMAR DEY (1907)

I L R 35 Calc 286

4. ——— **Cantonment property**—*Grant—Offer of compensation—Condition precedent—Notice to one of three executors—Joint occupants* *Held* that the notice of resumption was not a condition precedent to the right of resumption Even assuming that notice was a condition precedent that provision had been satisfied by giving notice to one of the three executors who were joint occupants The provision as to notice was nothing more than a statement of what will be done when practicable for the purpose of saving the occupant from such inconvenience as an immediate resumption might involve SECRETARY OF STATE FOR INDIA v VAMANRAV (1905)

I L R 30 Bom. 137

5 ——— **Invalid notice**—*Transfer of Property Act (IV of 1882) s 108 (i)—Limitation Act (XV of 1877) Sch II Arts 110—116—Royalty suit for* Where it was stipulated that certain notice was to be given two months before the 30th of Chaitra *Held* that a notice dated 1st Falgoon (=13th February) was not a valid notice when the 30th Chaitra fell on 12th April as it was not a full two months notice but fell short of it by one day BHOLA NATH DAS v DURGA PROSAD SINGH (1908) **12 C W N 724**

6 ——— **Contempt of Court**—*Service of notice of motion for committal—Personal service necessary—Service upon attorneys not sufficient* Where an application is made for committal of a person to jail for disobedience of the Court s order it is necessary not only that the order should be served upon the defaulting party personally but the notice to commit should also be similarly served upon him. Service upon the party s attor

NOTICE—*concld*

neys is not sufficient Bai Moolbay v Chunilal Pitamber (1909) I. L. R. 33 Bom 630

NOTIFICATION

——— force of—

See Stamp Act 1879 s 12
I L R 5 Bom. 188

——— issue of before commencement of Act—

See Bengal Irrigation Act ss 1 6
I L R 28 Calc 487

——— issued under repealed Act continuance of—

See Petroleum Act (VIII of 1899) ss. 1 (3) 11 and 15 7 C W N 658

——— meaning of—

See Bengal Municipal Act 1884 s 2
I L R 20 Calc 699

——— of sale—

See Sale for Arrears of Revenue
I L R 34 Calc 381

——— publication of—

See Embankments L R 11 Calc 570

See Gambling 21 W R Cr 23

NOTIFICATIONS OF GOVERNMENT OF INDIA

——— No 1203, dated 23rd September 1874—

See High Court Jurisdiction of—N W P—Civil I L R. 18 All 375

——— No 1288 of 3rd March 1882—

See Stamp Act 1879 s. 3 cl. 10
I L R 18 Calc 39
I L R 13 All. 66

See Stamp Act 1879 s 61
I L R. 18 Calc 39

——— No 2955 of 1st December 1882—

See Stamp Act 1879 s 3 cl. 10
I L. R. 13 All. 66

——— No 361 dated 18th April 1883—

See Court Fees Act s. 26
I L. R. 10 Bom. 145

——— No 173 of 14th March 1889—

See Reformatory Schools Act s. 22.
I L R. 15 All. 208

NOTIFICATIONS OF GOVERNMENT OF INDIA—*concld*

——— No 458 of 18th March 1898—

See Arms Act s 19 I L R 22 All. 118

NOVATION

See Bond 9 B L R 364
14 Moo I A 86
13 B L R 509
L R 1 I A 241
2 N W 37
2 C L R 565
I L R 9 All. 249

See Limitation Act 1877 Art 73 (1871 art 72) I L R 1 Bom 503

——— of contract—

See Limitation I. L. R 26 All. 4

NUISANCE

See Bench of Magistrates.
I. L R 13 Mad. 142

See Bombay District Police Act s 48
I L R 19 Bom 737

See Criminal Procedure Code s. 133
8 C W N 143

See Easement I L. R. 35 Calc 661

See Ferry I L R 18 Calc 652

See Gambling 7 Bom Cr 74
7 C W N 710

See Injunction—Special Cases—Nuisance
I L R 8 Bom 35

See Jurisdiction of Civil Court—Magistrate's Orders interference with
4 B L R F B 24
I L. R. 14 Calc 60

See Limitation Act 1877 s 23
I L. R 18 Calc 652

See Madras City Municipal Act 1884 ss 392 433 and 4 8
I L. R. 25 Mad. 118

See Madras District Municipalities Act s. 222 I L. R. 15 Mad 91

See Mandatory Injunction
I. L. R. 35 Calc. 661

See Penal Code s. 188.
I. L. R 12 Mad. 475

See Prescription—Easements—Right of way I. L. R. 7 Calc 665
I. L. R. 8 Calc. 677

See Prescription—Easements—Trees.
I. L. R. 19 Bom. 420

NUISANCE—*contd*

——— abatement of—

See JURISDICTION OF CIVIL COURT—PUBLIC WAYS OBSTRUCTION OF I L R 3 Calc 20

See UNLAWFUL ASSEMBLY 5 Mad. Ap 6 I L R 3 Calc 573

——— liability for—

See RAILWAY COMPANY 10 B L R 241

——— suit for injunction to restrain—

See RAILWAY COMPANY 10 B L R 241

——— under Criminal Procedure Code—

See JURY—JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE

See SECURITY FOR GOOD BEHAVIOUR I L R 26 Mad. 471

See VERDICT OF JURY 6 C W N 886

1 MISCELLANEOUS CASES

1 ——— Order forbidding nuisance—*Power of Magistrate—Towns Improvement Act (XXVI of 1850)* Held that a Magistrate ... [illegible]

1850 GOVERNMENT *v* SHAM SOONDER 1 Agra Cr 34

2 ——— Order prohibiting traffic—*Bom Reg XII of 1827 s 19* A notice prohibiting general traffic over certain land ... [illegible] *bitory notice under* BOMBAY REGULATION XII OF 1827 8 Bom Cr 23

3 ——— Misfeasance—*Negligence—Municipality—The Municipality not keeping a ditch and sluices at a dam in proper order—Collection of the storm water in the ditch—The water passing over lands of another and doing damage* The plaintiff sued to recover damages from the defendant Municipality for injury done to his property by storm water The water had collected in an adjoining ditch which the Municipality had not kept in a state of repair but had allowed it to be choked with the rubbish of the town. They constructed a dam in the adjoining creek but allowed the sluices at the dam to be choked up with weeds sedges and silt The consequence was that the storm water which had collected in the creek passed on to the plaintiff s land and did damage *Held* that there was misfeasance on the part of the Municipality for they had turned their works by their negligence into a nuisance so as to throw the water collected on their property—the creek—on to the plaintiff s land and that therefore they were liable for the damage caused thereby *Borough of Bathurst v Macpherson 4 App Cas 256* followed. RAJENDRALAL *v* SURAT CITY MUNICIPALITY (1908) I L R 33 Bom 393

2 UNDER CRIMINAL PROCEDURE CODE

1 ——— Order to close drain—*Criminal Procedure Code 1861 ss 62 308—Power of Magistrate—Order not in writing* The accused was fined by the Magistrate for not having closed a drain in pursuance of the verbal order of the Magistrate *Held* that the Magistrate should have proceeded under Ch XX Act XXV of 1861 inasmuch as the nuisance was not one from which immediate danger was apprehended and not under s 62 which empowered the Magistrate to put an immediate determination to the continuance thereof A written order not having been given the procedure was faulty and therefore quashed. Only Magistrates of a district or division can act under Ch XX s 308 GOVERNMENT *v* CHOONEELALL 2 Agra Cr 1

[illegible] ...ver ...8— ...as any Magistrate was competent to pass an order under s 62 of the Criminal Procedure Code 1861 which contemplated circumstances under which the immediate order is urgently required and in this respect differed from s 308 of that enactment and that it should be read alone with s. 188 of the Penal Code GOVERNMENT *v* MAHOMED BUKSH 1 Agra Cr 23

3 ——— Order to prevent breach of the peace—*Criminal Procedure Code 1861 ss 62 318* It was not necessary that an order issued by a Magistrate under s 62 of the Code of Criminal Procedure whereby a breach of the peace was prevented should be supplemented by a proceeding under s 318 of the same Code QUEEN *v* LUTEEF HOSSEIN 10 W R Cr 1

4 ——— Order made on dismissal of complaint—*Criminal Procedure Code 1861 ss 62 308* Where a Magistrate dismissed a complaint under s 308 of the Code of Criminal Procedure it was *held* that it was competent for him to pass an order under s 62 of that Code ... [illegible] provided ... why s ... BHATTACHARJEE *v* MOHENDRO NATH CHATTERJEE 12 W R Cr 40

s c In the matter of the petition of KALIDAS BHATTACHARJEE 5 B L R Ap 82 note

5 ——— Requisites of order—*Criminal Procedure Code 1861 s 62—General and continuous order* Under Act XXV of 1861 s 62 it was necessary that the direction should be addressed

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE—*contd*

to a particular person or particular persons and not to the public generally and with reference to a particular occasion only and not for a continuance ANONYMOUS 8 Mad Ap 9

6 ———— *Notice and inquiry —Criminal Procedure Code 1861 s 62—Order without notice or inquiry* An order issued by a Magistrate under s 62 of the Code of Criminal Procedure in ...
per ...
inq ...

7 ———— ...

passed QUEEN v LACHMIPAT SINGH 5 B L R Ap 81

S C *In the matter of the petition of* LUCHMEEPUT SINGH 14 W R Cr 17

In re KALIDAS BHATTACHARJEE 5 B L R Ap 82 note

S C KALIDAS BHATTACHARJEE v MOHENDRA NATH CHATTERJEE 12 W R Cr 40

COLLECTOR OF HOOGHLY v TARAKNATH MUKHOPADHYA 7 B L R 449 16 W R 63

8 ———— *Ground necessary for order—Power of Magistrate to make prohibitory orders as to nuisance* When a Magistrate makes an order under s 518 Criminal Procedure Code 1872 on the ground that he has received information and is satisfied with it no interference is possible ...
information
information
prohibitory o...
ought to be information or evidence before the Magistrate that the act prohibited was likely to cause a riot or affray and that the stoppage of that act would prevent such riot or affray GOSHAIN LUCHMUN PERSHAD POOREE v POHOOP NARAIN POOREE 24 W R Cr 30

9 ———— Condition precedent to making of order—*Criminal Procedure Code 1872 s 518 expl I* The existence of the circumstances mentioned in explanation I is a condition precedent to the action of a Magistrate under s. 518 Code of Criminal Procedure *In the matter of* KRISHNA MOHUN BYSACK 1 C L R 58

10 ———— Ground for making order—*Criminal Procedure Code (XXV of 1861) s 62—Act X of 1872 s 518—Power of Magistrate—Procedure—Report of police* There is nothing in s 62 Criminal Procedure Code 1861 to justify a Magistrate in making an order under that section on the mere report of a police officer QUEEN v BHIRO DAYAL SINGH. 3 B L R A Cr 4 11 W R Cr 46

11. ———— Limit of order—*Criminal Procedure Code 1872 s 518—Inquiry into act necessitating order—Order made without jurisdiction* Per AINSLIE J —In dealing with the civil rights of a subject under s 518 of the Criminal Procedure Code it is incumbent on the Magistrate to limit the operation of his order to such reasonable time as may be necessary to enable him to hold a full and sufficient inquiry as to whether the act prohibited as likely to cause a breach of the peace is within or is in excess of the legal right of the person forbidden to do it and if necessary to deal with the case under the other provisions of the Criminal Procedure Code which enable him to meet cases of probable breach of the peace *Per* BROUGHTON J —Where an order on the face of it appears to have been made without jurisdiction no subsequent explanation can make it good *In the matter of* ABDOOL v LUCKY NARAYAN MUNDUL I L R 5 Calc 132

12 ———— Nature of order—*Perpetual Injunction—Criminal Procedure Code 1872 s 518 —Powers of Magistrate —Penal Act* ...

for a perpetual injunction is entirely beyond his powers GOPI MOHUN MULLICK v TARAMONI CHOWDHRANI I L R 5 Calc 7 4 C L R 309

13 ———— *Perpetual injunction—Magistrate power of* A Magistrate has no power to pass a perpetual ... 518 of ... Gopi ... L. P ...

I L R 8 Calc 580 11 C L R 414

14. ———— Duration of Magistrate s order—*Criminal Procedure Code (1872) s 518 (1882 s 144)—Penal Code s 188* In 1876 a Magistrate passed an order under s. 518 of Act X of 1872 (Criminal Procedure Code) directing the ...

rent hour and for so doing some of them were convicted and sentenced under s. 188 of the Penal Code *Held* that the conviction was wrong the order of 1876 having a temporary operation only *Gopi Mohun Mullick v Taramoni Chowdhrani I L R 5 Calc. 7* referred to QUEEN EMPRESS v SHRODIN I L R. 10 All. 115

15 ———— Order for protection of property—*Criminal Procedure Code (Act X of 1872) s. 518* A Magistrate has no jurisdiction to make an order under s. 518 of the Code of Criminal Procedure merely for the protection of property

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE—*contd*

In the matter of the petition of PRAYAG SINGH EMPRESS v PRAYAG SINGH I L R 9 Calc 103

16 ———— **Recall of order**—*Order made without jurisdiction* Where a Deputy Magistrate without taking evidence made an order under s 62 of the Code of Criminal Procedure 1861 changing a day on which a hat used to be held and subsequently on taking evidence found that his first order was wrong and passed without jurisdiction he was held to have acted properly in recalling his first order MOHUN SIRDAR v OBHOY CHURN MOOKOPADHYA 13 W R Cr 72

17 ———— **Order in disputes as to land**—*Criminal Procedure Code 1861 s 62* S 62 of the Code of Criminal Procedure does not apply to disputes connected with lands but refers specially to nuisance and other similar matters in which immediate action is necessary in order to avoid a risk of illegal consequences RAJ BULLUB ADDHYA v GOBINDO CHANDER MOITRO 12 W R Cr 66

18 ———— **Order as to moveable property**—*Criminal Procedure Code 1861 s 62—Likelihood of breach of the peace* The power of issuing orders to prevent breaches of the peace etc conferred on a Magistrate by s 62 of the Code of Criminal Procedure extends only to immoveable property of the description set forth in Ch XXII of that Code QUEEN v GOLUCK CHUNDER GOOHO 12 W R Cr 38

19 ———— **Private dispute as to path way**—*Criminal Procedure Code 1861 s 62* S 62 of the Code of Criminal Procedure does not apply to a private dispute between two parties relative to a path NILKOMUL MOOKHOPADHYA v ANUND CHUNDER LUHIKUR 19 W R Cr 6

20 ———— **Dispute as to interest in land**—*Question for Civil Court—Criminal Procedure Code 1861 s 62* The purchaser of an interest in land at a sale in execution of decree obtained an order for possession under s 263 or 264 Act VIII of 1859 and a dispute arose between him and another person who had some interest in the land as to what passed under the sale certificate Without ascertaining the rights of the parties the Magistrate made certain orders the effect of which was to exclude the auction purchaser for some time from exercising the right alleged to have passed to him under the purchase *Held* that the Magistrate ought to have made no order at all with reference to the property leaving it to the parties to determine their rights in the Civil Court and that he had ample power under the section to do what was necessary to prevent a breach of the peace LALOO v ADAM SIRCAR GOVERNMENT v SURJA KANT ACHARJIA DENGOO SHAIKH v ADAM SIRCAR 17 W R Cr 37

21 ———— **Order for removal of wall**—*Criminal Procedure Code 1861, s 62* S 62 of the Code of Criminal Procedure does not authorize a Magistrate summarily to direct a person to remove a wall erected on land alleged to belong to another person in the absence of evidence showing that a riot or affray was likely to occur RADHAKISHORE v GIRIDHAREE SAHEE 13 W R Cr 91

22 ———— **Order for removal of buildings**—*Criminal Procedure Code 1861 s 62* Orders by Subordinate Magistrates in one case directing the removal of a house on the ground that it was in a dangerous and dilapidated condition and in the other directing the removal of a granary on the ground that it had been improperly erected upon land required to be kept unoccupied for common purposes were set aside by the High Court because the Subordinate Magistrate acted without jurisdiction ANONYMOUS 4 Mad Ap 34

23 ———— **Order for removal of obstruction**—*Criminal Procedure Code 1872 ss 518 521* A Magistrate of the second class having passed an order under the Criminal Procedure Code 1872 s 518 for the removal of an obstruction the Magistrate on appeal held that though the Proceedings of the Subordinate Magistrate were without jurisdiction he (the Magistrate) was competent under s 518 to direct the removal of the obstruction, and he passed an order accordingly *Held* that the order of the Magistrate under s 518 was illegal and that he should have proceeded under s 521 and the following sections of the Code *In the matter of the petition of* BRINDABUN DUTT 21 W R Cr 24

24 ———— **Dispute as to right of possession**—*Criminal Procedure Code 1872 s 518—Breach of peace imminent—Order not to interfere with a temple* Where a dispute arises as to the right of the possession of lands and buildings a Magistrate if he considers a collision between the parties and a serious breach of the peace imminent may properly proceed under Ch 39 instead of Ch 40 of the Criminal Procedure Code If the Magistrate had jurisdiction the proceedings not being judicial cannot be revised by the High Court An order to abstain from interference with a temple and its property is an order to abstain from a certain act within the meaning of s 518 of the Criminal Procedure Code ELAVARISU VANAMAMALAI RAMANUJA JEEYARSVAMI v VANAMAMALAI RAMANUJA JEEYAR I L R 3 Mad. 354

25 ———— **Order to alter doorway of temple**—*Criminal Procedure Code 1861 s 62* The temple of Pandharpur a public temple is visited at certain periods of the year by a large concourse of pilgrims With a view to prevent the [illegible] improve [illegible] ten order [illegible] directed [illegible] iden and highten the doorway *Held* that such order was legal under the above section. *Semble* That the

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE—*contd*

case would have been the same had the temple been private property and also that the power of Magistrates to is ue orders under the section in question is entirely discretionary REG v RAM CHANDRA EKNATH 6 Bom Cr 36

26 ———— **Power of Magistrate to order repair of a house not adjoining the public road**—*Criminal Procedure Code ss 133 135 and 136—Penal Code (Act XII of 1860) 188* S 133 of the Code of Criminal Procedure does not empower a Magistrate to order the owner of a hou e standing apart from any public road in its own compound to repair such house By persons living or carrying on business in the neighbourhood injury to whom the power to pass orders under s 133 is intended to prevent are meant not the persons who in the exercise of their private rights may use a building supposed to be in a dangerous condition but unascertain d members of the public whose ordinary avocations may take them to the n ighbourhood of such building *Queen Empress v Narayana I L R 12 Mad 475* and *Queen Empress v Bishamber Lal I L R 13 All 577* distinguished QUEEN EMPRESS v JASODA NAND I L R 20 All 501

27 ———— **Disputed possession of temple**—*Criminal Procedure Code s 144—Magistrate jurisdiction of* The District Temple Committee dismis ed the trustees of a certain temple and appointed others The dismissed trustees retained possession A breach of the peace having become imminent in the opinion of a Deputy Magistrate he made an order under the Criminal Procedure Code s 144 directing the newly appointed [illegible] or its mar [illegible] had jurisd [illegible] Court decl [illegible] APPA CHETTI v DORASAMI AYYAR I L R 18 Mad 402

28 ———— **Order as to procession in public streets**—*Criminal Procedure Code 1872 s 518—Public worship—Conflict of rights—Duty of Magistrate when public peace threatened* In affording special protection to persons assembled for religious worship or religious ceremonies the law points to congregational rather than private worship and it may fairly be required of congregations that they should inform the Magistrate [illegible]

sanctity of their place of worship or on the plea that worship is carried on therein day and night The duties of a Magi trate in cases where the public peace is likely to be disturbed by one sect attempting to prevent another from using the public streets for processions discussed The principles laid down in *Muthealu Chetti v Bapun Saib I L R 2 Mad 140* examined explained and approved SUNDRAM v QUEEN PONNUSAMI v QUEEN I L R 6 Mad 203

29 ———— **Order to remove embankment**—*Criminal Procedure Code 1861 s 62* The Subordinate Magistrate issued an order to two persons directing them to remove a certain embankment whereby the adjacent lands of the complainant were in danger of being flooded *Held* that the act of the defendant was not an act which could be prohibited by the Subordinate Magistrate under s 62 of the Code of Criminal Procedure ANONYMOUS 5 Mad Ap 19

30 ———— **Order to destroy tank**—*Obstruction to enjoyment of public rights* The defendant had made a tank in the bed of a khal by throwing two bunds across it and on complaint to the Magistrate he finding that the tank had been in existence only for about six years passed an order [illegible] defen [illegible] they [illegible] river [illegible]

order QUEEN v GOLAM DARBESH 1 B L R S N 27 10 W R Cr 36

31 ———— **Trespass by cattle**—*Penal Code s 188* A Magistrate issued an order warning owners of cattle to take proper care of them and that in case of disobedience or neglect they would be punished according to law and did punish them for disobedience under s 188 of the Penal Code *Held* that the Magistrate was not competent under s 62 of the Code of Criminal Procedure 1861 to pass such an order The order contemplated [illegible]

of AMIRADDI 2 B L R A Cr 45

s c QUEEN v AMEERUDDEEN 12 W R Cr 36

32 ———————— *Penal Code* [illegible]

for disobedience of such order under s. 288 of the Penal Code QUEEN v MOZAFAR KHALIFA 9 B L R Ap 36

s c. GOVERNMENT v MOZUFFER KHALIFA 18 W R Cr 21

33 ———— **Order to cut down trees as being a nuisance**—*Removal of nuisance—Power*

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE—*contd*

of Magistrate Under s 62 of the Code of Criminal Procedure 1861 a Magistrate has no power to issue an order *ex parte* to cut down trees on the representation of a party supported by the report of the police that the existence of the trees was a nuisance QUEEN v RAM CHANDRA MOOKERJEE 5 B L R 131

S C UTTAM CHANDER CHATTERJEE v RAM CHANDER CHATTERJEE 13 W R Cr 72

34 ———— Order to remove stacked timber—*Criminal Procedure Code 1861 s 62—Illegal order* Where a complaint was made by *A* that timber belonging to his master which had been cut and stacked in a certain place had been removed by *B* who said that the timber was cut not by *A* s master but by himself and that he had stacked it in a place where he always put his timber it was held that the Magistrate could not proceed under s 62 of the Code of Criminal Procedure but was bound to try the charge brought against *B* and either restore the timber to *A* or leave it where it was according to the result of the investigation KARTICK CHUNDER BAL v CHUNDER NATH CHUKERBUTTY 15 W R Cr 56

35 ———— Rival hâts—*Order as to holding of hât or market—Rival hâts—Act XXV of 1861 s 404—Judicial order—Power of revision by High Court* An order of a Magistrate under s 62 Criminal Procedure Code 1861 —*e g* prohibiting one of two rival proprietors of two different hats from holding his hat on certain days of the week in order to prevent obstruction annoyance and injury —was not a judicial order and was therefore not open to revision by the High Court under s 404 Criminal Procedure Code PHEAR J (dissenting) QUEEN v ABBAS ALI CHOWDHRY 6 B L R F B 74

S C ABBAS ALI CHOWDHRY v ILLIM MEAH 14 W R Cr 46

LALLA MITTERJEET SINGH v RAJCOOMAR SIRCAR 18 W R Cr 22

See as to s 518 the corresponding section of Act X of 1872 *In the matter of the petition of* MOKUT SINGH 6 N W 16

36 ———— *Rival hâts—Criminal Procedure Code 1861 s 62* When two hats or markets were held on the same day on adjacent pieces of land and it was shown to lead to riots and affray and annoyance to persons lawfully employed in the ...
be so l...
prohib...
same d...
62 Ac... QUEEN v KALIKAPRASAD 5 B L R Ap 82 note 11 W R Cr 5

37 ———— *Criminal Procedure Code (Act XXV of 1861) s 6 —Act X of 1872 s 518—Rival hâts—Power of Magistrate* A Magistrate has power under s 62 of Act XXV of 1861 to prohibit a particular landholder from holding a hat on a particular spot on a particular day at least for a temporary period if he is satisfied upon reasonable grounds that the order is likely to prevent or tends to prevent a riot or an affray *In the matter of the petition of* BYKUNTRAM SHAHA ROY 10 B L R F B 434

S C BYKUNTRAM SHAHA ROY v MEAJAN 18 W R Cr 47

Overruling SHEEB CHUNDER BHUTTACHARJEE v SAADUT ALLY KHAN 4 W R Cr 12

38 ———— *Order under s 518 Criminal Procedure Code 1872—Order to close a hât* In a case in which the Magistrate passed an order under s 518 Criminal Procedure Code for closing a hat on the ground that it was only a mile apart from another hât ...

...tion as satisfied the Magistrate and the order was one which he had power to make BHOLANATH BOSE v KOMURUDDIN 20 W R Cr 53

39 ———— *Criminal Procedure Code 1872 s 518* The operation of s 518 Criminal Procedure Code was confined to cases where in the opinion of the Magistrate the delay which would be caused by adopting a different procedure from that specified in the explanation to that section would occasion a greater evil than that suffered by the person on whom the order is made or would defeat the intention of this (39th) Chapter Where a Magistrate without hearing the petitioner or giving him an opportunity of being heard and simply on the foundation of a police officer s report directed the petitioner to abstain from holding a hat upon his land on a certain day because another ...

... being vague and insufficient and a private interest of this kind not affording a ground for making an order under s. 518 or any other order under the Criminal Procedure Code BANEE MADHUB GHOSE v WOOMA NATH ROY CHOWDHRY 21 W R Cr 26

See KALI NARAYAN ROY CHOWDHRY v ABDOOL GUFFOOR KHAN 22 W R Cr 24

40 ———— *Criminal Procedure Code 1872 s 518—Hât removal of order of Magistrate as to* Where a Magistrate made an order under s. 518 of the Code of Criminal Procedure (Act X of 1872) directing one of two rival hât proprietors to remove his hat to such a distance

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE—*contd*

as to render it u eless for the purposes for which it was established it was *held* that the order came within the purview of the Full Bench deci ion of *Gopi Mohun Mullick v Taramoni Choudhrani I L R 5 Calc 7 4 C L R 309* and might be set a ide as in exce s of jurisdiction SHURUT CHUNDER BANERJEE *v* BAMACHARAN MOOKERJEE **4 C L R 410**

41 ———————— *Order prohibiting holding of hat—Criminal Procedure Code ss 134 144—Penal Code s 188—Disobeying order of public servant—Trader at hat* A District Magi trate by an order made under s 144 of the Criminal Procedure Code after stating that it appeared that one *G G S* has recently established a hat at S in the vicinity of *K* an old establi hed hat and held it on the same days and that in consequence of the establi hment of the new hat and the endeavours made to induce or force people to frequent the new hat instead of the old one a serious breach of the peace or riots are imminent ordered that the said *G G S* and all other persons abstain from holding such hat on those days The order was duly made and promulgated but not strictly in accordance with s 134 of the Code and the orders of Government made thereunder Notwithstanding the order one P C A was found ... good ... prohi ... with ... ying the order of the Magistrate and convicted of an offence ...

owner or manager not as a trader *Held* al o that the terms of s 134 of the Code and the notification made by Government thereunder as to promulgation and issue of an order are directory but an omission to follow strictly such direction though it is an irregularity does invalidate the order where therefore it is shown that the order has been brought to the actual knowledge of the persons sought to be affected by it such omission does not prevent the case coming within s 188 of the Penal Code *In the matter of the pet tion of* PARBUTTY CHARAN AICH PARBUTTY CHARAN AICH *v* QUEEN EMPRESS **I L R 16 Calc 9**

42 ———— Order ...

neighbourhood of each other s house though he may forbid their doing so for the purpose of mutual annoyance *In re* RAM CHUNDER GEER GOSSAIN **6 W R Cr 40**

43 ———— **Order stopping music while passing place of worship**—*Illegal order* An order of the Magistrate directing that all music should cease when any procession is passing a certain place of worship —*Held ultra vires* MUTHIALU CHETTI *v* BAUPUN SAIB **I L R 2 Mad 140**

44 ———— **Order prohibiting collection of rents**—*Dispute as to right to rent by rival proprietors—Criminal Procedure Code 1872 s 518* In case of a dispute between rival parties as to the payment of rents by tenants a Magi trate has no power under s 518 of Act X of 1872 to make an order that no rents should be coll ...

8 C L R 231

45 ———— **Order not to collect cesses** —*Criminal Procedure Code 1861 s 62* A Magistrate cannot pass an order under s 62 of the Code of Criminal Procedure directing a certain person to abstain from a certain act or to take order with certain property unless he is sati fied that such direction on his part is likely to prevent or tends to prevent a riot or affray nor can he pass an order under that section calling upon a person to enter into recognizances not to collect certain cesses *In the matter of* LUCHMIPUT SINGH **14 W R Cr 3**

46 ———— **Order to prevent obstruction**—*Criminal Procedure Code (Act XXV of 1861) ss 62 and 308—Act X of 1872 ss 518 and 521* When a ca e falls both under s 62 and under s 308 of the Criminal Procedure Code the order of the Magistrate ought not to be absolute in the first instance He should give the defendant an opportunity to show cause against the order *Semble* Whether a case comes under either of these two sections or under both the order of the Magistrate ought to ...

47 ———— **Procedure**—*Case falling within scope both of s 62 and s 308 Criminal Procedure Code 1861* In a case within s 62 of the Code of Criminal Procedure which al o falls within the scope of s 308 of the same Code a Magistrate must conform to the more particular directions of the latter section not to those of the former KHAN CHAND *v* COLLECTOR OF BOOLUNDSHAHUR **1 N W Pt 7 110 Ed. 1873 197**

48 ———— **Removal of obstruction**—*Criminal Procedure Code 1861 s 308—Joint Magi trate in charge of division* Proceedings under s 308 of the Code of Criminal Procedure for the removal of obstructions may be originated by a Joint Magistrate in charge of a division of a district *In the matter of the petition of* PUNCHANUN BOSE **15 W R Cr 41**

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE—*contd*

49 ——— *Jurisdiction of Joint Magistrat —Criminal Procedure Code s 308* The Magistrate of a district can alone hold pro ceedings in a case (uch as the removal of a thatched house) under s 308 of the Code of Criminal Proce dure The Joint Magistrate while in charge of the Magistrate s office has no such jurisdiction *In the matter of* GREESH CHUNDER CHUCKERBUTTY 15 W R Cr 36

50 ——— **Order as to future obstruction**—*Criminal Procedure Code 1872 ss 521 526* S 526 Criminal Procedure Code 1872 does not enable a Magistrate to make any orders except such as are mentioned in s 521 under which he can only deal with existing obstructions the Magistrate has no power to direct what is to be done in the case of any future obstruction KASHI CHUNDER CHUCKERBUTTY v YAR MAHOMED 21 W R Cr 10

51 ——— **Removal of public nuisance** —*Criminal Procedure Code 1861 s 308—Summary order to police* In order to remove a public nuisance a Magistrate is bound to proceed under s 308 and following sections of Ch XX of the Criminal Procedure Code and i not competent to pass a summary order to the police to do so QUEEN v DAMODUR DASS 2 N W 452

52 ——— **Nuisance in public place necessity for proof of**—*Criminal Procedure Code 1872 s 521* In a pro ecution under s 521 Criminal Procedure Code it is necessary to show that the act complained of is a nuisance and that it was committed in a thorou hfare or public place MUZHUR ALI v GUNDOWREE SAHOO 25 W R Cr 72

53 ——— **Order for removal of prostitute**—*Criminal Procedure Code 1872 s 521* The Code of Criminal Procedure (Act X of 1872) s 521 does not warrant a Magistrate s interference with a prostitute for the purpose of removing her from her dwelling hou e simply on the ground of her profe sion so long as she behaves her elf orderly and quietly and creates no open scandal by riotous living NUNDO KUMAREE PESHAGUR v ANUND MOHUN GOOHO 24 W R Cr 68

54 ——— **Private road with right of way over it**—*Criminal Procedure Code 1861 s 311 et seq* S 311 of the Code of Criminal Pro cedure and the other sections of Ch XX of that Code referred to public thoroughfares and not to private roads over which a right of way has been e tablished. GOOROO CHURAN GOON v GUNGA GOBIND CHATTERJEE 8 W R 269

55 ——— **Dispute as to right to water** In a case of a dispute as to the right to the use of water the Magistrate should not proceed as for a nuisance under Ch. XX Criminal Proce dure Code 1861 QUEEN v MADHOO CHURN 13 W R Cr 51

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE —*contd*

56 ——— **Obstruction of drain**—*Criminal Procedure Code 1861 s 308* The obstruc tion of a drain into which the sewage of complain ant s premises fell does not fall either under s 308 or 320 of the Code of Criminal Procedure but is matter for a civil suit and injunction *In re* TROYLAKNATH BOSE 5 W R Cr 58

57 ——— **Prevention of nuisance by public**—*Criminal Procedure Code 1861 308* S 308 of the Criminal Pro edure Code 1861 does not apply where a private individual charges the public with committing a nuisance in the exercise of an admitted right BECHARAM GHOROOEE v BOISTUBNATH BHOOYAN 14 W R 771

58 ——— **Order for protection of public health**—*Power of Magistrate—Criminal Procedure Code 1872 s 521* A Magistrate s powers under s 521 Code of Criminal Procedure are con fined to the instances specifically mentioned in that section which does not confer general powers upon a Magistrate to pass any order he may consider necessary for the protection of the public health It is only from a thoroughfare or public place that under that section a Magistrate is at liberty to direct a nuisan e to be removed *In the matter of the petition of* SOOJAUT HOSSEIN 22 W R Cr 19

PETAMBUR JUGI v NASARUDDY 25 W R Cr 4

59 ——— **Obstruction of thoroughfare**—*Criminal Procedure Code 1861 s 308* In [illegible] Code of [illegible] obstruc [illegible] should [illegible] If he finds in the affirmative he has jurisdiction to pro ceed if in the negative he should withhold his hand and abstain from carrying out the order for the removal of the obstruction *In the matter of the petition of* BECHARAM BHUTTACHARJEE 15 W R Cr 67

60 ——— **Obstruction to public thoroughfare**—*Criminal Procedure Code (1882) ss 133 137 and 43—Further inquiry—Jurisdiction of Sessions Judge* [illegible] of Criminal Procedure The Session Judge being of opinion that the Magistrate should have gone on with the ca e dire ted a further inquiry under s [illegible] Magis tra[illegible] the cor[illegible] under s[illegible] order of the Sessions Judge directing a further inquiry was *ultra vires* there being no section of the Code

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE—*contd*

under which an order for further inquiry could be made in the case s 437 having no application *Held* also that the Magistrate before whom the petitioner showed cause should not have made his conditional order under s 133 absolute without taking evidence upon the matter of the complaint the words evidence in the matter meaning in the matter of the complaint and not simply evidence which the opposite party might offer SRINATH ROY *v* AINADDI HALDER **I L R 24 Calc 395 1 C W N 217**

61. ———— *Private road—Criminal Procedure Code 1861 s 308* Although a road may be a private one a Deputy Magistrate has jurisdiction to make an order under s 308 Code of Criminal Procedure 1861 if it appears that s 320 applies to it —that is if it is open to the use of a certain class of persons who used it a few days before the occurrence of the dispute TARINEE CHURN SHAH *v* BONOMALI NAG **19 W R Cr 33**

62 ———— **Order not to frequent public places**—*Criminal Procedure Code (Act X of 1882) s 133* A general order of the Magistrate directing the public not to frequent the roads and public place in a village between certain hours is one made without jurisdiction under s 133 Act X of 1882 *In the matter of* KOMUL KRISTO BONICK **12 C L R 231**

63 ———— **Order prohibiting cremation in certain place**—*Criminal Procedure Code 1872, s 521* An application to have it declared that a certain place could not be used for cremation purpose would not come under Act X of 1872 s 521 GUDADHUR KAMILA *v* BAIDANATH JANA **24 W R Cr 6**

64 ———— **Order of removal of burning ghat**—*Burning ghat or cremation ground—Criminal Procedure Code (Act X of 1882) ss 133 140 437—Jurisdiction of District Magistrate to order further inquiry in a proceeding under s 133 of the Code— Legalised nuisance —Private cremation ground duties of owner of— Public place — Trade or occupation —Form of Notice* A District Magistrate [illegible]

u

[illegible] s 133 of the Code which has been practically dropped by a Subordinate Magistrate the proper course being to refer the matter to the High Court Although a burning ghat or cremation ground may not in itself be a nuisance within the meaning of cl 2 s 133 of the Criminal Procedure Code (Act X of 1882) still a Magistrate will have jurisdiction to take action under that section if it is shewn that such a ghat or ground is in such an offensive state or that cremation is carried upon it in such an offensive manner as to be a source of injury danger or annoyance to persons living in the vicinity *Queen Empress* v *Saminadha Pillai I L R 19 Mad 464* and *Bamford* v *Turnley 31 L J Q B (Ex Ch) 286* referred to and discussed. *Brindabun Chander Roy* v *Chairman of Municipal Commissioners of Serampore 19 W R Cr 309* distinguished A private proprietor m

property

the owner

create a nuisance [illegible] he allows the cremation of bodies upon that ground to be so performed as to annoy or endanger the lives and properties of persons living in the neighbourhood. The proprietor of a cremation ground cannot be said to be carrying on any trade or occupation within the meaning of cl 3 s 133 of the Criminal Procedure Code A Magistrate has no power under s 133 of the Criminal Procedure Code to order the removal of a burning ghat from its position but he can direct a proprietor to remove the nuisance *i e* to take such steps as would result in the cremation of corpses ceasing to be a nuisance to the public INDRA NATH BANERJEE *v* QUEEN EMPRESS **I L R 25 Calc 425 2 C W N 113**

65 ———— **Excavations near a public place**—*Criminal Procedure Code (Act X of 1882) s 133—Magistrate s power to order the excavations to be fenced and not to be filled up* Under s 133 of the Criminal Procedure Code (Act X of 1882) a Magistrate has no power to order excavations adjacent to a public way or any public place to be filled up he can only order them to be fenced *In re* SULEMANJI GULAM HUSEN **I L R 22 Bom. 714**

66 ———— **Obstruction in a public river**—*Criminal Procedure Code (Act X of 1882) s 133— Meaning of obstruction as used in the section* S 133 of the Code of Criminal Procedure (Act X of 1882) contemplates not only that the way river or channel where an unlawful obstruction is made must be one of public use but also that the obstruction must be of that public use Where a dispute arose between the proprietors of two talukhdari village situate on the banks of a river about the diversion of the course of the river by means of a dam and a trench made by one of them in the current of the river and each talukhdar claimed the river as his own private property —*Held* that the Magistrate had no jurisdiction to interfere under s 133 of the Criminal Procedure Code (Act X of 1882) *In re* JASWATSANGJI FATESANGJI **I L R. 22 Bom 988**

67 ———— **Service of notice of orders under s 133**—*Procedure—Criminal Procedure Code 1882 s 133* The mode of service of notice of an order under s 133 considered. QUEEN EMPRESS *v* NARAYANA **I L R. 12 Mad. 475**

68 ————**Order regulating boat traffic at a landing place**—*Criminal Procedure Code (Act X of 1882) s 144—High Court s power of*

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE—*contd*

revision when order cannot be made under that section An order regulating the boat traffic at a certain landing place of a river in the manner directed by the order passed in this case held to be not an order that is authorized by s 144 of the Criminal Procedure Code If the order be one that cannot be made under s 144 of the Criminal Procedure Code the mere fact of the order purporting to have been made under that section does not prevent the High Court from interfering with it in revision *Abayeswari Debi* v *Sidheswari Debi* *I L R 16 Calc 80* and *Ananda Chundra Bhattacharjee* v *Stephen* *I L R 19 Calc 12* followed QUEEN EMPRESS v PRATAP CHUNDER GHOSE I L R 25 Calc 852
2 C W N 593

69 ——— Order against minor—*Criminal Procedure Code (Act X of 1882) s 144* An order purporting to have been made under s 144 Criminal Procedure Code to the effect that the ...

MOHAMAD v BHUBAN MOHAN MOITRA.
2 C W N 422

70 ——— Order purporting to be made under s 144—*Criminal Procedure Code (Act X of 1882) s 144—Criminal Procedure Code ss 435 439—Jurisdiction of the High Court to interfere with such an order—Ex parte order—Property beyond the jurisdiction of the Court passing the order* R purchased some properties in execution of a mortgage decree and was put in possession of the same The Joint Magistrate of Dacca purporting to act under s 144 of the Code of Criminal Procedure ordered R or any of his subordinates to refrain from entering upon the lands ...

looking at the nature of the case and to the language of s 144 Criminal Procedure Code it was clear that the section does not apply to a case like the present and the order purporting to be made under that section is therefore bad *Held* further that when an order though purporting to be made under s 144 does not properly come within the scope of that section the High Court s power of revision is not ousted by the provision in the last part of s 435 of the Code of Criminal Procedure *Ananda Chandra Bhuttacharjee* v *Carr Stephen* *I L R 19 Calc 12* and *In the matter of Krishna Mohun Bysack 1 C L J 58* followed. Where the party ...

Magistrate ought under the circumstances to have heard the applicant and that he exercised an unwise discretion in not doing so No order under s 144 can be made by a Magistrate where the property is situated outside the local limits of his jurisdiction ROOP LALL DASS v MANOOK.
2 C W N 572

71 ——— Jurisdiction of a Magistrate—*Criminal Procedure Code 1882 s 144—Penal Code s 188* Where a Sub Divisional Magistrate by an order purporting to have been made under s 144 Criminal Procedure Code directed certain prostitutes and their zamindars under whom they held the land to remove the houses of the former from a particular site within 24 hours and to take up their ...

the said order directed prosecution under s 188 Penal Code —*Held* that s 144 Criminal Procedure Code was not intended to apply to such cases and the orders referred to were *ultra vires* *In the matter of the petition of* BIRESHWAR
2 C W N 70

72 ——— Order to abstain from certain act—*Criminal Procedure Code 1882 s 144* A Deputy Commissioner passed an order ...

specified parganas and also from effecting any ...

to set aside such order —*Held* that the acts which the petitioner was directed to abstain from were not acts which come within the meaning of the words a certain act as used in s 144 of the Code of Criminal Procedure and that the order should be set aside ABAYESWARI DEBI v SIDHESWARI DEBI I L R 16 Calc 80

73 ——— Order forbidding person from collecting rent—*Criminal Procedure Code (Act X of 1882) s 144 439—Superintendence of High Court—Charter Act (24 & 25 Vict c 104) s 15—Revision* An order forbidding a person who claimed ...

... n ... ie ... is therefore made without jurisdiction and may be set aside under the High Court s powers of revision and superintendence conferred by s 439 of the Criminal Procedure Code and s 15 of the Charter Act Chapter XI of the Code of Criminal Procedure refers to interference or dealing of some kind with the land itself or with something erected or standing upon it and is directed to the prevention or direction by prompt order of some definite act on

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE— *contd*

the part of an individual so that injury or nuisance may not be caused ANANDA CHUNDRA BHUTTACHARJEE v STEPHEN I L R 19 Calc 127

74. ——— **Magistrate s authority to prohibit the public generally from giving caste dinners**—*Criminal Procedure Code (Act X of 1882) s 144—Public notice* Owing to the prevalence of cholera the District Magistrate of Broach issued an order in the form of a proclamation under 144 of the Criminal Procedure Code (Act X of 1882) forbidding the public generally to give caste dinners in the city The order was posted in different quarters of the city including the street in which the accused had his dwelling house A few days after the promulgation of this order the accused gave a feast in a private house to about 500 people of his caste He was thereupon convicted of disobedience to an order duly promulgated by a public servant under s 188 cl (*b*) of the Penal Code and sentenced to a fine of R35 *Held* reversing the conviction and sentence that the District Magistrate s order was both in its substance and its manner of publication illegal as being beyond the powers conferred by s 144 of the Code of Criminal Procedure The power of the Magistrate under that section is confined to the direction to a particular person to abstain from acts of a certain character or to the public generally to abstain from similar acts when frequenting a particular place QUEEN EMPRESS v LAKHMIDAS MAKANDAS I L R 14 Bom 165

75 ——— **Order under Criminal Procedure Code (Acts X of 1882 and V of 1898) s 144 made ex parte**—*Absence of proof of emergency—Insufficient notice* Ordinarily in proceedings under s 144 notice should issue upon the person against whom the order was directed It is only in the case of emergency or where the circumstances do not admit of the serving in due time of a notice upon such person that service of notice is dispensed with and the order may be made *ex parte* under sub s (2) Where therefore an order was passed by the Magistrate directing the petitioners to remove certain huts erected by them within three hours from time of service of order and there was nothing on the record or in the Magistrate s explanation to show that there was [illegible]

76 ——— **Power of Magistrate to determine rights and shares of parties**—*Dispute regarding right to property—Civil Court—Code of Criminal Procedure (Act V of 1898) ss 144 and 145* It is not because private parties or members of the same family dispute regarding their respective rights to land or crops that a Magistrate is called upon to interfere A Magistrate cannot take upon himself to decide questions of fact and Mahomedan law so as to satisfy himself as [illegible] actual possession or if it is shown that the members of the family are inclined to break the peace he can bind them all over to keep the peace Where there was a dispute between the parties who were related to one another as to the amount of their shares to certain property which was claimed on the one hand to be joined in certain shares and on the other hand to exclusively belong to the other party and no proceedings had been taken under s 145 of the Code of Criminal Procedure nor was there anything to show that there was any probability of a breach of the peace the Magistrate passed the following order The applicants must not plough more that 12 annas of the land *Held* that such an order could not properly fall within s 144 of the Code of Criminal Procedure as an order under that section could only be passed on some emergency and would have effect for only two months The present order in its operation would have effect and was intended to have effect until the parties went to a Civil Court to settle their disputes and no emergency was even suggested That the order therefore was entirely without any authority of law and must be set aside DAIMULLA TALUKHDAR v MAHARULLA TALUKDAR I L R 27 Calc 918

77 ——— **Judicial proceeding**—*Criminal Procedure Code 1861 ss 308 404* An order made by a Magistrate under s 308 of Act XXV of 1861 was not a judicial proceeding within the meaning of s 404 of that Act ASHBURNER v KESHAV VALAD TAKU PATIL 4 Bom A C 150

(*Contra*) COLLECTOR OF HOOGLY v TARAKNATH MUKHOPADHYA 7 B L R 449 16 W R 63

Such an order is now by special enactment made a judicial order

78 ——— **Procedure**—*Rules in Criminal Code—Criminal Procedure Code 1861 s 308* Where a Magistrate has commenced proceedings under 308 of the Code of Criminal Procedure he is not at liberty to proceed otherwise than in conformity with the rules laid down in Ch XX of the Code QUEEN v PITTI SINGH 8 W R Cr 37

79 ——— *Opportunity to show cause—Criminal Procedure Code (Act XXV of 1861) Ch XX ss 308 315—Order of Magistrate* A Magistrate does not act legally under that chapter if he does not first call on the person with whose property he proposes to interfere to appear and show cause COLLECTOR OF HOOGHLY v TARAK NATH MUKHOPADHYA 7 B L R 449 16 W R 63

See QUEEN v RAI LACHMIPAT SINGH 5 B L R Ap 81 14 W R Cr 17

NUISANCE—*contd*

2. UNDER CRIMINAL PROCEDURE CODE —*contd*

and *In re* KALIDAS BHATTACHARJEE 5 B L R Ap 82 note

80 ——— *Opportunity to show cause—Criminal Procedure Code (Act X of 1882) s 133—Erection of buildings—Unconditional order* Every order made under s 13 of the Code of Criminal Procedure Act X of 1882 must appoint a time within which and a place where the per on to whom it is directed may appear before the Magistrate and move to have the order set aside or modified. No unconditional order can be made under that ection EMPRESS v BROJOKANT ROY CHOWDHRY I L R 9 Calc 637

81 ——— *Opportunity to show cause—Criminal Procedure Code 1872 ss 521 525 528* An order by a Magistrate under s 521 Act X of 1872 for the removal of a nuisance does ... iven ... the ... order can be made under s 528 of the Code unless there is imminent danger or fear of injury of a erious kind to the public involved in the case and where a Magistrate who had made an order under s 521 subsequently directed further inquiry to be made it was held that he must be considered to have abandoned his proceedings under s 528 and that he should have proceeded under s 528 instead of finding the party charged under 188 of the Penal Code QUEEN v BROJENDRO LAL 21 W R Cr 86

82 ——— *Obstruction in public way—Inquiry under s 133 Criminal Procedure Code (Act X of 1882)—Previous orders when no bar to such inquiry* An application was made under s 133 of the Criminal Procedure Code (Act ... a second application was made under s 133 of Act X of 1882 with a like object which was refu ed on the ground that the civil suit wa pending and that there was no likelihood of a breach of the peace The civil su t resulted in the way being ... dency of the civil suit and the previous improper order and that neither of these orders operated therefore as a bar to the Magistrate inquiring into the matter of the pre ent complaint MAKHAN LALL SAHA v MAKHAN CH RA SAHA I L R 11 Calc 271

83 ——— *Order calling on party to appear and show cause—Criminal Procedure Code 1861 s 308—Removal of nui ance—Filling up tank* Held that a Magistrate cannot proceed to pass an order for the removal of a nuisance under s 308 of the Code of Criminal Procedure without calling on the party to show cause why the order should not be passed again t him and without hearing the objections even if they are filed after the time fixed for the representation but before he takes up the ca e A Magistrate s power to fill up a tank is by s 308 limited to having it fenced in but where the tank is proved to be injurious to the community he may under that ection treat it as a public nui ance and cause it to be filled up QUEEN v BISTOO CHURAN CHUCKERBUTTY 10 W R Cr 27

84 ——— *Appearance of party to show cause* Where a per on to whom an order has been i sued under s 521 of the Code of ...

85 ——— *Criminal Procedure Code 1882 ss 133 and 137—Magistrate s duty to take evidence under s 137* Under s 137 of the Criminal Procedure Code a Magistrate is bound to take evidence as a basis for the order he has to make Where a Magistrate had without taking any evidence ordered a privy to be removed and it appeared that in so doing he had acted solely on his own opinion that the privy was a nuisance —*Held* that he acted illegally and *ultra vires* *In the matter of the petit on of* MAHADAJI SHADASIV THAK I L R 11 Bom. 375

86 ——— *Appearance of party to show cause—Criminal Procedure Code, 1861 ss 308 404—Thoroughfare—Obstruction Removal of—Powers of Magistrate.* Where in a proceeding before a Magistrate under s 308 of the Code of Criminal Procedure for the removal of an obstruction from a thoroughfare or public place the accused appars and shows cause it is the duty of the Magistrate to inquire whether there is a thoroughfare or public place and whether there is an obstruction If the Magistrate makes the inquiry upon evidence before him he does not act without juri diction or in excess of juri diction. The High Court cannot set aside his order except for an error in law or an excess of jurisdiction It is not a ground for interference that the Magistrate

NUISANCE—*contd*

2. UNDER CRIMINAL PROCEDURE CODE—*contd*

has come to an erroneous decision upon the evidence ANGELO v CARGILL.
9 B L R 417 18 W R Cr 41

87 ———— *Appearance of party to show cause—Criminal Procedure Code (Act XXV of 1861) s 308—Order made without recording evidence* Where the Magistrate on the report of the Civil Surgeon of the district passed an order under s 308 Act XXV of 1861 that the defendants should appear and show cause why certain tanneries should not be removed as being a nuisance and injurious to health and after the defendants had shown cause the Magistrate went himself to the place and thereupon made his former order absolute the High Court on an objection that the order was not legal it having been made without recording legal evidence refused to interfere QUEEN v ALA BUKSH
7 B L R 482 note 12 W R Cr 24

88 ———— Slaughter house order prohibiting—*Criminal Procedure Code 1861 s 308—Power of High Court to interfere with order* When a Magistrate under s 308 Criminal Procedure Code [illegible]

injurious to the health and comfort of the community or that the cause shown was such as ought to [illegible]

on the record any evidence to warrant such findings MUNICIPAL COMMISSIONER FOR THE SUBURBS OF CALCUTTA v AMANAT ALI 7 B L R 516

89 ———— *Criminal Procedure Code 1861 s 308* The condition and the conduct of an old established slaughter house were proved to be in fact an offensive nuisance and dangerous to the health of the neighbours but the evidence did not show it was in a worse condition than at any time since its establishment the occupiers when summoned refused to ask for a jury under s 310 Criminal Procedure Code *Held* that the Magistrate was justified in suppressing the trade or occupation under s 308 MUNICIPAL COMMISSIONERS OF THE SUBURBS OF CALCUTTA v MAHOMED ALI 7 B L R 499 16 W R Cr 6

90 ———— *Private slaughter house—Criminal Procedure Code 1872 s 521* Where a Deputy Magistrate had treated the slaughtering of cattle as a nuisance under s 521 of the Criminal Procedure Code and ordered its discontinuance within a private enclosure belonging to some Mahomedans —*Held* that though the act complained of might be shocking to the prejudices of Hindus it could not properly be regarded as a nuisance and that at any rate the act being done in a private place and not on a thoroughfare it could not be dealt with under s 521 MUZHUR ALI v GUNDOWPEE SAHOO 25 W R Cr 72

91 ———— Order to pull down house—*Criminal Procedure Code 1861 s 308—Report of jurors—Illegal order—Obstruction to public way* The Magistrate of a district issued an order under s 308 of the Code of Criminal Procedure calling upon the petitioner to remove a building on the ground that it was unlawful obstruction upon a high road A jury of five persons was appointed by the Magistrate s successor under s 310 to report within fifteen days whether the order was reasonable and proper The jurors being without instruction took different views as to the performance of their duties but four of them visited the premises and were unanimous in finding that the building complained of was not on the high road at all Five days after receiving reports to this effect the Magistrate issued another order to the petitioner requiring him to pull down his house within fifteen days as the jurors had made no report within the time prescribed The petitioner showed cause under s 313 but without effect and the order was repeated The proceedings were ultimately forwarded to the Sessions Judge whose successor in office returned them with the remark that nothing appeared to have been done contrary to the law for the removal of nuisances *Held* that the petitioner had shown sufficient cause to satisfy the Magistrate under s 313 that the order to pull down the house was not reasonable and proper REG v DALSUKRAM HARIBHAI 2 Bom 407 2nd Ed 384

92 ———— Nuisance caused by tank—*Criminal Procedure Code 1861 s 308—Removal of tank* The order of a Magistrate under s 308 Code of Criminal Procedure should be confined to a direction to remove the nuisance complained of In the case of a tank the Magistrate cannot order the proprietor to excavate it The proprietor [illegible]

excavation can alone be charged against the proprietor at whose disposition the soil taken out in the course of excavation must be placed *In the matter of* PAUL DOSS 10 W R Cr 51

93 ———— Presumption as to place being public thoroughfare—*Finding of jury—Interference of High Court* The fact of a Magistrate taking action under s 521 of the Code of Criminal Procedure is *prima facie* sufficient to show that he considers the *locus in quo* to be a thoroughfare or public place and if no objection is taken that it is not such and the jury find that the order made under that section is reasonable and proper the High Court will not interfere *In the matter of* IMANDI KHAN 8 C L R 399

NUISANCE—*contd*

2 UNDER CRIMINAL PPOCEDURE CODE—*contd*

94. ———— **Functions of jury**—*Obstruction—Public thoroughfare—Procedure* Before a Magistrate can make an order under s. 521 of the

s

open to the use of the public The only fun tions which a jury appointed under s 523 can exercise are to consider whether the order made by the Magistrate under s 521 is reasonable and proper it being no part of their duty to determine the

this order to the consideration of a jury appointed under s 523 before he had himself come to a conclusion whether such pathway was a public thoroughfare the only course left open to him under such circumstances was to stay all proceedings initiated under s 521 and take action under s 532 *In the matter of th petition of* CHUNDER NATH SEN **I. L. R 5 Calc 875 6 C L R 379**

95 ———— **Nuisance, order for the removal of**—*Criminal Procedure Code (Act V of 1898) s 1₀3—Bonâ fide claim—Jurisdiction of Magistrate and of jury* Where in a proceeding *under s 133 Criminal Procedure Code the petitioner* appeared and objected on the following amongst other grounds that there was no pathway and no right of way open to the public over the land which belonged to him —*Held* that the Magistrate ought to have determined where the objection was *bonâ fide* before he took further action and this was not a matter which could be properly considered by a jury BUDHAI NATH v NIL MAHANTO **4 C W N 596**

96 ———— **Obstruction of public ways** —*Disput as to public right* The powers embodied in ss 133 134 135 136 137 of the Criminal Procedure Code 1882 with regard to the obstruction of public ways are not intended to be exercised where there is a *bonâ fide* dispute as to the existence of the public right Where there is such a dispute the Court should pass no order under tho e sections until the public right has been established by proper legal proceedings civil or criminal BASARUDDIN BHUIAH v BAHAR ALI

I. L. R 11 Calc 8

97 ———— **Question of title**—*Criminal Procedure Code ss 133 135—Application for order to remove obstruct on—Disputed title—Jurisdiction of Criminal Court* Where an application is made under s. 133 of the Criminal Procedure Code 1882 calling on a person to remove an obstruction and such person *bonâ fide* rai es a question of title —*Held* that the case then becomes one for a Civil Court. The section contemplates only an enquiry as to the existence or non-existence of the obstruction complained of not an enquiry into disputed questions of title ASKAR MEA v SABDAR MEA **I L R 12 Calc 137**

LALL MIAH v NAZIR KHALASHI **I L R 12 Calc 696**

98 ———— *Criminal Procedure Code (Act X of 1882) ss 133 137 Course to be followed in the administration of—Claim of title—Bonâ fides of claim of title right of Magistrate to enquire into—Jurisdiction* The mere assertion of a claim of title made without reasonable ground or honest belief in it or honest intention to support it will not oust a Criminal Court of its jurisdiction under ss. 133 137 of the Criminal Procedure Code In proceedings under s 133 of the Criminal Procedure Code with reference to obstructions to public ways it is open to the Magistrate to enquire into the *bonâ fides* of the claim and where he decides against its *bona fides* he must state reasons for his decision which will be subject to revision by the High Court Such a claim must be set up at or before the hearing and not afterwards *In re Chunder Nath Sen I L R 5 Calc 875 6 C L R 379 Chuni Lall v Ram Kishen Sahoo I L R 15 Calc 460 Mutty Ram Sahoo v Mohi Lall Roy 7 C L R 433 I L R 6 Calc 291* and *P v Sandford 30 L T 601* referred to LUCKHEE NARAIN BANERJEE v RAM KUMAR MUKERJEE **I L R 15 Calc 564**

99 ———— *Criminal Procedure Code (1882) ss 133 138—Procedure* Where a claim is raised to the land in respect of which proceedings are taken the Magistrate before proceeding further should satisfy himself as to the *bonâ fides* of the claim *Luckhee Narain Banerjee v Ram Kumar Mukerjee I L R 15 Calc 564* and *Queen Empress v Bissessur Sahu I L R 17 Calc 562* approved of UPENDRA NATH BHUTTACHARJEE v KHITISH CHUNDER BHUTTACHARJEE **I L R 23 Calc 499**

100 ———— *Criminal Procedure Code (Act X of 1882) ss 133 137—Conditional order—Jurisdiction—Bona fide question of title* Where a party against whom a conditional order was made under s 133 Criminal Procedure Code for an alleged ob truction of a public pathway showed cause stating that the way was not a public way and claiming title to the land and the Magistrate after taking evidence decided that such claim was a *bona fide* one and directed the party to institute a civil suit within 15 days in order to establish his claim and stayed proceedings in the meantime —*Held* that the Magistrate was wrong in making the Civil Court to establish his title without having first decided whether the public had a right over the alleged pathway Ss. 133 and 137 explained *Luckhee Narain Banerjee v Ram Kumar Mukerjee I L R 15 Calc 564* and *Queen Empress v Bis*

NUISANCE—*contd*

2. UNDER CRIMINAL PROCEDURE CODE—*contd*

[illegible] Sahu *I L R 17 Calc* 562 referred to MUKUNDA LALL DEY *v.* HABIB [illegible] SHAHA 2 C W N 584

101. ——— *Criminal Procedure Code* [illegible] *s* 133 [illegible] *bonâ fide question of title—Jurisdiction of Magistrate and jury* [illegible] In the institution of proceedings under s 133 Criminal Procedure Code the [illegible] that the way [illegible] obstructed was not [illegible] the way [illegible] used by the public. The Magistrate without dealing with the objection referred it to a jury and upon [illegible] report that it was a reasonable and proper order [illegible] of the obstruction. *Held* that the Magistrate should have found whether the objection taken was a *bonâ fide* one and if he found it to be so he should have abstained from further action until the right of way had been determined by a competent Court. *Jugal Kishore Narain Banerjee v. Ram Kumar Mukerjee I L R 15 Calc 510* followed. The jury was not competent to decide whether the way alleged to be obstructed was public or not for the decision of this matter affected the jurisdiction of the Magistrate to interfere under s 133 and it is only when the Magistrate is competent to pass an order under the section that a jury can be appointed to consider whether it is a reasonable and proper order. Whether the Magistrate had not expressly found that the objection was made *bonâ fide* but the police report made by his order contained ample reason for such finding the High Court set aside the order under s 137 as *ultra vires*. NASARUDDIN *v.* AKBARUDDI 3 C W N 315

102 ——— *Criminal Procedure Code (Act X of 1882) s 133—Question of title—Bonâ fide claim of title right of Magistrate to enquire into—Jurisdiction of Civil Court* In a proceeding under s 133 of the Criminal Procedure Code for the purpose of compelling the removal of an obstruction from a public way where a *bonâ fide* question as to the way being public is raised there is no jurisdiction to make an order under the section and the question should be left for determination by the Civil Court. To have this effect however the claim must be *bonâ fide* and not a mere pretence to oust jurisdiction and it is for the Magistrate to say whether the claim be *bonâ fide* or not. QUEEN EMPRESS *v.* BISSESSUR SAHU I L R 17 Calc 562

103 ——— *Criminal Procedure Code (Act X of 1882) ss 133 and 137—Bonâ fide question of title—Jurisdiction of Magistrate—Public Nuisance* When a question of title is *bonâ fide* raised the Magistrate ought not to make an order under ss 133 and 137 of the Criminal Procedure Code but should allow the party an opportunity for the determination of the question by Civil Court. The claim of title must however be *bonâ fide* and not a mere pretence to oust jurisdiction and it is for the Magistrate to say whether the claim is a *bonâ fide* one or a pretence. *Jugal Kishore Narain Banerjee v. Ram Kumar Mukerjee I L R 15 Calc 510* and *Queen Empress v. Bissessur Sahu I L R 17 Calc 562* followed. Although no length of enjoyment can legalize a public nuisance—see *Municipal Commissioner of Calcutta v. Mahomed Ali* [illegible]—yet the long previous uninterrupted enjoyment of what is said to be a nuisance may give to the objection of the person so possessing or enjoying it the character of a *bonâ fide* dispute as to title such as might have the effect of ousting the jurisdiction of the Magistrate under ss 133 and 137 of the Code and making the question a proper one for the Civil Court. PRANNATH DEY *v.* GOBERDHONE MALO I L R 25 Calc 278

104. ——— *Criminal Procedure Code (Act X of 1898) s 133—Bonâ fide question of title* When the person called upon under s 133 of the Criminal Procedure Code to show cause why an obstruction should not be removed from a public way denies that it is a public way it is for the Magistrate to determine whether this is a *bonâ fide* objection and he cannot in spite of the objection (unless he determined that it is not *bonâ fide*) refer the matter to a jury. KAILASH CHUNDER SEN *v.* RAM LAL MITTRA I L R 26 Calc 869

105 ——— *Criminal Procedure Code (Act X of 1882) ss 133 and 137—Reference by Sub Divisional Magistrate to a second class Magistrate* A Sub Divisional Magistrate having made a conditional order under s 133 of the Criminal Procedure Code (Act X of 1882) against a person to remove an obstruction on a public thoroughfare or appear and show cause before a second class Magistrate the said person appeared as directed and the order was made absolute under s 137. In revision the High Court held that having regard to the penultimate paragraph of s 133 the order was not illegal on the ground that it was made absolute by a Magistrate with second class powers other than the Magistrate who made the conditional order. *In re Narasimha I L R 9 Mad 201* approved of. PRANNATH DEY *v.* GOBERDHONE MALO I L R 25 Calc 278

106 ——— **Order requiring abatement of nuisance in certain time**—*Criminal Procedure Code ss 133 137 140* A Sub Divisional Magistrate having made a conditional order under s. 133 of the Code of Criminal Procedure against a person to abate a nuisance or appear and show cause before a second class Magistrate why the order should not be enforced the said person appeared as directed and the order was made absolute under s. 137. The second class Magistrate then issued a notice and order under s 140 requiring the nuisance to be abated within a certain date. The District

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE—*contd*

Magistrate having referred the case on the ground that the second class Magistrate had no jurisdiction to pass final orders in such ca es —*Held* that the order was not illegal *In re* NARASIMHA

I L R 9 Mad 201

107 ——— Application for jury—*Obligation of Magistrate to appoint jury—Criminal Procedure Code 1872 s 521* When the person on whom a notice has been issued under s 521 Code of Criminal Procedure applies for a jury the Magistrate is bound to appoint one and cannot decide the matt r by a local inquiry *In th matter of* MOTHOOR CHUNDER DOSS 2 C L R 509

108 ——— Question referred to jury—*Effect of referring a question not for jury to decide Held* that the agreement of the accused to refer the matter to a jury which had given the case agai t them in no way deprived them of their l gal rights or affected the fact that the question of the expediency of discontinuing the alleged nui ance which had been referred to the jury ought not to have been so referred MUZHUR ALI v GUNDOWREE SAHOO 25 W R Cr 72

109 ——— Discontinuance of proceedings—*Cr minal Procedure Code 1872 s 521—*

the matter drop *In re* SHONAI PORAMANICK SHONAI PORAMANICK v JOGENDRO SHAHA

1 C L R 486

110 ——— Withdrawal of case—*Code of Criminal Procedure (Act X of 1872) s 521* Where a Magistrate in a proceeding under s 521 of the Code of Criminal Procedure satisfies himself that there is no necessity for proceeding further under that ection he is competent to let the matter drop *In re Shonai Poramanick 1 C L R 486* followed *In the matter of the pet t on of* ISSUR CHUNDER NATH. ISSUR CHUNDER NATH v KALI CHURN NATH

I L R 8 Calc 883 11 C L R 235

111 ——— Procedure after decision by jury—*Criminal Procedure Code 1872 ss 523 526—Order of Magistrate after decision of jury*

is bound to make an order upon the report of the jury and in accordance with their decision as required by s. 526 of the Code NYAN v SHER ALI

22 W R Cr 86

112 ——— Building encroaching on public way—*Criminal Procedure Code (Act V of 1898) ss 133 139 (1)—Public nuisance order respecting—Bonâ fide claim of right whether it affects Magistrate s jurisdiction* Where a person erects a building encroaching upon a public way a Magistrate has jurisdiction to pass an order under s 139 (1) and such jurisdiction is not ousted by any claim of that person however *bonâ fide,* to make such encroachments *Luckhee Narain Banerjee v Ramkumar Mukherjee I L R 15 Calc 564 Queen Empress v Bissessur Sahu I L R 17 Calc 562* and *Preo Nath Dey v Goberdhone Malo I L R 25 Calc 278* distinguished ADHORE CHANDRA DEY v AMBIKA CHURAN ROY (1902)

6 C W N 886

113 ——— Dispute as to land—*Decree of Civil Court existing—Criminal Procedure Code (Act V of 1898) s 144 order under effect of—Landlord and tenant—Jurisdiction* An order under s 144 Criminal Procedure Code made or affirmed contrary to an existing decree of the Civil Court in respect of the same lands is illegal Where the dispute was between a landlord and a tenant and the landlord obtained a decree for *khas* possession in respect of such land as had been leased to the tenant the fact that the landlord was unable to point out the particular lands of which he had obtained possession under the decree does not justify an order under s 144 Criminal Procedure Code to keep the landlord out of such possession it being on the tenant to show under the circumstances what lands he held from the landlord GOBIND SAHAI v SIMS AND CARRUTHERS (1902) 6 C W N 466

114 ——— Encroachment on road—*Criminal Procedure Code s 133—Encroachment upon unmetalled portion of a Government road Held* that any obstruction upon a public road is a nuisance within the meaning of s 133 of the Code of Criminal Procedure whether in point of fact it causes practical inconvenience or not QUEEN EMPRESS v KEDAR NATH (1901)

I L R 23 All 159

115 ——— Jurisdiction of Magistrate—*Penal Code (Act XLV of 1860) s 188—Disobedience of an order of a public servant lawfully promulgated—Order under s 144 Criminal Procedure Code interfering with the exercise of private rights of individuals if lawful—Magistrate jurisdiction of to pass such orders* If a Magistrate apprehends a breach of the peace he can restrain temporarily the exercise by any private person of his lawful right to prevent such breach of the peace by making an order under s 144 Criminal Procedure Code and disobedience to such an order amounts to an offence under s 188 Indian Penal Code *Bycuntram Shaha Roy 10 B L R 443* followed. TEKAIT KUNJ BEHARI NARAIN DEO v BHIKO SINGH (1900) 5 C W N 329

116 ——— *Criminal Procedure Code (Act V of 1898) ss 144 187—Order to abstain from a certain act —Trial by Magistrate who made the order of persons alleged to have disobeyed it* On a petition being filed in the Court of a Sub Divisional First-class Magistrate setting out that a

NUISANCE—contd.

2. UNDER CRIMINAL PROCEDURE CODE—contd.

breach of the peace was likely to arise from the [illegible] of a certain [illegible] of the *Hindu* and [illegible] *Magistrate* [illegible] an order [illegible] who were named, and several others of the [illegible] and to those members who were named and several others of the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Held* [illegible] [illegible] [illegible] s. 144 of the Criminal Procedure Code [illegible] [illegible] *Held* [illegible] [illegible] [illegible] [illegible] Criminal Procedure Code [illegible] by a public servant [illegible] [illegible] *Held* that the Magistrate was not competent [illegible] [illegible] [illegible] s. 144. QUEEN-EMPRESS *v.* [illegible] (18[illegible])

I. L. R. 21 Mad. 202

117. ——— **Management of temple**—*Criminal Procedure Code* [illegible] *s. 144*—*Order to abstain from* [illegible] *of a temple* [illegible] *Legality of order*—An order purporting to be made under s. 144 of the Code of Criminal Procedure directing a person (i) not to interfere with the management of a certain temple (ii) until he should be duly established [illegible] [illegible] *Held* that the first portion of the order was a direction to abstain from a certain act within the meaning of those words as used in s. 144 of the Code of Criminal Procedure, but that the latter portion contravened the provisions of sub-s. ( ) of that section, and that to that extent the order was made without jurisdiction. [illegible] CHETTI *v.* [illegible] CHETTI (1898)

I. L. R. 21 Mad. 45

118. ——— **Obstruction of pathway**—*Criminal Procedure Code* (*Act V of 1898*) *s. 133*—*Public pathway, obstruction of*—*Order of removal*—*Claim of title, bonâ fide, of*—*Magistrate's jurisdiction*—When a person in showing cause against an order under s. 133, Criminal Procedure Code, to remove an obstruction from an alleged public pathway, claims that no such pathway [illegible]

NUISANCE—contd.

2. UNDER CRIMINAL PROCEDURE CODE—contd.

A Magistrate had not the jurisdiction in such a case [illegible] before coming to an express finding on this issue to proceed to determine whether or not there was a public pathway. *Juddoo Narain Banerjee v. Ram Kumar Mullick*, *I. L. R. 15 Calc. 561*, followed. LAKHAI CHUNDRA SHAHA *v.* KAILASH CHANDRA SARKAR (190)

7 C. W. N. 117

119. ——— **Possession**—*Criminal Procedure Code* (*Act V of 1898*) *ss. 107, 144* [illegible] [illegible] *possession*—[illegible] *order under s. 144, Criminal Procedure Code* [illegible] *of proper*—*Clause* [illegible] *Act* [illegible] [illegible] *of order under effect of*—[illegible] *peace order of proper.* Where in a case [illegible] [illegible] a Magistrate without instituting a proceeding [illegible] 144, Criminal Procedure Code, found that [illegible] [illegible] and on that [illegible] [illegible] an order under s. 144, Criminal Procedure [illegible] restraining them in the exercise [illegible] [illegible] [illegible] [illegible] and [illegible] proceeded to bind the petitioner [illegible] keep the peace under s. 107, Criminal Procedure Code: *Held* that the Magistrate was not competent to arrive at a finding as to [illegible] [illegible] judicial inquiry held under s. 144, Criminal Procedure Code, [illegible] could he rely [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Held* [illegible] that proceedings under s. 107, Criminal Procedure Code, could not properly be instituted in such a case. *Held* also that Magistrate's order under s. 144, Criminal Procedure Code, [illegible] [illegible] operate [illegible] [illegible] [illegible] [illegible] in respect of it. SAT [illegible] [illegible] *v.* [illegible] (190)

7 C. W. N. 142

120. ——— **Removal of prostitutes**—*Criminal Procedure Code* (*Act V of 1898*) *ss. 133, 139*—[illegible]—*Prostitute*, [illegible] *occupation of*—[illegible] *from road*—*Order for*—*Physical comfort of the public*—*Jury, opinion of.* The mere existence of houses of prostitutes by the roadside and the fact that they ply their trade in the house cannot affect the physical comfort of the passers-by. In a proceeding under s. 133, Criminal Procedure Code, certain prostitutes were called upon to remove their trade and occupation from the slopes and neighbourhood of a road; they appeared and in showing cause claimed a jury which was appointed; the jury were of divided opinion, and the majority suggested that they should be directed to mend their habits, but did not recommend the removal of their houses; and the Magistrate made absolute his conditional order of removal of their houses. *Held*, that the order of the Magistrate based upon the report of the jury was neither reasonable nor legal, and must be set aside. BASANTA BAISTABI *v.* EMPEROR (1901)

5 C. W. N. 566

NUISANCE—*contd*

2 UNDER CRIMINAL PROCEDURE CODE—*concld*

121. ——— Revival of proceedings—*Code of Criminal Procedure (Act V of 1898) s 133—Nuisance removal of—Effect of dropping of previous proceeding—Magistrate jurisdiction of to take fresh proceedings regarding the same matter* There is no bar in law to the revival of a proceeding under s 133 Criminal Procedure Code with regard to the same matter which had been previously dropped provided there are materials before the Magistrate upon which *primâ facie* he could act The question whether the matter with regard to which a proceeding has been instituted does or does not properly come within the purview of s 133 Criminal Procedure Code must be raised and decided at the trial ISHAN CHUNDRA CHAKRAVARTI v PRASANNA KUMAR ROY (1900)
5 C W N 173

122 ——— Time limit—*Criminal Procedure Code (Act V of 1898) s 144—Urgent cases of apprehended danger order made upon—Limit as to time—Lapse—Renewal—Magistrate s jurisdiction* A Magistrate is not competent to make an order under s 144 Code of Criminal Procedure which not being limited in time purports on the face of it to be in the nature of a perpetual injunction Where an order under s 144 Code of Criminal Procedure has lapsed on the expiry of two months under sub (6) of that section the Magistrate has no jurisdiction to make an order for its renewal PERMJIT SINGH v LUCHMAN PROSAD (190_)
7 C W N 140

3 PUBLIC NUISANCE UNDER PENAL CODE

1 ——— Prescriptive right No length of [illegible]

[illegible]

[illegible] W R Cr 8

2 ——— Unfenced Well—*Penal Code ss 290 43* Omission to fence a well on private ground within eight yards of a highway and open to it is not punishable as a public nuisance QUEEN v ANTHONY I L R 6 Mad 280

3 ——— Omission to keep ponies from straying—*Penal Code s 290* The omission of [illegible]

[illegible]

4. ——— Prostitute visiting dak bungalow—*Penal Code s 290* A prostitute [illegible]

[illegible] ... or to any persons who in the exercise of their public right were lodging in the bungalow is not liable to be convicted under s 290 of the Penal Code as having committed a public nuisance QUEEN v BEGUM 2 N W 349

5 ——— Keeping a gaming house—*Penal Code ss 109 290—Abetment* The lessee of a house who permitted disorderly people to use it for gambling and thereby caused annoyance to the public was convicted of an offence under the Penal Code s. 290 it appeared however that the accused had not engaged the house with the object of letting it out as a gaming house *Held* that the conviction was right QUEEN EMPRESS v THANDAVARAYUDU
I L R 14 Mad. 364

6 ——— Soliciting for purposes of prostitution—*Penal Code (Act XLV of 1860) ss 268 290 Held* that the soliciting for purposes of prostitution of passers by on a public road is not a public nuisance as that term is defined in s 268 of the Penal Code QUEEN EMPRESS v NANNI I L R 22 All 113

7 ——— Requisite proof—*Penal Code s 290—Offence under special law* In a case of public nuisance under s 290 of the Penal Code it must be proved that injury danger or annoyance has been caused either in regard to the enjoyment of property or the exercise of a public right on the part of a portion of the community or of any particular class of people The fact that there is a special law to meet a particular offence (in this case cattle trespass) does not prevent the punishment of the offenders under the Penal Code if an offence which could have been rightly punished under the Penal Code was established ONOORAM v LAMESSOR WEBSTER v KEENA 9 W R Cr 70

8 ——— *Penal Code s 291—Previous conviction and order to desist* Before a conviction can be had of committing a public nuisance under s 291 of the Penal Code [illegible]

[illegible]

20 W R Cr 55

9 ——— Erection of shed for religious ceremonies—*Penal Code ss 268 290—Annoyance to persons of other religion* Certain Mahomedan inhabitants of a village erected during the Muharram a temporary shed on land forming part of the village site and placed in the shed a religious symbol They were convicted by a Magistrate under s 290 of the Penal Code of committing a public nuisance on the ground that their act was certain to cause annoyance to the Hindu inhabitants of the village whose temples were in the vicinity and was therefore calculated to lead to a breach of the public peace *Held* that the conviction was illegal MUTTUMIRA v QUEEN EMPRESS I L R 7 Mad. 590

10 ——— Repeating or continuing public nuisance—*Penal Code s 291—Injunc*

NUISANCE—*contd.*

3. PUBLIC NUISANCE UNDER PENAL CODE—*contd.*

[illegible] Crim[illegible] Proc[illegible] [illegible] [illegible] Form [illegible] [illegible] Penal Code [illegible] [illegible] [illegible] Criminal Pro[illegible] [illegible] Penal Code [illegible] Chapter X and XI [illegible] Criminal Proc[illegible] [illegible] Chapter XI [illegible] cases that an order may be made [illegible] and any exception [illegible] that it shall be directed to a particular individual. In such exceptional cases an order may, under s. 144 of the Code, be directed to the public generally when frequenting or visiting a particular place, or to a particular [illegible] but [illegible] to a proclamation directed to the public generally frequenting or visiting a particular place, but to a portion of the community. *Queen-Empress v. Joshi*. I. L. R. 8 All 99

11. ———— Annoyance to a particular religious sect—*Penal Code* (*Act XLV of 1860*), *ss. 268 and 290*—[illegible] cut up [illegible] at that [illegible] for a [illegible] party [illegible] passing [illegible] Jains [illegible] Jain [illegible] Magistrate [illegible] [illegible] The Magistrate found that the [illegible] was not in an offensive state, but convicted the accused of committing a public nuisance under s. 268 of the Penal Code on the ground that [illegible] which several persons, being Jains, were much annoyed, it being a well known fact that they had great repugnance to the killing of animals of every sort. *Held*, reversing the conviction and sentence, that in this case no real damage or injury was caused to the public or to the people in general dwelling in the vicinity, and that it was a case of private rather than of public nuisance, and therefore not one falling within the purview of the criminal law. The applicant's act was an annoyance merely by reason of its hurting the feelings of the Jains who have a repugnance to the killing of animals, and did not constitute an offence under s. 291 of the Penal Code. *Muttumira* [illegible] *Queen-Empress* I. L. R. [illegible] *Mad.* [illegible] referred to. *Queen-Empress v. Bapaji Dhaji*.

I. L. R. 12 Bom 437

12. ———— Obstruction to public highway—*Penal Code* (*Act XLV of 1860*), *ss. [illegible] and 283*—[illegible] Where [illegible] any part of a [illegible] the right of the [illegible] and the [illegible] Penal Code [illegible] punishable under s. 283. *Queen-Empress v.* [illegible]

I. L. R. 20 Mad 433

13. ———— Obstruction on tidal navigable river—[illegible] [illegible] *s.* 283, 290 [illegible] a tidal [illegible] never kept [illegible] Divisional Officer [illegible] *Held* [illegible] had committed an [illegible] of the Penal Code, and was [illegible] of that Code. *In the matter of the petition of* [illegible] Chandra [illegible]

I. L. R. 14 Calc 656

14. ———— — *Penal Code* (*Act XLV of 1860*), *ss.* 283, 290. The mere [illegible] in a tidal navigable river [illegible] to a public nuisance [illegible] an encroachment [illegible] [illegible] s. 290 of the Penal Code [illegible] that such encroachment [illegible] s. 18. *In the matter of the petition of* [illegible] *Chandra* [illegible] *I. L. R. 14 Calc. 656*, considered and commented on. [illegible] that any encroachment, however slight, on a tidal navigable river constitutes an offence under s. 290 is not [illegible] Each case should be determined after examining its facts, and a decision arrived at as to whether the encroachment has caused an obstruction or not. The petitioner was charged with having erected a jag in a tidal navigable river constructed of trees and dams, and thereby having committed offences under ss. 283 and 290 of the Penal Code. There was evidence to show that the jag was about 45 cubits long and 10 cubits broad, and that it was erected on the silted side of the river where it was about 300 hats broad, and that it did not obstruct the ordinary navigation of the river. The lower Court held that the jag could not but cause an obstruction and convicted the petitioner under s. 283. *Held*, that as there was no evidence to show that the petitioner had caused any danger, obstruction, or injury to any person in any public way or line of navigation, the conviction under that section could not be sustained. *Held*

NUISANCE—*concld*

3 PUBLIC NUISANCE UNDER PENAL CODE —*concld*

further that he could not be convicted under s 290 as there was no evidence of any obstruction to the ordinary navigation of the river JUGAI DAS DALAL v QUEEN EMPRESS I L R 20 Calc 665

15 ———— Slaughter of kine by Mahomedans on their own property—*Penal Code ss 268 290* A person wilfully laughtering cattle in a public street so that the slaughter could be heard and seen by the passers by would

stances proved did not amount to the commission of a public nuisance as defined in s 268 of the Code *Muttumira v Queen Empress I L R 7 Mad 590* referred to QUEEN EMPRESS v ZAKIUDDIN I L R 10 All 44

16 ———— Cremation—*Disobedience to an order duly promulgated by a public servant—Penal Code (1860) ss 188 and 290—Criminal Procedure Code s 143—Illegal order* On the 11th August 1894 the District Magistrate promulgated an order prohibiting the people of the village of Thirukodikaval from using their burning grounds situated on the southern bank of the Cauvery and directing them to use other burning grounds which had been provided. On the 11th May 1895 certain persons in defiance of this order cremated a corpse at the spot interdicted and were convicted under ss 188 and 290 of the Penal Code but the conviction under s 188 was reversed on appeal *Held* that when persons entitled to use particular spot dedicated for the communal purpose of cremation use it for that purpose in a manner neither unusual nor calculated to aggravate the inconveniences necessarily incidental to such an act as is generally performed in this country they cannot be convicted of a public nuisance on the ground that their act caused material annoyance and discomfort to persons near the place on the occasion referred to *Held* further that the order of the District Magistrate was not warranted by s 143 Criminal Procedure Code or by any other law and must therefore be set aside QUEEN EMPRESS v SAMINADHA PILLAI I L R 19 Mad 464

17 ———— Private action in respect of nuisance—*Public thoroughfare—Damage in common with others—No special damage—Mandatory injunction suit for—Maintainability of* A private action cannot be maintained in respect of a public nuisance save by a person who suffers particular damage beyond what is suffered by him in common with all other persons affected by the nuisance BHAWAN SINGH v NAROTTOM SINGH (1909) I L R 31 All 444

NUNCUPATIVE WILL

See DECLARATORY DECREE SUIT FOR—REVERSIONERS I L R 7 All 163

See DECLARATORY DECREE SUIT FOR—SUITS CONCERNING DOCUMENTS I L R 1 All 688 L R 5 I A 87

See HINDU LAW—WILL—NUNCUPATIVE WILL

See PROBATE—OF WHAT DOCUMENTS GRANTED I L R 25 All 313

See WILL—NUNCUPATIVE WILLS 3 W R 63 I L R 24 Bom 8

O

OATH

See OATHS ACTS

See OATHS ACT (X OF 1873) s 9 I L R 29 All 49

See WITNESS—CIVIL CASES—SWEARING OR AFFIRMATION OF WITNESSES 1 Mad 99 note 2 Mad 246

See WITNESS—CRIMINAL CASES—SWEARING OR AFFIRMATION OF WITNESSES 13 W R Cr 17

———— administration of by arbitrators—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—AWARD I L R 1 All 535

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE I L R 1 All 535

———— agreement to take—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE 4 Mad 422 4 Mad Ap 3 I L R 12 Mad 483 I L R 14 All 141

———— power to administer—

See MUNSIF JURISDICTION OF I L R 11 Mad 375

1 ———— Power to administer oath—*Act X of 1861—Mad Regs III of 1832 s 6 and VI of 1816 s 27* Since the repeal of s 27 of Madras Regulation VI of 1816 and s 6 of

2 ———— *Non judicial proceeding—Charge of giving false evidence on.* In a non judicial proceeding the object of which is to dis

OATH—*concld*

cover the writer of a candalous petition it is not competent for the Magi trate conducting the pro ceeding to admini ter an oath The High Court reversed a conviction for giving false evidence where an oath was administered under the above circum stances. REG *v* JIBHAI VAJA 11 Bom 11

3 ———— *Decree upheld in appeal on strength of oath—Final adjudication* A uit of 1898 had been affirmed on appeal on the strength of an oath taken under the Oaths Act *Held* that it was a confirmation of the original decree As between the parties a decree arrived at after the taking of an oath on a question of fact in the ca e is none the less a final adjudication AHMED *v* MOIDIN (1901) I L R 24 Mad 444

OATHS ACT (VI OF 1872)

———— **Omission to take oath or taking it irregularly** Under Act VI of 1872 s 5 the omission to take any oath or any irregularity in the orm in which it is administered does not invalidate the proceedings QUEEN *v* TARINEE CHURN BOSE 21 W R Cr 31

OATHS ACT (X OF 1873)

———— s 4—

See CRIMINAL PROCEDURE CODE s 122
I L R 26 All 371

———— ss 4 5—

See PENAL CODE s 193
I L R 29 Mad 89

———— s 5—

See FALSE EVIDENCE—GENERAL CASES
I L R 16 Mad 421
I L R 27 Calc 455

———— ss 5 (b) 13—

See SANCTION FOR PROSECUTION
I L R 36 Calc 808
13 C W N 942

———— s 6—

See FALSE EVIDENCE—GENERAL CASES
I L R 19 Calc 355

1 ———— and s 13—*Witness—Omission to take evidence on oath or affirmation* S 6 of the Oaths Act (X of 1873) imperatively requires that no person shall testify as a witness except on oath [illegible]
the sa [illegible]
year [illegible]
recorc [illegible]
v *Sewa Bhogta 14 B L R 294* dissented from The nature of judicial oaths and affirmations and the history of Indian legislation on the subject discussed QUEEN EMPRESS *v* MARU
I L R 10 All 207

2 ———— *Omission to take evidence on oath or affirmation—Evidence Act (I of 1872) s 118—Competency of persons of tender years* The competency of a person to testify as a witness is a condition precedent to the ad ministration to him of an oath or affirmation and is a question distinct from that of his credibility when he has been sworn or has affirmed In determining the question of competency the Court under s 118 of the Evidence Act has not to enter into enquiries as to the witness s reli gious belief or as to his knowledge of the conse qu nces of falsehood in this world or the next It has to ascertain in the best way it can whe ther from the extent of his intellectual capacity and understanding he is able to give a rational account of what he has een or heard or done on a particular occasion If a per on of tender years or of very advanced age can atisfy the e re quirements his competency as a witness is es tablished Having regard to the language of the Oaths Act (X of 1873) a Court has no option when once it has elected to take the statements of a person as evidence but to administer to such person either an oath or affirmation as the case may require *Queen Empress v Maru I L R 10 All 207* referred to In a trial for murder before the Court of Session one of the witnesses was a boy of twelve years of age and in answer to questions put by the Sessions Judge he said that he worshipped Debi and understood the difference between truth and falsehood that he did not know what would be the consequences here and hereafter of telling lies but that he would tell the truth The Sessions Judge pro ceeded to record the boy s statement but without admini tering to him any oath or affirmation *Held* that there was nothing in law to sanction this procedure on the part of the Judge The High Court required the attendance of the boy and of the accused and having atisfied it elf of the competency of the former to depose as a witne s examined him as to his account of what had occurred. QUEEN EMPRESS *v* LAL SAHAI
I L R 11 All 183

OATHS ACT (X OF 1873)—*contd*

———— s 6—*concld*

1 ———— s 8—*Oath purporting to affect a third person—Revocation of consent to be bound by statement made on oath taken in a particular form* The plaintiff in a civil suit offered to be bound by the statement which the defendant might make on oath holding the arm of hi son The defendant accepted the proposal took the required oath and made a statement which had the effect of defeating the plaintiff s claim When the defend ant came into Court to take the oath the plaintiff attempted to revoke hi proposal but alleged no further reason than that he did not understand [illegible] the d fend
[illegible] it the form
[illegible] ving regard
[illegible] lmini tered
but as it had been administered and was a form of oath especially binding upon Hindus the state ment made upon it should be accepted. *Held* also that when one party to a suit offers to be bound by the oath of the other party and such other party

OATHS ACT (X OF 1873)—contd

———— s 8—contd

accepts the proposal the party so offering to be bound should not be allowed to revoke his proposa except upon the strongest possible grounds proved to the satisfaction of the Court to be genuine grounds for revoking the proposal *Lekh Raj Singh v Dulhma Kuar I L P 4 All 302* referred to PAM NARAIN SINGH v BABU SINGH
I L R 18 All 46

2 ———— and ss 9 10 11—*Applicability to criminal proceedings— Party to a judicial proceeding does not include complainant or accused* The provisions of ss 8—11 of the Oaths Act (X of 1873) do not apply to criminal proceedings The expression party to a judicial proceeding in s 8 of the Act does not include either the complainant or the accused in a criminal case In the course of a trial on a charge of assault the complainant s pleader agreed to be bound by the evidence on oath of a material witness provided he swore on the Gita (a sacred book of the Hindus) The witness took the required oath and stated that there was no assault but merely a taking held of the hand The Magistrate did not believe this witness and proceeded with the trial He convicted the accused on the other evidence in the case and sentenced him to a fine of R25 *Held* that the Magistrate was not bound to decide the case on the evidence of the witness who swore the special oath QUEEN EMPRESS v MURARJI GOKULDAS
I L R 13 Bom 389

———— ss 8—12—

See APPEAL—ARBITRATION
I L R 4 All 283

See ARBITRATION—REVOCATION OF OR WITHDRAWAL FROM ARBITRATION
I L R 4 All 302

———— s 9—

See RES JUDICATA—ADJUDICATIONS
I L R 5 Mad 259

1 ———— *Consent by guardian of a minor defendant to accept the oath of the plaintiff* It was agreed by the defendants who

taken and a decree was passed accordingly *Held* that the minor defendant was bound by the con

GALREDDI v VENKATAREDDI
I L R 12 Mad. 483

See ARUNA CHALLAM v MURUGAPPA.
I. L. R 12 Mad. 503

2 ———— *Civil Procedure Code (Act XIV of 1882) s 462—Offer by guardian of minor defendant to be bound by oath of plaintiff* The offer of the guardian of a minor defendant on behalf of the minor to abide by the deposition to be given by a plaintiff on oath taken in a particular form under the Indian Oaths Act stands on a very different ground from an agreement or compromise contemplated by 462 of the Civil Procedure Code In such a case the minor is bound by the consent of his guardian although given without the leave of the Court provided that there is no fraud or gross negligence on the part of the guardian *Chengalreddi v Venkatareddi L I R 12 Mad 483* approved of SHEO NATH SARAN v SUKH LAL SINGH
I L R 27 Calc 229
4 C W N 327

3 ———— *Valid authority of to bind client—Pleader—Agent holding a power of attorney authorizing him to act and appear for a party to a suit* An Agent holding a power of attorney authorizing him to act and appear for a party to a suit cannot bring the suit to a close by offering to be bound by the oath of the opposite party in a particular form Nor can a pleader so bind his client Under the Indian Oaths Act (X of 1873) no person but the party himself can make such an offer as is contemplated in s 6 SADASHIV RAYAJI v MARUTI VITHAL
I L R 14 Bom 455

4 ———— *Offer by one party to be bound by oath of other party if taken in a certain*

form upon a certain point The defendant accepted the offer and took the oath *Held* that the plaintiff could not retract his offer to be bound by the oath APAJI v BALA
I L R 22 Bom 281

5 ———— *Agreement to be bound by statement on oath of specified person—Such agreement not revocable except for special cause* Where a party to a suit has made either a reference to arbitration or a reference to the oath of a witness such as is provided for by s 9 of the Indian Oaths Act 1873 he should not be allowed arbitrarily to withdraw from the reference *Lekhraj Singh v Dulhma Kuar I L R 4 All 302* and *Ram Narain Singh v Babu Singh I L R 18 All 46 49* referred to CHIDDU v KUNWAR SEN (1906)
I L R 29 All 49

6 ———— and ss 10 and 11—*Offer by party to be bound—Conclusive proof of the matter stated* Defendant in a suit before trial filed a petition under s 9 of the Indian Oaths Act 1873 to the effect that if the plaintiff should make an oath according to law regarding certain facts this defendant will forfeit his right of contesting this suit He subsequently desired to withdraw the petition on insufficient grounds but the plaintiff took the oath and on the strength thereof all the issues were decided and a decree passed in plaintiff s favour The suit was however remanded on appeal for disposal after recording evidence on both

OATHS ACT (X OF 1873)—*contd*

——— s. 9—*concld*

sides. On appeal by plaintiff against this order of remand —*Held* (i) that there is nothing in ss 9 to 11 of the Indian Oaths Act 1873 which allows a party who has agreed to the administration of an oath under those sections to retract after the opponent has accepted the proposal (ii) that the Act gives the Court a discretion to administer the oath or not and though it should not administer it if good grounds be shown for retracting it is justified in so doing notwithstanding the retraction if the grounds are frivolous (iii) that if the matter stated as referred to in s 11 of the Act affords sufficient material for the decision of the suit a decree may be passed on the facts so proved But if the facts so proved are not sufficient for the decision of the case such further facts as are necessary should be proved by evidence adduced on both sides The Act provides not for the adjustment of a suit in an arbitrary way but merely for the conclusive proof of facts such facts if not sufficient for the decision of the suit should be supplemented by facts duly proved by evidence and (iv) that the facts proved by the special oath are conclusively proved and any further evidence that may be taken should be limited to matters not proved by the oath THOYI AMMAL *v* SUBBAROYA MUDALI
I L R 22 Mad. 234

7 ——— ss 9 11—*Special oath—Binding effect—Conclusive evidence* In a proceeding under s 144 Code of Criminal Procedure one of the parties undertook to withdraw his claim to the matter in dispute if the other party should take an oath to a certain effect The latter took the oath. *Held* that the oath was not binding as conclusive evidence on the party who threw out the challenge in a subsequent civil proceeding the parties having had in mind only the proceeding under s 144 of the Code of Criminal Procedure at the time the oath was taken BADIADUDDIN AHMED *v* NIZAMUDDIN HAIDER (1906) I L R 33 Calc 386
s c 10 C W N 501

8 ——— ss 9 and 11—*Defendant taking oath proposed by plaintiff—Oath conclusive* The plaintiff in a suit stated that he would accept what [illegible]

[illegible] to the defendant *Held* that the suit must be dismissed the defendant having sworn in the manner prescribed CHEDI LAL *v* JWALA PRASAD (1909)
I L R. 31 All 315

——— ss 10 11—*Referee s depositions inadequate for decision of question referred—Appeal after death of referee—Practice.* Where a case had been decided under the provisions of ss 10 and 11 of the Oaths Act (X of 1873) with reference to the depositions of a person appointed by agreement of the parties as referee and where after the death of the referee on an appeal being preferred

OATHS ACT (X OF 1873)—*contd*

——— s 10—*concld*

[illegible]

Court for disposal according to the usual procedure MAHABIR PRASAD MISR *v* MAHADEO DAT MISR
I L R 13 All 386

——— s 11—

See RES JUDICATA—ADJUDICATIONS
I L R 5 Mad 259

1 ——— *Agreement to be bound by oath—Judgment on such agreement—Mad Reg III of 1806 s 6* The mere agreement of one of the parties to a judicial proceeding to be bound by the oath of the other is in itself no adjustment of the suit If the matter stated in the agreement is sufficient as the grounds of a decision a judgment may be passed for then it would be conclusive evidence under the Oaths Act The difference between Regulation III of 1802 s 6 and the Indian Oaths Act 1873 s 11 discussed VASUDEVA SHANBOG *v* NARAINA PAI I L R 2 Mad. 356

2 ——— *Agreement to be bound by oath of a particular person—Discretion of Court* The Oaths Act (X of 1873) does not constrain a Court to pass a decision in favour of a particular party If a party to a suit says he will be bound by the oath of a particular person s 11 of the Act only means that *pro tanto* he will be bound *i e* so far as the matter of that evidence is concerned and that evidence will be conclusive as to its truth as against him throughout the whole of the litigation But it in no way compels the Court trying the case to accept it as conclusive *Vasudeva Shanbog* v *Naraina Pai I L R 2 Mad 356* approved MUHAMMAD ZAHUR *v* CHEDA LAL
I L R 14 All 141

3 ——— and s 8—*Defendant examined in usual form* S 11 of the Oaths Act (X of 1873) is not applicable to the evidence of a defendant who has been examined under the usual form of oath and not under any oath or form of affirmation under s 8 SREEMUNT RAM TOTADAR *v* RAM KISHEN SEN 22 W R 387

4 ——— ss 11 12—*Where the plaintiff agreeing to take an oath subsequently refuses the Court cannot dismiss the suit but must record the fact of refusal under s 12 and proceed with the suit* The defendant in a suit agreed in the course of the trial to be bound by the statement on oath of the plaintiff as to certain facts. By an agreement in writing between the parties the plaintiff agreed to take the oath as required on a certain date that if he failed to do [illegible]
defen[illegible]
shoul[illegible]
point[illegible]
the a[illegible]
The [illegible]
decli[illegible]

OATHS ACT (X OF 1873)—*contd*

———— s 11—*concld*

evidence and dismissed the suit *Held* that the Court ought not to have dismissed the suit but should have recorded the refusal and the reasons therefor under s 12 of the Oaths Act and proceeded with the trial The agreement did not amount to an adjustment of the suit so as to bar further proceedings in the trial. *Umayammi* v *Muthia Nadar 17 Mad L J 99* distinguished *Vasudeva Shanbog* v *Narrina Pai I L R 2 Mad 356* followed *Per* MILLER *J obiter* If by the act of the party refusing to take the oath the other party has lost evidence which was available to him the Court may be justified in refusing to allow the former to adduce evidence MOYAN v PATHUKUTTI (1907) I L R 31 Mad 1

1 ———— s 12—*Refusal to take the oath—Presumption.* Where the Lower Appellate Court at the instance of the defendant called upon the plaintiff to swear on the Koran that the defendant s case was false which the plaintiff refused to do —*Held* that the Lower Appellate Court was justified in raising a presumption from the plaintiff s refusal that his case was false the Court having power to act as it did under the provisions of Act X of 1873 ISSEN MEAH v KALARAM CHUNDER NAW 2 C L R. 476

2 ———— *Refusal to take an oath—Effect of such refusal—Estoppel—Evidence* The plaintiff sued to recover certain land from eight defendants alleging it to be h ... [illegible]

... offered to withdraw ... [illegible]

to the refusal and on the evidence passed a decree for the plaintiff The defendant appealed and in the Appellate Court the plaintiff s son on behalf of his father refused the oath while on the other hand the defendant said he was willing if required to swear to the truth of his case The Judge was of opinion that the plaintiff s refusal to take the proposed oath and the defendant s readiness to take it was under the circumstances of the case conclusive and disregarding the recorded evidence he reversed the decree of the lower Court and allowed the defendant s claim *Held* (reversing the appellate decree and restoring the decree of the lower Court) that the Appellate Court was wrong in deciding the case on the ground of the plaintiff s refusal to take the proposed oath That refusal did not conclusively prove the falsity of the plaintiff s claim It was merely a piece of conduct which was evidence to be considered in the case together with the other evidence In this case there was abundant other evidence all of which was in favour of the plaintiff and his

OATHS ACT (X OF 1873)—*contd*

———— s 12—*concld*

refusal to take the oath did not necessarily constitute a sufficient reason to set aside that evidence A party who makes an oath as prescribed by his adversary confers by so doing on his statement the character of conclusive proof but his mere refusal to make the oath does not under the terms of the Oaths Act (X of 1873) justify any legal presumption against him. Such refusal is to be considered merely as a piece of conduct to be considered along with the other evidence CHINTAMAN BHAT v SHRINIVAS BHAT I L R 22 Bom 680

———— s 13—

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUNDS FOR SETTING THEM ASIDE I L R 1 All. 535

See COMMISSION—CIVIL CASES 7 C W N 806

See FALSE EVIDENCE—GENERAL CASES I L R 19 Calc 355

1 ———— *Omission to take evidence on oath of affirmation* The word omission in s. 13 of Act X of 1873 includes any omission and is not limited to accidental or negligent omissions JACKSON J dissented QUEEN v SEWA BHOGTA

14 B L R F B 294 23 W R Cr 12

2 ———— *Omission to take evidence on oath or affirmation* S 13 of Act X of 1873 does not render the evidence of a child of nine years of age inadmissible if the evidence has been advisedly and not by an omission recorded without any oath or affirmation QUEEN v ANUNTO CHUCKERBUTTY

14 B L R 295 note 22 W R Cr 1

3 ———— *Competent witness* The accused was charged with throwing *B* and *C* down a well She was charged with the murder of *B* under s 312 of the Penal Code and on that charge she was tried and acquitted Thereupon the Joint Magistrate without holding any further preliminary inquiry committed her on a charge under s. 307 of attempting to murder *C* The only eye witness of the offence according to the Sessions Judge ... [illegible]

that the omission to administer either an oath or solemn affirmation although knowingly made did not render the child s evidence inadmissible QUEEN v ITWARIA

14 B L R 54 22 W R Cr 14

4. ———— *Omission to swear jury in sessions case* *Quære* If the jury in a sessions case are not sworn whether the omission is one which would be covered by s. 13 of the Oaths Act 1873 QUEEN v RAMSODOY CHUCKERBUTTY 20 W R Cr 9

OATHS ACT (X OF 1873)—*concld*

——— s. 13—*concld*

5 ——— *Omission to administer an oath or affirmation—Witness Competency of—Child Evidence of* At a trial on a charge of murder one of the witnesses for the prosecution was a girl about ten years old. The Sessions Judge allowed her to be examined without administering any oath or affirmation as it was found that she did not understand the nature of either The prisoner s counsel objected to the admissibility of her statement but the objection was overruled and the prisoner was convicted of murder and sentenced to death. *Held per* JARDINE J that the girl s evidence was admissible The omission referred to in s 13 of the Indian Oaths Act (X of 1873) includes any kind of omission and is not restricted to accidental or negligent omissions *Queen* v *Sewa Bhogta 14 B L R 294 23 W R Cr 1* approved and *Queen Empress* v *Maru I L R 10 All 207* dissented from. QUEEN EMPRESS v SHAVA I L R 16 Bom 359

6 ——— and s 6—*Examination as witness of a child of tender years—Intentional omission to administer affirmation* A child aged about six years was called as a witness in a Sessions

attempt to bind his conscience expedient or practically operative The Judge did not examine the child for the purpose of eliciting whether he knew it was wrong not to tell the truth or whether he knew the difference between right and wrong but he told him to tell the truth and permitted him to be examined as a witness *Held* that the child should have been affirmed *Quære* Whether the omission to affirm the child having been intentional on the part of the Judge the case came within the provisions of Oaths Act s 13 QUEEN EMPRESS v VIRAPERUMAL I L R 16 Mad 105

——— s 14—

See EVIDENCE ACT s 132
I L R 12 Bom 440

See FALSE EVIDENCE—GENERAL CASES
I L R 19 Calc 355
I L R 19 Mad 375

See MAGISTRATE—POWERS OF MAGISTRATES I L R 16 Mad. 421

OBJECT HELD SACRED

See RELIGION OFFENCES RELATING TO
I L R 17 Calc 852

OBJECTION

See APPEAL—OBJECTIONS BY RESPONDENT

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

See PRIVY COUNCIL PRACTICE OF—PRACTICE AS TO OBJECTIONS

OBJECTION—*concld*

See REMAND—OBJECTIONS TO FINDINGS ON REMAND

——— taken for first time on appeal—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

See JURISDICTION—QUESTION OF JURISDICTION

See PRIVY COUNCIL PRACTICE OF—PRACTICE AS TO OBJECTIONS

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL

——— to apportionment—

See COMPENSATION I L R 34 Calc 451

——— to validity of decree—

See EXECUTION OF DECREE
I L R 30 Mad 26

OBJECTS AND REASONS FOR ACT

See STATUTES CONSTRUCTION OF
11 Moo I A. 551
I L R 8 Bom 241
I L R 14 Calc 145
I L R 19 Calc 544
I L R 21 Calc 732
I L R 22 Calc 788
L R 22 I A. 107

OBSCENE ADVERTISEMENTS

See OBSCENE POST CARDS
I L R 32 Calc 247

OBSCENE POST CARDS

——— *Post cards containing obscene advertisement—Post Office Act (VI of 1898) ss 20 61* Transmission by post of printed post cards containing an advertisement of a patent medicine in language of an obscene character is an offence within ss 20 and 61 of the Post Office Act (VI of 1891) *The Queen* v *Hicklin L R 3 Q B 360 Empress of India* v *Indarman I L R 3 All 837* and *Queen Empress* v *Parashram Yeshwant 1 L P 20 Bom 193* relied upon SARAT CHANDRA GHOSE v KING EMPEROR (1904)
I L R 32 Calc 247

OBSCENE PUBLICATION

See PENAL CODE s 292
I L R 28 All 100

1 ——— Obscene meaning of the word—*Penal Code (Act XLV of 1860) s 292 and 293* In interpreting the word obscene in ss. 292 and 293 of the Penal Code the Court may rightly follow *Reg* v *Hicklin L P 3 Q B 360* where Lord COCKBURN C J says I think the test of obscenity is this whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may

OBSCENE PUBLICATION—*concld*

fall Whether a publication is obscene is a question of fact. QUEEN EMPRESS v. PARASHRAM YESHVANT I L R 20 Bom 193

2 ——— Destruction of book by order of Criminal Court—*Penal Code s 293—Act X of 1872 (Criminal Procedure Code) s 418* A book may be obscene within the meaning of the Penal Code although it contains but a single obscene passage. The defence to a charge of selling and distributing certain obscene books was that they were sold and distributed in good faith in prosecution of a religious controversy. *Held* that the excessive obscenity of such books took away the protection which their controversial nature might otherwise have afforded them. *Held* also that the intention of the seller and distributor must be gathered from the character of the matter contained in such books. As he had chosen to sell and distribute what was obscene it must be presumed that he intended the natural consequences of his act namely corruption of the minds and prejudice of the morals of the public. It was not sufficient for him to say that his intentions were good. It was his public act that must be the test of his intentions and having done an unlawful act it was no answer to say that he thought it lawful. *Queen* v *Hicklin L R 3 Q B 360* and *Steele* v *Brannan L R 7 C P 261* followed. At the conclusion of the trial of a person for the sale and distribution of obscene books the Court trying him ordered the destruction of certain copies of such books voluntarily surrendered by him under s 418 of the Criminal Procedure Code. *Held* that such Court was not empowered by that section to make such an order. EMPRESS OF INDIA v. INDARMAN I L R 3 All 837

OBSTRUCTION

See CIVIL PROCEDURE CODE 1882 CH XIX PROV H I L R 30 Bom 115

See RESISTANCE OR OBSTRUCTION TO ARREST

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

——— of public servant—

See PENAL CODE s 186 6 C W N 120

——— on public street—

See ENCROACHMENT I L R 34 Calc 844

——— removal of—

See NUISANCE—UNDER CIVIL PROCEDURE CODE.

——— to flow of water—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY—WATER.

See LIMITATION ACT 1877 s 26 (1871 s 27) I L R 1 Mad. 335

OBSTRUCTION—*concld*

——— to flow of water—*concld*

See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER

See RIGHT TO USE OF WATER

——— to navigation—

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I L R 14 Calc 656 I L R 20 Calc 665

——— *Beng Act V of 1864* To render a person liable to punishment under s 16 Bengal Act V of 1864 for obstructing the line of navigation of a Government canal it must be shown that he wilfully obstructed the navigation. QUEEN v. KABIL MANJI 2 B L R A C 23

s c QUEEN v. KABIL 11 W R Cr 18

——— to public way—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE 6 C W N 886 I L R 23 All 159 7 C W N 117

See RIGHT OF SUIT—OBSTRUCTION OF PUBLIC HIGHWAY

See WRONGFUL RESTRAINT 5 C W N 215

——— to right of way—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY WATER ETC 5 C W N 335

——— to rights of property—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY

——— to road or public way—

See BENGAL MUNICIPAL ACT 1884 s 217 I L R 17 Calc 684

See JURISDICTION OF CIVIL COURT—PUBLIC WAYS OBSTRUCTION OF

See MADRAS POLICE ACT 1859 s 48 I L R 4 Mad 235

See MADRAS POLICE ACT 1888 s 71 I L R 14 Mad. 223

See MAGISTRATE—GENERAL JURISDICTION I L R 15 Mad 83

See PENAL CODE s 283 I L R 4 Mad. 235 I L R 25 Calc 275

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY

OCCUPANCY

See PUNJAB LAWS ACT I L R 30 Calc. 635

OCCUPANCY HOLDING

See AGRA TENANCY ACT (II OF 1901)
I L R 28 All 696
I L R 29 All 129 327

See BENGAL TENANCY ACT (VIII OF 1885)
12 C W N 114 899

See BENGAL TENANCY ACT s 29 (b)
11 C W N 62

See CENTRAL PROVINCES TENANCY ACT
I L R 35 Calc 470

See ESTOPPEL I L R 35 Calc 904

See DEATH OF RAIYAT WITHOUT HEIRS
13 C W N 12

See DISPOSSESSION 13 C W N 108

See LANDLORD AND TENANT
I L R 35 Calc 904
12 C W N 72 589

See LETTERS PATENT APPEAL.
I L R 35 Calc 1096

See N W P RENT ACT (XII OF 1881)
s 9 I L R 31 All 51

See MORTGAGE 13 C W N 12

See OCCUPANCY RIGHT

See OCCUPANCY TENANT

See PURCHASER 13 C W N 652

See RIGHT OF OCCUPANCY

See SALE OF 13 C W N 913

See TRANSFER 13 C W N 630

See UNREGISTERED TRANSFEREE
13 C W N 98

———— *Non transf rable occupancy holding—Co sharer landlord s decree for* [illegible]

tion of a mortgage decree the defend [illegible]

2 ———— *Similarity of pos session—Temporary lease—Occupancy raiyat—Right of landlord to recover khas possession— Costs* Where [illegible]

indigo cultivation Held that the lessee being merely a landlord in occupation did not acquire [illegible]

3 ———— *Occupancy holding —Right of occupancy—Sale of non transferable occu*

OCCUPANCY HOLDING—*contd*

pancy holdings in execution of money decree—Subse quent recognition by landlord—Code of Civil Pro cedure (Act XIV of 1882) s 244—Questions for Court executing decree—Issue raised by judgment debtor as defendant in separate suit that property sold was not saleable—Estoppel Where the purchaser of a non tran ferable occupancy holding at a sale in execution of a money decree obtains the landlord s consent to the sale and his recognition of the pur chaser as a tenant as soon as can reasonably be expected after the objections to the purchaser s obtaining po se sion have been overcome the sale is rendered valid in law It i not nece ary that the consent of the landlord hould be obtained prior [illegible]

proceedin s and had full opportunity to raise the objection *Held* that it was not competent to him to re ist the purchaser after the confirmation of the sale and that as between himself and the pur chaser the title to the property vested in the latter on such confirmation *Sheikh Murullah* v *Sheikh Burullah 9 C W N 97? Durga Charan Mandal* v *Kali Prasanna Sarkar I L R ?6 Calc 72?* and *Bhiram Ali Shaikh Shikdar* v *Gopi Kanth Shaha I I R ?4 Calc ?5?* referred to DWAR KANATH PAL v TARINI SANKAR RAY (1907)
I L R 34 Calc 199

4. ———— *Occupancy holding transferability of—Custom and u age proof of—Second appeal ground of—Finding of fact* To prove a cu tom or usage that occupancy holdings are transferable in any locality it is not sufficient to shew simply that such holdings are sold in the village or neighbouring villages The essence of a usage of transferability is that transfers made to the knowledge of but without the con ent of the landlord are valid and mu t be recognised by him *Jagun Proshad* v *Posun Sahoo 8 C W N 1?2* followed When occupancy holdings are not transferable by custom the person who purchases [illegible]

5 ———— *Occupancy hold ing non transferable—Transfer if may be ques tioned by transferor s heirs—Transfer by will—Void or voidable—Landlord s option* The transfer of an occupancy holding which is not transferable by local custom or usage is not a void transaction It is binding between the partie namely the trans feror and the transferee and all persons claiming through them and is voidable only at the option of the landlord The heirs of an occupancy raiyat would therefore be bound by a transfer of the holding made by will *Bhagirath Changa* v *Sheikh Hafi uddin 4 C W N 679 Basarat Mandal* v

OBSCENE PUBLICATION—*concld*

fall Whether a publication is obscene is a question of fact. QUEEN EMPRESS v PARASHRAM YESHVANT I L R 20 Bom 193

2 ——— Destruction of book by order of Criminal Court—*Penal Code s 293—Act X of 1882 (Criminal Procedure Code) s 418* A book may be obscene within the meaning of the Penal Code although it contains but a single obscene passage The defence to a charge of selling and distributing certain obscene books was that they were sold and distributed in good faith in prosecution of a religious controversy *Held* that the excessive obscenity of such books took away the protection which their controversial nature might otherwise have afforded them. *Held* also that the intention of the seller and distributor must be gathered from the character of the matter contained in such books As he had chosen to sell and distribute what was obscene it must be presumed that he intended the natural consequences of his act namely corruption of the minds and prejudice of the morals of the public It was not sufficient for him to say that his intentions were good It was his public act that must be the test of his intentions and having done an unlawful act it was no answer to say that he thought it lawful *Queen* v *Hicklin L R 3 Q B 360* and *Steele* v *Brannan L R 7 C P 261* followed At the conclusion of the trial of a person for the sale and distribution of obscene books the Court trying him ordered the destruction of certain copies of such books voluntarily surrendered by him under s 418 of the Criminal Procedure Code *Held* that such Court was not empowered by that section to make such an order EMPRESS OF INDIA v INDARMAN I L R 3 All 837

OBSTRUCTION

See CIVIL PROCEDURE CODE 1882 CH XIX PROV H I L R 30 Bom 115

See RESISTANCE OR OBSTRUCTION TO ARREST

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

——— of public servant—

See PENAL CODE s 186 6 C W N 120

——— on public street—

See ENCROACHMENT I L R 34 Calc 844

——— removal of—

See NUISANCE—UNDER CIVIL PROCEDURE CODE.

——— to flow of water—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY—WATER.

See LIMITATION ACT 1877 s 26 (1871 s 27) I. L. R 1 Mad. 335

OBSTRUCTION—*concld*

——— to flow of water—*concld*

See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER

See RIGHT TO USE OF WATER

——— to navigation—

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I. L. R. 14 Calc 656
I. L. R 20 Calc 665

——— *Beng Act V of 1864*
To render a person liable to punishment under s 16 Bengal Act V of 1864 for obstructing the line of navigation of a Government canal it must be shown that he wilfully obstructed the navigation QUEEN v KABIL MANJI 2 B L R A. C 23
s c QUEEN v KABIL 11 W R Cr 18

——— to public way —

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE 6 C W N 886
I L R 23 All 159
7 C W N 117

See RIGHT OF SUIT—OBSTRUCTION OF PUBLIC HIGHWAY

See WRONGFUL RESTRAINT 5 C W N 215

——— to right of way—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY WATER ETC 5 C W N 335

——— to rights of property—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY

——— to road or public way—

See BENGAL MUNICIPAL ACT 1884 s 217 I. L. R. 17 Calc 684

See JURISDICTION OF CIVIL COURT—PUBLIC WAYS OBSTRUCTION OF

See MADRAS POLICE ACT 1859 s 48 I L R. 4 Mad. 235

See MADRAS POLICE ACT 1888 s 71 I L. R 14 Mad. 223

See MAGISTRATE—GENERAL JURISDICTION I L. R. 15 Mad. 83

See PENAL CODE s 283
I L R. 4 Mad. 235
I. L. R. 25 Calc 275

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY

OCCUPANCY

See PUNJAB LAWS ACT I L R 30 Calc. 635

OCCUPANCY HOLDING

See AGRA TENANCY ACT (II OF 1901)
I L R 28 All 696
I L R 29 All 129 327

See BENGAL TENANCY ACT (VIII OF 1885)
12 C W N 114 899

See BENGAL TENANCY ACT s 29 (*b*)
11 C W N 62

See CENTRAL PROVINCES TENANCY ACT
I L R 35 Calc 470

See ESTOPPEL I L R 35 Calc 904

See DEATH OF RAIYAT WITHOUT HEIRS
13 C W N 12

See DISPOSSESSION 13 C W N 108

See LANDLORD AND TENANT
I L R 35 Calc 904
12 C W N 72 589

See LETTERS PATENT APPEAL
I L R 35 Calc 1096

See N W P RENT ACT (XII OF 1881)
s 9 I L R 31 All 51

See MORTGAGE 13 C W N 12

See OCCUPANCY RIGHT

See OCCUPANCY TENANT

See PURCHASER 13 C W N 652

See RIGHT OF OCCUPANCY

See SALE OF 13 C W N 913

See TRANSFER 13 C W N 630

See UNREGISTERED TRANSFEREE
13 C W N 98

1 ——————— *Non transferable occupancy holding—Co sharer landlord s decree for rent—Sale in execution—* [illegible]

tion of a mortgage decree the defendant claimed under a lease from co sharer landlord who also had purchased the holding in execution of a decr e for his share of the rent *Held* that the question of transferability of the holding did not arise AYEN UDDIN NASYA v SRISH CHANDRA BANERJI (1906)
11 C W N 76

2 ——————— *Similarity of possession—Temporary lease—Occupancy raiyat—Right of landlord to recover khas possession— Cost* Where a lessee of lands in the occupation of raiyats who [illegible]

3 ——————— *Occupancy holding —Right of occupancy—Sale of non transferable occupancy holdings in execution of money decree—Subsequent recognition by landlord—Code of Civil Procedure (Act XIV of 1882) s 244—Questions for Court executing decree—Issue raised by judgment* [illegible]

con ent to the sale and his recognition of the purchaser as a tenant as soon as can reasonably be expected after the objections to the purchaser s obtaining pos e sion have been overcome the sale is rendered valid in law It is not nece sary th t the consent of the landlord should be obtained prior to the execution proceedings Where in execution of a money decree agains the defendant an occupancy holding belonging to him was sold and he had failed to raise the objection at the time of the sale that the holding was not transferable although he had full knowledge of the execution proceedin s and had full opportunity to raise the objection *Held* that it was not competent to him to re ist the purchaser after the confirmation of the sale and that as between himself and the purcha r the title to the property ve ted in the latter on such confirmation *Sheikh Murullah* v *Sheikh Burullah 9 C W N 9,2* *Durga Charan Mandal* v *Kali Prasanna Sarkar I L R 26 Calc 7*[illegible] and *Bhiram Ali Shaikh Shikdar* v *Gopi Kanth Shaha I L R 24 Calc* [illegible] referred to DWARKANATH PAL v TARINI SANKAR PAY (1907)
I L R 34 Calc 199

4. ——————— *Occupancy holding transferability of—Custom and usage proof of—Second appeal ground of—Finding of fact* To prove a cu tom or usage that occupancy holdings are transferable in any locality it is not sufficient to shew simply that such holdings are sold in the village or neighbouring villages The es ence of a usage of transferability is that transfers made to the knowledge of but without the consent of the landlord are valid and must be recognised by him *Jagun Proshad* v *Posun Sahoo 8 C W N 172* followed When occupancy holdings are not tran ferable by cu tom the person who purcha es them in execution of a money decree purchases no thing They are not transferable as between the judgment debtor and the decree holder PEARY MOHAN MUKERJEE v JOTE KUMAR MUKERJEE (1906) 11 C W N 83

5 ——————— *Occupancy holding non transferable— Transfer if may be questioned by transferor s heirs—Transfer by will—Void or voidable—Landlord s option* The transfer of an occupancy holding which is not transferable by local custom or usage is not a void transaction It is binding between the parties namely the transferor and the transferee and all persons claiming through them and is voidable only at the option of the landlord The heirs of an occupancy raiyat would therefore be bound by a transfer of the holding made by will *Bhagirath Changa* v *Sheikh Hafizuddin 4 C W N 679* *Basarat Mandal* v

OCCUPANCY HOLDING—*contd*

Sabulla Mandal 2 C W N cclxxix Ambica Nath Acharji v *Aditya Nath Maitra 6 C W N 624 Ayenuddin Nasya* v *Srish Chandra Banerjee 11 C W N 76* relied on. HARI DAS BANERJEE *v* UDOY CHANDRA DAS BAIRAGI (1908)
12 C W N 1086

6 ———————— *Transferability—Usage—Growing usage not sufficient—Usufructuary mortgage by tenant—Subsequent relinquishment to landlord—Right of landlord to re enter—Mortgage or out and out sale* In 1894 an occupancy raiyat executed a usufructuary mortgage of the holding put the mortgagee in possession and though it was arranged that the tenant would continue to pay rent to the landlord the tenant left the village and abandoned all connection with the land In 1901 the tenant executed a deed of relinquishment in favour of the landlord and surrendered the land to him and it did not appear that he had paid any rent since BRETT J held on second appeal upon a consideration of the terms of the mortgage bond and the circumstances connected with the transaction that although the document purported to be a usufructuary mortgage for sixty years the transaction was really an out and out sale and the deed was drawn up in that form in order to evade the provisions of law against the transfer of occupancy holdings *Held* by RAMPINI C J and MITRA J —That apart from such consideration the moment the deed of relinquishment was executed by the tenant the landlord became entitled to re enter A growing usage of transferability of occupancy [illegible]

[illegible]

N 719 relied on RAJENDRA KISHORE ADHIKARI *v* CHANDRA NATH DUTT (1907)
12 C W N 878

7 ———————— *Occupancy holding non transferable—Transfer—Transferor in possession as tenant of transferee—Ejectment* Where on a transfer of a non transferable occupancy holding the original tenant takes a sub lease under the transferee and in a suit by the landlord for *khas* possession pleads that the holding was transferable and that he is in occupation as a sub tenant under the transferee *Held* that the landlord is entitled to *khas* possession by ejecting both the original tenant and the transferee *Rajani Kanto Biswas* v *Elliott Das 11 C W N 811 s c I L R 34 Calc 689* explained KALI CHARAN GHOSH *v* ARMAN BIBI (1908) **13 C W N 220**

8 ———————— *Occupancy holding—Usufructuary mortgage by raiyat—Rent receipt recognising mortgage—Landlord's suit for khas possession.* When an occupancy raiyat executed in favour of one B a usufructuary mortgage with possession which was recognised by the landlord as shown by written receipts of money on account of rent wherein the payment of rent was expressed to be through B the mortgagee *Held* that

OCCUPANCY HOLDING—*concld*

the landlord was not entitled to recover *khas* possession *Barada Charan Dutt* v *Hemlata Dasi 13 C W N 242*, reversed BARODA CHURN DUTT *v* HEMLATA DASI (1909) **13 C W N 833**

9 ———————— *Civil Procedure Code (Act XIV of 1882) s 244—Occupancy holding—Unregistered transferee—Auction purchaser of his interest if bound by rent decree against registered tenant—Right to apply to set aside sale as fraudulent—Locus standi* A purchaser in execution of a decree against an unregistered transferee of an occupancy holding as well as the unregistered transferee himself are bound by a decree for rent subsequently obtained against the registered tenant The purchaser is therefore a representative of the judgment debtor within the provisions of s 244 of the Civil Procedure Code and may apply to set aside a sale held in execution of the rent decree on the ground of fraud *Ishan Chunder Sirkar* v *Beni Madhub Sirkar I L R 24 Calc 62* followed *Agarali* v *Aboddin Kazi 9 C W N 131 Gopi Nath Chattopadhya* v *Sajani Kanta Singh 10 C W N 240* referred to HARADHAN RAKHIT *v* GIRISH CHANDRA MUKERJEE (1908) **13 C W N 98**

OCCUPANCY RIGHT

See BENGAL TENANCY ACT s 21
9 C W N 141
10 C W N 351

See OCCUPANCY HOLDING

See REVENUE SALE LAW s 37
10 C W N 497

See RIGHT OF OCCUPANCY

See TRANSFER **10 C W N 499 1033**

——— sale of—

See KHOTI SETTLEMENT ACT
I L R 31 Bom. 267

See OCCUPANCY HOLDING

OCCUPANCY TENANT

See ENHANCEMENT
I L R 33 Calc 607

See INAMDAR **I L R 28 Bom 74 92**

See KHOTI SETTLEMENT ACT
I L R 30 Bom 290
I L R 31 Bom 267

See LANDLORD AND TENANT
I L R 33 Calc 531

See NORTH WESTERN PROVINCES RENT ACT **I L R 26 All 78**

See OCCUPANCY HOLDING

OCCUPIERS AND OWNERS

——— Fine imposed on—

See BENGAL MUNICIPAL ACT 1864 s 67
8 B L R Ap 9
3 W R Cr 33 57
W R Cr 45

OFFENCE

See OFFENCE ON THE HIGH SEAS

See RAILWAY COMPANY **11 C W N 563**

——— **by alien in Foreign State—**

See JURISDICTION OF CRIMINAL COURT—NATIVE INDIAN SUBJECTS
I L R 16 Bom 178

——— **date of—**

See PROSECUTION **I L R 34 Calc 909**

——— **during journey—**

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED DURING JOURNEY

——— **in contempt of Court—**

See CONTEMPT OF COURT

See CRIMINAL PROCEDURE CODE s 476 (1872 s 471)

See CRIMINAL PROCEDURE CODE s 487 (1872 s 473)

——— **specification of—**

See WARRANT OF ARREST—CRIMINAL CASES **6 B L R Ap 129**

OFFENCE BEFORE PENAL CODE CAME INTO OPERATION

1 ——— **Murder**—*Beng Reg IV of 1797—Act XVII of 1862—General Clauses Consolidation Act (I of 1868) s 6—Repeal of statute effect of—Right of defence to High Court* Up to the 1st January 1862 a person committing the offence of murder was liable to trial and punishment under the Regulations By Act XVII of 1862 the Regulations prescribing punishments for offences were repealed except as to any offence committed before the 1st January 1862 By the same Act it was declared that no person who should claim the same should be deprived of any right of appeal or reference which he would have enjoyed under such Regulations By s 6 of Act I of 1868 the repeal of an Act does not affect any thing done or any offence committed or any fine or penalty incurred before the repealing Act shall have come into operation. Under the provisions of this section the repeal of Act XVII of 1862 by Act VIII of 1868 and Act X of 1872 did not in respect of offences committed before the 1st January 1862 affect the penalties prescribed by such Regulations nor were [illegible]

1868 *Held* accordingly where a person committed murder in the year 1855 that such person was punishable under the Regulations *Held* also that inasmuch as such right as the right of reference given by s 3 of Regulation IV of 1797 accrues on conviction and therefore in the present case had not accrued before Act XVII of 1862 was repealed it is doubtful whether a person convicted of murder committed before the 1st January 1862 has such right EMPRESS OF INDIA *v* MULUA
I L R 1 All 599

2 ——— *Beng Reg IV of 1797—Act XVII of 1862—General Clauses Consolidation Act (I of 1868) s 6—Repeal of statute effect of* The prisoner was found guilty and sentenced under Regulation IV of 1797 to transportation for life for a murder committed in 1861 before the Penal Code came into operation and the case was sent up to the High Court to confirm the sentence Regulation IV of 1797 was repealed by Act XVII of 1862 and that Act was wholly repealed by Acts VIII of 1868 and X of 1872 *Held* on reference to a Full Bench that the conviction was illegal s 6 of Act I of 1868 which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation not being applicable EMPRESS *v* DILJOUR MISSER **I L R 2 Calc 225**

3 ——— **Perjury or forgery**—*Act I of 1848—Sanction in case of perjury or forgery* A case of perjury or forgery alleged to have been committed in a case before a Civil Court before January 1st 1862 can be dealt with only under the old Procedure Law (Act I of 1848) according to which the sanction of the Court before which the offence was alleged to have been committed was necessary before criminal proceedings can be instituted *In re* RADHAJEEBUN MOOSTAFFEE
5 W R Cr 8 1 Ind Jur N S 97

4 ——— **Forgery**—*Procedure in case of forgery* In a case of filing a forged vakalutnamah in a Civil Court before January 1st 1862 the prosecution can only proceed in the ordinary way *i e* by way of commitment by a Magistrate on the complaint of the party aggrieved QUEEN *v* ENAYET HOSSEIN **5 W R Cr 43**

5 ——— **Mortgage of property previously mortgaged**—*Bom Reg XIV of 1827—Religious Law of Hindus* Regulation XIV of 1827 (Bombay) s 1 cl 1 art 7 and the Religious Law of the Hindus are not applicable to the case of a party charged with mortgaging his house a second time previously to redeeming the same from a prior mortgagee REG *v* ANNAJI VALAD GOVINDRAM
1 Bom. 93

OFFENCE ON THE HIGH SEAS

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION
8 Bom. Cr 63
I L R. 5 Mad. 23

1 ——— **Punishment—Procedure—***European British subject—7 Will IV and 1 Vict c. 85 s 2—1 & 15 Vict c. 19 s 5—Jurisdiction—Act XIII of 1835* In prosecuting a British subject for an offence committed on board a British

OFFENCE ON THE HIGH SEAS—*contd*

ship upon the high seas —*Held* (i) (PHEAR J *dubitante*) that he must be charged with an offence under English law (ii) that the punishment must be according to English law (iii) that the trial must be according to the procedure of the local Court Therefore where a British subject was charged before the High Court with having committed an offence under 7 Will IV and 1 Vict c 85 s 2 on board a British ship upon the high seas within the Admiralty jurisdiction of the Court and found guilty of an offence under 14 & 15 Vict c 19 s 5 —*Held* that the conviction was good and that the prisoner would be rightly punished with rigorous imprisonment which is defined by s 53 of the Penal Code to be equivalent to imprisonment with hard labour and that the trial had been rightly proceeded with under Act XIII of 1865 QUEEN v THOMPSON 1 B L R O Cr 1

See EMPEROR v SALIMULLAH I L R 39 Calc 487

2 ———— Law applicable—*Stat 30 & 31 Vict c 124 s 11—Procedure—Power of*

same substantive law is applicable to prisoners

ing a ship when committed at a greater distance than three miles from the coast or for the abetment in British India of such an offence so committed. REG v ELMSTONE 7 Bom Cr 89

3 ———— *Jurisdiction of Criminal Courts—Power to legislate for high seas —Stats 12 & 13 Vict c 96 and 23 & 24 Vict c 88* An offence committed on the high seas but within three miles from the coast of British India as being committed within the territorial limits of British India is punishable under the provisions of the Penal Code The ordinary Criminal Courts of the country have jurisdiction over such offences by virtue of the Stat 12 & 13 Vict c 96 ss. 2 and 3 extended to India by Stat. 23 & 24 Vict c. 88 *Semble* The Governor General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits of British India though he ... considered. *Queen v Thompson, 1 B L R O Cr 1* commented on. REG v KASTYA RAMA 8 Bom Cr 83

OFFENCE ON THE HIGH SEAS—*concld*

4 ———— *Jurisdiction of Criminal Court—Law applicable to offence committed within three miles of Goa—Treaty Act (IV of 1880)—Stat 30 & 31 Vict c 124 s 11—Stat 37 & 38 Vict c 27—Procedure* The rule laid down in *Reg v Elmstone 7 Bom Cr 89* to the effect that English and not Indian law is applicable to offences committed on the high seas is altered by Stat 37 & 38 Vict c 27 which provides that such offences shall be tried and punished according to the local law The accused who was captain of a native craft was charged with having dishonestly sold his

tenced him to five years rigorous imprisonment On appeal the accused contended that the Sessions Judge of Ratnagiri had no jurisdiction to try the case 1st because the first offence if it took place at all was committed within the territorial waters of Goa and 2ndly because the offence if committed on the high seas could only be tried according to the law of England and not according to the Penal Code *Held* (i) that the Court at Ratnagiri had jurisdiction If the offence were committed within three miles of Goa the Treaty Act (IV of 1880) between England and Portugal as regards the Goa territory conferred the right to try such cases in British India (ii) If the offence were committed beyond the three mile limit and on the high seas the Court had jurisdiction and the Penal Code applied under the provisions of Stat 30 & 31 Vict c 124 s 11 and Stat 37 & 38 Vict c 27 QUEEN EMPRESS v ABDOOL RAHIMAN I L R 14 Bom 227

5 ———— *Trial of British seaman for offence committed on a British ship on the high seas—Procedure at such trial—Merchant Shipping Act 1854 (17 & 18 Vict c 104) s 267—Merchant Shipping Act 1855 (18 & 19 Vict c 91) s 21—Courts (Colonial) Jurisdiction Act 1874 (37 & 38 Vict c 27)—Jurisdiction of Criminal Court* The trial of a British seaman for

I L R 21 Calc 782

OFFENCE RELATING TO DOCUMENTS

See FALSE EVIDENCE FABRICATING FALSE EVIDENCE

See FORGERY

1 ———— Penal Code s 477—*Destruction of pottah* The ...

5 W R Cr 38

OFFENCE RELATING TO DOCUMENTS—*concld*

——— Penal Code s 477—*concld*

2 ——— *Valuable security—Unstamped and inadmissible document* The fact that a document has not been stamped and is not therefore receivable in evidence does not prevent its being a valuable security within the meaning of s 477 of the Penal Code ANONYMOUS
7 Mad Ap 26

3 ——— and s 95—*Destruction of a valuable security—Unstamped document purporting to be a valuable security—Act causing slight harm* A having had certain transactions with B wrote out a rough account showing his indebtedness to B and signed the total The paper was not stamped B afterwards presented it to A and demanded payment of the total amount A paid part only and after an altercation tore up the paper *Held* that the act of tearing up the paper constituted the offence of destroying a valuable security and the harm caused was such that a person of ordinary sense and temper would complain of it QUEEN EMPRESS v PAMASAMI I L R 12 Mad 148

4. ——— and s 426—*Destruction of promissory note—Mischief—Jurisdiction of Sessions Court.* P M was convicted by a Magistrate under s. 426 of the Indian Penal Code on a charge of mischief by tearing up a promissory note for R20 *Held* that the offence charged fell under s 477 of the Penal Code and was therefore triable by a Sessions Court only *In re* MADURAI
I L R 12 Mad 54

5 ——— s 477A—*Criminal Procedure Code (Act V of 1898) s 222 (2)—Criminal breach of trust by public servant—General falsification of accounts for a period extending over two years* The alteration in the law by s 222 (2) of the Criminal Procedure Code (Act V of 1898) does not apply to a charge under s 457A of the Penal Code (falsification of document) It applies only to criminal breach of trust or dishonest misappropriation of money QUEEN EMPRESS v MATI LAL LAHIRI
I L R 26 Calc 560
3 C W N 412

OFFENCE UNDER THREAT

——— Penal Code s 94—*Proof requisite* To obtain the benefit of the exception allowed by s 94 of the Penal Code it must be shown that the prisoners were compelled to set as they did from apprehension that instant death would be the consequence of a refusal QUEEN v SONOO
10 W R Cr 48

OFFER MADE WITHOUT PREJUDICE

See WRITTEN STATEMENT
12 B L R Ap 19

OFFERINGS

See ATTACHMENT—SUBJECTS OF ATTACHMENT—OFFERINGS TO HINDU DEITY

OFFICE

——— intrusion on—

See INJUNCTION—SPECIAL CASES—INTRUSION ON OFFICE

——— suits concerning—

See JURISDICTION OF CIVIL COURT—OFFICES RIGHT TO

See RIGHT OF SUIT—OFFICE OR EMOLUMENT

OFFICE BROCAGE AGREEMENT

See AGREEMENT OPPOSED TO PUBLIC POLICY I L R 30 Mad. 530

OFFICER

——— acting in two capacities—

See COLLECTOR

See MAGISTRATE 5 B L R Ap 89
8 B L R 422
24 W R Cr 1

——— appointed to conduct appeal—

See APPEAL IN CRIMINAL CASE —ACQUITTALS APPEALS FROM
I L R 2 Calc 273

——— dismissal of—

See RELIGIOUS COMMUNITY
I L R 11 Bom 185

——— liability of—

See COMPANY—WINDING UP—LIABILITY OF OFFICERS

See GOVERNMENT OFICERS ACTS OF

See JUDICIAL OFFICERS

——— of corporation or company—

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS
I L R 12 Calc 41
I L R 20 All. 167

See PLAINT—VERIFICATIONS AND SIGNATURE I L R 21 Calc 60
L R 20 I A 139

See WRITTEN STATEMENT
I L R 22 Calc 268

——— of Government—

See COLLECTOR I L R 1 Bom. 318

See GOVERNMENT OFFICERS ACTS OF

See JUDICIAL OFFICERS

See PUBLIC OFFICER.

See PUBLIC SERVANT

OFFICIAL ASSIGNEE—*contd*

——— validity of sale as against—

See INSOLVENCY—SALES FOR ARREARS OF RENT I L R. 1 Mad 59
I L R. 9 Calc 855

1 ——— *Official Assignee of insolvent judgment-debtor not a necessary party to such suit—Decree in such suit cannot declare property liable to be attached but only that it is th property of the judgment debtor* S 283 of the Code of Civil Procedure gives a statutory right of suit to the unsuccessful party in claim proceedings and when the property of the in olvent judgment-debtor which was attached in execution had vested in the Official As ignee during the pendency of such claim proceedings the latter is not a necessary party to such suit The decree in such suit should where property had so vested only declare the property attached to belong to the judgment debtor and ought not to declare it liable to attachment ANNAPURANI AMMAL v SUBRAMANIAN CHETTIAR (1908)
I L R 31 Mad. 347

2 ——— *Official Assignee —Disallowance of claim of Official Assignee to have*

have the proceeds of a sale in execution of a decree against the insolvent judgment debtor paid over to him *Kashi Prasad* v *Miller I L R 7 All 752 Sardarmal* v *Aranvayal Sabhapathy I L R 21 Bom. 205* and *Chandmull* v *Ranee Soondery Dossee I L P 22 Calc 259* referred to OFFICIAL ASSIGNEE v HAZARI LAL (1908) I L R. 30 All. 486

3 ——— *Insolvency Act (11 and 1 Vict c 21) s 7—Insolvent—Vesting order—*

was filed and a vesting order was made by the Court On the 15th June 1904 the insolvents took out a rule nisi to withdraw their petition and the rule was made absolute on the 21st September 1904

OFFICIAL ASSIGNEE—*concld*

operative was not effec ive to divest the Official Assignee and revest the property in the insolvents A withdrawal of a petition for which no provision is made in the Act cannot be regarded as the legal equivalent to its dismissal by consent HAJI SAJAN v MACLEOD (1907) I L R. 32 Bom 321

4. ——— Commission—*Sale of Insolvent s Estate—Commission on sale of mortgaged property—Indian Insolvency Act (11 and 12 Vict c 21) ss 19 21 31—Supreme Courts Officers Act (XV of 1848) ss 1 2—Practice.* On the application of the mortgagee an order wa made in insolven y proceedings directing the Official Assignee to sell certain immoveable properties belonging to an insolvent but which were subject to a mortgage — *Held* that the Official Assignee was not entitled to charge a commission out of the insolvent s estate on the *full* value of the properties sold but only on

the Supreme Courts Officers Act 1848 *In re Howard Brothers (Insolvents) 13 B L R App 9* commented on *In re* OFFICIAL ASSIGNEE S COMMISSION (1909) I L R 36 Calc 990

OFFICIAL LETTERS

See EVIDENCE—CRIMINAL CASES—GOVERNMENT GAZETTE 7 B L R. 63

OFFICIAL TRUSTEE

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT
I L R 12 Mad. 250

See PROBATE I L R. 35 Calc 156

1 ——— Public officer—*Civil Procedure Code s 2 Semble* The Official Trustee is a public officer within the meaning of s 2 of the Civil Procedure Code ABDUL LATEEF v DOUTRE
I L R. 12 Mad. 250

2 ——— *Civil Procedure Code 1877 s 2 and s 424—Notice of suit* The Official Trustee is a public officer within the definition given in s 2 of the Civil Procedure Code The cases in which a public officer is entitled to notice of suit under s. 424 of the Code are those in which he is sued for damages for some wrong inadvertently committed by him in the discharge of his official duties and the object of giving notice is that if a public body or officer entrusted with powers happens to commit an inadvertence irregularity require pay have an op ing amends, ying for the damages he has done. The Official Trustee therefore is not entitled to notice of suit when the question to be decided relates to the rights of the *cestuis que trustent* in respect of the trust fund and not to a wrong committed by him. SHAHUNSHAH BEGUM v FERGUSSON I L R 7 Calc. 499

OFFICIAL TRUSTEE—*concld*

3 ———— Appointment of Official Trustee—*Official Trustees Act (XVII of 1864) s 10—Consent of Beneficiaries* On an application under s 10 of the Official Trustees Act (XVII of 1864) where the petition was not signed by one of the beneficiaries the Court held upon other evidence that such beneficiary was desirous of having the Official Trustee appointed as trustee of the will *In the goods of* COLLETT I L R 25 Calc 856

4 ———— Official Trustees Act (XVII of 1864) ss 10 15 and 17—*Trustees and Mortgagees Powers Act (XXVIII of 1866) s 34—Indian Trustees Act (XXVII of 1866) ss 6 and 26 — Property meaning of— Vesting meaning of* The main purpose of the Official Trustees Act was to place the Official Trustee and his successors in office in the same position and vested with the same powers as the persons who held the property in trust previous to the appointment of the Official Trustee and a wide meaning must be given to the words property and vest That property in the Official Trustees Act was meant also to include action or actionable claims and the vesting thereof was intended to have the effect of giving the Official Trustee complete power of enforcing all claims of demands in respect of the trust estate The plaintiff as a creditor of S E E had obtained letters of administration to his estate and now brought this suit for the recovery of R12 000 on a mortgage which had been executed in favour of *S E E* S *E E* in his lifetime was the trustee of a sum of R?0 000 and the Official Trustee who had been appointed trustee in his place and who was made a defendant in this suit claimed the benefit under the said mortgage on the allegation that the said sum had been advanced by *S E E* out of the trust funds The plaintiff contended that she was entitled to the usual mortgage decree and to get in the money thereunder and that the proper course for the rival claimants to the money represented by the plaintiff in her personal capacity on the one side and the Official Trustee on the other was then to proceed to establish their rights to the money by separate suit or otherwise *Held* that the contention of the plaintiff was not correct and the Court was bound to determine the question raised by the plaintiff representing the estate of the deceased and the Official Trustee representing the trust estate and that the Official Trustee could adduce evidence in this suit to shew that the money was advanced out of the trust estate GABRIEL v SOLOMON 4 C W N 70

OFFICIAL TRUSTEES ACT (XIX OF 1841)

See LIMITATION ACT 1877 ART 13 (1859 s 1 CL 5) Marsh. 573
11 Moo I A. 405
B L R. Sup Vol. 833

OFFICIAL TRUSTEES ACT (XVII OF 1864)

See OFFICIAL TRUSTEE

OFFICIATOR

See BOMBAY REVENUE JURISDICTION ACT s 4 I L R. 18 Bom. 319

OMISSION

———— to appeal—

See APPEAL—OMISSION TO APPEAL IN TIME AGAINST PRELIMINARY ORDER OR DECREE.

———— to argue question of law—

See PRACTICE 11 C W N 340

———— to decide Issue—

See REMAND—GROUND FOR REMAND

See REVIEW—GROUND FOR REVIEW
3 B L R. A C 346
10 W R 134 150
I L R 5 All 14
I L R. 2 Mad. 58

———— to give information of offence—

See CRIMINAL PROCEDURE CODES s 45 (1872 s 90)

See INFORMATION OF COMMISSION OF OFFENCE

———— to point out material evidence—

See JURY TRIAL BY I L R. 34 Calc 698

———— to sue for portion of claim—

See RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM

ONUS PROBANDI

See BURDEN OF PROOF

See ONUS OF PROOF

ONUS OF PROOF

ONUS OF PROOF—*contd*

See AGRA TENANCY ACT s. 201
I L. R. 29 All. 158

ONUS OF PROOF—*contd*

See ASSAM FOREST REGULATION (VII OF 1891) s 40 I L R 33 Calc 895

See BENAMI TRANSACTION—ONUS OF PROOF

See BENGAL TENANCY ACT s 167
13 C W N 720

See BILL OF LADING 13 B L R 394
I L R 5 Bom 313

See BOMBAY MUNICIPAL ACT
I L R 30 Bom 126

See BURDEN OF PROOF

See COMPENSATION
I L R 34 Calc 599

See CONTRACT—WAGERING CONTRACTS
I L R 25 All. 38

See DECLARATORY DECREE SUIT FOR—MISCELLANEOUS SUITS
I L R 24 All. 170

See ESCHEAT 1 B L R P C 44

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT PROCEEDINGS IN
I L R 29 Calc 187
I. L R 35 Calc 25

See FALSE CHARGE 5 C W N 106

See GIFT I L. R 30 Bom 578

See HINDU LAW—

ADOPTION—EVIDENCE OF ADOPTION
I L. R. 30 Calc 999

ALIENATION—ALIENATION BY FATHER.
I L R 26 Bom 326
I L R 35 Calc 1039

CUSTOM—IMPARTIBILITY
I L. R. 29 Calc 828

JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY

WIDOW S ESTATE ALIENATION OF
13 C W N 931

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE
I L. R. 4 Calc 888
I L. R. 19 All. 125
5 C W N 91

See JHUM CULTIVATION
I. L. R. 36 Calc 1

See KHOJA MAHOMEDANS
I. L. R. 12 Bom. 280
I. L. R. 13 Bom. 534

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT
I. L. R. 26 Bom. 410

See LANDLORD AND TENANT—DAMAGE TO PREMISES LET 5 B L. R. 401

ONUS OF PROOF—*contd*

See LANDLORD AND TENANT—ENCROACHMENT—ADVERSE POSSESSION
13 C W N 698

See LANDLORD AND TENANT—PAYMENT OF RENT—NON PAYMENT
I L R 4 Calc 314
I L R 9 Bom 419
I L R 3 Mad 118
5 Bom A C 65

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND
I L R 13 All 571
I L R 22 Calc 742 744 note 746 note
748 note 751 note
I L R 23 Calc 854
I L R 21 All 297

See LIMITATION ACT 1877 s 26
8 C W N 359

See LIMITATION ACT 1877 SCH II ART 127 (1859 s 1 CL 13)
12 B L R 219
4 Mad 354
3 Agra 133
3 W R 173
6 W R 170
15 W R 400
23 W R 381
I L R 22 Bom 259
1 C W N 543

See MAHOMEDAN LAW
I L R 31 Bom 165

See MALICIOUS PROSECUTION

See MARINE INSURANCE
I L R 36 Calc 516
13 C W N 425

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION I L R 27 Bom 271

See NEGOTIABLE INSTRUMENT
I L R 36 Calc 239

See NEGOTIABLE INSTRUMENTS ACT s 98
I L R 26 Mad 239

See PARDANASHIN WOMEN

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS I L R 26 Calc 281

See PENAL CODE s 302 8 C W N 22

See PENAL CODE s 373
I L R 22 Calc 164

See PENAL CODE s 456
I L R 29 All 46

See PENAL CODE s 498
8 B L R Ap 63

See POSSESSION 12 C W N 273

See PRE EMPTION I L R 29 All 618

See PRESUMPTION OF DEATH
I L R 33 Calc 173

See PRIVATE INTERNATIONAL LAW
9 C W N 394

ONUS OF PROOF—*contd*

See RAILWAY COMPANY 2 Agra 200
I L R 3 Bom 120
I L R 26 Calc 465
I L R 22 All 361

See RECOGNIZANCE TO KEEP PEACE—LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE 2 N W 431
I L R 9 All 452

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY
I L R 30 Calc 1

See SALE IN EXECUTION
I L R 36 Calc 654

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION I L R 15 Calc 765
I L R 22 Calc 473

See SPECIFIC RELIEF ACT s 9
I L R 24 All 501

See STOLEN PROPERTY—OFFENCES RELATING TO I L R 20 Bom 348

See SUIT FOR RENT IN DEPOSIT
11 C W N 380

See SUMMONS SERVICE OF
I L R 23 All 99

See VARIANCE BETWEEN PLEADING AND PROOF

See VENDOR AND PURCHASER—NOTICE
I L R 4 Calc 897

See WAIVER 11 C W N 848

See WILL—VALIDITY OF WILL
I L R 23 All 472
13 C W N 782

——— age—

See EVIDENCE ACT s 32 CL (5)
I L R 25 Mad 184

——— ejectment—

See LANDLORD AND TENANT—EJECTMENT 6 C W N 105

See SERVICE TENURE
I L R 26 Mad 403

——— enhancement of rent—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD CESS PAPERS
I L R 30 Calc 1033

See RENT SUIT FOR 5 C W N 880

——— legitimacy—

See EVIDENCE ACT s 112
I L R 29 Calc 111

——— minority—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE
I L R 26 Bom 109

ONUS OF PROOF—*contd*

——— negligence—

See RAILWAY COMPANY—LIABILITY OF COMPANY I. L. R. 28 Calc. 401

——— partibility of estate—

See HINDU LAW—IMPARTIBLE PROPERTY I L. R. 24 Mad 562

——— possession, and proof of title—

See UNLAWFUL ASSEMBLY 5 C W N 368

——— that accused is the person against whom warrant issued—

See WARRANT OF ARREST—CRIMINAL CASES I L R 28 Calc 399

——— that lands are *mal*—

See EVIDENCE—CIVIL CASES—MAPS 7 C W N 612

——— that Nepal is in India—

See NEPAL 7 C W N 635

——— that Permanent Settlement of 1793 applies to particular land—

See EVIDENCE—CIVIL CASES—MAPS I L R 30 Calc 291

——— zerait land—

See BENGAL TENANCY ACT s 116 13 C W N 661 664

1 ACCOUNT

See HINDU LAW—PARTITION 13 C W N 309

1. ——— Balance of account—*Suit for sum due on balance of account* Where a plaintiff sues for a specific sum of money due on a balance of account it is for him ...

12 W R 529

2 ——— *Suit founded on statement of account* Where a claim was founded upon a distinct statement of an account signed by the defendant in which he acknowledged a particular sum to be due to the plaintiff —*Held* that it was for defendant to produce evidence to rebut the *primâ facie* case made against him ELIAS *v* JORAWAR MULL 24 W R 202

2 ACCOUNT BOOKS ENTRIES IN

1 ——— Suit for possession—*Dispute as to whether transaction was a mortgage or sale—Entries in account books showing debts* The plaintiffs sued for possession of certain lands alleging that they had been mortgaged to the defendant by their father under two documents. The defendant produced them and relied upon them as deeds of sale which conveyed to him absolutely the lands mentioned in them The form of the instruments was not conclusive but it appeared *aliunde* by the conduct of the defendant himself that the deeds were intended as mere securities for money and that he had treated them as such Certain entries in the defendant s accounts also treated the respective considerations named in the deeds as sums indebted to

to the defendant and that it was incumbent on the latter to give either oral or documentary evidence which in some way neutralised or explained away their effect or showed that they related to other transactions than those mentioned in the two documents GOVINDA *v* JESHA PREMAJI I L R 7 Bom. 73

3 AGENT

1 ——— Gomastah suit against—*Suit to recover advances due from discharged gomastah* In a suit to recover advances alleged to be due from a discharged gomastah who pleaded acquittance at the time of his discharge —*Held* that plaintiff was bound to prove the payments to and the receipts from the gomastah and to put in original documents and not mere transcripts even if the defendant had remained silent WATSON & Co *v* SREEDHUR MUNDLE 10 W R 421

2. ——— Agents of official assignee suit against—*Proof of items of account* Agents who have collected money on account of an insolvent estate are severally bound to prove to the assignee or his representative that the expenditure of the several amounts charged in their accounts has been actually and properly made and the *onus probandi* rests on such agents It is incumbent on such agents to offer proof in support of all the items in their accounts which are impugned and the propriety or the actual expenditure of such items should form the subject matter of issues properly framed. NUJUF ALI *v* PATTERSON 2 N W 104

3 ——— Principal suit against for ...

plaintiff to prove that the alleged agent was the duly accredited agent of the defendants in reference to the transaction the subject of the claim HATHE RAM *v* GOBIND RAM 3 Agra 131

4 ARBITRATION

1. ——— Reference to arbitration—*Consent obtained by threats and undue influence*

ONUS OF PROOF—*contd*

See LANDLORD AND TENANT—ENCROACHMENT—ADVERSE POSSESSION
13 C W N 898

See LANDLORD AND TENANT—PAYMENT OF RENT—NON PAYMENT
I L R 4 Calc 314
I L R 9 Bom 419
I L R 3 Mad 118
5 Bom A C 85

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND
I L R 13 All 571
I L R 22 Calc 742 744 note 746 note
748 note 751 note
I L R 23 Calc 854
I L R 21 All 297

See LIMITATION ACT 1877 s 26
8 C W N 359

See LIMITATION ACT, 1877, SCH. II ART 127 (1859 s 1 CL 13)
12 B L R 219
4 Mad 354
3 Agra 133
3 W R 173
6 W R 170
15 W R 400
23 W R 381
I L R 22 Bom 259
1 C W N 543

See MAHOMEDAN LAW
I L R 31 Bom 165

See MALICIOUS PROSECUTION

See MARINE INSURANCE
I L R 36 Calc 516
13 C W N 425

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION I L R 27 Bom 271

See NEGOTIABLE INSTRUMENT
I L R 36 Calc 239

See NEGOTIABLE INSTRUMENTS ACT s 98
I L R 26 Mad 239

See PARDANASHIN WOMEN

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS I L R 26 Calc 281

See PENAL CODE s 302 8 C W N 22

See PENAL CODE s 373
I L R 22 Calc 164

See PENAL CODE s 456
I L R 29 All 46

See PENAL CODE s 498
8 B L R Ap 63

See POSSESSION 12 C W N 273

See PRE EMPTION I L R 29 All 618

See PRESUMPTION OF DEATH
I L R 33 Calc 173

See PRIVATE INTERNATIONAL LAW
9 C W N 394

ONUS OF PROOF—*contd*

See RAILWAY COMPANY 2 Agra 200
I L R 3 Bom 120
I L R 26 Calc 465
I L R 22 All 361

See RECOGNIZANCE TO KEEP PEACE—LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE 2 N W 431
I L R 9 All 452

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY
I L R 30 Calc 1

See SALE IN EXECUTION
I L R 36 Calc 654

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION I L R 15 Calc 765
I L R 22 Calc 473

See SPECIFIC RELIEF ACT s 9
I L R 24 All 501

See STOLEN PROPERTY—OFFENCES RELATING TO I L R 20 Bom 348

See SUIT FOR RENT IN DEPOSIT
11 C W N 380

See SUMMONS SERVICE OF
I L R 23 All 99

See VARIANCE BETWEEN PLEADING AND PROOF

See VENDOR AND PURCHASER—NOTICE
I L R 4 Calc 897

See WAIVER 11 C W N 848

See WILL—VALIDITY OF WILL
I L R 23 All 472
13 C W N 782

———— age—

See EVIDENCE ACT s 32 CL (5)
I L R 25 Mad 184

———— ejectment—

See LANDLORD AND TENANT—EJECTMENT 6 C W N 105

See SERVICE TENURE
I L R 26 Mad 403

———— enhancement of rent—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD CESS PAPERS
I L R 30 Calc 1033

See RENT SUIT FOR 5 C W N 880

———— legitimacy—

See EVIDENCE ACT s 112
I L R 29 Calc 111

———— minority—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
I L R 26 Bom 109

ONUS OF PROOF—*contd*

——— negligence—

See RAILWAY COMPANY—LIABILITY OF COMPANY I. L. R. 28 Calc. 401

——— partibility of estate—

See HINDU LAW—IMPARTIBLE PROPERTY I. L. R. 24 Mad 562

——— possession, and proof of title—

See UNLAWFUL ASSEMBLY 5 C W N 368

——— that accused is the person against whom warrant issued—

See WARRANT OF ARREST—CRIMINAL CASES I L R. 28 Calc 399

——— that lands are *mal*—

See EVIDENCE—CIVIL CASES—MAPS 7 C W N 612

——— that Nepal is in India—

See NEPAL 7 C W N 635

——— that Permanent Settlement of 1793 applies to particular land—

See EVIDENCE—CIVIL CASES—MAPS I. L R 30 Calc 291

——— zerait land—

See BENGAL TENANCY ACT s 116 13 C W N 661 664

1 ACCOUNT

See HINDU LAW—PARTITION 13 C W N 309

1. ——— Balance of account—*Suit for sum due on balance of account* Where a plaintiff sues for a specific sum of money due on a balance of account it is for him to start his case and show what sum is due on the account and until he has done so the defendant need not be called upon to rebut him RUTTUN CHAND BYSACK *v* BOCHA BIBEE 12 W R 529

2 ——— *Suit founded on statement of account* Where a claim was founded upon a distinct statement of an account signed by the defendant in which he acknowledged a particular sum to be due to the plaintiff —*Held* that it was for defendant to produce evidence to rebut the *primâ facie* case made against him ELIAS *v* JORAWAR MULL 24 W R 202

2 ACCOUNT BOOKS ENTRIES IN

1 ——— Suit for possession—*Dispute as to whether transaction was a mortgage or sale—Entries in account books showing debts* The plaintiffs sued

ONUS OF PROOF—*contd*

2 ACCOUNT BOOKS ENTRIES IN—*concld*

for possession of certain lands alleging that they had been mortgaged to the defendant by their father under two documents The defendant produced them and relied upon them as deeds of sale which conveyed to him absolutely the lands mentioned in them The form of the instruments was not conclusive but it appeared *aliunde* by the conduct of the defendant him elf that the deeds were intended as mere securities for money, and that he had treat ed them as such. Certain entries in the defendant s accounts also treated the respective considera [illegible]

to the defendant and that it was incumbent on the latter to give either oral or documentary evidence which in some way neutrali ed or explained away their effect or showed that they related to other transactions than those mentioned in the two documents GOVINDA *v* JESHA PREMAJI I L. R 7 Bom 73

3 AGENT

1 ——— Gomastah suit against—*Suit to recover advances due from discharged gomastah* In a suit to recover advances alleged to be due from a discharged gomastah who pleaded acquittance at the time of his discharge —*Held* that plaintiff was bound to prove the payments to and the receipts from the gomastah and to put in original documents and not mere transcripts even if the defendant had remained silent WATSON & Co *v* SREEDHUR MUNDLE 10 W R 421

2 ——— Agents of official assignee [illegible]

agents to offer proof in support of all the items in their a counts which are impugned and the propriety or the actual expenditure of such items should form the subject matter of issues properly framed NUJUF ALI *v* PATTERSON 2 N W 104

3 ——— Principal, suit against for [illegible]

plaintiff to prove that the alleged agent was the duly accredited agent of the defendants in reference to the transaction the subject of the claim HATHE RAM *v* GOBIND RAM 3 Agra 131

4 ARBITRATION

1. ——— Reference to arbitration—*Consent obtained by threats and undue influence*

ONUS OF PROOF—*contd*

4. ARBITRATION—*concld*

When it is averred that the consent of one of the parties to an arbitration was obtained by threats and through undue influence exerted by persons in authority the *onus probandi* is on the person making the averment PURVATHA VURDHAY NAUCHIAR *v* JAYAVERA PAMAKOMARA ETTYAPA NAICKER 4 W R P C 31

s c ZAMINDAR OF RAMNAD *v* ZAMINDAR OF YETTIAPOORAM 7 Moo I A. 441

5 ATTACHMENT IN EXECUTION

1 ———— Attachment of person of debtor—*Execution of decree.* In an application for an order for execution of a decree by attachment of the person of the debtor the onus is on the judgment-debtor to show that he has no means of satisfying the debt and that he has not been guilty of any misconduct and not on the creditor to show that by sending the debtor to prison some satisfaction of the debt would be obtained SETON *v* BIJOHN 8 B L R 255 17 W R 165

2 ———— Claim by judgment debtors

against the representatives of a deceased debtor specific property was seized as the property of

who asserted that the property seized in execution of his decree was the property of the deceased debtor and as such in the possession of the judgment debtors. ABDUL RAHMAN *v* MAHOMED ATIM 4 C W N 151

6 BAILMENTS

1 ———— Negligence—*Hiring—Accident—Evidence Act (I of 1872) s 106—Contract Act (IX of 1872) ss 150 151 152* The question of the burden of proof in cases of accidental injury to goods bailed depends upon the particular circumstances of each case In some case from the nature of the accident it lies upon the bailee to account for its occurrence and thus to show that it has not been caused by his negligence. In such cases it is for him to give a *prima facie* explanation in order to shift the burden of proof to the person who seeks to make him liable If he gives an explanation which is uncontradicted by reasonable evidence of negligence and is not *primâ facie* improbable the Court is bound in law to find in his favour and the mere happening of the accident is not sufficient proof of negligence *S* hired a horse from *W* and while it was in his custody it died from rupture of the diaphragm which was proved to have been caused by over-exertion on a full stomach

ONUS OF PROOF—*contd*

6 BAILMENTS—*concld*

bolted for two miles and at last fell down and died This evidence was not contradicted on any point nor was any other evidence offered as to how the horse came to run away There was evidence that the horse was a quiet one that for some time previously it had done hardly any work that it was fed immediately before it was let out for hire and that rupture of the diaphragm was a likely result of the horse running away while its stomach was distended with food The Court of first instance held that the defendant was bound to prove that he had taken such care of the hor e as a man of ordinary prudence would under similar circumstances have taken of own property that he must have u ed his whip freely or done something else which caused the horse to bolt and that in so doing he acted without reasonable care and had thus caused the animal s death The Court accordingly decreed the claim *Held* by EDGE *C J* that if the burden of proof was originally upon the defendant it was shifted by the explanation which he gave and which was neither contradicted nor *prima facie* improbable and that the decree of the lower Court being unsupported by any proof and based on speculation and assumption was one which that Court had no jurisdiction to pass and should consequently be set aside in revision under s 622 of the Civil Procedure Code *Per* BRODHURST *J* that as the decree was not only unsupported by
on the record
exercise of its
meaning of s. 6...
I L R 9 All. 398

7 BOUNDARY

1. ———— Disputed boundary—*Removal of boundary* Where a dispute arises regarding the direction of a boundary which one of the parties to a suit has demolished and the other party proves its general direction the onus of proof that the direction is wrongly stated if it be so lies on the former who removed the boundary JUDOONATH MULLICK *v* KALEE KRISTO TAGORE 25 W R 524

2 ———————— *Failure of proof* Suit concerning the boundary line between contiguous mehals The land in dispute (which with the mehals adjacent originally formed part of a permanently settled zamindari consisted of revenue paying mehals and of mehals alleged to be lakhiraj all belonging to one proprietor) was so situated that it necessarily belonged either to Havelee one of the latter or to the contiguous rent paying mehals The Permanent Settlement did not define the boundary nor was it fixed in subsequent resumption proceedings against Havelee which ended in a

ONUS OF PROOF—*contd.*

7 BOUNDARY—*contd*

temporary settlement of that mehal for twenty years. The owner hip of Havelee having become severed from the ownership of the other mehals, the que tion of boundary arose not as a question of revenue between the Government and a zamindar but as one of title to land between the zamindars and proprietors of two contiguous and separate e tates. The appellant having failed to prove that no part of the disputed land was included in the re pondent s settlement (ome portion at least being hown to belong to Havelee) and also having failed to prove by independent evidence his own right to recover the land pecified in the plaint —*Held* that the suit hould not have been determined upon that

3 W R P C 19 10 Moo I A 81

See LEELANUND SINGH v LUCHMUNUR SINGH 10 C L R 169

where the Privy Council explain this case

3 ——————— *Lakhiraj tenure and mal land of amindar* In a question of boundary between a lakhiraj tenure and a zamindar s *mal* land there is no presumption in favour of one or the other but the onus is on the plaintiff to prove his case BEER CHUNDER JOOBRAJ v RAM GUTTY DUTT 8 W R 209

4. ——————— *Failure to prove alleged boundary* Where the plaintiff sued to

boundary between the zamindaris LEELANUND SINGH v MOHENDRO NARAIN SINGH 13 W R P C 7 13 Moo I. A 57

5 ——————— *Suit for possession where defendant alleges land to be within zamindari but in protected tenure* In a suit by a talukhdar to obtain khas pos ession of certain land as

12 C L R 457

6 ——————— *Suit for khas possession—Onus of proving intermediate tenure—Onus of proving that a parcel is outside intermediate*

ONUS OF PROOF—*contd*

7 BOUNDARY—*contd*

tenure—General rule as to onus of proof in suits for ejectment In a suit by a landlord for khas possession of land in defendants possession the defendants set up and proved an intermediate tenure *Held* that it was on the plaintiffs to show that the parcel of land sought to be resumed was outside such tenure *Sahib Perhlad Sein* v *Budhoo Sing* 12 *Moo I A* 275 explained *Rhidoy Kristo Mistri* v *Nobin Chunder Sen* 12 *C L R* 457 followed In this respect it makes no difference whether the plaintiff admits the existence of the under tenure or ...hough ...a um 4/3 210

Hurrynur Mookhopadhya v *Madhu Chunder Baboo* 14 *Moo I A* 152 referred to and discussed RAJENDRO KUMAR BOSE v MOHIM CHANDRA GHOSE 3 C W N 763

7 ——————— *Lands in amindari—Settlement of shikmi talukh* Lands situate within a zamindari must *primâ facie* be considered as part of the zamindari and it is for those who insist on the separation of lands from the general lands of

3 W R P C 5 10 Moo I A 165

8 ——————— *Suit for confirmation of posse sion of lands alleged to be within certain talukh* In a uit for confirmation of right and possession in respect of lands alleged to be within plaintiff s permanently settled talukh where plaintiff incidentally remarked that defendant (as intervenor in a previou rent suit) had claimed the

of that other talukh instead of following the usual and recogniz d course of requiring the plaintiff to prove that the lands in suit belonged to his talukh GUNGAMALA CHOWDHRAIN v MADHUB CHUNDER ROY 10 W R 413

9 ——————— *Mouzah which may belong to one of two amindaris—Possession* If a particular mouzah has been held for many years as part of a particular mehal or zamindari the fact of such holding affords a strong presumption that it is part of that mehal even as against a purchaser at a sale for arrears of revenue of another mehal who claims that part of the mehal purchased by him It is not conclusive evidence against such auction purchaser nor could any length of adverse holding prior to his purchase preclude the auction purchaser from recovering it if he could show clearly that it belonged to the mehal which he had purchased. PRAN KISHEN BANERJEE v JUGGOBUNDOO DUTT 7 W R. 207

10 ——————— *Suit for possession of land once bed of a nullah* In a suit for

ONUS OF PROOF—*contd*

7 BOUNDARY—*contd*

possession of land which had once formed the bed of a nullah of which defendants held a julkur settlement but which was situated within plaintiff s settled estate —*Held* that as defendants had failed to show that their settlement extended beyond the fishery rights plaintiff was entitled to recover possession MONOHUR CHOWDHRY *v* NURSINGH CHOWDHRY 11 W R. 272

11 ———— *Suit for possession—Disputed plots of land* In a suit to recover possession of two parcels of land alleged to have been comprehended in one plot on the ground that they had been held by the plaintiff and defendant jointly until by certain proceedings the former was virtually deprived by the latter of the usufruct the defendant s case being that the parcels were divisible into two distinct plots one held by the plaintiff and himself jointly and the other by himself exclusively *Held* that it was on the plaintiff to prove that the disputed parcel was a part of the land held jointly by him and the defendant GUNGA PERSHAD DUTT *v* LOKENATH NUNDEE 12 W R. 179

12 ———— *Suit by purchaser of share of co sharer in land jointly settled* Where the settlement proceedings showed that the question of extent of the shares of several persons on settlement was in dispute and that the settlement was made jointly without prejudice to title the onus in a suit by a purchaser of one of the shares was *held* to be on the plaintiff to show the extent of his vendor s share GOOROO CHURN PODDAR *v* HAFEEZA BIBEE 7 W R 366

8 CLAIMS TO ATTACHED PROPERTY

1 ———— Allegation of application by

SEE DUTT MISSER *v* BROJO MOHUN THAKOOR 9 W R. 332

2 ———— Proof of attachment—*Civil Procedure Code 1859 s 235 239 270—Priority* Plaintiff claimed priority under s 270 Act VIII of 1859 asserting that the property attached and sold by defendant was an identical property which he had attached prior to defendant s attachment *Held* that he was bound to prove the due attachment of the property *viz* by proof of having obtained a written order under s 235 prohibiting defendant from alienating the property by sale gift etc and by the publication of the said order in the manner prescribed by s 239 KANHYA LALL PUNDIT *v* DINONATH SIRCAR 17 W R. 23

3 ———— Suit by unsuccessful claimant for confirmation of alleged possession and adjudication of title—*Civil Procedure Code 1859 s 246* Where an unsuccessful claimant under s. 246 Code of Civil Procedure sues for confirmation of alleged possession and adjudication of title the onus in the first instance is on plaintiff and an important question in the case is who was in possession at the time of the attachment TOOFANEE DOSS *v* MUN PAKHUN ROY 15 W R 202

4 ———— Right to begin—*Civil Procedure Code 1859 s 246* Where a claim was made under s 246 of Act VIII of 1859 by a third party to some timber which had been attached by a prohibitory order under s 234 —*Held per* PEACOCK C J L S JACKSON PHEAR and MACPHERSON JJ (MITTER J dissenting) that the claimant must begin The onus is on him to prove that the goods attached were his property or in his possession and therefore not in the possession of the judgment debtor His evidence must be confined to proving his own claim and he cannot be allowed to show a title in a third person with whom he has no connection *Held (per* MITTER J) that on the proper construction of the words proceed to investigate the same with like powers as if the claimant had been originally made a defendant the onus of proof as against the claimant is on the decree holder *Nito Kali Dev v Kripanath Roy 8 W R 358* and *Misree Begum v Punnoo Singh 8 W R 362* overruled NGA THA YAH *v* BURN 2 B L R F B 91 11 W R F B 8

5 ———— Suit by a claimant to property under attachment The defendant having attached certain property as belonging to his judg

right to the property in question The Court of first instance dismissed the suit The plaintiff appealed to the District Judge who reversed the lower Court s decree holding that it was incumbent on the defendant to show that the alleged transaction of sale was fictitious. On second appeal by the defendant to the High Court —*Held* that the District Judge was wrong in throwing the burden of proof on the defendant. The defendant had obtained an order maintaining his attachment and it was incumbent on the plaintiff who impugned that order by the present suit to prove her case For this purpose it was necessary for the plaintiff to prove the payment of the purchase money and that she had been in possession since the alleged sale GOVIND ATMARAM *v* SANTAI I L R. 12 Bom. 702

6 ———— Objections to attachment—*Civil Procedure Code 1882 ss 278 279 and 283 —Suit on title under deed of sale to declare property not liable to be taken in execution* In proceedings under s. 278 of the Code of Civil Procedure the objector pleaded that the property sought to be

ONUS OF PROOF—*contd*

8. CLAIMS TO ATTACHED PROPERTY—*contd*

attached was his by virtue of a certain registered sale deed. This objection was disallowed on the finding that the deed relied upon was fictitious The objector then brought a separate suit to have the property declared not liable to be taken in execution but he did not file the sale deed in question or account for its non production *Held* that under the circumstances of the case it was in this instance for the plaintiff to prove that the deed he relied on was not fraudulent and collusive as has been found in the previous proceedings *Govind Atmaram v Santai I L R 12 Bom 270* referred to PAM NATH v BINDRABAN

I L R 18 All 369

7 ——— Suit for confirmation of possession—*Civil Procedure Code 1859 s 246—Claim—Deed of sale* A decree holder caused the right title and interest of his debtor in certain land to be attached in execution. A claim was preferred under s 246 Act VIII of 1859 by a previous purchaser but was rejected In a suit thereupon instituted for confirmation of possession on reversal of the order the defence was that the purchase was benami. *Held* that the onus was on the plaintiff to make out his case MAHIMA CHANDRA KUNDU v NURUDDIN 3 B L R A C 70 11 W R 422

TULSEE MONEE DOSSEE v PEARY MOHUN BABOO 25 W R 79

8 ——— Suit to establish right after rejection of claim—*Civil Procedure Code 1859 s 246* In a suit brought to establish the plaintiff s right to certain property after an order against him under s 246 Act VIII of 1859 the defendant admitted that the property had been in the possession of the person against whom the plaintiff had obtained his decree but stated that it had passed to him by conveyance executed by that judgment debtor in his favour the plaintiff alleged that this

[illegible]

PRASAD v BINODE RAM SEN
3 B L R A C 71 note 10 W R 321

9 ——— *Civil Procedure Code 1859 s 246—Claim* The plaintiff sued to [illegible]

[illegible]

assignment but alleged that it was a fraudulent transaction *Held* that the onus was on him to prove that the transaction was not a *bona fide* one LALBEHARI DUTT v SRINATH MOOKERJEE

3 B L R A C 73 note

10 ——— Suit to establish right to attach—*Civil Procedure Code s 283—Right of defendant to set up title of third person.* In a suit brought under s 283 of the Civil Procedure Code (Act XIV of 1882) to establish the right to attach property it is for the plaintiff to prove that the property in question is the property of the judgment debtor The onus of proof is upon him He can have no right to attach property which is proved either never to have belonged to his judgment debtor or having been his to have passed out of his possession and ownership and become in law the property of others prior to the time at which attachment is sought The defendant in defending such a suit may therefore rely on the title of a third person ADAM ISUFBHAI v JAMNADAS RANCHORDAS

I L R 17 Bom 94

11. ——— Suit for declaration of title —*Civil Procedure Code 1859 s 246—Equitable right* Certain property belonging to one *S* was mortgaged by him in 1810 and 1813 to *O* under form of conditional sale *S* had three sons *H A* and *N* and in 1819 he sold the property included in the mortgages of 1810 and 1813 to his sons *H* and *A* In 1820 *H* and *A* entered into a fresh arrangement with *O* who accepted from them a fresh mortgage of the property in lieu of those of 1810 and 1813 and of this mortgage in 1831 he obtained a decree for foreclosure Subsequently the Government resumed the property and settled it with *O* s widow as representing the proprietor and the plaintiff afterwards purchased a one third share of the estate The defendant was the holder of a decree obtained in 1836 against the heirs of *S* on a money debt of *S* and in execution of that decree he in 1866 caused the rights of *N* in the property to be attached and sold and himself became the purchaser On attachment the plaintiff preferred a claim to it under s 246 Act VIII of 1859 but it was disallowed In a suit by the plaintiff praying for his right of ownership and possession which was menaced by the defendant s decree and sale —*Held* the onus was on the defendant to show that he had an equitable right which he could assert against the plaintiff SHURFUN BIBEE v COLLECTOR OF SARUN

12 B L R 66 note 10 W R 199

12 ——— Allegation of assignment by deed of sale—*Civil Procedure Code 1859 s 246* If a plaintiff coming into Court under s. 246 of the Code of Civil Procedure to set aside an attachment and sale shows in proof of his title that a deed of sale has been executed in his favour by the judgment-debtors and that consideration money has passed and possession has been given him he starts his case sufficiently If the defendant alleges notwithstanding that the sale was collusive and fictitious it is for him to show that it was so DIGUMBUREE DOSSEE v BANEE MADHUB GHOSE

15 W R 155

13 ——— Suit by unsuccessful claimant to set aside sale of land—*Civil Procedure Code 1859 s 246* Where the plaintiff filed a suit to set aside a sale of land after he had been unsuccessful in an application made under s. 246 of the Civil Procedure Code 1859 to raise an attachment that had been laid on such land —*Held* that the onus lay

ONUS OF PROOF—*contd*

8 CLAIMS TO ATTACHED PPOPERTY—*concld*

on the plaintiff to prove his title and not on the purchaser to prove that of the judgment debtor NATHU SADASHIV *v* RAMCHANDRA ANNAJI
5 Bom A C 76

14 ——— **Suit to establish title under deeds of gift**—*Proof of bonâ fides* In a suit to establish title unsuccessfully asserted in an execution case to property sold in satisfaction of a decree where plaintiff claims under a gift and other titles originating with the judgment debtor it is not sufficient for plaintiff to make out a *primâ facie* case leaving it to defendant to demonstrate fraud plaintiff is bound to satisfy the Court of the genuine *bonâ fide* nature of the transfer RAM KISHORE SINGH *v* RAMSURBO CHATTERJEE 11 W R 454

15 ——— **Suit for value of goods taken in execution where a claim to them is allowed under s 246 Act VIII of 1859**—*Evidence of title* M to whom C his judgment debtor had made over certain goods attached the same in execution of his decree as the property of his judgment debtor but on a claim being preferred to the goods by D and B under s 246 of Act VIII of 1859 they were ordered to be released from attachement they remained however in the possession of M D and B having sued M to recover the value of the goods the lower Court held that inasmuch as M failed to sue within a year to set aside the order of the miscellaneous department and establish his right to take the property in satisfaction of his decree as belonging to his judgment

disputing the plaintiff s right to the goods and that the plaintiffs were bound to prove their right to entitle themselves to a decree and that the miscel

9 CONTRACT

1 ——— **Construction of contracts**—*Allegation of special law* The onus is on the party who contends that a contract is governed by special and not by general rules of law TEJ CHUND *v* SREEKANTH GHOSE
6 W R P C 48 3 Moo I A 261

10 CONTRIBUTION

1 ——— **Suit for contribution of Government revenue**

ONUS OF PROOF—*contd*

10 CONTRIBUTION—*concld*

to prove their shares and amount of revenue payable on them AGHOREE RAM SAHOY *v* RAMOLEE SAHOO W R 1864 309

2 ——— *Money paid to Government treasury* In a suit for contribution for money admittedly paid by plaintiff into the Government treasury on account of defendants share of the revenue where defendants plead previous payment to the plaintiff —*Held* that the burden of proving such payment was upon the defendants MOHADEO MISSER *v* LAHOREE MISSER 24 W R 250

11 CUSTOM

1 ——— **Custom at variance with**

inheritance —*Held* that the burden of proving the alleged custom rested upon her RAHIMATBAI *v* HIRBAI I L R 3 Bom 34

2 ——— **Impartibility**—*Suit for partition—Presumption as to partibility* In a suit for the partition of part of a deshgat vatan brought by the younger brothers of a joint Hindu family against their eldest brother the desai the defence was that the vatan was held by him as an impartible inheritance subject to a right by custom that a brother should receive maintenance out of the income derived from it *Held* that there was no such general presumption in favour of the impartibility of estates of this kind as to shift the burden of proof which was upon the desai to show that the vatan had contrary to the general Hindu law been inherited by him alone It was for the desai to show by evidence of the nature of the tenure of the vatan that it was impartible or to

law ADRISHAPPA *v* GURUSHIDAPPA
I L R 4 Bom 494

3 ——— **Adoption**—*Custom proof of* It is a general rule and fundamental principle amongst Brahmans Kshatrya and Vaishyas that they are absolutely prohibited from and incapable of adopting a daughter s or sister s son or son of any other woman whom they could not marry by reason of propinquity The burden of proving a special custom to the contrary amongst any members of these three regenerate classes prevalent either in their caste or in a particular locality lies upon him who avers the existence of that custom GOPAL SAFRAY *v* HANMANT SAFRAY
I L R 3 Bom 273

4 ——— **Forfeiture of rights of mohuntship by marriage**—*Right of succession* Where the plaintiff proved his right of succession to a math on the death of its mohunt the

ONUS OF PROOF—*contd*

11 CUSTOM—*concld*

burden of proving that his sub equent marriage worked a forfeiture of his office and its appendant property and ri ht lay upon the defendant who impugned the plaintiff s right on account of the marriage GOSAIN PAMBHARTI JAGRUPBHARTI v SURAJBHARTI HARIBHARTI I L R 5 Bom 682

5 ———— Maintenance—*Custom to reduce maintenance* Suit by a late Rajah s brother for maintenance allowance which the present Rajah oppo ed on the ground that as the plaintiff was no longer the ruling Rajah brother his allowance mu t be dimini hed *Held* that the onus was on

6 ———— Right to take fees—*Vatandar joshi right of to take fees* The burden of proving that the vatandar jo hi of a village is not entitled to officiate and take fee in the family of any particular caste lies upon the per on or per ons a serting exemption RAJA VALAD SHIVAPA v KRISHNA BHAT I L R 3 Bom 232

12 DAMAGES

1 ———— Suit for damages against defaulting witness—*Proof of liability* In a suit for damages against a defaulting witness the onus is on the plaintiff to prove that he was damaged by the non attendance of the witness The mere failure of the defendant to appear as a witness is not *per se* a sufficient proof of his liability to damages DWARKANATH KOOPEE v ANANDO CHUNDER SANNEL 5 W R S C C Ref 18

2 ———— Suit for damages for wrong

standing and permitted him to continue for a time till the plants should be removed defendant pro mi ing them to give over po session but that when the time came defendant refused to give over pos session and was still occupying the land *Held* that it lay upon the plaintiff to show wrongful occupancy on the part of the defendant GOUR SURUN DASS v SCRONDEY 15 W R 144

13 DEBTOR AND CREDITOR

1 ———— Release of debtors—*Debt owing by partnership* The burden of proof that a creditor by agreeing to an arrangement whereby a firm indebted to him conveyed to two of the partners thereof certain property in trust to pay off his and certain other debts thereby released the remaining members of the partnership lies upon the parties who were originally liable to such creditor KALAI KHAN v MADHO PERSHAD 3 N W 129

ONUS OF PROOF—*contd*

13—DEBTOR AND CREDITOR—*concld*

2 ———— Debts contracted by persons in wrongful possession—*Suits to charge zamindari* Where it was ought to charge a zamindari with debts contracted by persons who

ower and the creditor the onus was on the creditor who was seeking to set up a charge in his favour made by one who was in posses ion but without title and therefore in absence of any evidence on behalf of the creditor as to the circumstances in which the transactions were had with the usurping zamindar in possession and the failure to connect the loans with the debts contracted by the former and lawful zamindars the suit was rightly dismis ed The case of *Hunooman Persaud Panday v Munraj Koonweree 6 Moo I A 393* distinguished CHIDAMBARA SETTI v MUTTUVIJEYA 3 Mad. 260

14 DECLARATION OF TITLE

his case and the *onus probandi* that he is in posses sion as owner is upon him RASSONADA RAYAR v SITHARAMA PILLAI 2 Mad. 171

2 ———————— *Production of title deeds* The plaintiff sued for declaration of her title to property of which the defendant was in po session but of which she produced the title deeds in favour of her elf *Held* that the onus was on the defen lant to disprove the plaintiff s title SWARNAMAYI RAUR v SRINIBASH KOYAL 6 B L R. 144

3 ———————— *Reversioner—Setting aside deed of sale* In a suit for a declara tion of plaintiff s reversionary title as heir to his late uncle s property and for reversal of a deed of sale from that uncle set up by the defendant the widow not having been made a party to the suit and her consent to or dissent from the alleged conveyance not having been ascertained the issue tried was whether the deed was genuine and whether defend ant has posses ion under it *Held* that the onus was rightly placed on the defendant BYKUNT NATH ROY v GREESH CHUNDER MOOKERJEE 15 W R. 98

4. ———————— *Suit for confirmation of pos ession—Intervenor* In a suit for confirmation of posses ion and declaration of title (the principal defendants admitting plaintiff s pos session and title) in which a vendee from such defendants intervenes and claims the property on the allegation of being in possession —*Held* that such vendee must prove po es ion before he could

ONUS OF PROOF—*contd*

8 CLAIMS TO ATTACHED PROPERTY—*contd*

on the plaintiff to prove his title and not on the purchaser to prove that of the judgment debtor NATHU SADASHIV *v* RAMCHANDRA ANNAJI
5 Bom A. C 76

14 ——— Suit to establish title under deeds of gift—*Proof of bonâ fides* In a suit to establish title unsuccessfully asserted in an execution case to property sold in satisfaction of a decree where plaintiff claims under a gift and other titles originating with the judgment debtor *it is not* sufficient for plaintiff to make out a *primâ facie* case leaving it to defendant to demonstrate fraud plaintiff is bound *to* satisfy the Court of the genuine *bonâ fide* nature of the transfer RAM KISHORE SINGH *v* RAMSURBO CHATTERJEE 11 W R 454

15 ——— Suit for value of goods taken in execution where a claim to them is allowed under s 246 Act VIII of 1859—*Evidence of title* *M* to whom *C* his judgment debtor had made over certain goods attached the same in execution of his decree as the property of his judgment debtor but on a claim being preferred to the goods by *D* and *B* under 246 of Act VIII of 1859 they were ordered to be released from attachement they remained however in the possession of *M* *D* and *B* having sued *M* to recover the value of the goods the lower Court held that inasmuch as *M* failed to sue within a year to set aside the order of the miscellaneous department and *establish his right to take the property in satisfac*tion of his decree as belonging to his judgment debtor the plaintiff s right to it must be admitted without further enquiry or proof and decreed the claim on the basis of that order alone It was *held* in special appeal that the defendant was not debarred by that order or by the law of limitation from *disputing the plaintiff s right to the goods and that* the plaintiffs were bound to prove their right to entitle themselves to a decree and that the miscellaneous order was not conclusive proof of their right and still less such an adjudication on the question as precluded a readjudication of it MADHO PARSHAD *v* DURGA PARSHAD 7 N W 85

9 CONTRACT

1 ——— Construction of contracts—*Allegation of special law* The onus is on the party who contends that a contract is governed by special and not by general rules of law TEJ CHUND *v* SREEKANTH GHOSE
6 W R P C 48 3 Moo I A. 261

10 CONTRIBUTION

1 ——— Suit for contribution of Government revenue In a suit to recover the

ONUS OF PROOF—*contd*

10 CONTRIBUTION—*contd*

to prove their shares and amount of revenue payable on them AGHOREE RAM SAHOY *v* RAMOLEE SAHOO W R 1864 309

2 ——— *Money paid to Government treasury* In a suit for contribution for money admittedly paid by plaintiff into the Government treasury on account of defendants share of the revenue where defendants plead previous payment to the plaintiff —*Held* that the burden of proving such payment was upon the defendants. MOHADEO MISSER *v* LAHOREE MISSER
24 W R 250

11 CUSTOM.

1 ——— Custom at variance with law of inheritance—*Proof of custom—Khojas* Where a defendant alleged a special custom of the Khoja community at variance with the Hindu law of inheritance —*Held* that the burden of proving the alleged custom rested upon her PAHIMATBAI *v* HIRBAI I L R 3 Bom. 34

2 ——— Impartibility—*Suit for partition—Presumption as to partibility* In a suit for [illegible]

income derived from it. *Held* that there was no such general presumption in favour of the impartibility of estates of this kind as to shift the [illegible]

desai to show by evidence [illegible] tenure of the vatan that it was *impartible* or to show by evidence of family custom or of district *i e* local custom that impartibility attached to it such evidence being strong enough to rebut the presumption of the prevalence of the general Hindu law ADRISHAPPA *v* GURUSHIDAPPA
I L R. 4 Bom 494

3 ——— Adoption—*Custom proof of* It is a general rule and fundamental principle amongst Brahmans Kshatryas and Vaishyas that they are absolutely prohibited from and incapable of adopting a daughter s or sister s son or son of any other woman whom they could not marry by reason of propinquity The burden of proving a special custom to the contrary amongst any members of these three regenerate classes prevalent either in their caste or in a particular locality lies upon him who avers the existence of that custom GOPAL SAFRAY *v* HANMANT SAFRAY
I. L. R 3 Bom 273

4 ——— *Forfeiture of rights of* mohuntship by marriage—*Right of succession* Where the plaintiff proved his right of succession to a math on the death of its mohunt the

ONUS OF PROOF—*contd*

11 CUSTOM—*concld*

burden of proving that his subsequent marriage worked a forfeiture of his office and its appendant property and right lay upon the defendant who impugned the plaintiff's right on account of the marriage GOSAIN PAMBHARTI JAGRUPBHARTI v SUKAJBHAPTI HARIBHAPTI I L R 5 Bom 682

5 ——— Maintenance—*Custom to reduce maintenance* Suit by a late Rajah's brother for maintenance allowance which the present Rajah opposed on the ground that as the plaintiff was no longer the ruling Rajah's brother his allowance must be diminished *Held* that the onus was on [illegible]

6 ——— Right to take fees—*Vatandar joshi's right of to take fees* The burden of proving that the vatandar joshi of a village is not entitled to officiate and take fees in the family of any particular caste lies upon the person or persons asserting exemption PAJA VATAD SHIVAPA v KRISHNA BHAT I L R 3 Bom 232

12 DAMAGES

1 ——— Suit for damages against defaulting witness—*Proof of liability* In a suit for damages against a defaulting witness the onus is on the plaintiff to prove that he was damaged by the non attendance of the witness The mere [illegible]

2 ——— Suit for damages for wrongful occupation—*Refusal to give up possession* A party holding a decree for a share of a mouzah [illegible]

till the plaints should be removed defendant promising them to give over possession but that when the time came defendant refused to give over possession and was still occupying the land *Held* that it lay upon the plaintiff to show wrongful occupancy on the part of the defendant GOUR SURUN DASS v SCRONDEY 15 W R. 144

13 DEBTOR AND CREDITOR

1 ——— Release of debtors—*Debt owing by partnership* The burden of proof that a creditor by agreeing to an arrangement whereby a firm indebted to him conveyed to two of the partners thereof certain property in trust to pay off his and certain other debts thereby released the remaining members of the partnership lies upon the parties who were originally liable to such creditor KALAI KHAN v MADHO PERSHAD 3 N W 129

ONUS OF PROOF—*contd*

13—DEBTOR AND CREDITOR—*concld*

2 ——— Debts contracted by persons in wrongful possession—*Suits to charge zamindari* Where it was sought to charge a zamindari with debts contracted by persons who were at the time usurpers in wrongful possession of the zam[illegible] ments [illegible] for the [illegible] Government —*Held* that as between the lawful owner and the creditor the onus was on the creditor who was seeking to set up a charge in his favour made by one who was in possession but without title and therefore in absence of any evidence on behalf of the creditor as to the circumstances in [illegible]

14 DECLARATION OF TITLE

1 ——— Suit for declaration of title—*Proof of title* Where a plaintiff brings a suit for a declaration of his title as owner he is bound to establish his title affirmatively He is in the same position as any other plaintiff and must make out his case and the *onus probandi* that he is in possession as owner is upon him RASSONADA RAYAR v SITHARAMA PILLAI 2 Mad. 171

2 ——— *Production of title deeds* The plaintiff sued for declaration of her title to property of which the defendant was in possession but of which she produced the title deeds in favour of herself *Held* that the onus was on the defendant to disprove the plaintiff's title SWARNA MAYI RAUR v SRINIBASH KOYAL 6 B L. R. 144

3 ——— *Reversioner—Setting aside deed of sale* In a suit for a declaration of plaintiff's reversionary title as heir to his late uncle's property and for reversal of a deed of sale from that uncle set up by the defendant the widow not having been made a party to the suit and her consent to or dissent from the alleged conveyance not having been ascertained the issue tried was whether the deed was genuine and whether defendant has possession under it. *Held* that the onus was rightly placed on the defendant BYKUNT NATH ROY v GREESH CHUNDER MOOKERJEE 15 W R. 96

4. ——— *Suit for confirmation of possession—Intervenor* In a suit for confirmation of possession and declaration of title (the principal defendants admitting plaintiff's possession and title) in which a vendee from such defendants intervenes and claims the property on the allegation of being in possession —*Held* that such vendee must prove possession before he could

ONUS OF PROOF—*contd*

15 DECREES AND DEEDS SUITS TO ENFORCE OR SET ASIDE—*contd*

minor adopted by his deceased brother to succeed to the estate of the deceased. To induce the defendant to acknowledge the validity of the adoption the adoptive mother of the plaintiff, as his guardian executed a conveyance of one moiety of the family house to the defendant. *Held* in a suit to cancel the conveyance that the burden of proving that the defendant s objection to the validity of the adoption was groundless and the conveyance therefore with out consideration was upon the plaintiff. SUBRAMANIA AYYAN *v* VENKATA PAYAR

I. L. R. 6 Mad. 254

17 ——— Suit to set aside sale—*Allegation of fraud* A as reversionary heir of the former proprietor and as now entitled to possession on the death of that proprietor s mother sued for land in the possession of *C* who obtained by it purchase at a sale in execution of a decree passed on a bond granted by *O* which bond and decree were alleged by A to be fraudulent and collusive transactions. *Held* that the burden was on the plaintiff to prove that the decree was fraudulently obtained GREESH CHUNDER CHATTERJEE *v* MOHESH CHUNDER NYALUNKAR 10 W R. 173

18 ——— Transfer of interest in joint family by one member to the other members Where one brother of a joint undivided family transferred his interest in the joint property to the other brothers after a decree had been passed against him although before attachment —*Held* that when a question arose in such a case the onus was on the brothers to whom the transfer was made to prove the *bona fide* character of the transaction BROJO LALL SANDYAL *v* BHOBO SOONDUREE DEBIA CHOWDRAIN 17 W R. 499

19 ——— Suit to set aside collusive decree—*Suit by judgment-debtor on allegation of decree being fraudulent and collusive.* *A* having

notice of proceedings taken in execution *Held* that it was for the plaintiff to make out her case of fraud and that it was not for defendant to show that the decree [illegible]

20 ——— Suit to have deed declared a forgery—*Setting up forged lease.* *D* sued *T* for arrears of rent on the allegation that he held a khusra jumma. *T* admitted only a lower rent [illegible]

plaintiff was bound to make out a *prima facie* case before the onus could be thrown upon the defendant of proving the genuineness of his pottah. JOY CHUNDER TUPPADAR *v* RAM CHURN DOSS 15 W R. 117

21. ——— Deed conveying property to other than legal heir—*Suit by Mahomedan widow for share of property* In a suit by a Mahomedan widow against the brother of her deceased husband for her share of the property of her husband the defendant set up a tumliknamah by which the deceased conveyed the property away to the son of the defendant. *Held* that the burden of proof was on the defendant and that he was bound to adduce the very strictest proof of the conveyance as it cut away property from the natural heir The tumliknamah was rejected having regard to its terms and to the probabilities and facts of the case SADUK ALI KHAN *v* PEAREE 9 W R 142

22 ——— Voluntary deed—*Suit by settlor to set aside his deed* One *M* (the original plaintiff) was priest in the family of the first and second defendant and was treated with much kindness by the first defendant (N) upon whom he chiefly relied for advice in worldly matters. A sum of R30 000 which was the bulk of his property was in deposit in the defendants firm at interest. Early in 1887 he became ill and in June 1887 he expressed a wish to execute a trust-deed and an English will. He gave instructions to N for the trust deed By this deed which contained no power of revocation he settled R30 000 upon the first and second defendants (who were uncle and nephew) as trustees to perform his funeral ceremonies and to carry out certain religious observances and to pay two annuities each of R25 and with the residue to found a Sanskrit class. The deed provided for the payment during his lifetime of a sum of R100 per mensem for his maintenance and expense or such larger sum as he might require for such purposes but in other respects it was not to come into operation until after his death The will of even date gave certain property to his wife and subject to this bequest gave the residue of his property to his sister After receiving instructions for these documents N took them to an attorney From these instructions drafts were prepared which were read over to *M* in his room by the attorney s managing clerk Neither draft nor instructions, [illegible] never left *M* having On the [illegible] of the attorney The documents were explained to him by the attorney and were interpreted to him by a High Court interpreter *M* was then examined by a medical man with a view to ascertain whether he was capable of understanding what he was doing *M* then executed the trust-deed and the will and both were then duly attested At the same time *M* signed the accounts in the defendants book

ONUS OF PROOF—*contd*

15 DECREES AND DEEDS SUITS TO ENFORCE OR SET ASIDE—*contd*

and the balance of the money which stood to his credit over and above the R30 000 comprised in the deed was produced and made over to him and he made it over to A to be kept by him personally Shortly after this M s sister and her son came to Bombay and he fell under their influence He

the whole of his property to his sister On the 2nd September 1888 his nephew took him to Surat and on the 14th September 1888 at Surat he executed a deed revoking the trust deed of the 23rd June 1887 He also signed instructions and a power of attorney under which this suit was

GAVRI v NARONDAS CALIIANDAS
I L R 15 Bom. 549

23 ———— **Suit for cancellation of instrument**—*Specific Relief Act (I of 1877) s 39—Fiduciary relationship—Undue influence—Gift to spiritual adviser—Evidence Act (I of 1872) s 111* In a suit under 39 of the Specific Relief Act (I of 1877) for cancelment of a deed of gift executed by the plaintiff in favour of the defendant the plaintiff was a Chatri by caste well advanced in years and the defendant was his guru or spiritual adviser a Brahman held in high consideration in the locality where he resided The gift comprised the whole of the plaintiff s property and the only reason for its execution was the

repudiated it and sued for its cancellation on the ground of fraud. *Held* that having regard to the fiduciary relation subsisting between the parties the improvidence of the gift the absurdity of the reason alleged for it and the principle recognized by s 111 of the Evidence Act (I of 1872) the burden rested upon the defendant to show that the transac

referred to MANNU SINGH v UMADAT PANDE
I L R 12 All 523

ONUS OF PROOF—*contd*

15 DECREES AND DEEDS SUITS TO ENFORCE OR SET ASIDE—*concld*

24 ———— **Deed of gift and endowment executed by Mahomedan widow in favour of agent**—*Fiduciary relationship—Burden of proving absence of undue influence* An instrument executed by a widow after setting apart the rental of villages belonging to her as her patrimony to defray the expenses of her and her deceased husband s tombs gave to her managing agent who

character towards another of showing conclusively that he has acted honestly and *bona fide* without influencing the donor who has acted independently of him In a suit by the agent s representative to *have the gift enforced against the widow s successor* in the estate this burden had not in the opinion of the Courts below with which their Lordships concurred been sustained and it was held that the gift had been rightly set aside WAJID KHAN v EWAZ ALI KHAN
I L R 18 Calc 545
L R 18 I A 144

25 ———— **Power of revocation in a voluntary deed**—*Onus of proof—Mahomedan Law—Relinquishment of share—Voluntary settlement—Document whereby heirs give up their rights in the property in favour of one heir—Deed supported by valuable consideration* In a suit to impeach a deed to which he has been a party the *onus* lies on the plaintiff to make out a case for setting aside on equitable grounds a deed duly executed for valuable consideration *Melbourne Banking Corporation v Brougham 7 App. Cas 307 311* followed ASHIDBAI v ABDULLA (1906)
I L R 31 Bom. 271

16 DEED EFFECT AND OPERATION OF

1 ———— **Deeds of gift between joint brothers of part of family estate**—*Deeds of partition—Subsequent partition between them of residue* Two brothers the only members of a joint Hindu family executed and registered mutual deeds of gift to one another of their interests in specified portions of their family estate In after years the younger brother sued the elder for partition of the estate excepting so much of it as had already been *the subject of the above gifts. The elder defended* the suit on the ground that the deeds of gift had not been intended to operate not representing any real transaction. To negative their effect the burden of proving that the transaction was not real but only a pretence was laid upon the defendant who failed to adduce that proof SHAM CHAND PAL v PROTAP CHUNDER PAL
I L R 25 Calc 78
L R 24 I A 168
1 C W N 594

ONUS OF PROOF—*contd*

17 DOCUMENTS RELATING TO LOANS EXECUTION OF AND CONSIDERATION FOR AND CASES OF MONEY LENT

1 ——— **Execution admission of**—*Suit on document* Where a defendant admits the execution of a document upon which he is sued the onus lies on him to get rid of the effect of such admission YEKNATH BABAJI v GULABCHAND KAHANJI 1 Bom 85

MOKOOND NARAIN DEO v JONARDUN DEY BURNICK 15 W R 208

2 ——— *Mortgage-deed possession under* Where the execution of a mort [illegible] denies that the money which was consideration for its execution was paid HURPAUL SINGH v ZAHOORUN 2 Agra 202

3 ——— *Mortgage deed—Registration Act (III of 1877) s 59—Endorsement certificate by Registrar* In a suit brought by a mortgagee upon a mortgage by conditional sale for payment of the mortgage debt or in default for foreclosure one of the defendants not being one of the original mortgagees but a purchaser at auction sale under a Pent Court decree resisted the suit and put the plaintiff to proof of the document under which he claimed. *Held* that the mere pro [illegible] SUMIRTA KUAR I L R 17 All 428

4 ——— **Consideration payment of**—*Recital in deed—Presumption* When it has been found that a deed has been duly executed, and that a [illegible] the deed. DOMUN SINGH v BHUGGOBUTTY DEBEA 8 W R 215

5 ——— *Presumption as to bona fides* Where a mortgage is found to be genuine and the receipt of consideration admitted the Court is bound to assume unless it be shown to the contrary that the transaction was a real one and that the consideration money was paid. PADHANATH BANERJEE v JODOONATH SINGH 7 W R 441

6 ——— *Deed of sale—Acknowledgment of payment in deed—Delivery of deed* In a suit to recover the balance of purchase money alleged to have been due upon the sale of a

ONUS OF PROOF—*contd*

17 DOCUMENTS RELATING TO LOANS EXECUTION OF AND CONSIDERATION FOR AND CASES OF MONEY LENT—*contd*

decree where the plaintiff s case was that the consideration money was not paid but a rooqua given for it payable when the mutation of names took place —*Held* that the onus of proving non payment was thrown upon the plaintiff in consequence of the acknowledgments she had made of the receipt of the whole purchase money *vi* an admission which was made and recorded under Act XX of 1866 at the time when the deed was registered and again an acknowledgment made in the petition presented to the Court which made the decree for mutation of names Although when a deed of sale containing an acknowledgment of payment is written payment is not made it may become an acknowledgment afterwards *i e* when the deed is handed over ALLEE SHAH v AMANEE BEGUM 19 W R 149

7 ——— **Proof of execution and bona fides of transaction**—*Suit on mortgage bond* Where a claim is made under an alleged [illegible] execution of the mortgage and if the Court discredits the plaintiff s witnesses as regards the *bona fides* of the transaction it is at liberty to dismiss the suit although the defendant gives no substantial evidence of fraud BRAJESHWARA PESHKAR v BUDHANUDDI I L R 6 Calc 268 7 C L R 6

8 ——— **Proof of execution and consideration**—*Suit on bond* In a suit on a bond the plaintiff is entitled to recover upon showing that it was executed by the defendant The onus lies on the defendant of showing the want of consideration JUGGUT CHUNDER CHOWDHRY v BHUGWAN CHUNDER FUTTEHDUR Marsh 27 1 Hay 57 1 Ind. Jur O S 67

KURUFOOL KOOER v PAJKALEE KOOER 17 W R 439

9 ——— **Receipt of consideration**—*Suit on bond* Though a bond may be genuine and duly executed the receipt of consideration must nevertheless be proved. GHANSAM SINGH v CHUKOWREE SINGH W R 1864 197

10 ——— *Payment under letter of assignment* When a defendant admits execution of a bond but denies receipt of consideration the onus of proving receipt is on the plaintiff When a defendant admits having written a letter of assignment directing the plaintiff to pay certain sums of money due by the defendant to the third parties named in the letter the plaintiff is bound to prove such payment POOP MUNGUL SINGH v ANUND ROY 3 W R 111

JHALOO v FURZUND ALI 5 W R 20

11 ——— **Proof of consideration**—*Promissory note—Suit by professional money lender*

ONUS OF PROOF—*contd*

1- EXE
FOR
td

against a young man recently come of age—Presumption—Negotiable Instruments Act (XXVI of 1881) s 118—Evidence Act (I of 1872) s 114 ill (c) Professional money lenders sued a young man recently come of age to recover certain loans of money alleged to have been advanced by them to him on promissory notes The defendant who under the will of his father was entitled to a large property but had not yet come into possession of it was of an extravagant and reckless character He pleaded as to part of the consideration for the notes that he did not receive it and as to a further part that the consideration was immoral In dealing with the case the Court laid down the following propositions not as rules of law but as guides in considering the evidence in such a case (i) That upon the above facts the ordinary presumption that a negotiable instrument has been executed for value received was so much weakened that the defendant s allegation that he had not received full consideration was sufficient to shift the burden of proof and to throw upon the money lenders (the plaintiffs) the obligation of satisfying the Court that they had paid the consideration in full That is the practical effect of ill (c) to s 114 of the Evidence Act (I of 1872) (ii) Where the plaintiff in answer to such a defence affirmed that he had paid the consideration in full and was corroborated by his books and [illegible]

which the Court felt able to rely upon with confidence In the absence of this the ordinary presumption laid down in s 118 of the Negotiable Instruments Act (XXVI of 1881) must prevail viz that until the contrary is proved the presumption should be made that every negotiable instrument was made for consideration MOTI GULABCHAND v MAHOMED MEHDI THARIA TOPAN
I L R 20 Bom 367

12 ———————— *Proof of consideration for a registered mortgage—Income tax returns—Evidence Act (I of 1872) ss 76 and 77* The defendant in a suit for money secured by [illegible] plaintiff [illegible] ore the [illegible] The [illegible] ll not have decided in favour of the defendant but for its having been shown on an inspection of copies officially certified of income tax returns made by the [illegible]

should not have been admitted in evidence in reference to ss 76 and 77 of the Indian Evidence Act (I of 1872) and also that assuming the false statement of income to have been made it still

ONUS OF PROOF—*contd*

17 DOCUMENTS RELATING TO LOANS EXECUTION OF AND CONSIDERATION FOR AND CASES OF MONEY LENT—*contd*

remained unproved by the defendant that the acknowledged consideration had not been paid The judgment of the Appellate Court was affirmed by their Lordships who concurred in the opinion that the returns if the plaintiff had wrongly omitted to make a full return of income would not have had any weight in changing the onus which lay upon the defendant of showing that no consideration had passed for this mortgage ALI KHAN BAHADUR v INDAR PERSHAD **I L R 23 Calc 950**
L R 23 I A 92

13 ———————— *Suit on bond—Proof of consideration where defendant denies and proves that he acknowledged receipt of it* In a suit on a bond plaintiff rested his case entirely upon the bond and the defendant s acknowledgment therein that R8 000 was received in cash At the trial the defendants proved that acknowledgment to be fictitious and that only a part of the money had been advanced *Held* that the onus was upon the plaintiff to prove in some other way the advance which he alleged LALA LAKMI CHAND v HAIDAR SHAH **4 C W N 82**

14 ———— **Proof of amount due**—*Suit on bond* In a suit on a bond it is for the plaintiff to prove the amount of the debt and this will be done sufficiently in the first instance by proof of the execution of the bond It is for the defendant to prove in answer if he can that such amount is less than the sum sued for SIVARAMAIYAR v SAMU AIYAR **1 Mad. 447**

15 ———— **Recital in bond**—*Consideration* The plaintiff sued on a bond which recited that the defendant had received the consideration mentioned in the bond *Held* that the onus was on the defendant to show that the recital in the bond was not correct FULLI BIBI v BASSIRUDI MIDHA **4 B L R F B 54**

S C FOOLEE BIBEE v BASSIRUDI MIRDHA
BAMA NATH CHUCKERBUTTY v ROMANATH ROY **12 W R F B 25**

RUGHOONATH DOSS v LUCHMEE NARAIN SINGH **10 W R 407**

16 ———————— *Admission—Consideration* A sued B on a bond in which it was [illegible]

jewellery *Held* that on the admission of the execution of the bond which contained the recital of payment the onus was upon *B* to prove that payment had not been made under the bond MANIKLAL BABOO v RAMDAS MAZUMDAR
1 B L R A C 92 10 W R 132

17 ———— **Proof of want of consideration**—*Suit for money due on bond* When in a suit for money due on a bond both the execution

ONUS OF PROOF—*contd*

17 DOCUMENTS RELATING TO LOANS EXECUTION OF AND CONSIDERATION FOR AND CASES OF MONEY LENT—*contd*

and the receipt of the consideration are denied the defendant must prove the latter plea if the execution be established by the plaintiff KISHENDYAL SINGH v MONOHUR LALL 2 Hay 381

18 ———— *Suit on bond—Onus thrown on wrong party effect of* The defendants in a suit on a bond admitted the execution of the bond but denied that they had received as the bond recited they had at the time of its execution the consideration for it The Court of first instance instead of calling on the defendants to establish the fact that they had not received the consideration for the bond as it ought to have done under the circumstances irregularly allowed the plaintiff to produce witnesses to prove that the consideration for the bond had been paid at the time of its execution The evidence of these witnesses proved that the consideration of the bond had not been paid at the time of execution and that if it had been paid at all

paid as admitted in the bond a new case was opened up in which the onus was shifted back to the plaintiff to establish that he had not at the time alleged in the bond but at some subsequent time paid to the defendants the consideration for the bond MAKUND v BAHORI LAL I. L. R. 3 All 824

19 ———— **Non receipt of full consideration**—*Suit on bond* In a suit for money due

credit in account upon which the debtor had not in fact drawn certain items The Judicial Committee concurred with the High Court which had reversed so much of the decree of the Court of first instance as disallowed these items the latter Court not having correctly adjusted the burden of proof and having acted as if the plaintiff had relied on his own books to prove the debt besides having erred in weighing the evidence RAJESWARI KUAR v RAI BAL KRISHAN I. L. R 9 All. 713 L. R. 14 I A 142

20 ———— **Judge's duty to decide**

receipt of consideration The Subordinate Judge held that the bond for R200 was not proved but awarded the claim upon the other bond On appeal one of the issues raised by the Assistant Judge was—are the bonds in suit proved ? He held that the plaintiffs had failed to prove execution of the bonds and dismissed the claim *in toto* *Held* reversing the decision of the lower Court that the defendant having admitted execution of the bonds in question the Assistant Judge acted illegally in the exercise of his jurisdiction in raising the question of the execution The first rule of adjudication is that a Judge shall decide *secundum allegata et probata* The only question that could be tried in the present case was non receipt of consideration GORAKH BABAJI v VITHAL NARAYAN I L R 11 Bom 435

21 ———— **Allegation of payment**—*Allegation of loss of document* The plaintiff in a suit on a bond for money accounted for not producing it by alleging that the defendant had stolen it The defendant admitted the execution of the bond but alleged that he had paid it *Held* that the defendant was bound to begin and prove payment either by the production of the bond or other evidence or by both CHUNI KUAR v UDAI RAM I L. R 6 All 73

22 ———— **Plea of payment**—*Suit on bond—Alleged theft of bond by obligors* The plaintiff sued on a bond made in his favour by the defendants which he alleged had been stolen by the defendants The defendant while admitting the execution of the bond pleaded payment and that the bond had been returned by the plaintiff to them They did not produce the bond nor did they offer any evidence of the alleged payment *Held* that as the defendants admitted the bond and pleaded payment the burden of proof of such payment lay on them SAVJI BIN SATU v PATLU 8 Bom A. C 139

MEHEROONNISSA v ABDOOL GUNEE 17 W R 509

23 ———— **Bond in favour of one undivided brother for the benefit of himself and others**—*Suit by promisee alone—Payment to younger undivided brother—Discharge* In a suit on a bond executed by the deceased father of defendants in favour of the plaintiff the defendants while admitting the bond and the consideration for which it had been given contended that inasmuch as plaintiff had four undivided brothers and the deed had been executed in his name for the benefit of himself and his brothers the latter should have been joined as plaintiffs and that plaintiff could not maintain the suit alone They also pleaded payment to plaintiff's ...

ONUS OF PROOF—*contd*

17 DOCUMENTS RELATING TO LOANS EXECUTION OF AND CONSIDERATION FOR AND CASES OF MONEY LENT—*contd*

person *primâ facie* entitled to payment it therefore lay on the promisor to show that a payment to a third party was binding on the plaintiff which had not been done The contention that payment to any member of the family was by itself necessarily binding on the member who took the contract could not be supported ADAIKKALAM CHETTI v MARIMUTHU I. L. R 22 Mad. 326

24 —— **Bond in favour of one co sharer**—*Payment of such bond made to another co sharer when a discharge* Where a debt due to one member of a joint family has been paid by the debtor to another member of the family the question whether such payment operates as a discharge depends on the circumstances under which it was made A and B were members of joint Hindu family Both managed the joint property for the common benefit Each used to recover debts due on bonds taken in the other s name In 1890 defendant passed a bond to A In 1892 he passed a mortgage bond to B the consideration for which was stated to be the balance due on the former bond Subsequently A sued defendant on the bond of 1890 *Held* that under the circumstances the mortgage bond passed to B operated as a valid discharge of A s claim under the previous bond GURUSHANTAPPA v CHANMALLAPPA

I. L. R. 24 Bom. 123

25 ———— **Suit for money lent on acknowledgment**—*Proof of consideration* Where the plaintiff sued to recover money lent relying upon a samadaskat or acknowledgment of debt given by the defendant —*Held* that s 9 of Bombay Regulation V of 1827 contained the rule of law applicable to the case and that the onus lay on the defendant to prove that he had not received full consideration for the acknowledgment of indebted n ss he had subscribed MOTI KAHANJI v DIPCHAND VIPCHAND 5 Bom A C 81

26 ———— **Suit for money lent**—*Admission of receipt of note* Where a plaint ...

entitled to a decree unless the Court holds that the loan itself was not made A party admitting the receipt of a note for R1 000 on loan becomes primarily liable for it to the lender and it is for him to show that the advance was made not on his credit but on that of some other person MONOHUR DOSS v GUNGA PERSHAD 2 N W 264

27 ———— **Suit for value of hundi**—*Proof of payment—Possession of hundi* On 2nd ...

ONUS OF PROOF—*contd*

17 DOCUMENTS RELATING TO LOANS EXECUTION OF AND CONSIDERATION FOR AND CASES OF MONEY LENT—*concld*

... be decreed to pay to him R.34 with profit and interest M P admitted that he had executed the hundi and had given it to A K for R500 He further alleged that it had been presented to him for payment by I H to whom he had paid the amount with interest on 31st March 1871 and he produced the hundi with a receipt purporting to be by I H indorsed upon it I H denied the payment by M R and alleged the indorsement on the hundi to be a forgery *Held* that the admission by M P of the drawing of the hundi for value received laid on him the burden of proving payment and that though the possession by M R of the hundi was a circumstance in his favour yet as it did not in itself amount to proof of payment the *onus probandi* was not thereby shifted on to the plaintiff ABDUL KARIM v MANJI HANSRAJ I. L. R 1 Bom. 295

28 ———— **Statement in ikrar reserving equity of redemption**—*Loss of document—Absolute sale deed of* Plaintiff sued for confirmation of possession and registration of certain property which had been mortgaged to him by defendants The transaction on the face of the deed was an absolute sale but an ikrar was executed at the same time as the mortgage which reserved the equity of redemption to the mortgagor This ikrar was made over to the defendant the mortgagor Plaintiff s allegation was that the ikrar ... presumption of law was in favour of the plaintiff who had possession of the ikrar and that the onus of proving its loss lay upon the defendant RAJ KOOMAR SINGH v RAM SUHAYE LOL

11 W R. 151

29 ———— **Satisfaction of decree**—*Proof of payment made out of Court—Statement in receipt* Where money was paid in satisfaction of a decree not through the Court and a receipt was taken but execution was afterwards enforced in a suit for refund of the money so paid —*Held* that the statement contained in the receipt to the effect that the decree had been satisfied was sufficient to shift the burden of proof to the defendant to show that it was an incorrect statement DAVLATA v GANESH SHASTRI I L R 4 Bom. 295

17A DOMICILE

———— *Domicile of origin—Abandonment—Acquiring fresh domicile—Onus of proof—Immoveable property rights over* The person who attacks a settlement on the ground of nationality must show conclusively that the

ONUS OF PROOF—*contd*

17A. DOMICILE—*concld*

nationality of the settlor was foreign and if he succeeds in doing so the onus is then shifted upon the person supporting the settlement to show that the settlor had acquired a fresh domicile in British India and that his estate ought to be administered according to Indian law All rights over immoveable property are governed by the law of the country where the property is situate this principle being universally recognised *De Nicols v Curlier [1900] A C 21 In re De Nicolas [1900] 2 Ch 410* dissented from A L BONNAUD v EMILE CHAFRIOL (1905) I L R 32 Calc 631

18 EASEMENTS

1 ———— **Claim to restrain exercise of proprietary rights**—*Criminal Procedure Code (Act X of 1882) s 147* The right to restrain another from exercising ordinary proprietary rights over his own land is of the nature of an easement different from the ordinary rights of owners of land the burden of proof would therefore lie upon the party alleging such rights HARI MOHAN THAKUR v KISSEN SUNDARI I L R 11 Calc 52

2 ———— **Right of way**—*Suit for declaration that party who has obtained an order under s 320 Criminal Procedure Code 1861 has no right of way—Proof of right to possession* In a suit for a declaration that defendant had no right of way over certain land belonging to the plaintiff where it appears that the defendant had obtained an order from the Magistrate under the Criminal Procedure Code 1861 s 320 it was held that the onus of proving an easement did not lie with the defendant but that it was for the plaintiff to prove that he was entitled to exclusive possession PUCHAI KHAN v ABED SIRDAR 21 W R 140

3 ———— **Right of way or water course over land**—*Suit to have right to easement determined after order of Magistrate under s 532 Criminal Procedure Code 1872* Where the right to have a way or water course over certain land is disputed by the owner thereof and an order under s 532 of the Code of Criminal Procedure has been passed by the Magistrate in favour of the person claiming the right the fact of such an order having been made will not be sufficient to relieve the [illegible]

2 C L R 555

4 ———— **Right to water**—*Suit for removal of outlets for water plaintiff alleging right to its exclusive use* In a suit for the removal of certain outlets made by defendant in an aqueduct on the ground that plaintiff was entitled to the exclusive use of the water of the aqueduct where the defence set up was that the portion of the

ONUS OF PROOF—*concld*

18 EASEMENTS—*concld*

aqueduct to which the dispute related was where water flowed through the lands of the defendant s zamindari —*Held* that it was for plaintiff to make good the title he alleged ONPAET v KISHEN SOONDUREE DOSSEE 15 W R 83

19 EJECTMENT

1 ———— **Suit for ejectment**—*Limitation Act 1859 s 15* The law obtaining in India requires that in actions of ejectment the Courts should always enforce the rule that a plaintiff must recover by the strength of his own title and a party who might have shifted the burden of proof if he had proceeded under s 15 of Act XIV of 1859 cannot if he let slip that opportunity obtain the same advantage in an action of ejectment DADABHAI NARSIDAS v SUB COLLECTOR OF BROACH 7 Bom A C 82

2 ———— *Trespass—Proof of title* In an ejectment suit the defendant though a trespasser is entitled to require the plaintiff who seeks to eject him to prove that he has a superior title KALU v BARSU I L R 19 Bom. 803

3 ———— *Defence of right of permanent occupancy—Defence of special character* In suits by the trustee of a temple to recover possession of certain lands with mesne profits defendants set up in defence that they were absolute owners of the land in question or at least were entitled to rights of permanent occupancy In support of the latter contention they relied *inter alia* [illegible] h contained [illegible] term they [illegible] ght of permanent occupancy *Held* (i) that where the occupier of land resists a suit for ejectment by setting up a claim of a right of permanent occupancy the onus of establishing such a right lies on the defendant inasmuch as by it he seeks to derogate from the ordinary incidents of property and (ii) that the right expressed by the term ulavadai (which means an act or right of ploughing or cultivating lands) cannot be assumed to be a permanent right PANGASAMI REDDI v GNANA SAMMANDHA PANDARA SANNADHI I L R 22 Mad. 264

4 ———— *Limitation—* [illegible]

under whom he claims have been in possession of the property within twelve years before suit A mere [illegible]

R 9 I A 99 explained and distinguished. GOPAUL CHUNDER CHUCKERBUTTY v NILMONEY MITTER I L R 10 Calc 374

ONUS OF PROOF—*contd*

19 EJECTMENT—*concld*

5 ——————— *Claim to joint ownership.* In a suit to eject the special appellant from a portion of a house which he claimed to be in possession of as part owner —*Held* that the lower Appellate Court was wrong in laying down that it was not called upon to decide whether the defendant was entitled to share in the house as the onus of proving an exclusive title to the property lay on the plaintiff. ISUBJI v KHATIZA
Bom 189 2nd Ed 181

6 ——————— *Proof of possession* *Quære* Whether a plaintiff in ejectment is entitled to succeed upon mere proof of antecedent undisturbed possession. JOYTARA DASSEE v MAHOMED MOBARUCK
I. L. R 8 Calc. 975 11 C L. R 399

7 ——————— Ejectment evidence of— ... *bond fide.* An ... under direct ... uments issued ... pre umed to have been real and *bona fide* until the party ejected proves that all these proceedings were fictitious and that he never lost possession of the land but still holds it. BUDURUDDEN v HANIFF MULLICK
5 W R 180

20 ENHANCEMENT OF RENT

1. ——————— Suit for enhancement—*Fair and equitable rent* A plaintiff who sues for enhanced rent is bound to prove that the present rate is not fair and equitable HILLS v JENDAR MUNDUL
1 W R 3

GOLAM ALI v GOPAL LALL TAGORE
1 W R 56

SUMEERA KHATOON v GOPAL LALL TAGORE
1 W R. 58

2 ——————— *Bengal Tenancy Act (VIII of 1885) ss 7 and 188—Customary rate of rent—Fair and equitable rent* In a suit for ...

the defendant to prove that the existing rent was fair and equitable HEM CHANDRA CHOWDHRY v KALI PRASANNA BHADURI I L. R 26 Calc 832

3 ——————— *Act X of 1859* ...

enhance without notice specifying the grounds of enhancement. The onus of proving the existence of the grounds alleged is upon the landlord BAKRA NATH MANDAL v BINODRAM SEN
1 B L. R. F B 25 10 W R F B 33

4 ——————— *Ground of enhancement—Act X of 1859 s 17* In a suit for enhancement of rent on the ground that the produce and productive powers of the land have increased otherwise than by the agency or at the expense of the raiyat the onus is upon the plaintiff to prove the grounds upon which he seeks enhancement RAJKRISHNA MOOKERJEE v KALI CHARAN DOBAIN 6 B L. R. Ap 122 15 W R. 109

DHUNRAJ KOONWAR v OOGGUR NARAIN KOONWAR
15 W R 2

5 ——————— *Act X of 1859 s 17 cl 2* Where in a suit for enhancement on the ground that the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat the defendant admits the increase in productiveness but denies the alleged cause the onus of proving that the productiveness has been increased by other means lies on the plaintiff PULIN BEHARI SEN v WATSON
B L. R Sup Vol. 904

S.C POOLIN BEHAREE SEIN v WATSON
9 W R 190

Overruling NOBEEN KISHEN BOSE v SHOFAT OOLLAH
1 W R. 24

6 ——————— *Nature of tenancy—Grounds of enhancement* In a suit to recover rent at an enhanced rate after notice had been granted a kabuliat was put in in support of the plaintiff s case and admitted by defendants A pottah put in by defendants was found by the lower Court to be a forgery *Held* that plaintiff s contention that the kabuliat does not give the full terms of the agreement binds him to show beyond all reasonable doubt what were the actual terms of the pottah. Having failed to do this the kabuliat was treated as complete and conclusive evidence of the nature of the tenancy which was inferred by the Court to be permanent and at a fixed rate *Held* that it lay upon the plaintiff to make out distinctly the different grounds on which he rested his right to enhance viz excess of area increase of productiveness apart from the tenant s agency and increase in the value of produce GOLAM ALI v GOPAL LALL THAKOOR
9 W R 65

S C on appeal to the Privy Council SOORASOONDERY DEBI v GOLAM ALI 15 B L. R 2 note
19 W R 142

7 ——————— *Purchaser of estate settled in perpetuity* When the purchaser of a moiety of an estate settled in perpetuity some years ago according to a jamabandi then made does not sue directly to set aside the jamabandi of settlement but many years after the settlement he sues to enhance the rents entered therein to entitle him to succeed he must show that since the period of settle

ONUS OF PROOF—*contd*

20 ENHANCEMENT OF RENT—*contd*

ment circumstances have occurred which have tended to raise the value of the raiyat s lands and con equently to entitle him to an increased share of the surplus profits arising from the lands RAM LOCHUN PAUL v BROJO MOHINEE
W R 1864 Act X, 118

8 ———————— *Similar rates* Where a plaintiff sues for enhancement on the ground that the defendant does not pay the rents paid by others in the neighbourhood for similar lands and the defendant denies his liability to pay such rents owing to his having mokurari pottahs the onus is on the defendant to prove those pottahs PRANNATH ROY CHOWDHRY v MOHEHOODEEN AHMED 6 W R Act X 39

9 ———————— *Custom to exempt certain land* In a suit for enhancement where the defendant pleads that rent has been assessed on lands covered by hedges and ditches and forming boundaries between fields and that according to custom such land is not liable to pay rent at all the onus is on the defendant to prove the custom HAROO CHOWDHRY v JOYESSUR NUNDEE
6 W R Act X 46

10 ———————— *Excess lands* In a suit for enhancement of rent on the ground that defendant holds land in excess of what he pays rent for it is plaintiff s duty to show that the lands in question are all included within the tenure of the defendant but that the latter has been paying rent for a quantity less than the area of those lands. AHMED HOSSEIN v BUNDEE 15 W R 91

11. ———————— *Alteration of area of tenant s holding* To entitle the plaintiff to a decree for enhancement of rent on the ground of an alteration in the area of the defendant s holding the plaintiff mu t show that the defendant is holding lands in excess of what he is paying rent for and in order to do that he must show for what quantity of land the defendant is paying rent SURJA KANTA ACHARJEE v BANESWAR SHAHA
I. L. R. 24 Calc 251

12 ———————— *Act X of 1859 s 16—Presumption* In a suit for enhancement the burden of proof that a tenure is protected under s 16 Act X of 1859 is on the defendant and it is only for the plaintiff to rebut any presumption which the defendant may make out under that section NOBOKRISTO MOJOOMDAR v TARA MONEE
12 W R 320

13 ———————— *Proof of variation in rate of rent—Act X of 1859 s 16* In a suit for enhancement the presumption under s 16 Act X of 1859 established by twenty years holding at a uniform rate cannot be rebutted by the fact that the plaintiff did not obtain direct possession of the estate for many years and was for other reasons prevented from suing but the onus is on the plaintiff to prove that the present rent has been varied or fixed at a period subsequent to the decennial settlement DHUN SINGH v CHUNDER KANT MOOKERJEE W R 1864 Act X, 25

14 ———————— *Variation of rent* The fact alone of variation in the amount of rent paid between one year and another does not necessarily establish a right in the plaintiff to enhance or affect the defendant s right to hold at a fixed rent It is for the defendant to account for such variation HURO NATH ROY v CHITTRAMONEY DOSSEE 3 W R Act X 122

15 ———————— *Proof of uniformity of rent* In a suit for enhanced rent of a talukh the existence of which as an ancient talukh is undoubted and in which the only question is whether the rent is fixed or variable the onus is first on the defendant to prove that he has held at a uniform

16 ———————— *Beng Reg VIII of 1793 s 48 51—Registration* In a suit for enhancement of rent —*Held* that in order to bring a talukh within the scope of s 51 Regulation VIII of 1793 it was sufficient to show that the tenure existed and was capable of being registered at the time of the decennial settlement the fact of actual registration not being an essential element in the formation of a talukh *Held* further that the effect of proof of the existence of such a talukh at the time of the decennial settlement was sufficient to throw the onus on the plaintiff to prove that it was held at a variable rent RADHIKA CHOWDHRAIN v BAMASUNDARI DASI 4 B L R P C 8

S C BAMASOONDUREE DOSSEE v RADHIKA CHOWDHRAIN 13 W R P C 11
13 Moo I. A 248

Reversing decision of High Court in BAMA SOONDEREE DOSSEE v RADHIKA CHOWDHRAIN
1 W R 339

17 ———————— *Liability of land comprised in a zamindari to enhancement—Dependent talukh —Resumed lakhiraj—Beng Reg XIX of 1793* In a suit for enhancement of rent in respect of land which the defendant cl

ment ASSANULLAH v BUSSARAT ALI CHOWDHRY
I L R 10 Calc 920

18 ———————— *Plea that some lands never paid rent—Suit for enhancement* When a landlord sues for enhanced rent and is met by an allegation that certain plots of land never paid any rent at all the onus is on him to prove that the lands did at some former time pay him rent GUNGADHUR SINGH v BIMOLA DOSSEE
5 W R Act X, 37

ONUS OF PROOF—*contd*

20 ENHANCEMENT OF RENT—*contd*

SHEEB NARAIN ROY v CHIDAM DOSS BYRAGEE
6 W R Act X 45

DHUN MONEE DEBEE v SUTTOORGHUN SEAL
6 W R Act X 100

UMBIKA CHURN MUNDLE v RAMDHONE MOHURIR
11 W R 35

GUMANI KAZI v HAFIHAR MOOKERJEE
B L R Sup Vol 15 W R F B 115

RAM COOMAR GHOSAL v DEBEE PERSHAD CHATTERJEE 6 W R Act X 87

19 ———— *Lakhiraj* The suit was for enhancement of rent The defendant set up that certain plots of land the rent of which was sought to be enhanced were lakhiraj and therefore not liable to pay rent *Held* that the onus was not upon the defendant to prove the land was lakhiraj but upon the plaintiff to prove that the land was mal or rent paying *Semble* The Courts are accustomed to require some *primâ facie* evidence

20 ———— *Separation of mal and lakhiraj lands* In a suit for assessment at enhanced rates in which the defendant admits that the main portion of the lands in dispute are mal but does not separate the rent free lands the plaintiff is not bound to prove that the lands are mal until the defendant points out their precise situation, SUTTO CHURN GHOSAL v TARINEE CHURN GHOSE
3 W R 178

ASHRUFOONISSA v UMUNG MOHUN DEB ROY
5 W R Act X 48

NEHAL CHUNDER MISTREE v HUREE PERSHAD MUNDUL 8 W R 183

21. ———— *Plea that certain of the lands included in notice are not enhanceable—Onus of proof of such fact—Notice of enhancement* In suits for enhancement of rent where

in this the onus is then shifted upon the landlord to rebut such *primâ facie* evidence NEWAJ BUNDOPADHYA v KALI PROSONNO GHOSE
I L R 6 Calc 543 8 C L R 6

22 ———— *Alienation of land being lakhiraj* In a suit for enhancement of rent upon a certain area of land which plaintiff

ONUS OF PROOF—*contd*

20 ENHANCEMENT OF RENT—*concld*

ant s plea is a mere allegation of lakhiraj or must it be supported by *primâ facie* evidence? MUN MOHUN DEY v SREERAM ROY 14 W R 285

23 ———— *Evidence of receipt of rent* In a suit for enhancement of rent

to prove receipt of rent HEERA RAM BHUTTACHARJEE v ASHRUF ALI 9 W R 103

24 ———— *Allegation of debutter land* In a suit for enhancement of rent where defendant pleads that a parcel of it is debutter land the property of another party the onus lies on the plaintiff to prove that the land is mal even though the alleged owner puts forward no claim PREM CHAND BARIK v BROJONATH KOONDOO CHOWDHRY 10 W R 205

25 ———— *Suit for arrears of rent* In a suit for arrears of rent at an enhanced rate where the defendant set up that he had relinquished all the mal land in his occupation and that the residue of the land in dispute was lakhraj —*Held* that the onus was upon the plaintiff to prove that the land for which he sued for enhanced rent was rent paying and not on the defendant to make good his defence MAHOMED AZSSAR ALI v NASSIR MAHOMED 3 B L R A C 304

26 ———— Suit to contest enhancement—*Act X of 1859 s 14* In a suit brought by a raiyat under s 14 Act X of 1859 to contest a notice of enhancement the *onus probandi* is on the raiyat PRITHEE RAM CHOWDHRY v CHIDAM CHUNDEE SHAHA 8 W R 8

21 GENEALOGICAL DESCENT

1 ———— Suit for partition of hereditary property—*Proof of genealogical descent* In a suit for partition of hereditary property it is not necessary for the plaintiff to trace back his

MADHAVRAV 8 Bom A C 205

2 ———— Common ancestor—*Claim as collateral heir* Where the plaintiff claimed as paternal uncle s grandson and only heir of *N* and the evidence showed that N s father was one of three brothers but it was not stated in the plaint nor shown by the evidence who was the father of the three brothers —*Held* that the suit ought to be

ONUS OF PROOF—contd

21 GENEALOGICAL DESCENT—concld

di mi ed it being incumbent on the plaintiff claiming as a collateral heir to show who the com mon ancestor was from whom he derived title KEDARNATH DOSS v PROTAB CHUNDER DOSS
I L R 6 Calc 626 8 C L R 238

22 HINDU LAW

(a) ADOPTION

1 ——— Suit to set aside adoption —*Invalidity of adoption* A plaintiff suing for a declaration that an adoption is invalid is bound to prove the invalidity BROJO KISHORE DOSSEE v SREENATH BOSE 9 W R 453

2 ——— *Allegation of fraudulent adoption* In a suit to have it declared that an adoption which has long taken place and has been acted upon and in virtue of which defend ants are in possession is a fraudulent and false adoption the onus lies on the plaintiff to make out to some extent at any rate the fraud and falsehood alleged. GOOROO PROSUNNO SINGH v NIL MADHUB SINGH 21 W R 84

3 ——— *Improper and unauthorized adoption* In a suit in which plaintiffs claiming as heirs of a deceased Hindu sought to set aside an adoption effected by the widow as without authority and otherwise improper the lower Appel late Court held that the onus lay with the plaintiffs to prove their affirmation in respect to the adoption HUR DYAL NAG v ROY KRISTO BHOOMICK
24 W R 107

4. ——— *Adoption under will—Proof of validity of adoption* A Hindu died leaving a son (who afterwards died a minor and unmarried) a widow and three daughters. On the

her infant son born in 1853 brought a suit to set aside the will and with it the adoption and for recovery of possession of the property left by her minor brother The defence set up was that the will was genuine that the plaintiff should have sued within twelve years from the adoption and that she had in 1851 admitted the adoption in having accepted a dar patni from the guardian of the adopted son. *Held* that the onus was upon the adopted son to prove the validity of the adoption, and not upon the plaintiff suing as heir to prove its invalidity even though he alleged fraud and adduc ed no evidence in support of it TARINI CHARAN CHOWDHRY v SARODA SUNDARI DASI
3 B L R A C 145 11 W R 468

5 ——— Validity of adoption depending on whether natural son alive or dead—*Deed or will conferring estate on a person described as adopted son—Evidence Act (I of 1872) ss. 107, 108—Person not heard of for seven years—*

ONUS OF PROOF—contd

22 HINDU LAW—contd

(a) ADOPTION—contd

Presumption of death One *S* died in September 1878 leaving a widow *B* The year before his death his only son (Bala) a child of eight years old had left his home and was never heard of again A few days before his death *S* adopted the plaintiff (his nephew) and executed a deed of adoption which stated that he had no hope that his son Bala was alive and that he had therefore adopted the plaint

the plaintiff as *S* s adopted son brought this suit to recover some of *S* s property which was in the hands of the defendants who claimed it as *S* s heirs They (*inter alia*) impeached the plaintiff s adoption. *Held* that in order to recover the pro perty as the adopted son of *S* it lay on the plaintiff to prove a valid adoption It was a condition pre cedent to prove that at the date of the adoption *S* was without a son It was therefore for the plaint iff to prove that Bala was then dead There was at that time no presumption that Bala was dead and there being no evidence on the point it was impos sible to say when he died or consequently that the adoption was valid *Held* however that plaintiff was entitled to succeed as donee under the deed of adoption. It was clearly *S* s intention to give the estate to the plaintiff as being his adopted son But if the adoption was invalid the gift had no effect. The onus here was on the defendants. It was for them to show that Bala was at that date alive and the adoption therefore invalid That burden they had not discharged and the plaintiff therefore was entitled to a decree *Per* FARRAN C J —Where a deed of gift or will confers an estate upon a named person because he fills or by reason of his filling a certain character he is entitled to recover the estate without affirmatively proving that he fills such character The onus of proving that he does not fill the character which is the reason of the gift lies upon those who dispute his claim The whole question is one of onus of proof RANOO BALAJI v MUDIYEPPA
I L R 23 Bom 296

6 ——— Suit to enforce the mortgage against son s shares—*Joint Hindu family —Mortgage by father—Legal necessity—Burden of proof* As a general rule a creditor endeavouring to enforce his claim under a hypothecation bond given by a Hindu father against the estate of a joint Hindu family in respect of money lent or advanced

satisfy a prudent man that the loan was contracted to pay off an antecedent debt or for the other legal necessities of the family There is a distinction between such cases as this and cases in which a

ONUS OF PROOF—*contd*

22. HINDU LAW—*contd*

(*a*) ADOPTION—*contd*

decree has been obtained against the father and the property sold or cases in which the sons come into Court to ask for relief against a sale effected by their father for an antecedent debt Where a decree was obtained against the father and a sale effected the presumption is that the decree was properly made. Where a son comes into Court to ask for relief against a sale effected by his father for an antecedent debt it is for the son to make out a case for the relief asked for In a suit against the members of a joint Hindu family upon a bond given by their father and in which family property was hypothecated no evidence was given on either side as to the circumstances in which the bond was given There was no evidence to show that any inquiry had been made by the plaintiff as to the objects for which the bond was executed by the father *Held* that the burden of proof was upon the plaintiff to show either that the money was obtained for a legal necessity or that he had made reasonable inquiries and obtained such information as would satisfy a prudent man that the loan was contracted to pay off an antecedent debt or for the other legal necessities of the family and that no evidence having been given the suit must be dismissed. JAMNA *v* NAIN SUKH I L R 9 All. 493

(*b*) ALIENATION

7 ———— **Alienation by Hindu widow**—*Proof of necessity* Where the validity of an alienation by a Hindu widow is the question for the consideration of the Court the onus of proving the necessity for the alienation rests with the alienee Where in such a case the plea of necessity fail the Court will not grant a decree for immediate possession unless a very strong case of waste and deterioration be made out What is sufficient evidence to support a sale by a Hindu widow of property in which she has only a life interest CHUTTER DHAREE SINGH *v* HUPCOOMAREE 1 Ind Jur O S 99

NUND COOMAR SINGH *v* GUNGA PERSAUD NARAIN SINGH 10 W R 94

And the same is the case in a suit by a son to annul an alienation of ancestral property by the father JUGDEL NARAIN SUHAYE *v* LALLA RAM PROKASH 2 W R 292

8 ———— **Purchaser duty of**—*Suit for possession—Plea of bona fide purchase* In a suit to recover possession the onus is on the defendant [illegible]

See VARDEN SETH SAM *v* LUCKPATHY ROYJEE 9 Moo I. A. 303

9 ———— *Widow's power of alienation* It is incumbent on the purchaser of realty from a Hindu widow to enquire whether the circumstances are such as to confer on her the power of alienation. HEERALALL SHAHA *v* JADUB CHUNDER CHENCHKEY Cor 119

10 ———— *Good faith—Failure to make inquiry as to widow's right to sell* A purchaser from a childless Hindu widow is bound to satisfy himself as to her right to sell If he does not act with due care in the matter he cannot be [illegible] hat [illegible] 123

11 ———— *Purchase from Hindu widow* Upon those who claim under an alienation from a Hindu widow rests the onus of showing that the transaction was within her limited power COLLECTOR OF MASULIPATAM *v* CAVALY VENCATA NARAINAPAH 2 W R P C 61 8 Moo I A 529

So with a purchaser of immoveable property dealing with any one with a qualified power

See VADALI RAMAKRISTNAMA *v* MANDA APPANYA 2 Mad 407

12 ———— **Voluntary transfer alleged to have been made by a Hindu widow**—*Burden of proving her knowledge of her rights—Gift* Where a voluntary transfer by a Hindu widow is alleged the burden of proving that it was a free gift made with knowledge by her of her rights is on the donee The plaintiff widow of the only son who survived his father who was the owner of village lands and other property had become on her husband's death without issue entitled as the widow to the estate which he had inherited. But she obtained possession of only half of it The other half was in the recorded possession when this suit was brought of the widow of her late husband's younger brother who died in his father's lifetime The case which the latter widow as defendant now sought to make was that she had become entitled to a share in the estate as the result of a series of transactions by way of family arrangement in which the two widows and their mother in law widow of the deceased father had taken part [illegible]

I L R 17 All. 1
L. R 21 I A. 198

13 ———— **Power of widow of sonless Hindu to mortgage ancestral property**—*Pardanashin woman conditions necessary to the*

ONUS OF PROOF—*contd*

22 HINDU LAW—*contd*

(*b*) ALIENATION—*contd*

execution of a valid deed by—Power of reversioner to sell or mortgage reversionary interest in—Expectancy—Transfer of Property Act (IV of 1882) s 6 cl (a) K died in 1866 possessed of considerable property both moveable and immoveable He left surviving him a widow H who died in 1878 a daughter A married to one L and two grandsons I and S sons of A the latter of whom S died some time sub equent to 1881 as did also his father L

as to the balance in respect of certain previous debts and interest thereon At the date of this bond both I and S were minors In April 1881 H having in the meanwhile died and I having attained majority but S being still a minor a second bond of a similar nature to the former was executed by L A and I for R20 000 this sum being recited as composed of various debts of earlier date with interest thereon of an advance to pay Government revenue an advance for expen e of the marriage of L s daughter and a very small balance in cash. It was not shown that the del ts secured by either of these two bonds were debts incurred for legal necessity by the widow or daughter of K or that the mortgagees after due inquiry had reasonable grounds for believing that such nece ity exi ted nor was it shown that the mortgages were entered into with the consent of all the hu band s kindred under circumstances which might rai e a valid presumption that the debts secured by them were properly incurred It was further not shown that the power of attorney under which L purported to act in executing the bond of 1877 on behalf of H A and I was ever properly explained to the profe ed executants or that they under tood its import nor was it shown that either of the bonds was duly explained to and comprehended by the profe sed executants other than L him elf in manner required by law in the case of documents executed by pardanashin women nor though at the date of the execution of the second bond I had attained the age of majority did it appear that he signed the bond with any clear knowledge of its contents or of the liability which he

majority at the date of suit ...

of the money believed by them to be one in respect of which his mother A a Hindu daughter in possession could mortgage or charge the family property beyond her own then vested interest in it or on proof that he as one of the reversioners by joining with his mother in executing the documents of mortgage led the lenders of the money to believe that such a necessity existed for the loan as enabled the Hindu daught r to create a valid mortgage on the family property beyond the extent of her own life interest The Hindu law which prevails in the N W Provinces recognizes no power in a rever

alleged to have been made by her or in consequence of an alleged execution by her of a general power of attorney to be reasonably atisfied that the liability she was incurring and the nature of the transaction were explained to her and more particularly is this the case if it is sought by reason of her having executed a document to fix her and her property with a liability to pay a debt which if the document had not been executed by her or by an agent appointed by her with adequate power could not have been enforced again t her property It is also necessary when money lenders in this country seek to enforce against the property of a Hindu family a contract of mortgage made by a reversioner who although of age at the time was then still of tender years and without experience of business for the Court when the question is raised to be satisfied that the reversioner understood the nature of the transaction and the effect of the contract which he was entering into or that the reversioner of the family property in which the reversioner had an estate in expectancy only was liable for the debt in respect of which the mortgage is sought to be enforced and that no unfair advantage was taken of the reversioner s youth and inexperience ACHHAN KUAR *v* THAKUR DAS I L R 17 All. 125

Affirmed by Privy Council in SHAM SUNDER LAL *v* ACHHAN KUNWAR I L R 21 All. 71
L R 25 I A 183

14 ——— Necessity for alienation—*Adequacy of consideration—Purchaser* The onus of proving the necessity for a sale by a Hindu widow and the adequacy of the purcha e money lies on the purchaser JADU NATH SIRCAR *v* SONAMONEE DOSSEE Cor 70

BISSONAUTH ROY *v* LALL BAHADOOR SINGH 1 W R 247

WOOMA CHURN BANERJEE *v* HARADHUN MOOKERJEE 1 W R 347

15 ——————— *Mortgage by Hindu widow* The burthen of proving the necessity for a mortgage by a Hindu widow rests on the

ONUS OF PROOF—*contd*

22 HINDU LAW—*contd*

(*b*) ALIENATION—*contd*

mortgagee where that necessity is disputed by the next heir COLAB SINGH v RAO KURUN SING RAO KURUN SING v MAHOMED FIAZ ALI KHAN
10 B L R P C 1 14 Moo I A 176

16 ——————— *Purchaser of ancestral property—Proof of inquiry as to existence of necessity* In justifying the purchase of ancestral property the purchaser is not bound to prove the fact that family necessity actually existed it is sufficient if he establishes that he made *bonâ fide* inquiry into the matter and was in that inquiry reasonably led to suppose that the necessity did exist SOORENDRO PERSHAD DOBEY v NUNDUN MISSER 21 W R 196

17 ——————— *Duty of purchaser of ancestral property* Where ancestral property is to be sold or mortgaged all that the purchaser has to do is to see that there is sufficient pressure upon the estate to render the transfer necessary The fact of there being a decree an attachment and a proclamation for sale is sufficient pressure SHEORAJ KOOER v NUCKCHEDEE LALL
14 W R 72

18 ——————— *Alienation by Hindu* In a suit brought by a Hindu son for him

[illegible]

was not a common family necessity was properly laid by the District Judge upon the plaintiff BABAJI SAKHOJI v PAMSHET PANDUSHET
2 Bom 23

19 ——————— *Proof of power to alienate—Degree of proof* Although as a general rule it may lie upon those who claim under an alienation of ancestral property for necessary purposes to show that the transaction was within the

[illegible]

SINGH 3 N W 4

TASOUWAR ALI v KOONJ BEHREE LAL
3 N W note

20 ——————— *Malabar law—*

[illegible]

AMMA [illegible]

21 ——————— *Application of*

[illegible]

ONUS OF PROOF—*contd*

22 HINDU LAW—*contd*

(*b*) ALIENATION—*contd*

need not see to the application of the money RADHA KISHORE MOOKERJEE v MIRTOONJOY GOW
7 W R 23

KOOL CHUNDER SURMA v RAMJOY SURMONA
10 W R 8

RAM PERSHAD SINGH v NAJBUNNISSA KOOER
9 W R 501

22 ——————— *Duties of purchaser—Application of purchase money* A purchaser for value is not bound to prove the antecedent economy or good conduct of a Hindu widow who alienates a portion of her husband's estate nor to account for the due appropriation of the purchase money but he is bound to use diligence in ascertaining that there is some legal necessity for the loan and he may be reasonably expected to prove the circumstances connected with his own particular loan GOBINDMONEE DOSSEE v SHAM LOLL BYSACK. KALI COOMAR CHOWDHRY v RAM DOSS SHAHA W R 1864 153

23 ——————— *Application of purchase money—Alienation by Hindu widow* In a sale by a Hindu widow under necessity where the vendee pays a fair price and acts *bonâ fide* the mere fact of only two thirds of the purchase money

[illegible]

24 ——————— *Obligation on creditor seeking to enforce a charge on property sold* In transactions such as the alienation by a widow of her estate of inheritance derived from her

[illegible]

RUN BAHADUR SINGH
I L R 6 Calc 843 8 C L R 361
L R 8 I A 8

KASHINATH SITARAM OYE v DADKI
6 Bom. A C 211

25 ——————— *Proof of execution of deed by Hindu widow* The plaintiff to make good his claim against the estate of his deceased debtor relied upon a document purporting to have been signed by the latter's widow since then also deceased. The Court of first appeal however found that there had been no actual execution of the instrument by the widow and dismissed the suit. The burden of proving due execution by the widow lay upon the plaintiff who relied upon it as binding the estate which she represented a matter commented on in *Kameswar Pershad* v *Run Bahadur Singh I L R 6*

ONUS OF PROOF—contd

22. HINDU LAW—contd

(b) ALIENATION—contd

Calc 843 L R 8 I A 8 RAMRATAN SUKAL v NANDU I L R 19 Calc 249 L R 19 I A 1

26 ——— *Creditor obligation of—Proof of satisfaction of debt* Where a party entitled to impeach an alienation by a widow of her husband s estate sues to set aside such an alienation and the defendant establishes not only that he had a charge on the estate in virtue of a mortgage deed executed by the widow but that the debt to him was on account of advances made to her for purposes for which she would have been entitled

prove payment is to be inverted in his favour or that the debt is to be presumed to be atisfied

MASULIPATAM

10 W R P C 47 11 Moo I A 619

27 ——— **Suit to set aside alienation**—*Suit to set aside sale in execution of decree of joint family property as improperly made* Where joint family property is sold in execution of a decree against the head of the family and purchased *bond fide* and for valuable consideration the onus lies on members of the family who impugn the sale to show that the decree was an improper one SHEO PERSHAD SINGH v SOORJBUNSEE KOOER 24 W R 281

28 ——— **Suit for share of alienated property**—*Mortgage by one member of joint family—Suit for possession of property* In a suit by a Hindu widow to recover a share of property alleged to have been inherited from her husband (*J*) and which had been mortgaged by her husband s brother (*B*) and sold under a decree obtained on the mortgage the question was raised whether the money for which the property was mortgaged had been borrowed by *B* for his own private use or for the benefit of the family *Held* that the onus was on the defendant to show that the plaintiff had derived any benefit from the money SREEMUTTY v LUKHEE NARAIN DUTT 22 W R 171

29 ——— **Alienation by Hindu father**—*Necessity—Specific performance suit for against father* There is no legal presumption in the Madras Presidency that a sale by a Hindu father is valid until the contrary is shown Where a suit is brought against the father of an undivided Hindu family having an infant son for the specific performance of a contract to sell land presumably ancestral the Court having thereby notice that the vendor s powers can be exercised without a breach of trust only where there exists a necessity sufficient in law to justify the sale and that the infant son is entitled to interdict the sale is bound to require the plaintiff to give some proof of the necessity for the sale GURUSAMI SASTRIAL v GANAPATHIA PILLAI I L R 5 Mad 337

30 ——— **Alienation by widow**—*Proof that money on mortgage was advanced for purpose justified by legal necessity—Evidence of sufficiency of husband s estate to maintain widow* A Hindu proprietor s heirs in possession after the death of his widow who had mortgaged part of the inheritance were sued by the mortgagee s heir who represented him to enforce the mortgage as binding on the land There was evidence that after the mortgage was executed previous mortgages made by the widow were paid off with the borrowed money but there was no evidence connecting any of those securities with a debt of the husband or that the mortgage was made for a legitimate purpose *Held* that although the suit was brought by the representative and not by the original mortgagee, the burden of proving the money to have been advanced to the widow for a purpose justified by legal necessity was on the plaintiff and that it was incumbent on him to adduce sufficient evidence of the nature of the transaction That general evidence to the effect that the husband died in debt and that the widow substituted new securities at reduced interest for former mortgages was not sufficient to exempt the plaintiff from having to prove the particulars of the transaction and its justification That the burden of proving that the estate left by the husband was sufficient to maintain the widow was not thrown upon the defendants *Hunooman Pershad Pandey v Mundraj Koonweree 6 Moo I A 393* discussed MAHESHAR BAKSH SINGH v RATAN SINGH I L R 23 Calc 766 L R 23 I A 57

31 ——— **Purchase by son at sale for arrears of rent against father**—*Proof of bond fides of sale* Where a son purchased a property sold for arrears of rent on account of the default of his father and both father and son were living together at the time of the purchase —*Held* that the onus was on the son to prove that his purchase was *bona fide* HUR SUHAYE MISSER v DEEN DYAL SINGH 7 W R 275

32 ——— **Alienation by manager of infant s estate**—*Presumption of bond fides—Obligation of purchaser to inquire—Necessity for*

ONUS OF PROOF—*contd*

22. HINDU LAW—*contd*

(b) ALIENATION—*contd*

as to the onus of proof in such ca es is one not capable of a general and inflexible answer but the presumption proper to be made will vary with circumstances Thus a mortgagee who is setting up a charge in his favour made by one who e title to alienate he knew to be limited mu t prove the facts which embody the repre entations made to him of th alleged deeds of the e tate and the motives influencing his immediate loan but such proof mu t not be required from one not an original party

precedent debt of an ancestor not previou ly que tioned the pre umption will ari e in favour of a con ideration that binds the e tate The lender is bound to inquire into the nece sity for the charge and to sati fy him elf that the manager is acting for the benefit of the estate But if he does o inquire and acts hone tly the real exi tence of an alleged ufficient and rea onably credited necessity i not a condition precedent to the validity of his charge and he is not bound to ee to the application of the money HUNOOMAN PERSHAD PANDEY *v* MUNDRAJ KOONWFREE

6 Moo I. A 393 18 W R 81 note

33 ———— Sale of property by guardian for minor—*Allegation of fraud* In a suit by three brothers to recover an estate sold by their two brothers as their guardians during their minority as they alleged without neces ity and in collu ion with the purcha er —*Held* that the onus was on the plaintiff to prove the sale fraudulent and collu ive ACHUNTH SINGH *v* KISHEN PERSHAD SINGH W R 1864 37

34 ———— Sale of property of minor or person under disqualification by party in fiduciary position—*Proof of bonâ fide* When a person after attaining majority questions any sale of his property ma le by his guardian during his minority the burden lies on the person who upholds the purchase not only to show that under the circumstances of the case either the guardian had the power to sell or that the purcha er reasonably supposed he had such power but further that the whole transaction so far as regarded the purchaser s part in it was *bona fide* Following the principle laid down by the Court in the case of *Kanailal Jowhari* v *Kaminee Dabe* *1 B L R O C 31 note* it was held that when either the person who s lls labours under disqualification or the purchaser stands in a fiduciary relation to the owner of the prop rty the *bond fides* of the dealing cannot be presumed but must be made out by the purchaser POOP NARAIN SINGH *v* GUJADHUR PERSHAD NARAIN 9 W R. 297

35 ———— Suit to set aside sale made by guardian—*Act XL of 1858 s 18—Fraud or collusion—Purchaser* Where a plaintiff alleges fraud or illegality as a ground for etting aside a sale made under s 18 the onus lies upon him to make out a *primâ facie* ca e of fraud or illegality and to how that the debt which formed the consideration for the sale in such case was one for which the minor was not responsible *Per* PRINSEP *J* —A stranger purcha ing from a guardian acting under the authority granted under s 18 of Act XL of 1858 will be entitled to every protection from the Courts so

applied were not debts lawfully binding on the minor The burden of proof in such a case would lie heavily on the person seeking to set aside the alienation But where the purcha er is him elf the

has established a *prima facie* case SIKHER CHUND *v* DULPUTTY SINGH

I L R 5 Calc 363 5 C L R 374

36 ———— Alienation for debt contracted by karnavan—*Presumption—Proof*

tarwad as their agent and manager to contract debts and that he assumed to act in the particular instance as such agent and manager The creditor having established these facts it lies on the tarwad to show that the obligor was not acting within the scope of his authority in the parti ular instance KUTTI MANNADIYAR *v* PAYANU MUTHAN

I. L. R. 3 Mad. 288

37 ———— Suit on a mortgage executed by a Hindu father—*Transfer of Property Act (IV of 1882)—Joint Hindu family—Sons not made parties—Notice* Where the sons in a joint Hindu family come into Court seeking to get rid of the effect as against their interests in the joint

I. L. R. 21 All. 193

BIJAI BAHADUR SINGH *v* MEWA LAL

I L R 21 All 195 note

38 ———— Alienation by ancestor—*Suit by heir* Where an heir s title to an estate is uncontested and his poss ssion is only obstructed by an alleged conveyance on the part of an ancestor

ONUS OF PROOF—*contd*

22 HINDU LAW—*concld*

(*b*) ALIENATION—*concld*

it lies upon the party holding possession and who causes the obstruction to prove that such a con veyance has taken place KAMINEE MOHUN CHUCKERBUTTY v KALEE KANT SEIN

14 W R 275

39 ———— Subject of purchase—*Evidence of right and interest on purchased property* A purchaser of another s rights and interests is bound to show what may be properly compri ed under that denomination RAM NATH ROY v SALEEM AHMED KHAN JADOO NATH ROY v SALEEM AHMED KHAN 3 N W 188

(*c*) MAINTENANCE.

40 ———— Right in property beyond mere maintenance—*Right of widow exercising* [illegible]

deceased husband incompatible with a mere right to maintenance from his estate the onus of proof that the widow is entitled to nothing beyond a bare main tenance lies upon the party asserting this [illegible]NDH SINGH v SOHUN KOOER 3 N W 12

(*d*) MARRIAGE

41 ———————— *Hindu law—Panchals—Kurbars—Sub divisions of Shudra tribe—Inter marriage valid—Custom as to illegality* A marriage between a man of the Panchal caste and a woman of the Kurbar caste is valid The [illegible]

prove such prohibiting custom *Inderun Valungy pooly Taver* v *Ramasawmy Pandia Talaver 13 Moo I A 141* and *Fakirgauda* v *Cangi 22 Bom 277* followed. MAHANTAWA v GANGAWA (1909) I L R 33 Bom. 693

(*e*) STRIDHAN

42 ———— Purchase with stridhan proof of—*Hindu wife seeking to exempt property from the debts of her husband* A Hindu wife seeking to exempt property from responsibility for her hus ban[illegible] dhan [illegible] with [illegible] PADH. [illegible]

43 ———— Proof of property being stridhan—*Gift of Hindu widow* The burden of proving property (the subject of a gift of a Hindu widow) to be stridhan rests with those claiming under her CHUNDER MONEE DOSSEE v JOYKISSEN SIRCAR 1 W R. 107

BISSESSUR CHUCKERBUTTY v RAM JOY MOJOOMDAR 2 W R. 236

ONUS OF PROOF—*contd*

23 HUSBAND AND WIFE

1. ———— Suit by wife to recover property from husband—*Alienation by husband of securities belonging to wife.* In a suit by a Mahomedan wife who had left her husband s protection on account of ill usage for recovery among other property of certain securities belonging to her which had got into the husband s possession and the detention of which he justified on the ground that he had purchased them from her and on their endorsement and delivery to him had paid the full value for them the correct principle as to the onus of the proof is that although the wife may have failed to establish affirmatively the precise case alleged by her her husband having admitted the receipt of the securities from her was bound to show something more than mere endorsement and delivery that the relation of the parties being what it was it lay upon him to prove that the transactions which he set up were *bonâ fide* sales and purchases and that he actually gave full value for what he received from her and where it was proved that the wife had the securities while under her husband s protection and some had pa ed from her to him and other to his creditors and that the wife left her husband s house in destitution the proof adduced by the husband as to the sale for full consideration to him must be full and clear and such as to satisfy a Court of Justice that the transactions were conducted fairly and properly and with a due regard to the rights and interests of the wife Where it was in proof that a portion of the immoveable property of the wife had pas ed to a *bonâ fide* purchaser under conveyances executed by the wife to her husband or to such purchaser the burden of proof in a suit by her to recover the property is upon her as she seeks to be relieved from the effect of her own conveyances the execution of which she does not dispute against one who if not an absolute stranger stands in no fiduciary relation to her BUZLOOR RUHEEM v SHUMSOONNISSA BEGUM JUDOONATH BOSE v SHUMSOONNISSA BEGUM

8 W R P C 3 11 Moo I A. 551

S C. in High Court BUZZUL RUHIM v SHUMSHEROONNISSA BEGUM MIRTUNJOY BOSE v SHUMSHEROONNISSA BEGUM JUDOONAUTH BOSE v SHUMSHEROONNISSA BEGUM W R F B 60

2 ———— Suit by wife for property after divorce—*Mahomedan law* In a suit by a Mahomedan lady against her husband after divorce for recovery of property belonging to her which her husband held before the divorce the possession of the husband being the possession of the wife the onus lies on the husband to prove his right to the property till that was done the presumption was that the property so held by the husband was held by him on behalf of the wife ABDOOL ALI *alias* SHOAGEFA v KURRUMNISSA 9 W R. 153

3 ———— Suit for possession of property of which husband and wife have been tenants—*Nature of possession* In a suit to recover certain property on the allegation that

ONUS OF PROOF—*contd*

23. HUSBAND AND WIFE—*concld*

plaintiff s father had obtained it in gift from his wife *L* and that it had been in the posse sion of father and son more than thirty years defendant having had his name recorded in the Collectorate as heir to *L* —*Held* with reference to the fact that there had been a tenancy of husband and wife together that it was incumbent on plaintiff to prove that his posse sion was pos e sion on his own account and not that of an agent. VELAET ALI KHAN v AZMUN 11 W R 513

24 INTERVENORS

1 ——— Suit for rent—*Proof of receipt and enjoyment of rent* In a suit for rent under a kabuliat if a third party intervenes and supports the defendant s case that the rents have been paid not to the plaintiff but to the intervenor the onus of proving such previous receipt and enjoyment is altogether on the intervenor and until his intervention is disposed of the plaintiff need not prove his title or the kabuliat RAM BHUROSE SINGH v JEWA MAHATOON 11 W R 319

RADHA KISHORE TALOOKDAR v GOLUCK CHUNDER POY 11 W R 366

2 ——— *Suit against person holding under decree under s 77 Act X of 1859* The onus of proving title was on a plaintiff seeking to oust a person formally declared by a decree under s 77 Act X of 1859 to be in enjoyment of the rent of disputed land and consequently in posse sion PUNGO MONEE DOSSEE v UNNOPOORNA DEBIA 7 W R 149

3 ——— *Suit to get rid of decision in favour of intervenor* In order to get rid of the effect of a Collector s decision in favour of an intervenor under s 77 Act X of 1859 the party entitled must bring a suit to e tablish his title ...

4 ——— *Suit after successful intervention under s 77 Act X of 1859* Plaintiff s suit for rent against the raiyats of certain land alleged to belong to a mouzah (Baboolee) which they had bought at an auction sale having been dismissed in consequence of defendant s intervention under s 77 Act X of 1859 they brought an action against her to recover po session The defence was that the land in dispute did not belong to plaintiff s mouzah but to defendant s mouzah Gyrutpore *Held* that the plaintiffs were bound to prove their own case and to show that the land belonged to their purchased estate (Baboolee) In this case however both parties had consented to have the case decided on the question whether mouzah Gyrutpore was or was not in existence and the defendant could not therefore make out a new case in special appeal MOONDUR BIBEE v HONOOMAN PERSHAD 11 W R 277

...

plaintiff had to do in a regular suit brought by him in con equence was to prove that he was entitled to the rent from the under tenant It was not neces sary for him to prove that his land was valid lakhiraj RAJ CHUNDER GHOSE v JOY CHUNDER DUTT 12 W R 197

6 ——— *Civil Procedure Code s 73* Where the plaintiff sued to recover po ession of certain property which he alleged he had purchased from *H* and proved his purchase and *B* the mother of *H* intervened and contended that the property was her own and purchased for herself and not on behalf of *H* —*Held* he onus was on *B* to prove the title JAGGADANAND MISSER v HAMID RASUL 8 B L R 182 note

S C JUGGODANUND MISSER v HAMID RUS OOL 10 W R 52

7 ——— In a suit upon a ...

shown to be actually in posses ion to prove his allegation. *Held* that the lower Courts were right in so holding *Jaggadanand Misser* v *Hamid Rasul* *8 B L R 182 note 10 W R 5* approved and followed. BALNIA KUNDU DUBOYE v ADIKUNDA PUNDA 7 C L R 560

8 ——— *Proof of title.* A plaintiff who sues by right of inheritance for the recovery of lands in the possession not illegal or forcible of defendants to the rents whereof it was held in a previous suit in which he intervened that he had not been in the actual enjoyment is bound to prove as well his title to the estate as his lineal descent from or relation in such decree of contiguity as would entitle him to part succe sion to the original acquirer thereof CHYTUN MYTEE v LUKHEE CHURN PATNAIK 8 W R 258

9 ——— Suit for kabuliat—*Act X of 1859 s 77—Intervenor* In a suit to obtain a kabuliat the defendant admitted the plaintiff s title A third party intervened (under s 77 Act X of 1859) alleging that he was in actual receipt and enjoyment of the rent *Held* that the ...

3 B L R Ap 61

ONUS OF PROOF—*contd*

24 INTERVENORS—*contd*

KISHEN CHUNDER DOSS *v* BURATEE SHEIKH
2 W R Act X 36

10 ———— Suit for declaration of right—*Suit for usufruct of property—Unsuccessful intervention* The mortgage of certain property having been purchased by *S* he sold it to *G* who foreclosed got a decree for possession and sold it to *W* W s intervention having failed in a suit for arrears of rent by a party setting up a title intermediate between him and the raiyat on the ground ... mortgagor sub... ued to have his ... by the raiyat *Held* that it was not only not necessary for the plaintiff to prove possession but the very ground he took was want of possession his cause of action being that he was prevented from enjoying the usufruct *Held* also that it was for the defendant to show that the incumbrance did not injure the outturn of the property GOBIND CHUNDER BANNERJEE *v* WISE
12 W R 19

25 LANDLORD AND TENANT

1. ———— Allegation that lands are held under different title Where a raiyat holds lands of considerable extent under a zamindar and alleges that one or two plots occupied by him are held under a different title the onus is on him to prove his allegation RAM COOMAR ROY *v* BEJOY GOBIND BURAL
7 W R 535

2 ———— Allegation of independent title—*Suit to confirm title* In a suit by the lessee of the purchaser of the rights and interests of the first defendant to obtain possession of some portions of land alleged to fall within the share of the zamindari so purchased defendants contended that the plots which were the subject of suit although falling within the ambit of the zamindari did not in fact form a portion of it but were lakhiraj lands belonging to themselves by a title independent of the title to the zamindari. The evidence showed the principal defendant to have been in receipt of the rents and profits of the land in suit as well as of his share of the zamindari *Held* that the onus lay upon the defendants to show the alleged independent title failing to do so the *primâ facie* title made out by the plaintiff ought to prevail SHUMDAN ALI *v* MUTHOORNATH DUTT 14 W R 226

3 ———— Rival tenants—*Resignation of tenancy* In a suit between two rival tenants claiming to hold under the same landlord where one of them admitted the tenancy of the other but pleaded resignation by him of his tenancy and a lease to himself the onus of proof was held to rest upon him who made the allegation KISHEN CHUNDER SHAHA *v* HOOKOOM CHAND SHAHA
W R 1864 47

4. ———— Allegation of particular tenure—*Proof of title* The onus in a suit in which the plaintiff seeks to obtain a declaration that the defendants held a tenure under him lies on the plaintiff who must prove strictly the title under which he seeks that declaration ROYES MOLLAH *v* MUDHOOSOODUN MUNDUL 9 W R 154

5 ———— *Transferability of tenure—Presumption* There is no presumption that any tenure held is not a transferable tenure and a landlord who sues for khas possession on the ground that a tenure sold was not transferable must establish his case as an ordinary plaintiff DOYA CHAND SHAHA *v* ANUND CHUNDER SEN MOZUMDAR I L R 14 Calc 382

6 ———— *Transferability of tenures* In a suit brought to recover possession of certain lands forming part of the patni estate of the plaintiffs and constituting the raiyati holding of one *M* which lands were sold in execution of a money decree against *M* and purchased by the defendant the defendant set up that the tenure held by *M* was of a permanent and transferable nature *Held* that the onus of proving the transferability of this tenure was upon the defendant *Doya Chand Shaha* v *Anund Chunder Sen I L R 14 Calc 382* not followed KRIPAMOYI DABIA *v* DURGA GOVIND SIRKAR I L R 15 Calc 89

7 ———— *Transfer of Property Act (IV of 1882) ss 106 108—Transferability of tenancy—Suit by zamindar to set aside a Court sale of his raiyat s interest* A zamindari ... who had intervened unsuccessfully in execution now sued to set aside the sale and to eject the decree holder and the judgment debtor from the land Neither party adduced evidence *Held* that there was no presumption that the tenant was a tenant at will nor was there a presumption that the tenancy was not transferable—such presumptions being contrary to ss 106 and 108 of the Transfer of Property Act respectively The burden of proof therefore lay on the plaintiff and had not been discharged and the suit must consequently be dismissed. APPA RAU *v* SUBBANNA
I L R 13 Mad 60

8 ———— *Non transferable tenure* Where a plaintiff sets up a case of an exceptional nim osut howla alleging it to be not transferable the plaintiff should be called on to prove the allegation before a defendant in possession under an order of a Revenue Court can be called on to prove title HURRO SOONDERY DEBIA *v* AMEENA BEGUM 1 Ind. Jur N S 188
5 W R Act X 72

9 ———— *Suit for possession under mokurari lease* In a suit to recover possession of land under a mokurari lease granted to plaintiff by the zamindar (defendant who admitted its validity) from the other defendant who had

ONUS OF PROOF—*contd*

25 LANDLORD AND TENANT—*contd*

been in posse ion twenty years and who also claimed a mokurari interest —*Held* that the onus lay with the ub tantive defendant to show that his lease was mokurari. PUGHOONATH DOBEY *v* PURESH PAM MAHATA 10 W R. 9

10 ———— *Khadims tenure* Where persons have long held as Khadims under the upperior holders or managers of endowed property and claim to hold a permanent khadimi tenure from which they are not liable to be ejected except for misconduct the *onus probandi* is on them CHAND MIAN *v* KHONDKAR ASHRUTOLLAH 6 W R 89

11 ———— *Allegation that lands are sir—Sal in execution of decree* Where a person who e proprietary rights in a mehal have been old in execution of a decree alleges that land held by him at the time of such sale was held as sir the burden of proof lies on him. HARI DAS *v* GHANSHAM NARAIN I. L. R 6 All. 286

12 ———— *Suit for possession of ayma land—Identificat on by plaintiff* Wher a plaintiff establishes a *primâ facie* case of the identity of ayma land which he claims through his ance tor who had been allowed by the Collector to retain it it will rest with defendant to prove that the land is his own or that it is not the ayma land which the plaintiff s ancestor once held MOLLA ABDOOR PUB *v* HURRYHUR MOOKERJEE 1 Ind. Jur N S 50

13 ———— *Gorabundi tenure—Transferability proof of* The onus li s on a

14 ———— *Khoti tenure proof of—Suit for rent* In a suit by a kabuliatdar khot for rent from cultivator holding lands in a

country MUHAMMAD YAKOUB *v* MUHAMMAD ISMAIL 9 Bom 278

15 ———— *Suit for value of trees cut by tenant—Nature of tenure* There is no presumption that orchard lands in Behar are held on a bhaoli tenure there being many instances of

SOOKUN LALL 2 W R. 12

16 ———— *Orchard land—Possession of planter of trees* Although generally it may be taken that land whereon an orchard is planted belongs to the zamindar and has been granted to a stranger to plant trees thereon in which case it reverts to the zamindar after the trees have disappeared and the land has become arable yet when it is asserted that the land belongs to the planter of the orchard having been acquired by purchase it is for the zamindar to prove that the land belongs to him and was given for plantation and in the absence of such proof the holder or occupant may rely on his long possession DHUNEE RAM *v* AMANUT HOSSEIN 2 Agra Pt II 161

17 ———— **Suit by landlord for possession of land in his estate**—*Right to possession.* When a landlord sues for possession of land within his estate the onus is on him to prove that he is entitled to that possession GUDADHUR BANERJEE *v* KANYE DEKHOORIA 8 W R 191

18 ———— **Suit by talukhdar purchaser at sale**—*Dispossession and disputed title* A talukhdar who had purchased at an execution sale the under tenure of one of his tenants sued him to obtain possession of the land contained in the purchased holding of some of which he said he had been dispo se sed and in regard to the remainder of which his title was disputed *Held* that the deputation of an Ameen was improper and that the onus lay on the plaintiff to prove his case SHUSTEE RAM PAUL *v* NOBO KANT POY CHOWDHRY 14 W R 190

19 ———— **Lease of land of particular nature**—*Proof that it came under that designation* Where a landlord leased out some land to a tenant reserving to himself only such portion of it as fell under the definition of nila zamin —*Held* that it was for the landlord in a suit for the possession of such nila zamin to bring evidence to prove what portion of the land leased out was nila and that in the absence of such evidence the whole land must be taken as having been leased out to the tenant PEILY *v* BAMA SOONDUREE DOSSEE 25 W R 398

20 ———— **Suit for possession**—*Dispute as to ground and nature of possession* In a suit for possession of a portion of land on the allegation that it had belonged to plaintiff as his ancestral property up to the date of his being ousted when the defendant admitting the alleged possession contended that it had been not that of an owner but only permissive possession as that of a tenant —*Held* that the burden of proof lay on the defendant BOISTUB CHURN SEIN *v* TRAHEE RAM SEIN 15 W R 32

21 ———— **Suit to recover share of holding after sale in execution of decree for rent**—*Proof of status as tenant and recognition of division of tenure* In a suit to recover a share of a holding the whole of which had been sold in execution of a decree for arrears of rent the plaintiff who claimed to hold a divided portion of the tenure was held bound to prove either that such division had been recognized and ratified by the zamindar or that the latter received rent from him *i e* he would have to prove his status as tenant in

ONUS OF PROOF—*contd*

25 LANDLORD AND TENANT—*contd*

respect of the shar in question HURHUR SINGH v OOMA KOOER 16 W R 93

22 ———— Exercise of right incidental to tenure—*Objection to right* When a party objects to the exercise by another of an ordinary legal right incidental to his tenure it is for the objecting party to give some *primâ facie* evidence as to the grounds on which that objection is founded GYARAM MUNDUL v GYARAM NAIK 1 Ind Jur O S 22 Marsh 28 1 Hay 65

23 ———— *Right of occupancy—Permanent cultivators—Suit for ejectment* The defendant s ancestors were the only cultivat

tors dated back at least to 1806 In 1833 the defendant s ancestor was recognized by the Collector who then managed the temple as an hereditary raiyat. In the paimash account of 1827 defendant s ancestor was described as a cultivating parakudi ulavadai a term which does not necessarily imply a right of occupancy *Held* in a suit by the trustee of the temple to eject the defendants after notice to quit that the burden of proving that a right of occupancy was not an incident of defendants tenure lay on the plaintiff KRISHNASAMI PILLAI v VARADARAJA AYYANGAR I L R 5 Mad 345

24 ———— *Right of occupancy—Permanent cultivator—Paracudi* The defendant s ancestors or predecessors in title were the cultivating tenants of the lands of a certain temple from a date not later than 1827 in which year they were so described in the paimaish accounts In 1830 they executed a muchalka to the Collector who then managed the temple whereby they agreed among other things to pay certain dues They were described in the muchalka as paracudis In 1857 the plaintiff s predecessors took over the management of the temple from and executed a muchalka to the

of proving the permanent character of the tenure set up by the defendants lay on them *Krishnasami v Varadaraja I L R 5 Mad 345* discussed and distinguished THIAGARAJA v GIYANA SAMBANDHA PANDARA SANNADHI I L R 11 Mad. 77

25 ———— *Defendant admitting tenancy but pleading its permanent nature* Where the defendant admitted that he was a tenant the onus was upon him to show that his tenancy was such as he set up namely a permanent tenancy at a rate which cannot be enhanced. KHETTER KRISTO MITTER v DINENDRO NARAIN ROY

3 C W N 202

ONUS OF PROOF—*contd*

25 LANDLORD AND TENANT—*contd*

26 ———— *Suit for ejectment—Right of occupancy* In an ejectment suit by a landlord against his tenant the plaintiff cannot succeed unless he shows that under the terms of the tenancy and in the circumstances that exist he has a right to eject the defendant although the latter may allege and fail to establish a right of permanent occupancy VENKATACHARLU v KANDAPPA I L R 15 Mad 95

27 ———— *Ejectment suit for—Occupancy rights—Madras Rent Recovery Act (Madras Act VIII of 1865) s 12* A zamin

yati raiyats from time immemorial and it was found that their holding had lasted at least one hundred and fifty years The defendant had executed and delivered to the plaintiff a muchalka for one year and he had made no default in payment of rent *Held* that the onus was on the plaintiff and as she had failed to prove that the defendant s tenancy had commenced under her or her ancestors the suit should be dismissed VENCATA MAHALAKSHMAMMA v RAMAJOGI I L R 16 Mad. 271

28 ———— *Right of tenant to dig a tank on his land* In a suit by a zamindar alleging that the defendant his tenant had dug a tank on his land and thereby done him damage by converting the land from its original state and the conversion is admitted by the defendant but his defence is that he had a right to convert it the onus is on the defendant to show his right to dig the tank. In the absence of clear proof of the nature of his tenure he should at least show that the digging the tank is a fair and reasonable use of the land and one which will not be to the detriment of the zamindar TARINI CHARAN BOSE v DEBNARAYAN MISTRI 8 B L R. Ap 69

29 ———— Proof of zamindari rights—*Right to garden planted with trees* The owner of a bagh in an estate in which he is not possessed of any zamindari rights must if he claim a higher right than that ordinarily possessed by a tenant planter or the successor of such a planter produce

30 ———— Suit for assessment of lands accreted to zimma tenure—*Beng Reg VIII of 1793 s 51—Beng Reg XI of 1825* A suit

ONUS OF PROOF—*contd*

25 LANDLORD AND TENANT—*contd*

provisions of that law are not affected by Reg XI of 1825 as regards the mode in which the condition on which, and the burden of proof with which the zamindar may proceed to assess. PANIOTY v JUGGUT CHUNDER DUTT 9 W R 379

Upholding on review JUGGUT CHUNDER DUTT v PANIOTY 8 W R 427

31. ——— Acknowledgment of tenancy—*Suit for kabuliat* In a suit before the Collector for a kabuliat on the ground that the defendant had occupied and cultivated certain lands of the plaintiff the defendant pleaded that he was co parcener with the plaintiff of the land but he admitted that he had given a kabuliat for some of the land he occupied *Held* that since by giving the kabuliat the defendant had acknowledged the plaintiff to be his landlord the onus of proving the plea was upon the defendant JUGGOBUNDOO MOZOOMDAR v GOOROO PERSHAD ROY Marsh 54

GOOROO PERSHAD ROY v JUGGOBUNDOO MOZOOMDAR W R F B 15 1 Hay 228

32 ——— Suit by raiyat for pottah at fair and equitable rates The proprietors of a certain holding having refused the terms of the Government a farming settlement was made with the present defendant who undertook to confirm and ratify all amulnamahs granted by the zamindars while the settlement proceedings had been pending Plaintiff being a raiyat without a right of occupancy but one who had got an amulnamah sued for a pottah at the rate fixed by the amulnamah *Held* that the amulnamah formed the basis of a special contract between the parties and took their case out of the purview of ss 5 and 8 of the Rent Law and that by the terms of the amulnamah the defendant was bound to give plaintiff a pottah on fair and equitable rates (upajukta)

33 ——— Suit for rent—*Waste and lakhiraj land* In a suit for rent when the raiyat pleads that part of the land is waste and lakhiraj the onus is on the landlord to prove that such land has paid rent to him in previous years MOTEE LALL ADUCK v JUDOOPUTTEE DOSS 2 W R Act X, 44

GUMANI KAZI v HARIHAR MOOKERJEE B L R Sup Vol. 15 W R F B 115 Marsh 527

MIRTOONJOY CHUCKERBUTTY v BURODA KANT ROY 6 W R Act X, 18

BISSESSUR CHUCKERBUTTY v WOOMA CHURN ROY 7 W R 44

34 ——— *Plea of payment* In a suit for rent if the tenant pleads payment the *onus probandi* is on him PURFEAG LALL v RAM JEWAN LALL 1 W R 264

KOONJO BEHARY BANERJEE v ROY MOTHOORANATH CHOWDHRY 1 W R 155

35 ——— *Intervenor—Plea of payment* In a suit for rent where defendant denies the relationship of landlord and tenant as subsisting between himself and the plaintiff and states that he paid his rent to an intervenor it is not enough that the intervention is set aside it still remains for the Court to investigate the question whether the defendant is a raiyat of the plaintiff JAGURDEE v RADHA KISHORE 13 W R 259

36 ——— *Eviction of tenant by title superior to lessor* Where a tenant is sued for rent he can set up eviction by title paramount to that of his lessor as an answer and if evicted from part of the land an apportionment of the rent may take place The onus is on the lessor

37 ——— *Suit under special arrangement* In a suit for rent alleged to be due under a particular arrangement the existence of which is repudiated by defendant it is for plaintiff to prove the arrangement SHUMBHOO GEER GOSSAIN v RAM JEWAN LALL 8 W R 509

tional portion. LALUN v HEMRAJ SINGH 20 W R 76

39 ——— *Rate of rent proof of—Evidence that rent stated in lease has been realized* The mere fact that a tenant some time ago gave a kabuliyat for a limited period at a

2 C W N 47

40 ——— *Shifting of onus—Claim for rent—Written receipts if necessary proofs of payment—Written receipts if primary evidence* Written receipts for payments are important but by no means necessary as proof nor are they of the nature of primary evidence the loss of which must be shown in order to let in secondary On the evidence in the case it was held that

part of the defendant's case as related to the missing receipts was not worthy of belief yet that the

ONUS OF PROOF—*contd*

25 LANDLORD AND TENANT—*contd*

defendant did give evidence of payment of the rent claimed sufficient to throw back again on the plaintiff the onus of proving that the rent was still due Plaintiff s evidence was silent on the crucial point of payment her Dewan kept out of the way of examination and no sufficient grounds had been assigned for reversing the decrees of the High Court RAMESWAR KOER *v* BHARAT PERSHAD SAHI 4 C W N 18

41 — *Evidence—Plea of payment* In a suit by a landlord against

the defendant s under tenant during the time for which the arrears were demanded but swore that they were payments made in respect of arrears due on account of previous years. The lower Appellate Court reversing the decree of the Court of first

ments were in respect of that portion of the year 1283 for which the arrears were claimed. S 12 of the Rent Law applies to receipts given directly by the landlord to the tenant and not to receipts given to third persons. SYEFUN *v* PUDDER SOHAY I L R 7 Calc 582

42 — *Proof of determination of tenancy—Beng Act VIII of 1869 s 20* The defendant held under a lease from the plaintiff which expired in 1867 when he gave up possession without any notice In a suit subsequently

43 — Suit for arrears of rent—*Proof of rate of rent* In a suit to recover arrears of rent from the defendants who as ticcadars of the plaintiff s share in a certain mouzah had been in possession from 1262 to 1281 without having paid any rent the plaintiff who claimed a bhowli rent at the rate of 9 annas of the crop proved that in the mouzah in question the raiyats paid rent at that rate. *Held* that under the particular circumstances the onus was on the defendants who alleged that the proper rate was 8 annas to prove their allegation. LOCHUN CHOWDHRY *v* ANUP SINGH 8 C L R 426

44 — *Alleged possessions of portions only of land* In a suit to recover arrears of rent under a kabuliat the defendant who had paid rent for upwards of four or five years pleaded that he had obtained possession of portions only of the lands demised. *Held* (reversing the decision of FIELD J) that the onus was upon the defendant. BANY MADHOB MOOKERJEE *v* SRIDHUR DEB GHUTTUCK 10 C L R 555

45 — Suit for ejectment and for arrears of rent—*Disputed rate of rent* In a suit for arrears of rent and for ejectment in consequence of non payment where defendant challenged the rate claimed as well as plaintiff s right to sue alone —*Held* that the onus lay on plaintiff to prove his claim to the rate of rent sued for and to show that he was sole proprietor ASHRUF *v* RAM KISHEN GHOSE 23 W R 289

46 — Suit for ejectment—*Ground for retaining possession proof of* In a suit for

47 — *Nature of tenure—Evidence of* In a suit in ejectment valued under R100 the defendant who were sued as yearly tenants replied that their tenure was a mirasi gujasta tenure and in proof of their allegation adduced evidence which was not displaced by the plaintiffs The lower Courts considered that de

ment BYJI NATH SAHOO *v* RAMDOUR ROY 7 C L R 369

48 — *Suit by landlord to eject tenant on expiration of tenancy* Where a landlord sues to eject a raiyat on the ground of his tenancy having expired the tenant is not called upon to state the character of his tenancy

B set up a gujasta title to the land The lower Courts disbelieved plaintiff but called on *B* to support the title he had set up and he failing to do so gave *A* a decree *Held* that *A* s suit should have been dismissed when it was found that the evidence he put forward was unworthy of credit BULLEE AHEER *v* NISHAN SINGH 3 C L R 209

49 — *Suit to eject tenant holding over after expiry of lease* In a suit to eject a tenant holding over after the expiry of a pottah which was merely for a number of years the onus is on the landlord to show that the tenure was such that the express limit of years may be fairly applied to the possession and construed to give the right of re entry ROY ODYTE NARAIN SINGH *v* UBHURUN ROY 4 W R Act X, 1

SHEEB DYAL PAULEET *v* DWARKANATH SOOKUL. 2 W R Act X, 54

50 — *Right of occupancy* Where a tenant holding under a terminable

ONUS OF PROOF—*contd*

25 LANDLORD AND TENANT—*contd*

lease which does not provide for re-entry makes no allegation of previous possession and there is no admission of it on the other side the tenant is bound to go out at the expiration of his term and if he claims a right of further occupancy it is for him to prove that right PUDDOMONEE DOSSIA v JHOLLA PALLY 7 W R. 283

51. ———————— *Ejectment—Right of occupancy* In a suit by a zamindar against a raiyat for recovery of possession of land of which the plaintiff alleged he had granted the defendant a lease and taken a kabuliat and that the lease had expired the defence was that the defendant did not hold under any lease from the plaintiff that the kabuliat was not genuine and that the defendant by his holding had acquired a right of occupancy *Held* that the onus was on the plaintiff to prove the kabuliat and not on the defendant to prove that he had acquired a right of occupancy Therefore where the plaintiff failed to prove the kabuliat the suit was held to be rightly dismissed though the defendant failed to show any right of occupancy WALLAH ALTEE v GOLAM COUS 10 B L R Ap 32 19 W R 215

52 ———————— *Refusal to quit after notice.* In a suit by a zamindar to obtain khas possession of land within his estate if a defendant is a middleman the right of plaintiff follows as a matter of course ...

refusal to quit after notice under X of 1859 He must show that the raiyat is of a class liable to eviction LALLA JOYNATH SAHEE DEO v LUTCHEN CHRISTIAN 16 W R. 158

See PRAHLAD SEN v DURGAPRASAD TEWARI 2 B L R P C 111 12 W R P C 6 12 Moo I A 286

53 ———————— *Suit under Act X of 1859 s 23 cl 5* In a suit under cl 5 s 23 Act X of 1859 the question of illegal ejectment was the only question for adjudication The onus in such a cause was upon the plaintiff ASOUR v GOLUCK CHUNDER CHOWDHRY 8 W R 383

54. ———— **Suit for possession by tenant**—*Appropriation of crops by another tenant*

...

defendants (tenant and zamindar) to show that the land held by the plaintiff was removed from the ...

... W R 105

55 ———— **Suit to set aside order of Settlement Officer**—*Sonthal Pergunnahs Settlement Regulation (III of 1872) ss 21 25* In a suit instituted in January 1887 by a plaintiff to set aside a settlement ...

... and that the suit was consequently barred by the special limitation provided by s 25 of the Regulation It was contended that the onus of proving the tenure to the dar mokurari which had been thrown on the defendant had been wrongly so thrown on him as the suit was substantially one to set aside a decree *Held* that the onus of proving the validity and propriety of the settlement proceedings upon which he relied had been properly thrown on the defendant NADIAR CHAND SINGH v CHUNDER SIKHUR SADHU I L R 15 Calc 765

56 ———— **Suit for damages for illegal distraint** In a suit for recovery of damages by a plaintiff on the ground that his landlords the defendants had distrained their paddy alleging higher jummas the onus is on the plaintiff to prove the annual rent payable by him CHUNDER KANT MUKERJI v HEM LAL MONDAL 1 C W N 463

57 ———————— *Penal Code (Act XLV of 1860) s 424—Dishonest removal of property to avoid distraint—Distraint for arrears of rent under the Rent Recovery Act—Absence of presumption in favour of its legality—Onus of proof on prosecution*

...

was a legal distraint In the absence of such proof persons who have resisted the distraint or have removed their property to avoid it cannot be con...

...

58 ———————— *Permanency of tenancy* In a suit for ejectment where the defendant sets up a permanent tenancy the onus is upon the defendant to show this ISMAIL KHAN MAHOMED v AGHORE NATH MUKERJEE (1903) 7 C W N 734

26 LEGITIMACY

1 ———— **Proof of legitimacy**—*Proof of heirship depending upon illegitimacy of defendant—Suit for possession* The plaintiffs in a suit to eject the defendant from land of which he was in actual possession having to prove not only their relationship (which was not disputed) but their heir

ONUS OF PROOF—*contd*

26 LEGITIMACY—*concld*

Mahomed Cour Ali Khan v Ahmed Khan
2 W R P C 13 9 Moo I A 504

2 ———— *Evidence Act (I of 1872) s 112—Presumption as to paternity of child born after death of husband—Burden of proof—Illness of husband rendering act of begetting child improbabl* Where a child was born after the death of the husband under such circumstances as to give rise to the pre umption under s 112 of the Evidence Act (I of 1872) *Held* in a suit by the appellants to dispute the paternity of the child that the burden of proof lay on them and that on the evidence the presumption was not rebutted See *Nogendra Nath Pahari v Ram Gobind Pahari I L R 9 Calc 111 Reporter s Note* Tirloi Nath Shukul v Lachmin Kunwari (1903)
I L R 25 All. 403 s c L R 30 I A 152
7 C W N 617

27 LIMITATION AND ADVERSE POSSESSION

1. ———— Plea of limitation When a defendant pleads limitation the *onus probandi* is on the plaintiff Brojendro Coomar Roy Chowdhry v Radha Gobindo Shah 1 W R 235

Collector of Pungpore v Prosunno Coomar Tagore 5 W R 115

Pandurang Govind v Balkrishna Hari
6 Bom. A C 125

Kumola Dassee v Azmut Ali 7 W R 13

Nobokishore Dey v Pamkishen 9 W R 131

Bhiloo Mundul v Motee Lall Ghose Mundul
9 W R 251

Gossain Doss Koondoo v Siroo Kumaree Debia 13 B L R 219 19 W R 192

Ghoggoolee v Muzhur Hossein
24 W R 389

2 ———— Limitation—*Suit for possession—Dispossession—Cause of action* In a suit between ...

to prove ... dispossess... that he ... claims ...
Mitrasur Singh v Nund Lall Singh
1 W R P C 51

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION—*contd*

s c Nitrasur Singh v Nund Lall Singh
8 Moo I A 199

Sidhee Nuzeer Ali Khan v Woomesh Chunder Mitter 2 W R 75

Mahomed Hossain v Surathoonissa Khanum
2 W R 89

Kedarnath Acharjee v Bhugwan Chunder Nundee 2 W R 153

Gooroodoss Roy v Huronath Roy
2 W R 246

Jugodumba Chowdhrain v Ram Chunder Deo
6 W R 327

Boolee Singh v Hurobuns Narain Singh
7 W R 212

Lall Singh v Modhoosoodun Roy
8 W R 426

Dinobundhoo Suhaye v Fuplong
9 W R 155

Busseeroonissa Chowdhrain v Leelanund Singh 14 W R 135

Ameer Ali v Inderjeet Kooer 15 W R 43

Kalee Narain Bose v Anund Moyee Goopta
21 W R 79

3 ———— Adverse possession—*Proof of loss of title by* *Held* by the Privy Council ...

defendant is upon the defendant Radha Gobind Roy v Inglis 7 C L R 364

4 ———— *Joint ancestral property—Limitation* *Held* that the admis ion of certain property being joint ancestral throws the burden of proving exclusive and adver e possession beyond limitation upon the sharer refusing to admit other heirs Dabee Suhai v Sheo Dass Rai
1 Agra 285

5 ———— *Limitation Act 1877 Art 144* Under Art 144 of the Limitation Act (XV of 1877) it i not for the plaintiff to prove that he has been in pos ession within twelve years before suit but it is for the defendant to show that he has held adversely to the plaintiff for twelve years Naamtula v Nana valad Faridsha
I L R 13 Bom. 424

6 ———— *Suit for possession* Where a defendant pleads partly title and partly purchase and asserts his own possession on ...

proving possession within the period of limitation is on the plaintiff Ishur Chunder Biswas v Bissumbhur Biswas W R 1864 107

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

KEDARNATH MOOKERJEE *v* MORE H CHUNDER PAULIT 1 W R 67

7 ——— *Suit for possession—Proof of their possession* In a suit to recover possession the defendant pleaded limitation and plaintiff proved that the commencement of the possession of the party through whom defendant claim was a tenant it i for tho wh t up the plea of limitation to show when the nature of that possession was changed and how it became adverse PAMDHUN SATPA *v* NOBIN CHUNDER CHOWDHRY 12 W R 250

8 ——— *Suit for possession—Limitation* Where a plaintiff brought a suit in 1864 to recover land d property which was in the possession of the defendant since 1845 and at the time of the institution of the suit it was *held* that before the plaintiff could recover he must prove first possession within twelve year before suit and secondly title to possession BEEP CHUNDER JOBRAJ *v* DEPUTY COLLECTOR OF BHULLOOAH 13 W R P C 23

9 ——— *Benami transaction—Limitation* In a suit for immoveable property under a kobala more than twelve years old where defendant pleads that plaintiff was only a benamidar and was never in possession plaintiff must prove not only title but also possession within twelve years of the filing of the suit KEDARNATH MAHATA *v* KADUMBINEE DEBIA 10 W R 239

10 ——— *Suit for possession—Limitation* In a suit for possession of land on the ground that it belonged to plaintiff s talukh where defendant pleaded limitation —*Held* that the burden lay with the plaintiff to prove that he had possession (*i e* enjoyed the land) within twelve year of the suit PAM LOCHUN CHOWDHRY *v* JOY DOORGA DOSSIA 11 W R 283

11 ——— *Suit for possession* The plaintiff's ancestors having been declared by a decree of the Peishwa s Government in 1722 to be entitled to the whole of the patilki watan of Ian derai and the defendants having a watan patra from the Raja of Satara in 1742 in favour of their claim to a half share but being unable to show that their ancestors had any concern with the watan for a period of ninety six years subsequent thereto during which the plaintiff s ancestors were recognized as owners —*Held* that the onus was on the defendants to show sufficient adverse possession previous to suit as to entitle them to the property AMRITRAV I KOKDI *v* MANAJI J JAGTAP 3 Bom. A C 49

12. ——— *Suit to recover possession of land—Limitation* A suit to recover possession of an unenclosed piece of ground must be brought within twelve years from the time the cause of action accrued and in deciding this the issue is not that the plaintiff must show that he exercised some right of ownership over the ground within the twelve years preceding the filing of the action but that twelve years had not elapsed between the day the defendant interfered with the plaintiff s possession and the date on which the plaintiff filed his claim SAGANGOWDA BIN BASANGOWDA *v* BASAPA BIN CHENAPA 9 Bom 62

13 ——— *Limitation—Settlement* In a suit for possession where defendant denies plaintiff s title and sets up a defence involving the plea of limitation the question of limitation does not depend upon whether defendant was in possession but upon whether plaintiff was in possession Where defendant admitted that the permanent settlement was ordered to be made with the party in possession and that it was made within twelve years prior to the suit with the party from whom plaintiff claimed —*Held* that until the contrary was shown that party was rightly presumed to be in possession and plaintiff s claim was not barred by limitation MAHOMED KOBEER *v* ABDOOL AZEEM 24 W R 315

14. ——— *Suit for possession—Proof of title* In a suit to obtain possession where defendant pleads limitation plaintiff is bound not only to prove his title but also to show affirmatively that his cause of action accrued within twelve years before the commencement of the suit and he must succeed upon the strength of his own title not upon the weakness of his opponent s LUTCHOO KHAN *v* FOLEY 24 W R 273

15 ——— *Suit for possession—Limitation* In a suit for possession of land the defendants claimed to hold under a valid miras tenure so as to be entitled to the ground rent from the raiyats and to pay the plaintiff who was the su[illegible] versely to the plaintiffs as mirasdars for more than twelve years and that the plaintiffs had notice of such adverse holding *Prahlad Sen* v *Budhu Singh 2 B L R P C 111* cited and followed OGRA KANT CHOWDHREE *v* MOHESH CHUNDER SICKDAR 4 C L R 40

16 ——— — *Dispossession—Presumption—Onus probandi—Limitation—Joint owners Adverse possession between* Under the former Limitation Act the cause of action and under the present law the event from which limitation is declared to run must have occurred within the prescribed period and it lies on the plaintiff to show this Accordingly where the suit is for possession and the cause of action is dispossession the plaintiff is bound to prove possession and dispossession within twelve years. Possession is not necessarily the same thing as actual user When land has been shown to have been in a condition unfit

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

ting it for actual enjoyment in the usual modes at such a time and under such circumstances that that estate naturally would and probably did continue till within twelve years before suit it may properly be presumed that it did so continue and that the previous possession continued also until the contrary is proved Such a presumption is in no sense a conclusive one Its bearing upon each particular case must depend upon the circumstances of that case Many acts which would be clearly adverse and might amount to dispossession as between a stranger and the true owner of land would between joint owners naturally bear a different construction. MAHOMED ALI KHAN v ABDUL GUNNY

I L R 9 Calc 744 12 C L R 257

17 ——— *Conflicting evidence of possession—Presumption of possession from title—Possession and actual user—Character of land in dispute—Mode of enjoyment* It is only when the evidence of possession is strong on both sides and apparently equally balanced that the presumption that possession goes with title should prevail The principle does not apply where the evidence of possession is equally unworthy of reliance on both sides *Dhram Sing v Hurpershad Sing I L R 12 Calc 38* explained Possession however is not necessarily the same as actual user When therefore the plaintiff has to prove possession of land in dispute within the statutory period of limitation if there is anything special in the character of the land for example when it is permanently or temporarily incapable of actual enjoyment in any one of the customary modes a presumption in favour of continuance of possession though in no sense a conclusive one may arise *Mahomed Ali Khan v Abdul Gunny I L R 9 Calc 744 12 C L R 257* referred to THAKUR SINGH v BHOGERAJ SINGH **I L R 27 Calc 25**

18 ——— *Suit for possession—Previous dispossession—Limitation—Evidence* In every suit for the recovery of land on ...

... *Perkyn* [illegible] *App Cas 951* and *Noyes v Crawley 10 Ch D 31 3*[illegible] cited BHOOTHNATH CHATTERJEE v KEDARNATH BANNERJEE **I L R 9 Calc 125**

19 ——— *Suit for possession—Previous dispossession—Limitation* Where in a suit for the recovery of land based on title the plaintiff alleges that he has been in possession of the land and was dispossessed therefrom by the defendant within twelve years prior to the institution of the suit mere proof of such possession will not be sufficient to entitle the plaintiff to a decree *Wise v Amirunnissa Khatoon L R 7 I A 73* followed. *Kalim Manji v Khowa Bussio 5 C L*

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

R 278 disapproved EPTAZA HOSSEIN v BANY MISTRY **I L R 9 Calc 130 11 C L R 393**

20 ——— *Limitation Act 1877 Sch II Art 142—Burden of proof—Date of dispossession or discontinuance of possession* The claimants had shown that they formerly were proprietors of the land to which they alleged title and from which they claimed to oust the defendants but they had been dispossessed or their possession had been discontinued some years before this suit was brought by them and the land was occupied by the defendants who denied their title That being so the burden of proof was on the claimants to prove their possession at some time within the twelve years (prescribed by Art 152 of Sch II of Act XV of 1877) next preceding the suit That the claimants certainly showed an anterior title was not enough without proof of their possession within twelve years to shift the burden of proof on to the defence to show that the defendants were entitled to retain possession MOHIMA CHUNDER MOZUMDAR v MOHESH CHUNDER NEOGI **I L R 16 Calc 473 L R 16 I A 23**

21 ——— *Limitation Act (XV of 1877) Sch II Arts 142 144—Burden of proof* The plaintiff who was the sister of the defendant sued in 1888 to recover from him a moiety of a paramba purchased by them jointly in 1877 In 1878 the plaintiff went to live elsewhere but from time to time returned and spent a few days with the defendant on the land in suit The defendant pleaded limitation *Held* that the Limitation Act Sch II Art 144 applied to the suit and the burden of proving adverse possession lay on the defendant ALIMA v KUTTI

I L R 14 Mad 96

22 ——— *Limitation Act (XV of 1877) Arts 142 and 144* In cases falling under Art 142 of the Limitation Act the plaintiff must at the outset show possession within twelve years and cannot rest merely on a proof of title while in cases falling under Art 144 the plaintiff ...

Limitation Act and that it was for the plaintiff to show that he or those under whom he claimed had been in possession within twelve years before suit *Rao Karan Singh v Bakar Ali Khan I L R 5 All 1 L R 9 I A 99* and *Mohima Chunder Mozoomdar v Mohesh Chunder Neogi I L R 16 Calc 473 L R 16 I A 23* explained TAKI ABDULLA v BABAJI GUNGAJ **I L R 14 Bom 458**

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

23 ———————— *Limitation Act (XV of 1877) Art 142—Sale while vendor is out of possession—Adverse possession* In a suit brought by a vendee to recover possession of immoveable property which was not in the possession of his vendor at the time of the sale the defence having raised the point of adverse possession for more than twelve years —*Held* that the onus lay upon the plaintiff to show that the claim was not barred by the defendant s adverse possession by proving that his vendor had been in possession within twelve years *before the date of sale under Art 142 Sch II* of the Limitation Act KASHINATH SITARAM OZE *v* SHRIDHAR MAHADEV PATANKAR

I L R 18 Bom. 343

24 ———————— *Suit for possession of immoveable property—Question of title —Limitation Act s 28* Where a suit for the recovery of possession of immoveable property is resisted by a plea of adverse possession for more than twelve years the question of limitation becomes a question of title and it lies upon the plaintiff in the first instance to give satisfactory *primâ facie* evidence of his possession within twelve years of the suit *Mohima Chunder Mozoomdar* v *Mohesh Chunder Neogi I L R 16 Calc 473* and *Parmanand Misr* v *Sahib Ali I L R 11 All 438* referred to JAFAR HUSAIN *v* MASHUQ ALI

I L R 14 All. 193

25 ———————— *Suit for possession of immoveable property* In a suit for possession of immoveable property it is for the plaintiff to show by some *primâ facie* evidence that he has a subsisting title not extinguished by the operation of limitation before the defendant can be called upon to substantiate a plea of adverse possession *Parmanand Misr* v *Sahib Ali I L R 11 All 438* and *Jafar Husain* v *Mashuq Ali I L R 14 All 193* referred to In dealing with the question of possession as between brothers and sisters in native families regard must be had to the conditions of life under which such families live and to the fact that in such families the management of the property of the family is by reason of the seclusion of the female members ordinarily left in the hands of the male members In the case of such families slight evidence of enjoyment of income arising from the property is sufficient *primâ facie* proof of possession *Fazal Karim* v *Umda Bibi All Weekly Notes (1884) 171* referred to INAYAT HUSEN *v* ALI HUSEN

I L R 20 All. 182

26 ———————— *Suit for possession—Limitation Act (XV of 1877) Art 142—Evidence and proof of possession* A suit for the proprietary possession of land was defended on the ground of limitation resting on the defendant s possession displacing the plaintiff s case that her predecessor in title had possessed the land within twelve years before the suit This defendant had a possession which was admitted to have extended back for seven years before the suit The documentary evidence showing that he had been in possession for more than five years immediately preceding those seven years was exactly similar to the evidence which accompanied his possession during that period The evidence consisted of a series of documents such as were usually given to and received by the possessor of lands and they extended throughout the period in dispute going back far behind the twelve years which would bar It was not necessary to consider whether the burthen of proof was shifted merely by the seven years admitted possession as the additional evidence raised the inference that the same possession had continued for more than twelve years *Held* that the burthen of rebutting this inference had not been discharged by evidence given by the plaintiff while the evidence for the defendant had amply sustained the burthen originally laid upon him to show his twelve years possession INNASIMUTTU UDAYAN *v* UPAKARATH UDAYAN I L R 23 Mad 10

27 ———————— *Ejectment suit for—Limitation* In an action of ejectment the plaintiff need not fail merely because he cannot prove that he has been in possession of the land claimed within twelve years he must show that his cause of action (that is the taking possession of the land by another person) has accrued within that period PANDURANG GOVIND *v* BALKRISHNA HARI 6 Bom A. C 125

28 ———————— *Suit for possession—Ejectment—Evidence—Previous possession* Where in a suit for possession of land the plaintiff proves merely that he has been in possession of the disputed land at some time within twelve years previous to the filing of the plaint such evidence is not sufficient to throw upon the defendant burden of proving his title to the land *Wise* v *Amirunnissa Khatoon L R 7 I A 73* followed and *Gour Paroy* v *Woomа Sonduree Debia 12 W R 472* cited. DEBI CHURN BOIDO *v* ISSUR CHUNDER MANJEE

I L R 9 Calc 39 11 C L R 342

29 ———————— *Ejectment suit for—Proof of possession—Dispossession* In an

within twelve years and this rule is not intended to be interfered with by the Privy Council in *Radha Gobind Roy* v *Inglis 7 C L R 361* MORO DESAI *v* RAMCHANDRA DESAI I L R 6 Bom. 508

30 ———————— *Right of Crown to waste lands—Title suit by Crown for declaration of title and possession* Assuming that the Crown has the right to oust any person who without sanction occupies waste land which has not been appro-

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

priated for any public purpose it cannot by a suit brought for a declaration of title or for ejectment the date at which the cause of action arose not being stated in the plaint compel a defendant to prove possession for sixty years As a general rule a plaintiff must not only show he has a title but that he has a subsisting title which he has not lost by the prescriptive section of the Limitation Act The probable explanation of the ruling in *Radha Gobind Roy s Case 7 C L R 364* is that when a plaintiff proves title and possession it is to be presumed that his possession continues till the defendant proves that the possession was interrupted but that where the plaintiff can prove title only and not possession he must prove that the adverse possession of the defendant or the acts of which he complains as impugning his title occurred within the period prescribed by the Limitation Act SECRETARY OF STATE FOR INDIA v VIRA RAYAN

I L R 9 Mad. 175

31. ——— ——— *Waste land subsequently made cultivable—Presumption—Constructive possession* The doctrine of constructive possession applies only in favour of a rightful owner and must not as a rule be extended in favour of a wrongdoer whose possession must be confined to land of which he is actually in possession In a suit for the possession of lands formerly unculturable but subsequently brought under cultivation the District Judge had allowed the plea of limitation to prevail against the plaintiff upon a finding—based not upon evidence of actual possession by the defendants but upon an inference from part of the evidence—that the defendant had been in constructive possession for over twelve years prior to the suit *Held* that so far as the judgment and decree of the District Judge related to certain plots described as patit or unculturable lands they must be set aside and the case remanded to the District Judge to determine (*a*) how far the presumption in favour of the plaintiff as to the continuance of the unculturable state of the lands till within twelve years of suit applied and (*b*) how far that presumption had been rebutted by evidence of actual possession on the part of the defendants MOHINI MOHAN ROY v PROMODA NATH ROY

I L R 24 Calc 256
1 C W N 304

32 ——— *Dispossession—Ejectment—Evidence—Proof of title* In June 1878 the plaintiff sued the defendant for the recovery of possession of certain land At the trial it was proved that he had been continuously in peaceable possession of the land until the month of May 1878 when he was forcibly and illegally dispossessed by the defendant. *Held* that the evidence was sufficient to call upon the defendant to show his title to the land MOHABEER PERSHAD SINGH v MOHABEER SINGH **I L R. 7 Calc 591 9 C L R. 164**

33 ——— *Suit for possession after wrongful dispossession—Proof of title* In a suit for possession it was found that the plaintiff had been in possession within twelve years from the institution of the suit but he had been wrongfully dispossessed by the defendant The plaintiff was unable to prove possession previous to being ousted for a longer period than eleven years *Held* that the ouster by the defendant having been wrongful the onus was not thereby shifted to the plaintiff and that under the circumstances the defendants were bound to prove their title *See Mohabeer Pershad Singh v Mohabeer Singh I L R 7 Calc 591 9 C L R 164* BROJO SUNDER GOSSAMI v KOILASH CHUNDER KUR **11 C L R 133**

34 ——— *Suit for possession where defendants have been long in possession—Limitation* In a suit by Government against ghatwals the defendants were found to have been in possession for a very long time and although they had failed to prove possession in excess of sixty years the onus was held to lie on the Government to prove possession within sixty years BROMANUND GOSSAIN v GOVERNMENT **5 W R 136**

35 ——— *Limitation—Boundaries* No proof of anterior title in the claimant such as would be involved in the decision of a question of boundaries in his favour can relieve him of the burden of proving that he was in possession within twelve years prior to suit or shift it upon his adversaries so as to compel them to prove the time and manner of his dispossession TARA SINGH v CHAIDA MULL **2 Agra 177**

36 ——— *Limitation—Suit by reversioner to set aside alienation by widow* In a suit for possession by the purchaser of the right of a reversioner to the estate of a widow which was instituted within one day of the extreme time of twelve years allowed by the law of limitation reckoning from the alleged date of the widow s death —*Held* that it was necessary under such circumstance for the plaintiff in order to rebut the plea of limitation to prove not only that the widow died on the date alleged but that she actually held possession up to the time of her death KALEE NATH v JOY DOORGA DOSSEE **11 W R 173**

37 ——— *Suit for possession—Limitation—Chur lands* In a suit to recover possession of land under cultivation when the defendant pleads adverse possession it is under ordinary circumstances for the plaintiff to show *primâ facie* that the cause of action upon which he is suing is not barred by limitation and not for the defendant to prove his adverse possession in the first instance When a suit is brought for possession of jungly or unculturable lands or lands which have never been under cultivation the rule is different and the defendant must establish his adverse possession for more than twelve years When a suit is brought for possession of chur or other land under

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

cultivation at the time of the institution of the suit but previously jungly or unculturable the *onus probandi* still lies on the plaintiff but on his proving that the chur was formed or the land first became culturable within twelve years before he instituted his suit the onus is shifted to the defendant who must establish his adverse possession for more than twelve years MAHOMED IBRAHIM *v* MORRISON

I L R 5 Calc 36

38 ———— **Suit for possession of land after submersion**—*Limitation* Where the suit was for possession of certain land on the allegation that it was land belonging to plaintiff s village but submerged at the time of settlement if the plaintiff could show the identity of the land submerged with the land which has since been left dry the onus is on the defendant to show that some other person had been in adverse possession for twelve years before the plaintiff preferred his claim and that such adverse possession commenced from a time when plaintiff was in a position to dispute it HUR SAHAI *v* MAHOMED DAIM KHAN

2 Agra 64

39 ———— **Accreted lands**—*Re survey of lands* In a suit in which plaintiff claimed some land as an accretion to his estate but in which defendant claimed the [illegible]

defendant s who indeed had obtained a decree for it against the Government —*Held* that before plaintiff could be entitled to a decree for the land [illegible]

25 W R 129

40 ———— **Suit for possession of alluvial land**—*Evidence of possession in absence of landmarks* The plaintiff sued to recover a tract of chur land as parcel of his mouzah of J the defendant alleging the said land to be a parcel of his mouzah of G About the year 1830 a large tract of land was diluviated by the River Chutol within the mouzahs belonging respectively to the plaintiff and defendant and after re formation in 1837 a proceeding was taken by the plaintiff before the Magistrate under which he was ordered to be put in possession of a considerable tract of such newly formed land the Magistrate laying down the boundaries After nearly twelve years (*i e* in 1849) the defendant s father brought a civil suit to set aside the Magistrate s decision and the ultimate finding was that the plaintiff had been in possession of the land described in the Magistrate s order from and since the date of that order *Held* that that decree must be taken to have established that the plaintiff was in possession of the land described in the Magistrate s order and had continued in such possession the question in the present suit being whether the lands now claimed are identical with those so described *Held* also that the onus of proving that issue lay upon the plaintiff because the foundation of his suit was that having been in possession he was dispossessed as a consequence of certain measurements made by Government officers *Held* further that plaintiff had failed to sustain the burden of proof He relied principally on the boundaries given by the Magistrate and certain maps prepared then and later as compared with the Government map of 1853 but their Lordships were unable to place firm reliance upon any inference drawn from these maps Their Lordships were also of opinion that in questions of this kind where the natural boundaries and landmarks have disappeared evidence of possession was very important and satisfactory and that there was no reason to distrust the witnesses of the respondent proving such possession GRIJA KANT LAHORI CHOWDHRY *v* HURISH CHUNDER CHOWDHRY

19 W R P C 114

41 ———— *Right to alluvial land—Change in course of river—Boundaries —Disputed settlement* At the permanent settlement

men
(zilla
Saru
nel

resumed by Government and settled with the zamindars of Sohagpore In 1846 it was again settled with the same zamindars who remained in possession until 1848 when the river having returned to its northern channel the deara land was claimed by proprietors on the southern or Sarun side of the river the consequence was an Act IV of 1840 suit which was decided in favour of the zamindars of Sohagpore In 1856 on the expiry of the last temporary settlement the question arose with whom Government should engage for the revenue and it was finally decided by the Board of Revenue that a settlement should be made with the zamindars of Dumri who accordingly obtained possession The Board s decision proceeded on two principles —*viz* that a usage existed that the main channel of the Gunduck should be the boundary of the zamindaries and that therefore the interest of the zamindars of Sohagpore had been of a limited temporary and conditional character These zamindars then brought a suit to impeach this settlement and to recover possession. After decision appeal and remand it was finally decided by the High Court that the land in dispute was identical with that formerly settled with the maliks of Sohagpore who (it was assumed) had a permanent proprietary interest therein *Held* that the proper

ONUS OF PROOF—contd

27 LIMITATION AND ADVERSE POSSESSION —contd

issues to be tried were *first* whether the land had been settled in 1837 with the maliks of Sohagpore as

has been since a clear and definite usage such as supposed by the Board of Revenue the burden of proving the affirmative of this being on the defendant. RAJENDUR PERTAB SAHEE v LALLJEE SAHOO **20 W R P C 427**

42 ——— **Alluvion and diluvion**—*Alluvial land after diluvion—Re formation of chur land—Limitation* In a suit for possession of chur lands as re formations on the original site of plaintiff s or his vendor s lands or accretions thereto where limitation is pleaded by defendant in adverse possession the onus lies on plaintiff to prove that before disappearance or diluvion the land in dispute was in the possession of his vendor GOKOOL KRISTO SEN v DAVID **23 W R 443**

The evidence to be given and the onus of proof in cases of re formed chur lands was also discussed in AUKHIL CHUNDER CHOWDHRY v DELAWAR HOSSEIN **6 C L R 93**

43 ——— *Re formation on old site of lands after diluvion—Limitation* Where in a suit for possession of lands which have re formed upon the old site after diluviation the defendant relies upon a statutory title of twelve years possession the plaintiff in order to succeed must according to the rule laid down in the case of *Nitrasur Singh v Nund Loll Singh 8 Moo I A 199* prove satisfactorily that the defendant has not been in possession for the period of twelve

ing the institution of the suit it is incumbent on the plaintiff to show specially the portion if any which has not so re formed *Per* JACKSON J —I am unable myself to see on what principle or by what means the Court could of itself undertake to divide the portion of the land which may have re formed within twelve years from the larger part which evidently re formed more than twelve years ago and had been in the adverse possession of the defendants IUNJIT SINGH v SCHOENE KILBURN & Co **4 C L R 390**

44. ——— *Diluvion—Possession on re formation—Subsequent diluvion—Possession Suit for Per* GARTH C J —Where a person can show that he has been in possession of certain lands prior to such lands becoming diluviated his possession must be considered as continuing during the time of diluvion until such time as he becomes dispossessed by some other person and in such a case the onus lies upon the dispossessor to

show that he has acquired a title under the law of limitation which has put an end to the rights of the original possessor *Nitrasur Singh v Nund Loll Singh 8 Moo I A 199* and *Padha Gobind Roy v Inglis 7 C L R 364* distinguished KALLY CHURN SAHOO v SECRETARY OF STATE FOR INDIA **I L R 6 Calc 725 8 C L R 90**

45 ——— *Suit for possession of land—Presumption of possession and ownership* If in a suit for possession of land which was covered with water more than twelve years before the institution of the suit the plaintiff proves that he exercised acts of ownerships as by letting out the julkur to tenants that is *primâ facie* evidence of possession and ownership and unless the defendant can make out a twelve years statutory title by adverse possession the plaintiff s possession must be presumed to have continued and it is not necessary for him to show a possession by acts of ownership within the twelve years MOHINY MOHUN DAS v KRISHNO KISHORE DUTT
I L R 9 Calc 802 12 C L R 337

46 ——— *Alluvion and diluvion—Title—Limitation—Acts of ownership* In a suit for declaration of title to and recovery of possession of alluvial lands which had been diluviated

out alleging or proving possession during that period The defendants on the other hand alleged that the re formation had taken place more than twelve years before suit and that they had acquired a title to the lands by adverse possession for that period. *Held* that in such a case the submergence of the lands after diluvion ought to be presumed until the contrary was shown and that the onus of proving reformation before twelve years and adverse possession was shifted to the defendants *Per* WILSON J —As a general rule where a plaintiff claims land from which he alleges he has been dispossessed the burden is upon him to show possession and dispossession within twelve years Proof of possession within twelve years does not necessarily mean proof of acts of ownership within that time The nature of the proof of possession must depend on the nature of the case There are many cases in which the party on whom the burden of proof in the first instance lies may shift the burden to the other side by proving facts giving rise to a presumption in his favour In the case of lands gradually diluviated and gradually re formed if the diluviation has been more than twelve years before suit, the claimant unless he can show possession since the re formation must at least show that he was in possession down to the date of the diluviation. Where the true owner is in possession at the time of diluviation his possession is presumed to continue as long as the land continues

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

submerged probably also afterwards until he is di posse sed *Per* FIELD *J*—Although according to the general rule it lies upon the plaintiff who is met with a plea of limitation to show his own pos e ion within twelve years before the in titution of the suit when the property in dispute is apable of actual or vi ible pos es ion yet in the ca e of property which is not su ceptible of actual and visible po ession an exception from the nature of the thing mu t be made to the general rule In such ca e when the title and po es ion have been proved to be in a certain person up to a certain point of time—when there has been no tran fer of the title to any third person and there is no evidence that pos es ion was exercised by a person other than the person having the title—so long as actual vi ible pos e sion was possible the po e ion of the person having the title will be pre umed to continue until the property has again become su ceptible of actual vi ible po e sion Proof of po ession is presumptive proof of owner ship because men generally own the property which they pos ess And if the owner hip of property is proved and there is nothing to show that the posses ion of such property is with any person other than the owner it may fairly be presumed to be with the owner Such a presumption then takes the place of evidence to show the plaintiff s possession within twelve years before suit of a property in which from the nature of the thing evidence of actual pos ession is impo ible MANO MOHUN GHOSE *v* MOTHURA MOHUN ROY

I L R 7 Calc 225 8 C L R 126

47 ——————— *Diluviation—Subordinate tenure—Suit for recovery of possession of land—Re formation on the site of plaintiff s villages* In a suit brought by the plaintiffs on the 10th December 1888 for recovery of posse sion of three plots of land on the allegation that the lands

plaintiffs to prove possession of the lands in dispute previous to the diluviation but the onus lay on the

15 and *Davis* v *Abdul Hamed 8 W R 55* referred to GYNOA KUMAR MITTER *v* ASUTOSH GOSSAMI

I. L. R 23 Calc 863

48 ——————— *Accretion—Right of riparian proprietors—Title to a lluvial land contested between villages on opposite banks—Prescription.* The plaintiffs were the proprietors of

the northern leaving the tract of alluvial land now in dispute This appeared on its previous site to the south of the main stream. It was then carried away by diluvion and again appeared after that This land was claimed by the plaintiffs not as part of their old land but on the tr ngth of their having held possession adversely and without interruption

of the river towards the north and after the re ap pearance of the alluvial land on the south of the current the land had been taken by the Government into their possession and that the latter had made over the greater part of it to the defendants who had since held this part There had not been shown to have been any actual possession held of the re mainder by the plaintiffs who had thus failed as to the whole to prove the continued possession necessary to their acquiring title UDIT NARAIN SINGH *v* GOLABCHAND SAHU I L R 27 Calc 221 L R 26 I A. 236

49 ——————— *Limitation Act (XV of 1877) Sch II Arts 142 144—Boundaries Dispute as to—Ownership of land reclaimed from a bhil contested between proprietors of contiguous estates—Prior possession of land by one of two claimants—Presumption as to continuance of pos session of land by original owner limitation being pleaded by party in possession* In suits relating to disputed boundaries where the decision of the lower Court as to the ownership involves questions of the correctness of surveys maps recorded description and other such evidence the appellant should do more than show points requiring ex planation He should be prepared to show in what respect the decision has been wrong in regard to the evidence and what other course would be right. The question was as to the ownership of land reclaimed from a bhil within the confines of

title had been affirmed in proceedings of the revenue survey in 1857 In consequence of the nature and condition of the land there was no evidence of any act of pos ession done by either party

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVEPSE POSSESSION —*contd*

during the first two years of the twelve immediately preceding the date of the institution of the suit and during the last ten years the defendants had been in posses ion The latter having tried and failed to establish adverse posse sion in themselves contended that even if the plaintiff s po session had been shown to have existed in 18 7 he could not succeed without his showing that his pos ession remained till later than the 9th April 1869 the suit having been filed on 9th April 1881 or unless he proved som ac of disposse sion by the defendants within that period *Held* that the presumption was in favour of the plaintiff s posse sion which had been with apparent title having in fact con tinued over the two years in question as to which continuance there was no evidence to the contrary If the burden was on the plaintiff to show posse sion down to within twelve years of suit it had been discharged RAJKUMAR ROY v GOBIND CHUNDER ROY I L R 19 Calc 660 L R 19 I A 140

50 ——————— *Suit for posses sion of lands forming bed of river—Fishery rights —Presumption—Po session* In a su t to recover pos es ion of certain lands in the bed of a river which had changed its course and to get rid of the effect of a Deputy Magistrate s order under s 318 Criminal Procedure Code 1861 it was found that plaintiffs had been in po se ion when the lands were surveyed some years previou ly as part of their village and had continued in posse sion up to the year in which the criminal proceeding was held *Held* that the presumption rai ed by the plaintiff s continued and undisturbed po es ion was not re butted by defendant s allegation that he was entitled to the julkur of the river HOOG v DEVONOTH KOONDOO 11 W R 566

[illegible]

but pos e ion was delivered to the purchaser more than fifteen years after the ale such irregularity wa held not to entitle the party first mentioned to a de r e in a suit to recover the property unless he c uld prove possession for a period of more than twelve years before he was di po es ed ATTOT RAM DOSS v BALUNKEE DOSS 14 W R 357

52 ———— **Suit for confirmation of title**—*Po ion* In a uit by a Hindu widow for confirmation of her title to certain land in right of her hu band the defendant who had a possessory award of th pr p rty given to her un ler s 1 Act XIV of 18 9 pleaded that the plaint iff was n ver in po ses ion *Held* that the onus was on the plaintiff to sh w that she was in posses sion within the period of limitation. SHANTO MONEE GOOPTAH v SUTTO BHAMA GOOPTAH 7 W R 34

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

53 ——————— *Suit to estab lish proprietary right* Where plaintiff sues to establish proprietary right as against a mokurari dar it is not necessary for him to prove that he has been in actual possession within twelve years PRO TAP NARAIN MOOKERJEE v KARTICK CHUNDER MOOKERJEE 10 W R 192

54 ———— **Limitation**— *Suit on bond— Instalment bond—Indorsement of payment of in stalment* Where a defendant sets up the defence of limitation he must plead it and show that the claim is barred. If when the plaintiff has proved his case the facts show that the cause of action accrued at a date earlier than the period of limita tion and the plea of limitation has been set up by the defendant the latter will be entitled to take ad vantage of the plaintiff s evidence that the claim is barred and to have judgment given in this favour The obligee of a bond by which the obligor cove nanted to pay the sum of R3 800 by annual in [illegible]

[illegible]

debt became due at an earlier date than that stated by the plaintiff and that the claim was barred by limitation. *Held* that inasmuch as the defend ant adduced no evidence to show that the later instalments were not paid and inasmuch as the evidence produced by the plaintiff did not show that the debt accrued at a date earlier than the limita tion period the plea of limitation failed RADHA PRASAD SINGH v BHAJAN RAI I L R 7 All 677

55 ——————— *Suit for posses sion by member of family admittedly not joint— Partition.* The plaintiff sued for posses ion of certain property alleging that it had belonged to a joint family of which he had been a member and had been allotted to him on partition The parti tion was not proved and the suit was dismissed on the ground of limitation. On second appeal it was contended that if the partition was held not to be proved the family must be held to be joint and as the possession of one member could not be adverse to another the decree dismis ing the suit on the ground of limitation was erroneous. *Held* that [illegible]

had not done so his suit was properly dismissed TULSHI PERSHAD v RAJA MISSER I L R 14 Calc 610

ONUS OF PROOF—contd

27 LIMITATION AND ADVERSE POSSESSION —contd

56 ——— *Limitation Act (XV of 1877) Sch II Arts 127 and 144—Suit for possession of land alleging a previous partition* The defendant had purchased the land in question at a sale in execution of a decree obtained by him against cousins of the plaintiff The plaintiff claimed to recover the land alleging that it was his share of ancestral property which had been allotted to him on partition four or five years before suit and of which he had actually been in separate possession. The lower Court upon these allegations rejected the plaintiff claim holding that the suit was not one for partition and did not fall within Art 127 of the Limitation Act (XV of 1877) but that Art 144 applied and that the plaintiff had failed to show that the defendant s adverse possession had begun within twelve years preceding the suit On appeal to the High Court —*Held* reversing the decree and sending back the case that under Art 144 it was for the defendant to prove adverse possession for twelve years before suit HANMANTA KOLAJI v MAHADEV KONDAJI

I L R 18 Bom. 513

57 ——— *Suit for redemption of usufructuary mortgage—Plaint form of—Proof of title —Evidence Act (I of 1872) s 118* There is a clear distinction as to the onus of proof between cases where a plaintiff sues for possession of land by redemption of mortgage and cases where the defence to a suit for possession of land is twelve years adverse possession by the defendant In each case the plaintiff must plead his title and if that title is in issue he must make it out by at least *primâ facie* evidence before the defendant can be put to proof of his defence Where the defence is twelve years adverse possession the defendant must plead and make out the title he alleges and thus show that the title of the plaintiff which otherwise had been proved or admitted was lost In a suit for possession of land by redemption of mortgage the very nature of which presupposes that the possession of the defendant or his predecessor was lawful the plaintiff must in his plaint show the title upon which he relies and therefore a title subsisting at the date of suit Unless he gives *primâ facie* evidence to show that his suit is within time he fails to prove his title or subsisting right to the property *Philipps v Philipps L R 4 Q B D 127 Dawkins v Lord Penrhyn L R 4 Ap Cas 51 Radha Gobind Roy Sahib v Inglis 7 C L R 364 Rao Karan Singh v Bakar Ali Khan L R 9 I A 99 Raja Kissen Dutt Panday v Narendar Bahadur Singh L R 3 I A 85 Ram Chandra Apaji v Balaji Bhaurav I L R 9 Bom 137* and other cases referred to PARMANAND MISR v SAHIB ALI

I L R 11 All 438

58 ——— *Possession of usufructuary mortgagees* The possession of a usufructuary mortgagee being the possession of all the persons who have the right of redemption that is of all the persons entitled to the estate it is only when after redemption possession is taken by some of the persons so entitled that their possession can become adverse as against the others INAYAT HUSEN v ALI HUSEN I L R 20 All. 182

59 ——— *Limitation—Act XV of 1877 Sch II Art 127—Proof of exclusion from joint family property—Mere non participation in or refusal to live on joint property insufficient—Hindu law—Suit by one of three widows against her two co widows for partition of widow s estate in their late husband s property—Proof of unchastity on part of plaintiff during widowhood no ground for refusal—Tenant in common—Partition a matter of right* One Pangumi died in or about the year 1881 leaving three widows surviving him. The three widows as tenants in common participated for some time in the profits of their late husband s property After his decease one of the widows began to lead an immoral life and refused to live with the other two In 1895 she sued her co widows for partition and for an allotment of her one third share of the property She claimed to have participated in the profits of the family property until 1890 but the defendants contended that she had ceased to participate therein for more than twelve years before the institution of the suit and raised the plea of limitation They also pleaded that plaintiff was not entitled to claim partition by reason of her unchastity It was proved that plaintiff had been living with her paramour subsequent to her husband s decease and had supported herself without recourse to the family property and had refused to live with defendants *Held* that the burden lay on the defendants of proving that plaintiff who was admittedly a tenant in common with them till 1882 was excluded from enjoyment of the property Mere proof of refusal on the part of the plaintiff to live with her co widows or of non participation by her in the family property did not establish ouster or exclusion by defendants and there was no other evidence to show that she had abandoned her interest to their knowledge *Held* also that proof of plaintiff s unchastity after her husband s death did not disentitle her to claim partition of the property by metes and bounds A widow being a tenant in common is entitled to partition as a matter of right and the Court has no discretion in the matter SELLAM v CHINNAMMAL (1901) I L R 24 Mad 441

60 ——— *Joint family—Adverse possession of a co sharer as against another co sharer—Burden of proof* The land in question in this suit had formerly been the joint property of three brother Kalian Dullabh and Vallabh. In 1884 Kalian and Vallabh removed to a village elsewhere and Dullabh was left in exclusive possession of the land which he cultivated until his death in 1894 when his daughter the first defendant

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

during the first two years of the twelve immediately preceding the date of the institution of the suit and during the last ten years the defendants had been in possession The latter having tried and

proved om ac of di possession by the defendants within that period *Held* that the presumption was in favour of the plaintiff s possession which had been with apparent title having in fact continued over the two years in question as to which continuance there was no evidence to the contrary If the burden was on the plaintiff to show possession down to within twelve years of suit it had been discharged PAJKUMAR POY v GOBIND CHUNDER POY I L R 19 Calc 660 L R 19 I A. 140

50 ———— *Suit for possession of lands forming bed of river—Fishery right —Presumption—Possession* In a suit to recover possession of certain lands in the bed of a river which had changed its course and to get rid of the effect of a Deputy Magistrate s order under s 318 Criminal Procedure Code 1861 it was found that plaintiffs had been in possession when the lands were surveyed some years previously as part of their village and had continued in possession up to the year in which the criminal proceeding was held. *Held* that the presumption raised by the plaintiff s continued and undisturbed possession was not rebutted by defendant s allegation that he was entitled to the julkur of the river HOGG v DENONOTH KOONDOO 11 W R. 566

51 ———— **Omission to give purchaser possession until long after sale**—*Suit to recover possession* Where the right title and interest of a party had been sold in execution but possession was delivered to the purchaser more than fifteen years after the sale such irregularity was held not to entitle the party first mentioned to a decree in a suit to recover the property unless he could prove possession for a period of more than twelve years before he was dispossessed ATTOT RAM DOSS v BALUNKEE DOSS 14 W R 357

52 ———— **Suit for confirmation of title**—*Possession* In a suit by a Hindu widow for confirmation of her title to certain land in right of her husband the defendant who had a possessory award of the property given to her under ... Act XIV of 1859 pleaded that he plaintiff was never in possession. *Held* that the onus was on the plaintiff to show that she was in possession within the period of limitation. SHANTO MONEE GOOPTAH v SUTTO BHAMA GOOPTAH 7 W R. 34

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

53 ———— *Suit to establish proprietary right* Where plaintiff sues to establish proprietary right as against a mokurari dar it is not necessary for him to prove that he has been in actual possession within twelve years PROTAP NARAIN MOOKERJEE v KARTICK CHUNDER MOOKERJEE 10 W R. 192

54 ———— **Limitation**—*Suit on bond—Instalment bond—Indorsement of payment of instalment* Where a defendant sets up the defence of limitation he must plead it and show that the claim is barred If when the plaintiff has proved his case the facts show that the cause of action accrued at a date earlier than the period of limitation and the plea of limitation has been set up by the defendant the latter will be entitled to take advantage of the plaintiff s evidence that the claim is barred and to have judgment given in this favour The obligee of a bond by which the obligor covenanted to pay the sum of R3 800 by annual instalments of R200 and ...

amount of the bond He gave credit for payment of the instalments for seven years and alleged that his cause of action arose upon default in payment ...

debt became due at an earlier date than that stated by the plaintiff and that the claim was barred by limitation *Held* that inasmuch as the defendant adduced no evidence to show that the later instalments were not paid, and inasmuch as the evidence produced by the plaintiff did not show that the debt accrued at a date earlier than the limitation period the plea of limitation failed. PADHA PRASAD SINGH v BHAJAN PAI I L R 7 All 677

55 ———— *Suit for possession by member of family admittedly not joint—Partition.* The plaintiff sued for possession of certain property alleging that it had belonged to a joint family of which he had been a member and had been allotted to him on partition. The partition was not proved and ...

to another the decree dismissing the suit on the ground of limitation was erroneous *Held* that ...

had not done so his suit was properly dismissed TULSHI PERSHAD v RAJA MISSER I L R 14 Calc 610

ONUS OF PROOF—*contd*

2, LIMITATION AND ADVERSE POSSESSION —*contd*

56 ——— *Limitation Act (XV of 1877) Sch II Arts 127 and 144—Suit for possession of land alleging a previous partition* The defendant had purchased the land in question at a sale in execution of a decree obtained by him against cousin of the plaintiff The plaintiff claimed to recover the land alleging that it was his share of ancestral property which had been allotted to him on partition four or five years before suit and of which he had actually been in separate possession. The lower Court upon these allegations rejected the plaintiff s claim holding that the suit was not one for partition and did not fall within Art 127 of the Limitation Act (XV of 1877) but that Art 144 applied and that the plaintiff had failed to show that the defendant s adverse possession had begun within twelve years preceding the suit On appeal to the High Court —*Held* reversing the decree and sending back the case that under Art 144 it was for the defendant to prove adverse possession for twelve years before suit HANMANTA KOLAJI *v* MAHADEV KONDAJI

I L R 18 Bom 513

57 ——— *Suit for redemption of usufructuary mortgage—Plaint form of—Proof of title —Evidence Act (I of 1872) s 118* There is a clear distinction as to the onus of proof between cases where a plaintiff sues for possession of land by redemption of mortgage and cases where the defence to a suit for possession of land is twelve years adverse possession by the defendant In each case the plaintiff must plead his title and if that title is in issue he must make it out by at least *prima facie* evidence before the defendant can be put to proof of his defence Where the defence is twelve years adverse possession the defendant must plead and make out the title he alleges and thus show that the title of the plaintiff which otherwise had been proved or admitted was lost In a suit for possession of land by redemption of mortgage the very nature of which presupposes that the possession of the defendant or his predecessor was lawful the plaintiff must in his plaint show the title upon which he relies and therefore a title subsisting at the date of suit Unless he gives *prima facie* evidence to show that his suit is within time he fails to prove his title or subsisting right to the property *Philipps* v *Philipps L R 4 Q B D 127 Dawkins* v *Lord Penrhyn L R 4 Ap Cas 51 Radha Gobind Roy Sahib* v *Inglis 7 C L R 364 Rao Karan Singh* v *Bakar Ali Khan L R 9 I A 99 Raja Kissen Dutt Panday* v *Narendar Bahadur Singh L R 3 I A 85 Ram Chandra Apaji* v *Balaji Bhaurai I L R 9 Bom 137* and other cases referred to PARMANAND MISR *v* SAHIB ALI

I L R 11 All 438

58 ——— *Possession of usufructuary mortgagees* The possession of a usufructuary mortgagee being the possession of all

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*contd*

the persons who have the right of redemption that is of all the persons entitled to the estate it is only when after redemption possession is taken by some of the persons so entitled that their possession can become adverse as against the others INAYAT HUSEN *v* ALI HUSEN I L R 20 All 182

59 ——— *Limitation—Act XV of 1877 Sch II Art 127—Proof of exclusion from joint family property—Mere non participation in or refusal to live on joint property insufficient—Hindu law—Suit by one of three widows against her two co widows for partition of widow s estate in their late husband s property—Proof of unchastity on part of plaintiff during widowhood no ground for refusal—Tenant in common—Partition a matter of right* One Panguni died in or about the year 1881 leaving three widows surviving him. The three widows as tenants in common participated for some time in the profits of their late husband s pro

[illegible]

of the property She claimed to have participated in the profits of the family property until 1890 but the defendants contended that she had ceased to participate therein for more than twelve years before the institution of the suit and raised the plea of limitation They also pleaded that plaintiff was not entitled to claim partition by reason of her unchastity It was proved that plaintiff had been living with her paramour subsequent to her husband s decease and had supported herself without recourse to the family property and had refused to live with defendants *Held* that the burden lay on the defendants of proving that plaintiff who was admittedly a tenant in common with them till 1882 was excluded from enjoyment of the property Mere proof of refusal on the part of the plaintiff to live with her co widows or of non

[illegible] did not

[illegible] nts and

[illegible] she had

[illegible] *Held*

[illegible] after her

husband s death did not disentitle her to claim partition of the property by metes and bounds A widow being a tenant in common is entitled to partition as a matter of right and the Court has no discretion in the matter SELLAM *v* CHINNAMMAL (1901) I L R 24 Mad 441

60 ——— *Joint family—Adverse possession of a co sharer as against another co sharer—Burden of proof* The land in question in this suit had formerly been the joint property of

three broth[illegible]

1884 Kalia[illegible]

elsewhere[illegible]

sion of the[illegible]

in 1894 when his daughter the first defendant

ONUS OF PROOF—*contd*

27 LIMITATION AND ADVERSE POSSESSION —*concld*

entered into posses ion In 1888 however Kaban and Vallabh had sold the land to one Nagar who in 1895 sold it to the plaintiff In 1897 the plaintiff brought this suit for possession. The first Court passed a decree in his favour but on appeal the Judge reversed the decree holding that the defendant and her father Dullabh had had adverse pos es ion for more than twelve years and that the suit was therefore barred. On second appeal *Held* by the High Court that adverse possession had not been proved The burden of proving adverse pos ses ion should have been placed on the defendant Possession to be adverse mu t be shown to be con tinuous public and adequate to the circumstances of the case As between brothers especially when no partition is proved the adverse possession of one should be proved by more sati factory evidence than was given in this case JAGJIVANDAS v BAI AMBA (1900) I L R 25 Bom. 362

28 MESNE PROFITS

1 ———— **Suit for mesne profits**—*Possession by wrong doer* In suits for mesne pro fits when the defendants have been in po ession of the property as wrong doers it lies upon them to show what were the sums realized as rent during the time of their possession BROJENDRO KUMAR ROY v MADHUB CHUNDER GHOSE

I L R 8 Calc 343

2 ———————— *Mesne profits suit for—Onus—Notice of vacating possession* In a suit for mesne profits as in other cases it is in cumbent on the plaintiff to establish not only the existence of his right but also the extent of it There is nothing in the circumstances of the present case to take it out of this general rule ISHAN CHANDRA BURDHAN v MINUDDIN MIA (1901)

5 C W N 720

29 MINORITY

1 ———— **Plea of minority** Where a defendant pleads minority the onus on him to prove his plea NILMONEE CHOWDHRY v ZUHEERUNISSA KHANUM 8 W R 371

CHYET NARAIN SINGH v BUNWAREE SINGH

23 W R. 395

30 MONEY LENT

1. ———— **Failure to prove an alleged transaction of lending money** Upon the evi dence the decision of the High Court was affirmed as to a question of fact as whether the defendant s deceased father had or had not in his lifetime in consideration of a payment to his order by the plaintiff promised repayment. The High Court reversing the decree of the first Court had found that there had been no sufficient proof of the alleged

ONUS OF PROOF—*contd*

30 MONEY LENT—*concld*

transaction. This was the conclu ion also on this appeal and although it was possible that the money might (as it was indicated in the judgment) have been wrongly obtained from the plaintiff by persons about him it was not shown to have been received by the alleged borrower LACHMI PRASAD v NARENDRO KISHORE SINGH

I L R 14 All 169
L R 19 I A. 9

31 MORTGAGE

1 ———— **Suit for redemption of mort gage**—*Alleged sale* In a suit for redemption of property which the plaintiff alleges to be mortgaged but which the defendant contends was [illegible]

[illegible]

2 ———————— *Evidence Act I of 1872 s 110* The plaintiff sued to redeem certain land alleging that it had been mortgaged by his father to the defendant in 1854 55 The defendant denied the mortgage and alleged that he purcha ed it under a deed of sale from the plaintiff s father in [illegible]

Court of first instance The defendant appealed *Held* that the defendant s pos es ion was *prima facie* evidence of a complete title and that the plain tiff who alleged that the defendant was merely a mortgagee was bound to prove his own right as mortgagor clearly and indefeasibly Mere state ments that the property had been mortgaged which failed to establish any particular mortgage did not shift the burden of proof or require the mortgagee to show what were the terms of such mortgage or his right to retain po ession under it RAMCHANDRA APAJI v BALAJI BHAURAV

I L R 9 Bom 137

3 ———————— *Lost mortgage deed* In a suit for redemption the mortgage deed dated 21st July 1840 having been lost the Judicial Commissioner held that the onus lay not upon the mortgagor to prove that the term did not expire before 13th of Februray 1856 but upon the mortga gee to prove that it did *Held* by the Privy Council that the burden of proof was *primâ facie* on the mortgagor regard being had as respects the quantum of evidence required, to the opportunities which each party might naturally be uppo ed to have of giving evidence KISHEN DUTT RAM PANDEY v NARENDAR BAHADOOR SINGH

L R 3 I A 85

4 ———————— *Beng Reg VIII of 1806—Promulgation of Statute.* The plaintiff

ONUS OF PROOF—*contd*

31 MORTGAGE—*contd*.

sued, on the 31st of December 1861 to redeem a mortgage of lands in Sarun dated the 30th of November 1801 The mortgage money was payable on the 28th September 1806 If not paid the property was to vest absolutely in the mortgagee without foreclosure The defendant admitted that he had not foreclosed but stated that Regulation XVII of 1806 was promulgated in Sarun on the 7th January 1807 and consequently that the money became due before the Regulation was promulgated *Held* that the onus was on the plaintiff to prove that the Regulation was promulgated before 28th September 1806 SARIFUNNISSA *v* INAYET HOSSEIN B L R Sup Vol. 415 5 W R 88

5 —————— *Accounts* In taking an account on mortgage in a suit for redemption where the mortgagee had been in possession it lies upon the mortgagor to prove what is due from the mortgagor in respect of principal and interest GANGA MULIK *v* BAYAJI I. L. R. 6 Bom. 669

6 —————— *Profits* In a suit for redemption on the ground that the debt has been satisfied with interest the onus is on the plaintiff. A mortgagee is not an assurer of the continuation of the same rate of profits as his mortgagor was able to raise Hence an estimate of the rental preceding the mortgagor s possession is not sufficient proof of the profits in his time SHAH MAKHANLAL *v* SRIKRISHNA SINGH
2 B L R P C 44 11 W P C 19
12 Moo I. A. 157

7 —————— *Evidence Act I of 1872 s 110* The plaintiffs averring that their ancestor had mortgaged three villages to the ancestors of the defendants in 1842 for R2 500 putting the mortgagees into possession ...

village that they were subsequently mortgaged to their ancestors by him for R14 000 borrowed by him from them ...

mortgage of the 10 biswas of each village of which the defendants alleged the sale lay on the plaintiffs PATAN KUAR *v* JIWAN SINGH
I L R 1 All 194

8 —————— *Possession* Where a suit was brought to redeem a mortgage and the defendants pleaded possession under a sale — *Held* that under the circumstances there having been long undisputed possession that the onus of proving that the possession was less than a proprietary possession and was referable to a mortgage lay on the person who claimed to redeem it RUGHOO NATH RAI *v* CHUNDOO LALL
2 Agra Pt II 195

9 —————— *Joint mortgage—Redemption by one mortgagor—Suit for other mortgagor for his share* K and J jointly mortgaged ...

the mortgage to C had been made forty years before suit The defendants contended that a much longer period ...

had been since its redemption in proprietary and ...

defendants being admittedly in possession though the existence of a mortgage as the origin of their possession was conceded by them it lay upon the plaintiff to give *primâ facie* proof of the subsistence of that mortgage ...

would have been sufficient to satisfy the obligation which lay on the plaintiff *Kishen Dutt Ram Pandey v Narendar Bahadoor Singh L R 3 I A 85* referred to NURA BIBI *v* JAGAT NARAIN
I L R 8 All. 295

10 —————— *Sale of land in execution of decree—Suit by third party to recover* In a suit to redeem certain land demised on kanam in 1850 by A to the predecessor of B C who was in possession of the land was made a defendant A proved his title to the land and possession up to 1850 C pleaded title to the land and denied that B had ever been in possession. Both pleas were found to be false It was found however that C had been in possession from 1869 to 188, and that in 1876 the land had been sold in execution of a decree against C (to which A was not a party) and purchased by D who re sold to C in 1879 The lower Court held that C s possession must be taken to have been derived from B till the contrary was proved *Held* that the burden of proving that his possession was not derived from B lay upon C NILAKANDAN *v* THANDAMMA
I. L. R 9 Mad. 460

11 —————— Usufructuary mortgage—*Mortgagee in possession—Suit for balance of mort*

ONUS OF PROOF—*contd*

31 MORTGAGE—*contd*

gage money A plaintiff in possession under an usufructuary mortgage and suing for the balance due is bound to prove that he has not realized the amount due under the conditions of the lease from the usufruct CHUTTUR DHAREE SINGH v SUREER HOSSEIN **1 W R 28**

12 ——————— *Suit by mortgagee for possession under usufructuary mortgage*

a time the mortgagor tendered the amount of the principal sum and forcibly took possession of the property The mortgagee sued to recover possession and obtained a decree with wasilat *Held* that the plaintiff might have sued under Act XIV of 18 9 s 1 but that suing as he did the onus was on him to produce the accounts and show that something was due to him as interest PRANKISHORE v CHUNDER CHURN BISWAS **19 W R 429**

13 ——————— *Suit by mortgagee for possession and to set aside mokurari lease* In a suit by mortgagees under a zur i peshgi mortgage not only for possession but also for setting aside a mokurari lease which was alleged to have been granted by the mortgagor prior to the mortgage and under which defendants had been in possession for some time in accordance with a Magistrate s order —*Held* that the onus was on the plaintiffs to give some evidence to impeach the validity of the mokurari but this having been done and a strong *primâ facie* case made out the onus was shifted and it became incumbent on the defendants to show that the mokurari was executed before the zur i peshgi and that it was granted

14 ——————— *Suit by mortgagee under usufructuary mortgage* In a suit in which the plaintiff prayed for the sale of property which had been mortgaged to him as security for a loan under a zur i peshgi ijara lease and of which he had been dispossessed by the defendant under colour of a decree it was *held* that as the plaintiff had had for a great many years the usufruct of the land for the very purpose of repaying himself the principal and interest of his loan the burden was on him to show that there was anything remaining due to him and that the onus also was on him to prove that the ijara gave him the right to sell the property upon some contingency MUJEEDUNNISSA v DILDAR HOSSEIN **20 W R 178**

15 ——————— **Suit for possession after foreclosure**—*Civil Procedure Code 1859 ss 239 40—Suit on mortgage—Attachment* A suit on a mortgage foreclosed under Beng Reg XVII of 1806 s 8 comprising property attached before the date of the mortgage under s 81 and the following sections of Act VIII of 1859 was brought against

those claiming was contended

attaching creditor of his possession to prove the non observance of the formalities in question PAMKRISHNA DASS SURFOWJI v SURFUNNISSA BEGUM **I L R 6 Calc 129 L R 7 I A 157**

16 ——————— *Mortgage suit—Fraud—Collusion* In a suit on a mortgage where collusion and fraud are pleaded by a subsequent auction purchaser of the mortgaged property the *onus* is upon the plaintiff to prove that the transaction was perfectly genuine and free from taint of fraud *Brajeshware Peshakar* v *Budhanuddi I L R 6 Calc 268* referred to and explained *Ishan Chunder Sirkar* v *Beni Madhub Sirkar I L R 25 Calc 62* distinguished SHIB NARAIN PAHARI v SHANKAR PANIGRAHI (1900) **5 C W N 403**

32 NOTICE

1 ——————— **Liability under Act**—*Road Cess Act (Beng Act IX of 1880) ss 52 53—Evidence Act s 114—Presumption* Where under an Act certain things are required to be done before any liability attaches to any person in respect of any right or obligation it is for the person who alleges that that liability has been incurred to prove that the things prescribed in the Act have been actually done *Held* that the notice provided by s 5_ of the Road Cess Act did not come within the presumption of s 114 cl (*e*) of the Evidence Act and must be proved ASHANULLAH KHAN BAHADUR v TRILOCHAN BAGCHI **I L R 13 Calc 197**

2 ——————— **Service of notice**—*Execution of decree—Presumption* In the case of execu

33 PARTITION

1 ——————— **Suit for partition**—*Plea of prior separation* In a suit for partition of joint family property in which the defendant pleads that a partition has already taken place the onus is on

ONUS OF PROOF—*contd*

33. PARTITION—*contd*

the defendant to prove the alleged partition Cooroo Pershad Mookerjee *v.* Kalee Pershad Mookerjee **5 W R 121**

2 ——— **Private partition**—*Private arrangement—Subsequent partition by Collector* A and *B* were joint owners of a mouzah *B* leased his share in patni to *C* By arrangement between *A* and *C* a partition of the land was made and each party collected the rents of the lands allotted to him Forty years afterwards a butwara of the mouzah was made by the Collector between *A* and *B* where by lands held by *C* under the previous arrangement were allotted to *A* *C* was no party to the butwara proceedings In a suit brought by *A* against *C* for possession of the lands so allotted the plaintiff alleged that the previous division of the lands between *A* and *C* was a temporary one made after the commencement of the butwara proceedings The lower Appellate Court found that the plaintiff's allegation had not been proved and dismissed the suit *Held* (Tottenham *J* dissenting) that the decree of the lower Court was correct as it lay on the plaintiff to show that the private partition had come to an end Obhoy Churn Sirkar *v.* Hurri Nath Roy **I L R 8 Calc 72 10 C L R 81**

3 ——— **Suit for possession on allegation of partition** In a suit to obtain possession of certain land on the ground that they had been assigned to plaintiffs by a partition made by the Collector —*Held* in the matter of certain of the plots which plaintiffs alleged to be included in particular daghs in the butwara chittahs that as defendants denied that they were so included it was on the plaintiffs to prove their allegation *Held* in respect to a dagh in which plaintiffs were admitted to be entitled to a certain quantity of land that it was their business to prove that the particular lands which they claimed had been assigned to them by the butwara proceedings Bhuggobutty Goopta *v.* Saroda Soondburee Debya **11 W R 337**

4 ——— **Suit for possession after partition**—*Interference with possession after Collector's award* In a suit for possession with mesne profits on the ground that the lands claimed were allotted to plaintiff's share by a butwara under Bengal Regulation XIX of 1814 where defendant admitting the allegation urged that plaintiff had given up possession as soon as the butwara was completed —*Held* that it was for plaintiff to prove that defendant had interfered with the possession awarded to him by the Collector Mobarick Ali *v.* Imdad Ali **16 W R 200**

5 ——— **Suit to have property excluded from partition**—*Nature of possession* In two suits in which the prayer was substantially to have certain property which had been included in a butwara before the Collector excluded from such butwara it was held that as plaintiff's possession was admitted and defendant had failed to prove his plea that such possession was in the quality of tenant under him plaintiff was entitled to a decree Bipin Beharee Lukkun *v.* Ghasoo **11 W R 16**

6 ——— **Suit to stay partition by Collector**—*Specific Relief Act (I of 1877) s 42—Declaration of specific rights* A person bringing a suit under s. 42 of the Specific Relief Act to

only that there has been a private partition but also that under that partition he is entitled to and was in possession of in severalty some specific portion of the property again sought to be partitioned by the Collector and such person is entitled to no declaration affecting the rights of other shares in the parent estate *Khoolun v. Hooma Churn Singh 3 C L R 453* distinguished Kalup Nath Singh *v.* Lala Ramdein Lal **I L R 16 Calc 117**

34. POSSESSION AND PROOF OF TITLE

1 ——— **Suit for possession**—*Weakness of defendant's case—Title proof of* In a suit for possession of land where plaintiff's title and previous possession are both denied it is not proper for a Court to start with the case put forward by the defendant the onus of proof being primarily on plaintiff. Walker *v.* Atma Ram Mundur **14 W R 478**

2 ——— *Person out of possession—Evidence of title* Possession is evidence of title and is primarily exclusive It is for him who impugns this exclusive title to show that the possession arose in some way which has preserved his own right In every case the person who has been out of possession for more than twelve years must make out some *primâ facie* title and some agreement or acknowledgment of that title such that possession is deprived of its ordinary effect through being held on a joint right or a subordinate right Ramchandra Narayan *v.* Narayan Mahadev **I L R 11 Bom 216**

See also Tatya *v.* Anaji **I L R 11 Bom 220 note**

and Vithoba *v.* Narayan **I L R 11 Bom 221 note**

3 ——— *Proof of title* A decree holder sued to establish that certain property was the property of *W* his judgment debtor such property being claimed by *A* as his He proved that for five years and more *W* had been in possession of such property as ostensible owner *Held* that this being so it rested with *A* to prove his title Mathura Das *v.* Mitchell **I L R 4 All 206**

4 ——— *Evidence of title —Dispossession Proof of* Possession is evidence of title and if the plaintiff proves that he has possession and that his possession has been forcibly

ONUS OF PROOF—*contd*

34. POSSESSION AND PROOF OF TITLE—*contd*

disturbed he makes out a *primâ facie* title for the defendant to rebut MAHOMED BUX *v* ABDUL KUREEM *alias* ABOO 20 W R 458

5 ——— *Person in possession without title* In the case of the owner of land seeking to recover possession on the allegation that the party in possession has no right to continue in it and showing a *prima facie* title to possession he can claim a decree unless the party in possession has a tenure entitling him to retain possession RAM MONEE *v* ALEEMOODEEN 20 W R 374

JOYKISHTO MOOKERJEE *v* HUREEHUR MOOKERJEE 12 W R 365

KOONJ BEHAREE RAI *v* BUKSHEE LUCHMUN DOSS 19 W R 188

RAJKISHEN MOOKERJEE *v* PEAREE MOHUN MOOKERJEE 20 W R 421

HUREE MOHUN PODDAR *v* GUREEBOOLAH MULLICK 22 W R 417

KALEE KISHEN ROY *v* BROJENDRO COOMAR ROY CHOWDHRY 24 W R 266

BATAI AHIR *v* BHUGGOBUTTY KOER 11 C L R 476

6 ——— *Dispossession—Proof of title* When a person forcibly dispossessed sues to recover possession the burden of proving title is on the party by whom he was forcibly dispossessed SHAMA SOONDUREE DEBIA *v* COLLECTOR OF MALDAH 12 W R 164

7 ——— *Dispossession—Proof of title* In a suit to recover possession on the allegation of a previous possession and forcible ouster both being denied by defendants who set up a title of their own it is for plaintiffs to prove the alleged ouster If they do so to the satisfaction of the Court the burden of proof will be on the defendants to show the title on which they ousted the plaintiffs Should the defendants prove such a *primâ facie* title then it will be the duty of the Judge to call upon the plaintiffs to establish their title COUR PAROY *v* WOOMA SOONDUREE DEBIA 12 W R 472

DAITARI MOHANTI *v* JUGO BUNDHOO MOHANTI 23 W R 293

8 ——— *Dispossession.* Proper procedure pointed out in a suit for recovery of possession of certain lands on an allegation of illegal dispossession where defendant sets up a superior [illegible] similar [illegible] n such [illegible] then [illegible] e title [illegible] NYAN [illegible] DIBEE 8 W R 354

DARJEE SAHOO *v* TUMEEZOODDEEN 10 W R 102

RADHA BULLUB GOSSAIN *v* KISHEN GOBIND GOSAIN 9 W R 71

9 ——— *Ejectment—Proof of title* Where *A* was illegally dispossessed by *B* of land for which *A* obtained a decree in a suit with *C* and *A* brought a suit to recover possession —*Held* that the dispossession being proved the onus of proving the title was in the first instance on *B* and that the mere fact of the land being identical with that decreed to *A* in his suit with *C* could not entitle him to a decree in his suit with *B* JADUB NATH *v* RAM SUNDAR SURMA 7 W R 174

10 ——— *Proof of title—Forged evidence* Suit by *A* to recover immoveable property in the possession of *B* and his predecessors whose title had been unchallenged for forty four years on the ground that the estate was mortgaged only by *A* s ancestors and that *B* and those claiming under him were only usufructuary mortgagees in possession *Held* that the *onus probandi* was on *A* who could only succeed by the strength of his own title and not by reason of the weakness of *B* s title SEVVAJI VIJAYA RAGHUNADHA VALOJI KRISTNAN GOPALDAB *v* CHINNA NAYANA CHETTI 10 Moo I A 151

11 ——— *Title—Suit after ejectment* The plaintiff a lessee in perpetuity of a piece of land from the inamdar of the village in which it was situated sued the defendant who had dispossessed him more than six months before the date of suit to eject him from the land The defendant set up a lease from the same inamdar but it was held to have been granted without any authority Both the leases required to be registered under Act XX of 1866 but were not registered. *Held* that the plaintiff although suing more than six months after the date of dispossession and without resorting to a possessory suit (Act XIV of 1859 s 15 Act I of 1877 s 9) was entitled to rely on the possession previous to his dispossession as against a person who had no title the onus being on defendant to prove his title KRISHNARAV YASHVANT *v* VASUDEV APAJI I L R 8 Bom 371

12 ——— *Suit to establish title and for possession after decree under s 15 Act XIV of 1859* In a suit to establish title and recover possession from a person who has obtained possession under s. 15 Act XIV of 1859 the defendant need not prove his title and his possession cannot be disturbed unless the plaintiff gives proof of a better title the onus being on the plaintiff to prove everything MAENOODDEEN *v* GREESH CHUNDER ROY CHOWDHRY 7 W R 230

13 [illegible]

possession without reference to any right or title but simply on the ground of having been illegally eject-

ONUS OF PROOF—*contd*

34 POSSESSION AND PROOF OF TITLE—*contd*

ed his remedy would have been under 15 Act XIV of 1859 Not having availed himself of this remedy he was bound to show that he had title to re-enter and that the landlord had ejected him without any right to do so NUND KISHORE LALL v SHEO DYAL OOPADHYA 11 W R 168

RAM MOHAN DAS v JHUPPRO DOSS 14 W R 41

CROWDY v RAM BHUROSE CHOWDHRY 23 W R 383

a suit brought under 27 Bengal Act VIII of 1869

14 ———————— *Suit by heirs of last full owner of property—Proof of title* Where a defendant in possession of certain property resists a suit for possession thereof brought by parties who have proved themselves to be the nearest heirs of the last full owner the onus is on the defendant to prove his title *Tariny Churn Chowdhry v Saroda Soondurec Dassee 3 B L R A C 145* and *Thakur Deen Tewary v Ali Hossein Khan 13 B L R 427* cited and followed RAM PROTAB MISSER v ABHILACK MISSER 3 C L R 170

15 ———————— *Written statement—Admission* In a suit by *A* against *B* for recovery of ancestral jamai lands of which he alleged that he had been dispossessed by *B* *B* stated in his written statement that *A* s ancestor having relinquished the land the zamindar had leased the same to him *B* and he had been in possession since He also stated how *A* s ancestor relinquished and that he *B* had thereupon obtained a pottah He denied that he had dispossessed *A* *Held* that *B* having admitted the possession of *A* s ancestor it lay upon *B* to prove his title BAIKANTHANATH KUMAR v CHUNDRA MOHUN CHOWDHRY 1 B L R A C 133 10 W R 190

16 ———————— *Allegation of ownership as mortgagee only* Where a person is alleged to be in possession not as owner of the full

6 N W 36

17 ———————— *Land purchased benami by plaintiff for defendant—Evidence Act (I of 1872) s 110* The plaintiff sought to recover possession of certain lands alleging that he had been dispossessed The defendants who were in posses

I L R 8 Calc 759

18 ———————— *Title* In a suit to recover possession of certain property on proof that the plaintiff had been dispossessed by a benamidar in whose favour a conveyance had been executed by the plaintiff s father —*Held* that the presumption arising from the defendant s recent and unexplained possession being rebutted by the plaintiff s prior continuous and peaceful possession the defendant must show affirmatively that his title was a valid one and could not raise the defence that the plaintiff was prevented from showing it to be invalid. MAHESH CHANDRA BANERJEE v BARADA DEBI

2 B L R A C 274 11 W R 185

19 ———————— *Obstruction to execution of decree by a claimant—Civil Procedure Codes (Act VIII of 1859) s 229 (Acts X of 1877 and XIV of 1882 s 331)* In a suit under s 229 of Act VIII of 1859 (s 331 of Acts X of 1877 and XIV of 1882) the onus is on the plaintiff to establish a *primâ facie* case of possession and it is then incumbent on the claimant to answer that case and show if possible a better title PAKHAL CHURN MUNDUL v WATSON & Co I L R 10 Calc 50

20 ———————— *Resistance to execution by third party—Suit for possession—Civil Procedure Code (Act XIV of 1882) s 331* The plaintiff had obtained a decree for possession of certain land against his tenant *B* On proceeding to execute his decree he was obstructed by the defendants He therefore filed a claim against them for possession under s 331 of the Civil Procedure Code (Act XIV of 1882) which was duly registered as a suit The lower Court found as a fact that the plaintiff through his tenant *B* had been in possession of the land The defendants pleaded that the land had belonged not to the plaintiff but to one *J* on whose death they were entitled to it *Held* that in a proceeding under s 331 of the Civil Procedure Code where possession is shown to have been with the

BAPUJIRAO v FATTESING SHAHAJI BHOSLE I L R 22 Bom 967

21 ———————— *Proof of title—Unregistered deed of sale—Oral evidence inadmissible* On the 18th January 1876 plaintiff became a purchaser at a Court s sale of the right title and interest of *G* and *V* in a shop and having been obstructed by defendant in obtaining possession of it sued to recover it from him The plaint was filed on the 27th January 1877 Defendant answered that he purchased it from *C* under a deed of sale dated 5th January 1865 and that he had been in possession since that day The deed of sale was not admitted in evidence for want of registration but it was found that defendant had been in possession as owner since 5th January 1865 *Held* that as the defendant admitted that he had derived his title

ONUS OF PROOF—*contd*

34 POSSESSION AND PROOF OF TITLE—*contd*

from *G* (whose interest in the shop the plaintiff was assignee) the burden of proof lay upon the defendant and that he had failed to prove his purchase inasmuch as his unregistered deed of sale could not be received in evidence and oral evidence was inadmissible in place of the deed SAMBHUBHAI KARSANDAS *v* SHIVLALDAS SADASHIVDAS

I L R 4 Bom 89

22 ———— *Suit to have property declared liable in execution of decree* In a suit for the sale of certain property in satisfaction of a decree against a judgment debtor (since deceased) where it was found that the judgment debtor had made over the property to his wife in lieu of her dower and that she had transferred it to defendant —*Held* that the onus was on the plaintiff LIAKUT ALI *v* COURT OF WARDS

10 W R 423

23 ———— *Proceedings to obtain possession in execution of decree* Where a judgment creditor admits having obtained possession of a portion of the land without opposition from the judgment debtor the onus lies on him to show that he was unable nevertheless to obtain possession of the remainder AMJATT ALI *v* AZHUR ALI 21 W R 241

24 ———— *Khas mehals in 24 Pergunnahs—Relation between owners and the Government—Right to possession—Ejectment* There is no relation of landlord and tenant between the Government and the owner of khas mehals in the 24 Pergunnahs The latter is the landlord of the raiyats and is not himself a raiyat The right and title of the Government are to the rent but do not include a right to the possession of the lands though such a right might arise by forfeiture or extinction of the ownership and the onus is on the Government to prove its claim to the possession of the land GUNGA GOBIND MUNDUL *v* COLLECTOR OF 24 PERGUNNAHS

7 W R P C 22 11 Moo I A. 345

25 ———— — *Suit to establish title—Bom Reg XVII of 1827 s 7 cls 1 and 2—Bom Act I of 1865—Miras land* On the 28th August 1857 the plaintiff passed a kabuliat to Government and took possession of certain miras land abandoned by the mirasdar for four or five years previous to that date The plaintiff continued in possession of his land and paid the Government assessment from 1864 till 1872 In an action brought by the plaintiff to recover possession of the land he alleged in the plaint that he had taken the defendants as partners in the cultivation of the land and had been dispossessed by them Both the lower Courts rejected the claim. The lower Appellate Court based its decision on the ground that as the plaintiff failed to prove the fact of his alleged partnership with the defendant he could not succeed notwithstanding that Court found in the plaintiff s favour the other facts stated above *Held* on special appeal that as the suit was one to establish title and recover possession the Judge should on the facts found and having regard to Regulation XVII of 1827 s 7 cls 1 and 2 and Bombay Act I of 1865 have called upon the defendants to prove their claim to hold possession as against the plaintiff s right of occupation. TRIMBAK PANDU *v* NANA BHAVANI 12 Bom 144

26 ———— *Title* In a suit to recover possession of land and what under a ganti jumma which had originally belonged to the defendant the main question was as to ten cottahs of which possession by receipt of rent only was claimed from the defendants whose dwelling house was thereon The defendants alleged that the ten cottahs were not included in the ganti jumma under which plaintiffs claimed *Held* that the onus was on the plaintiffs to prove that the ten cottahs were included in the ganti jumma under which they claimed It was not on the defendants to show the extent of that tenure while it was in their possession and when it was transferred to the plaintiff although the fact was one peculiarly within their knowledge GIRDHAR HARI *v* KALI KANT ROY CHOWDHRY

3 B L R A C 161 11 W R 501

27 ———— *Evidence—Jaghir tenure—Auladad grant* By a sanad dated March 1854 the plaintiff s ancestor granted to *B* the defendant s ancestor a jagir of a certain mouzah *B* died in 1872 and plaintiff subsequently brought a suit to recover possession of the mouzah alleging that the grant to *B* was an ordinary service jaghir The plaintiff filed a kabuliat which had been executed by *B* the terms of which supported the plaintiff s allegation as to the nature of the grant The defendant alleged that the grant was auladad but failed to produce the sanad or account for its non production *Held* that the plaintiff was entitled to a decree *Juggernath Sahee v Ahlad Kowur 19 W R 140* distinguished THAKUR DOYAL *v* RAM NARAIN SINGH I L R. 8 Calc 375

28 ———— *Suit for lands granted as jaghir tenure—Non production of documentary evidence* In a suit to recover possession of certain lands upon the ground that they were

kabuliat—the latter would be in the possession of the plaintiff s ancestors. As this was not produced no secondary evidence given of it and no foundation laid for giving such evidence it was unnecessary to go further into the plaintiff s case JUGGERNATH SAHEE *v* ALHAD KOWUR 19 W R 140

ONUS OF PROOF—*contd*

34 POSSESSION AND PROOF OF TITLE —*contd*

29 ———— *Proof of title* The plaintiff sued for possession under the allegation that the property in dispute was under the management of the defendant The defendant having denied management and set up a title by purchase and his possession for more than thirty years having been proved —*Held* that the onus of showing a possession for his benefit was rightly thrown on the plaintiff KIRAT SINGH v RAM DOSS W R F B 8

30 ———— *Adverse or permissive occupancy—Proof of title* A donee under

so and allowed the claim. But the District Judge on appeal considering that the plaintiff had failed to prove his donors title to the land reversed the Munsif s decree *Held* that the Judge was in error in requiring the plaintiff to establish the title of the donors without enquiring whether the defendant had obtained possession merely by their permission and that the suit must be remanded for a finding by the District Judge on that point SAKALCHAND SAVAICHAND v DAYABHAI ICHHACHAND 4 Bom A C 70

31 ———— *Shifting of burden of proof—Land taken by Government as forest reserve—Madras Forest Act (Mad Act V of 1882)* Portions of certain land which had been taken up by Government as forest reserve were claimed by one who had admittedly been in possession and enjoyment of them for thirty years The Government failed to establish any subsisting title of its own. *Held* that the burden of proof had been shifted on to the Government and had not been discharged and accordingly that the claim should be allowed. SECRETARY OF STATE FOR INDIA v KOTA BAPANAMMA GARU I L R 19 Mad. 165

32 ———— *Suit for land attached under s 3 of Act IV of 1840* In a suit

33 ———— *Suit by zamindar against trespasser* An award under Act IV of 1840 does not relieve a party of the obligation to prove his right and title when sued by the zamindar as a trespasser BYDONATH SORBHON v KENOO RAM HOLDAR 1 W R 211

34 ———— *Possession under order of Criminal Court—Suit to eject on ground of title* *A* being in possession of lands as purchaser under deeds of sale from *B* the person last seised was forcibly ousted from possession by *C* and *D* who set up a title to the lands under an alleged deed of gift from *B* *A* made a complaint to the Criminal Court and under an order of that Court was again put into possession *C* and *D* being directed to institute a suit in the Civil Court to establish their claim which they accordingly did relying upon their title and impeaching the deeds ... the Judi... he Court ... to any question which might arise between *A* and any other party claiming under *B*) that it was incumbent on *C* and *D* to prove some title to the land claimed before they could put *A* to proof of his title RAM RUTTON RAE v FURROOKOONNISSA BEGUM 4 Moo I A. 233

35 ———— *Ejectment by order of Magistrate under s 319 Code of Criminal Procedure 1861—Suit to recover possession* The plaintiffs were in possession of certain land when the Magistrate acting under s 319 of the Criminal Procedure Code 1861 placed the defendant in possession until the rights of the parties should be determined by a competent Civil Court *Held* in a suit to recover possession of the property instituted more than six months after the plaintiffs were dispossessed that they could not recover without showing their title the onus being on them to prove it ASHUMANDE AGATH KUNHI PATHUMAH v MAKACHINDE AGATH MAKACHI 4 Mad 478

RAJESSUREE DEBIA v BRINDABUTTY DEBIA 7 W R 212

LUCHMUN PERSHAD v MAHARANEE OF BURDWAN 17 W R 181

36 ———— *Suit after order of Criminal Court under s 530 Act X of 1872* In a suit for possession and for establishment of title against parties in possession under an award of the criminal authorities under Act X of 1872 s 530 the *onus probandi* is on the plaintiffs HURI RAM v BHIKAREE ROY 25 W R 20

As also under s 318 of the Code of Criminal Procedure of 1861 HURRO SOONDUREE v SONATON DOSS 25 W R 464

37 ———— *Suit after order under the Land Registration Act (Beng Act VII of 1876)* Where a person who by an order of the Collector passed under the provisions of the Land Registration Act (Bengal Act VII of 1876) has been declared to be out of possession of certain land brings a suit for the recovery of possession it lies on him in the first instance to make out a *primâ facie* case MUDDUN MOHUN PODDAR v BHAGGOMANTO PODDAR I L R 8 Calc 923

38 ———— *Suit for produce of trees—Title proof of* In a suit to prevent the defendants from obstruct...

ONUS OF PROOF—*contd*

34 POSSESSION AND PROOF OF TITLE—*contd*

Held that the District Judge on appeal having found the possession and enjoyment to be in the defendants was right in throwing upon the plaintiff the burden of proving his title to the trees or their produce LALDAS RAMDAS *v* KASHIRAM
4 Bom. A. C 60

39 ———— *Civil Procedure Code 1859 s 230 suit under—Title proof of* S 230 Act VIII of 1859 only gave an applicant the right without instituting a separate suit of contesting the decree holder s right to dispossess him but did not exempt the applicant from the onus of proving his case MAHOMED AUSUR *v* PROKASH CHUNDER SHA **8 W R. 8**

40 ———— *Claim—Dispossession—Act VIII of 1859 s 230* One share holder being dispossed by the other of a certain julkur in execution of his decree brought a suit under s 230 Act VIII of 1859 alleging that the julkur had been a part of their joint mehal and that on partition thereof the julkur was left ijmali The decree holder set up that the julkur had been formed after the partition and by diluvion of one of his own villages *Held* that the onus was upon the claimant to prove his case UDAI TARA CHOWDHRAIN *v* ABDUL GANI **3 B L R Ap 90**

S C WOODOY TARA CHOWDHRAIN *v* ABDOOL GUNNY **12 W R 16**

41 ———— *Title by possession—Attachment and sale under a decree of property claimed by a third person—Suit by a third person to establish his title—Civil Procedure Code (Act VIII of 1859) s 230 246* S obtained a money decree against the sons and heirs of *A* and under that decree attached a shop as part of *A* s estate N (father of A) applied to have the attachment removed under s. 246 of the Civil Procedure Code (Act VIII of 1859) alleging that the shop was his. The application was rejected and the shop was sold in execution and bought by *P* the defendant N then brought his suit against *P* (the purchaser) to establish his title The Subordinate Judge dismissed the suit On appeal the District Judge reversed that decree holding that the plaintiff had been in possession of the shop and had proved his title The defendant appealed to the High Court. *Held* that the plaintiff having proved his possession at the date of the execution sale it lay upon the defendant (*P*) who claimed the property to prove a title in himself or in the judgment debtor A and that he having failed to do this, the plaintiff was entitled to a decree declaratory of his right to the property as against the defendant Where a dispossessed party proceed under s 230 of Act VIII of 1859 to vindicate the possession of which he has been deprived although he may give evidence of his title he is not bound to do so but may rest his right to recover on his possession and cast upon the decree holder the burden of proving his title i e his right to dispossess the applicant *Per* WEST *J*—A person in possession of property which is sold in execution as that of another is not called upon when suing to establish his title to prove his

as the right vested in the judgment debtor can be shown affirmatively to contradict or qualify it Possession constitutes an interest requiring affirmative proof of a superior title on the part of any one who seeks to disturb it and therefore where a person in possession of property which has been sold in execution as being the property of another sues to establish his title to such property the burden of proof lies not upon him but upon the person who claims as purchaser at the execution sale PEMRAJ BHAVANIRAH *v* NARAYAN SHIVARAM
I L R 6 Bom. 215

42 ———— **Suit for confirmation of possession**—*Proof of title.* In a suit for confirmation of possession of certain lands sold in execution of a decree as lakhiraj the onus was held to lie on the plaintiff to prove his title notwithstanding the defendant s admission that the lands in question were within the boundaries of the plaintiff s zamindari PURSEEDH NARAIN SINGH *v* BISSESSUR DYAL SINGH **7 W R 148**

43 ———— Where a party who asserts that he is in possession without adducing any evidence in support of his title sues for confirmation of title as against a *bona fide* purchaser for valuable consideration without notice from the party in whose name the property stood who exercised acts of ownership and gave himself out to the world as the real proprietor plaintiff cannot put the defendant of proof to his title till he has proved his own LEKHRAJ ROY *v* MUTTY MADHUB SEN
14 W R 95

44 ———— *Right to begin—Adoption proof of—Proof of loss and admission of secondary evidence of a document alleged to have been executed—Evidence Act (I of 1872) s 65* A suit for possession by right of inheritance was brought by a claimant alleging himself to be the heir against the alleged adopted son of the

the event of the defendant s failure to prove it without first proving his own title as collateral heir by descent thus in effect proposing to make the establishment of the plaintiff s title depend upon the failure or success of the defendant in proving the

ONUS OF PROOF—*contd*

34 POSSESSION AND PROOF OF TITLE—*contd*

adoption. The High Court pointed out the error of this proceeding and the Judicial Committee affirmed its judgment concurring also in its finding that the adoption had been proved It was found also that the loss of the anumati patra had been established so that secondary evidence of it was receivable KALI KISHORE DUTT GUPTA MOZUMDAR v BHUSAN CHUNDER *alias* BEPIN CHUNDER DUTT GUPTA I L R 18 Calc 201 L R 17 I A 159

45 ———— *Presumption of ownership—Possession—Suit for ejectment—Evidence Act (I of 1872) s 110* It is usually for the plaintiff who seeks ejectment to prove his title But where he proves himself to have peaceably enjoyed possession for a considerable time the person who has recently dispossessed him has to meet the presumption of law that the plaintiff s possession indicates his ownership In a suit for possession of immoveable property and other relief it was proved that the plaintiff and his predecessors in title had been in undisturbed possession for thirty or forty

J) with reference to s 110 of the Evidence Act that although in the first instance the burden of proving his title was on the plaintiff it was shifted by his proving long undisturbed possession that the defendant s failure to prove the alleged payment of rent went far to prove that the plaintiff s possession was adverse and that the Court below in acting upon the theory that such possession was that of a licensee had wrongly set up for the defendant a defence which he had not set up for himself LACHHO v HAR SAHAI

I L R 12 All 46

46 ———— *Possession—Declaration of title—Suit by person in possession for declaration of title—Burden of proof—Evidence—Effect of plaintiff s possession—Presumption of title—Evidence Act (I of 1872) s 110* The plaintiffs

viously been in possession They now sued because their possession had been threatened by the orders of Government officials It was admitted that the plaintiffs had been in actual possession since 1888 The District Judge held that the burden of proof of title to the land lay upon the plaintiff He was of opinion that they had failed to prove it and he dismissed the suit *Held per* JENKINS C J and

RANADE J (WHITWORTH J dissenting) that the plaintiffs being in possession (not shown to have wrongfully originated) such possession was good against the whole world except a person who could show better title that the burden of proving such title lay therefore upon the defendant that he had failed to prove it and that therefore the plaintiff were entitled to the declaration sued for *Per* WHITWORTH J —That the evidence did not show such possession in the plaintiffs as under s 110 of the Evidence Act (I of 1872) shifted the burden of proof upon the defendant that prior to the alleged sale to the plaintiffs in 1888 the defendant had been in the position of an absentee owner of the land in

was a wrongful act that the plaintiffs were therefore not relieved from the burden of proving their title and that they had not proved it *Per* RANADE J —When a person in possession of land has been dispossessed and sues to recover it the fact of his previous possession will not entitle him to a decree unless he sues under s 9 of the Specific Relief Act (I of 1877) within six months of the date of dispossession If he sues after the six months have expired he must prove a *primâ facie* title In such a case he is entitled to a decree unless a superior title is proved on the other side It is in reference to such cases that it has been held that possession is evidence of title and that the plaintiff who proves such possession and subsequent dis

that decree on the mere ground that he was in possession and that the defendant had no title Mere wrongful possession is insufficient to shift the burden of proof HANMANTRAV v SECRETARY OF STATE FOR INDIA (1900) I L R 25 Bom 287

35 PRE EMPTION

1 ———— Suit for pre emption—*Proof of antedating of a deed* In a suit by A to en

ALI v AZMUT ALI 8 W R 383

2 ———— *Suit on ground of vicinage—Ownership* In a suit to establish a right of pre emption on the ground of ownership of contiguous land no amount of misstatement on the part of the defendant as to the ownership of such land can relieve plaintiff of the onus of proving his ownership BEHAREE RAM v SHOOBHUDRA

9 W R 455

ONUS OF PROOF—contd

35 PRE EMPTION—contd

3 ——— *Recital in deed of sale as to price* In a suit to establish a right of pre emption to property which had been sold in which plaintiff alleged that the actual value was different from that which was recited in the deed of sale between the defendants the vendor and the vendee —*Held* that it was for plaintiff to give some evidence in support of the allegation that the amount stated as the price by the defendant was wrong GOLAM AYHYA v JOY MUNGUL SINGH

13 W R. 435

MAHOMED MORUL HOSSEIN v HYDER BUKSH

W R 1864, 304

4 ——— *Purchase money —Evidence Act (I of 1872) s 106* In a suit to enforce the right of pre-emption in which the plaintiff impugns the ...

... evidence is ordinarily sufficient to establish his case and when such case is established *it rests* upon the defendants the vendor and vendee to prove by cogent evidence that the stated price is the correct one The principle laid by the Privy Council in *Kishen Dutt Ram Panday* v *Narendar Bahadoor Singh L R 3 I A 85* applied. *Mahomed Noorul Hossein* v *Hyder Buksh W R 1864 304* and *Golum Ayhya* v *Joy Mungul Singh 13 W R 435* referred to BHAGWAN SINGH v MAHABIR SINGH

I L R 5 All 184

5 ——— *Dispute as to price —Assessment of amount* *Bhagwan Singh* v *Mahabir Singh I L R 5 All 184* followed as to the rule of *onus probandi* where the plaintiff in a suit to enforce a right of pre emption impugns the ...

... reasonable price for the property but to ascertain what amount actually changed hands as consideration for the sale TAWKKUL RAI v LACHMAN RAI

I L R. 6 All. 344

6 ——— *Purchase money— Evidence of consideration* In suits for pre-emption where the amount of the consideration for the sale is in dispute the rule as to the burden of proof is that in the first instance the plaintiff who alleges the price stated in the deed of sale to be fictitious must give some *primâ facie* evidence leading to the presumption that the price so stated was not the true price Having done that it then lies upon the vendor and vendee to give such an explanation by evidence as will *go to rebut the* presumption raised by the plaintiff's evidence In the majority of cases *the only primâ facie* evidence which the plaintiff pre-emptor could produce would be either evidence showing *that the vendor* or the vendee had made an admission that the price was fictitious or also evidence showing that the market value of the property was so much less than the alleged price as would lead any reasonable man to come to the conclusion that the alleged price was not the real price Where the price stated in the deed of sale was nearly five times the market value of the property sold and the purchaser ...

SHEOPARGASH DUBE v DHANRAJ DUBE

I L R 9 All. 225

36 PRINCIPAL AND AGENT

1 ——— **Evidence as to liability of agent to account** In 1884 a deed of release exonerating an agent from liability to account was executed by his principal stating that there had been a settlement between them In 1885 the agent signed an ikrarnama addressed to the principal stating that there had not been a settlement of ...

... that suit was dismissed In a suit brought by the principal the release of 1884 and its contents were ...

... concurrently that the release of 1884 was valid and that it necessarily followed from that finding that the document of 1885 so far as it expressed the agent's willingness to account was false the onus was as much upon the principal to explain his reception of the ikrarnama of 1885 as upon the agent to explain its execution. The question as to the burden of proof had therefore been rendered immaterial by the facts proved. On the materials before them the Courts below had rightly decided in favour of the defendant NILMONI SINGH DEO v KIRTI CHUNDER CHOWDHRY

I L R 20 Calc 847
L. R. 20 I A. 95

2 ——— *Evidence Act (I of 1872) s 111—Gift to an agent—Undue influence— Mental capacity of donor* *Held* that there is nothing to prevent an agent from being the object of the bounty of his principal. If an agent can clearly show that a gift was made in his favour by a donor who was in a position to exercise a free and unfettered judgment with full knowledge of what he was doing the gift will be upheld PHUL CHAND v LAKKHU (1903)

I L R. 25 All. 358

ONUS OF PROOF—*contd*

37 PROFITS SUITS FOR

1. ——— Suit by recorded co sharer for profits—*Claim for profits not collected in consequence of defendant s negligence or misconduct —Jamabandi—N W P Rent Act (XII of 1881) ss 93 (h) 209—Evidence Act (I of 1872) s 106* In a suit under s 93 (h) of the N W P Rent Act (XII of 1881) by a recorded co sharer against a lambardar for his recorded share of the profits of a mehal in which the plaintiff seeks to make the defendant liable under s 209 not only for the profits which the latter has actually collected but for those which through gross negligence or misconduct he has omitted to collect the burden of proving such negligence or misconduct rests in the first instance on the plaintiff No general rule can be laid down as to the quantum of evidence which the plaintiff in such a case must give in order to shift the burden of proof on to the defendant The mere production by the plaintiff of the jamabandi or rent roll is not sufficient to cast upon the defendant the necessity of proving that there was no negligence or misconduct in him S 106 of the Evidence Act (I of 1872) does not apply to such a case So *held* by the Full Bench MAHMOOD J dissenting *Held* by MAHMOOD J (*contra*) that the production of the jamabandi by the plaintiff ...

facie presumption in favour of the plaintiff so as to throw upon the defendant with reference to s 106 of the Evidence Act the necessity of proving circumstances ...
to
Mu
MA

38 RECOGNIZANCE TO KEEP PEACE

1. ——— Likelihood of breach of peace—*Party obtaining summons* The onus lies on the person who has obtained the summons to prove that the defendant is likely to commit a breach of the peace BEHARI PATAK *v* MAHOMED HYAT KHAN **4 B L R F B 46** **12 W R Cr 60**

39 RELINQUISHMENT OF PORTION OF CLAIM

1 ——— Objection of former suit for same cause of action—*Civil Procedure Code 1859 s 7—Omission to sue for portion of claim* Where a defendant objected under Act VIII of 1859 s 7 that the plaintiff omitted in a former suit to include the portion which he now claimed and in respect of which he then had a cause of action the objection being one of fact the burden of proof was held to lie with the objector SKINNER & Co *v* SHAMA SOONDUREE **19 W R 429**

ONUS OF PROOF—*contd*

40 RESUMPTION AND ASSESSMENT

1 ——— Suit for resumption—*Suit under Beng Reg XIX of 1793 s 10* In suits in a Civil Court for resumption under Regulation XIX of 1793 s 10 the onus was upon the plaintiff to prove a *prima facie* case The decisions in *Sonatun Ghose v Abdool Farar B L R Sup Vol 109* and *Heera Monee Dibi v Koonj Behary Holdar B L R Sup Vol Ap 8* upheld The mere fact of the lands falling within the ambit of his estate does not show that the lands are mal or rent paying HARIHAR MUKHOPADHYA *v* MADHAB CHANDRA BABU NABAKRISHNA MOOKERJEE *v* KAILAS CHANDRA BHUTTACHARJEE **8 B L R 566 20 W R 459** **14 Moo I A 152**

BISHNATH CHOWDHRY *v* RADHA CHURN GANGOOLY **20 W R 465**

2 ——— *Rent free tenure —Beng Reg XIX of 1793 s 10—Reg II of 1819 s 30* In a suit brought in the Civil Court before Act XIV of 1859 came into operation to enforce a right under s 10 Regulation XIX of 1793—that is to resume lands alleged to be held by the defendant under an invalid lakhiraj grant —*Held* that the suit was not barred by s 28 Act X of 1859 The onus was on the plaintiff to prove that the case fell within s 10 Regulation XIX of 1793—*i e* that the grant was made subsequent to December 1st 1790 PARBATI CHARAN MOOKERJEE *v* RAJKRISHNA MOOKERJEE **B L R Sup Vol 162**

s c SONATUN GHOSE *v* ABDUL TURFUR **2 W R 105**

(*Contra*) OMESH CHUNDER ROY *v* DUKHINA SOONDERY DEBIA **W R F B 95**

ELIAS *v* TITHARAM ROY **1 W R 164**

3 ——— *Invalid lakhiraj tenure* In a suit to resume and assess lands ...

be bad to prove it to be so BEER CHUNDER JOOBRAJ *v* SHIBJOY THAKOOR **W R 1864 8**

4 ——— *Auction purchaser* Certain lands which had been let out in patni were on default by the patnidar in payment of rent sold by auction under Bengal Regulation VIII ...

1793 the defence was that the lands in dispute were ...

lands are mal applies to cases where the plaintiff as

ONUS OF PROOF—*contd*

40 RESUMPTION AND ASSESSMENT—*contd*

in the present case is the representative of an auction purchaser ARFUNNESSA *v* PEARY MOHUN MOOKERJEE

I L R 1 Calc 378 25 W R 209

5 ———————— *Proof of rent free grant before permanent settlement* In the year 1862 the plaintiff brought a resumption suit against *A* in respect of the lands in dispute in this case upon the ground that she was holding them by an invalid lakhiraj title and obtained a decree After ome years the plaintiff brought the present suit against *B* who derived her title through *A* to have the rent as es ed *B* pleaded by way of bar to the jurisdiction that the lakhiraj grant under which *A* claimed was made previou ly to 1790 *Held* that the onus of proving this plea was upon *B* HEERA LALL PORAMANIC *v* BARIKUNNISSA BIBEE

I L R 3 Calc 501 1 C L R 596

6 ———————— *Lakhiraj and mal lands* In a suit by a zamindar to resume land which has been held as lakhiraj if the lakhirajdar claims under a grant of date prior to the 1st of December 1790 the onus is on him to prove it If the lal hirajdar claims under a grant subsequent to that date the zamindar is not entitled to a decree until he has hown in the first instance that the land claimed is part of his zamindari and at one time was mal land And in the latter case the lakhirajdar is not put to proof of his title until the zamindar has established the fact of the land having once at some time subsequent to 1st December 1790 been rent paying land MAHOMED AKHIR *v* PEILY

24 W R 447

7 ———————— *Declaration of lakhiraj t tle—A sessment of rent* In a suit instituted in 1877 *A* prayed for a declaration that he had a lakhiraj title to certain lands the defendant stated that the land for a declaration of a title to which *A* now sued formed part of certain lands which had been the subject of resumption proceedings which were terminated in 1863 by a decree declaring that the lands which were the subject of that suit including the lands now claimed by *A* were not lakhiraj It being found as a fact that *A* [illegible]

the institution of his suit and that proceedings had been taken by the defendant calculated to disturb such possession —*Held* that although the onus of proof lay on the plaintiff it was not necessary for him to prove that the lands claimed by him to be held as lakhiraj had been held rent free from before the date of the permanent settlement but it was sufficient for him to prove that the defendant was at the time of the institution of the suit debarred by lapse of time from instituting a suit for the resumption or asses ment of rent upon the land. ABHOY CHURN PAL *v* KALLY PERSHAD CHATTERJEE

I L R 5 Calc 949

s c OBHOY CHURN PAL *v* KALI PROSAD CHATTERJEE

6 C L R 260

8 ———————— *Lakhiraj grant* If a person claiming under a badshai lakhiraj grant made before the 1st of December 1790 can show that he has held the land as lakhiraj since the 1st of December 1790 this will be a conclusive bar to a uit for resumption whether brought by the Government or by a purchaser at a revenue sale or by any other person —that is in order to prove a grant anterior to the 1st December 1790 it is sufficient to give evidence of possession dating back to the 1st of December 1790 *Sristeedhur Sawunt* v *Romanath Rokhit* 6 W R 58 cited. A person seeking to resume lakhiraj land must give *primâ facie* evidence to show that rent has been paid [illegible]

and *Harihar Mukhopadhya* v *Madhab Chandra Babu* 8 B L R 566 referred to KOYLASH BASHINI DOSSEE *v* GOCOOLMONI DOSSEE

I L R 8 Calc 230 10 C L R 41

9 ———————— *Rent free lands —Landlord and tenant* In suits for the resumption of lands alleged by the defendant to be lakhiraj the burden of proof is in the first instance on the plaintiff to show that the lands are mal The fact that the defendant is a tenant of the plaintiff s is a matter to be taken into consideration by the Court in determining whether on the facts of the case the plaintiff has made out a *primâ facie* case but unless the Court finds that the plaintiff has ma le out a *primâ facie* case judgment should be given for the defendant *Harihar Mukhopadhya* v *Madhab Chandra Babu* 8 B L R 566 14 Moo I A 153 *Akbar Ali* v *Bhyea Lall Jha* I L R 6 Calc 666 and *Newaj Bundopadhya* v *Kali Prosunno Ghose* I L R 6 Calc 543 cited BACHARAM MUNDUL *v* PEARY MOHUN BANERJEE

I L R 9 Calc 813 12 C L R 475

10 ———————— *Rent free lands —Landlord and tenant* In a suit for resumption of lands where the defendants allege that the lands are lakhiraj the onus is on the plaintiff in the first instance to show that the lands are mal and if he fails to make out a *primâ facie* case the suit should be dismissed *Bacharam Mundul* v *Peary Mohun Banerjee* I L R 9 Calc 813 followed. *Newaj Bundopadhya* v *Kali Prosono Ghose* I L R 6 Calc 543 and *Akbar Ali* v *Bhyea Lal Jha*, I L R 6 Calc 666 cited and distinguished. NARENDRA NARAIN RAI *v* BISHUN CHUNDRA DAS

I L R 12 Calc 182

11 ———————— *Suit for rent of land where defendant pleads a lakhiraj tenure*

ONUS OF PROOF—*contd*

40 RESUMPTION AND ASSESSMENT—*contd*

The rule which in cases where the defendant pleads lakhiraj lays on the plaintiff the onus of proving that the land is mal is not inflexible but may be altered according to circumstances as in the case where the defendant admitted plaintiff's title as landlord and never set up any plea of lakhiraj until years after the suit was brought when a second Ameen was deputed to the spot to make a local enquiry COONOMONEE DOSSEE v BURRODAKANT ROY 18 W R 191

12 ———— *Alleged lakhiraj land* The Full Bench decision—*Parbati Charan Mookerjee v Rajkrishna Mookerjee B L R Sup Vol 16* ruling that before a plaintiff can resume lakhiraj land he must first prove that he has collected mal rents and defendant need not first prove his lakhiraj title—was held not to be applicable to the present case in which it was proved the plaintiff collected mal rents from the time the land was capable of bearing any RAMSOONDUR CHUCKERBUTTY v RAMESSUR ACHARJEE 8 W R 454

13 ———— *Beng Regs XIX of 1793 and XII of 1805—Evidence of exemption from resumption* *Semble* The exclusion of lands as lakhiraj from the decennial and permanent settlements is of no weight *per se* as evidence of exemption from resumption under Regulation XIX of 1793 The general presumption is in favour of the liability to assessment of land and by Bengal Regulations XIX of 1793 and XIV of 1825 the *onus probandi* lies on a claimant to lakhiraj to establish his title to exemption —not by inference but by

a such and descendible to heirs at or since that time DHEERAJ RAJA MAHATAB CHUND BAHADOOR v GOVERNMENT OF BENGAL 4 Moo I A 466

14 ———— *Suit by lakhirajdar* One lakhirajdar cannot maintain a suit for resumption against another and force the defendant to prove his title The onus is on the plaintiff KAEM KHAN v SAHEBA JAN 7 W R 362

15 ———— *Invalid lakhiraj* The Government when acting as agent of a zamindar can only sue to resume invalid lakhiraj lands under 100 bighas the onus of proof of its being mal when so claimed is on the zamindar RAM LOCHUN SIRCAR v DENONATH PAUL 2 W R 279

16 ———— **Suit for assessment**—*Suit by zamindar to assess lands usurped or alienated by lakhirajdar* The onus in a case in which the plaint

17 ———— *Suit by auction purchaser at sale for arrears of revenue to assess rent on lakhiraj land—Limitation Act 1859 s 1 cl 14* In a suit by an auction purchaser to assess rent on land claimed as valid lakhiraj the onus is on the raiyat to prove that the land has been held as lakhiraj from the year 1790 SHAM LALL GHOSE v SECUNDER KHAN 3 W R 182

FORBES v MEAN JAN 3 W R 69

HEERA MONEE DEBIA v LOKENATH MUNDUL 2 W R 135

NOBO LAL KHAN v ADHEERANEE NARAIN KOONWAREE 5 W R 191

18 ———— *Lakhiraj land —Beng Reg XLI of 1795 s 10* Where certain land apparently lakhiraj was represented in village papers as part of mal land and included within the boundary of the revenue paying mehal —*Held* on the zamindar's suit for assessment of the land that the onus of showing that the case is within s 10 Regulation XLI of 1795 lay on the zamindar The inclusion of the land in the boundary is not conclusive evidence nor is it binding when the boundary has not been made judicially The landlord proving it to be so the plaintiff claiming rent free possession would be required to prove his rent free possession (peaceably and not tainted with fraud) for sixty years before he can get a decree MAHABEER PERSHAD v OOMRAO SINGH 1 Agra 167

19 ———— *Rent free land —Benares* In a suit for rent of land in the province of Benares which was rent free and recorded as such at the revision of settlement in 1840-41 and 1842 the zamindar must show that if it was lakhiraj in 1197 Fasli there has been a legal resumption and assessment by judicial award or if mal in 1197 Fasli he must prove legal resumption and actual levy of rents The burden of proving this by direct and specific evidence lies on the zamindar MOTEE LALL v JANKI ROY 3 Agra 364

20 ———— *Suit to have certain lands declared mal* Where it is admitted that the defendants hold certain lands within the plaintiff's zamindari some at least of which are rent paying the defendants if desirous of proving that any of these lands are rent free are bound to give some *primâ facie* evidence of the fact before they can call upon the plaintiff the zamindar to prove that the whole or any part of the lands are mal AKBUR ALI v BHYEA LAL JHA

I L R 6 Calc 666 7 C L R 497

21 ———— **Suit for rent-paying land** —*Suit by auction-purchaser for land alleged by him to be mal* In a suit by an auction purchaser for the khas possession of land alleged to be mal land fraudulently alienated by the former zamindar as lakhiraj the burden of proving that it is mal is on the plaintiff ANDREW v LYON 2 Hay 362

ONUS OF PROOF—*contd*

40 RESUMPTION AND ASSESSMENT—*contd*

in the present case is the representative of an auction purchaser ARFUNNESSA v PEARY MOHUN MOOKERJEE
I L R 1 Calc 378 25 W R 209

5 ——————— *Proof of rent free grant before permanent settlement* In the year

which A claimed was made previously to 1790 *Held* that the onus of proving this plea was upon B HEERA LALL PORAMANIC v BARIKUNNISSA BIBEE
I L R 3 Calc 501 1 C L R 596

6 ——————— *Lakhiraj and mal lands* In a suit by a zamindar to resume land which has been held as lakhiraj if the lakhirajdar claims under a grant of date prior to the 1st of December 1790 the onus is on him to prove it If the lakhirajdar claims under a grant subsequent to that date the zamindar is not entitled to a decree until he has shown in the first instance that the land claimed is part of his zamindari and at one time was mal land. And in the latter case the lakhirajdar is not put to proof of his title until the zamindar has established the fact of the land having once at some time subsequent to 1st December 1790 been rent paying land. MAHOMED AKBIR v PEILY
24 W R 447

7 ——————— *Declaration of lakhiraj title—Assessment of rent* In a suit instituted in 1877 A prayed for a declaration that he had a lakhiraj title to certain lands the defendant stated that the land for a declaration of a title to which A now sued formed part of certain lands which had been the subject of resumption proceedings which were terminated in 1863 by a decree declaring that the lands which were the subject of that suit including the lands now claimed by A were not lakhiraj It being found as a fact that A

the institution of his suit and that proceedings had been taken by the defendant calculated to disturb such possession —*Held* that although the onus of proof lay on the plaintiff it was not necessary for him to prove that the lands claimed by him to be held as lakhiraj had been held rent free from before the date of the permanent settlement but it was sufficient for him to prove that the defendant was at the time of the institution of the suit debarred by lapse of time from instituting a suit for the resumption or assessment of rent upon the land. ABHOY CHURN PAL v KALLY PERSHAD CHATTERJEE
I L R 5 Calc 949

s.c. OBHOY CHURN PAL v KALI PROSAD CHATTERJEE
6 C L R 260

8 ——————— *Lakhiraj grant* If a person claiming under a badshai lakhiraj grant made before the 1st of December 1790 can show that he has held the land as lakhiraj since the 1st of December 1790 this will be a conclusive bar to a suit for resumption whether brought by the Government or by a purchaser at a revenue sale or by any other person —that is in order to prove a grant anterior to the 1st December 1790 it is sufficient to give evidence of possession dating back to the 1st of December 1790 *Sristeedhur Sawunt v Romanath Rokhit 6 W R 58* cited. A person seeking to resume lakhiraj land must give *primâ facie* evidence to show that rent has been paid for that land at some time since the 1st of December 1790 *Parbati Charan Mookerjee v Rajkrishna Mookerjee B L R Sup Vol 162 Sonatan Ghose v Abdul Farar B L R Sup Vol 100* and *Harihar Mukhopadhya v Madhab Chandra Babu 8 B L R 566* referred to KOYLASH BASHINY DOSSEE v GOCOOLMONI DOSSEE
I L R 8 Calc 230 10 C L R 41

9 ——————— *Rent free lands—Landlord and tenant* In suits for the resumption of lands alleged by the defendant to be lakhiraj the burden of proof is in the first instance on the plaintiff to show that the lands are mal The fact

prima facie case judgment should be given for the defendant *Harihar Mukhopadhya v Madhab Chandra Babu 8 B L R 566 14 Moo I A 153 Akbar Ali v Bhyea Lall Jha I L R 6 Calc 666* and *Newaj Bundopadhya v Kali Prosunno Ghose I L R 6 Calc 543* cited BACHARAM MUNDUL v PEARY MOHUN BANERJEE
I L R 9 Calc 813 12 C L R 475

10 ——————— *Rent free lands—Landlord and tenant* In a suit for resumption of land where the defendants allege that the lands are lakhiraj the onus is on the plaintiff in the first instance to show that the lands are mal and if he fails to make out a *primâ facie* case the suit should be dismissed *Bacharam Mundul v Peary Mohun Banerjee, I L R 9 Calc 813* followed. *Newaj Bundopadhya v Kali Prosono Ghose I L R 6 Calc 543* and *Akbar Ali v Bhyea Lal Jha I L R 6 Calc 666* cited and distinguished. NARENDRA NARAIN PAI v BISHUN CHUNDRA DAS
I L R 12 Calc 182

11 ——————— *Suit for rent of land where defendant pleads a lakhiraj tenure*

ONUS OF PROOF—*contd*

40 RESUMPTION AND ASSESSMENT—*contd*

The rule which in cases where the defendant plead lakhiraj lays on the plaintiff the onus of proving that the land is mal is not inflexible but may be altered according to circumstances as in this case where the defendant admitted plaintiff s title as landlord and never set up any plea of lakhiraj *until years after the suit was brought when a second* Ameen was deputed to the spot to make a local enquiry GOONOMONEE DOSSEE *v* BURRODAKANT ROY 18 W R 191

12 ———— *Alleged lakhiraj land* The Full Bench decision—*Parbati Charan Mookerjee v Rajkrishna Mookerjee B L R Sup Vol 16* ruling that before a plaintiff can resume lakhiraj land he must first prove that he has collected mal rents and defendant need not first prove his lakhiraj title—was held not to be applicable to the present case in which it was proved the plaintiff collected mal rents from the time the land was capable of bearing any RAMSOONDUR CHUCKERBUTTY *v* RAMESSUR ACHARJEE 8 W R 454

13 ———— *Beng Regs XIX of 1793 and XIV of 1825—Evidence of exemption from resumption* *Semble* The exclusion of lands as lakhiraj from the decennial and permanent settlements is of no weight *per se* as evidence of exemption from resumption under Regulation XIX of 1793 The general presumption is in favour of the liability to assessment of land and by Bengal Regulations XIX of 1793 and XIV of 1825 the *onus probandi* lies on a claimant to lakhiraj to establish his title to exemption—not by inference but by positive proof of a grant to hold as lakhiraj or by a proprietary right prior to the grant of the Dewanny (12th August 1765) and that the possession was *bona fide* taken under it or an enjoyment of lands as such and descendible to heirs at or since that time DHEERAJ RAJA MAHATAB CHUND BAHADOOR *v* GOVERNMENT OF BENGAL 4 Moo I A 466

14 ———— *Suit by lakhirajdar* One lakhirajdar cannot maintain a suit for resumption against another and force the defendant to prove his title The onus is on the plaintiff KAEM KHAN *v* SAHEBA JAN 7 W R 362

15 ———— *Invalid lakhiraj* The Government when acting as agent of a zamindar *an only sue to resume invalid lakhiraj* lands under 100 bighas the onus of proof of its being mal when so claimed is on the zamindar RAM LOCHUN SIRCAR *v* DENONATH PAUL 2 W R 279

16 ———— Suit for assessment—*Suit by zamindar to assess lands usurped or alienated by lakhirajdar* The onus in a case in which the plaintiff is an ordinary zamindar suing to assess lands which he asserts to have been illegally usurped or alienated by a dependent lakhirajdar subsequent to the permanent settlement rests on the plaintiff BEHAREE LALL ROY *v* KALEE DOSS CHUNDER 8 W R 451

17 ———— *Suit by auction purchaser at sale for arrears of revenue to assess rent on lakhiraj land—Limitation Act 1859 s 1 cl 14* In a suit by an auction purchaser to assess rent on land claimed as valid lakhiraj the onus is on the raiyat to prove that the land has been held as lakhiraj *from the year 1790* SHAM LALL GHOSE *v* SEKUNDER KHAN 3 W R 182

FORBES *v* MEAN JAN 3 W R 69

HEERA MONEE DEBIA *v* LOKENATH MUNDUL 2 W R 135

NOBO LAL KHAN *v* ADHEEPANEE NARAIN KOONWAREE 5 W R 191

18 ———— *Lakhiraj land—Beng Reg XLI of 1795 s 10* Where certain land apparently lakhiraj was represented in village papers as part of mal land and included within the boundary of the revenue paying mehal—*Held* on the zamindar s suit for assessment of the land that the onus of showing that the case is within s 10 Regulation XLI of 1795 lay on the zamindar The inclusion of the land in the boundary is not conclusive evidence nor is it binding when the boundary has not been made judicially The landlord proving it to be so the plaintiff claiming rent free

19 ———— *Rent free land—Benares* In a suit for rent of land in the province

assessment by judicial award or if mal in 1197 Fusli he must prove legal resumption and actual levy of rents The burden of proving this by direct and specific evidence lies on the zamindar MOTEE LALL *v* JANKI ROY 3 Agra 364

20 ———— *Suit to have certain lands declared mal* Where it is admitted that the defendants hold certain lands within the plaintiff s zamindari some at least of which are rent paying the defendants if desirous of proving that any of these lands are rent free are bound to give

efore they to prove are mal.

I L R 6 Calc 666 7 C L R 497

21 ———— Suit for rent-paying land—*Suit by auction-purchaser for land alleged by him to be mal* In a suit by an auction purchaser for the khas possession of land alleged to be mal land fraudulently alienated by the former zamindar as lakhiraj the burden of proving that it is mal is on the plaintiff ANDREW *v* LYON 2 Hay 362

ONUS OF PROOF—*contd*

40 RESUMPTION AND ASSESSMENT—*contd*

22 ———— **Suit for land alleged to be lakhiraj**—*Proof of receipt of rent* In a suit to recover possession of land within plaintiff s estate in which defendant sets up a rent free title all that plaintiff is required to show is that either he or his predece sor had received rent for the land at some time subsequent to the perpetual settlement in which case the onus of proving title falls on the defendant RAM NARAIN SINGH DEO *v* BISTOO THAKOOR 15 W R 299

23 ———— **Suit for possession of resumed lands**—*Application for and refusal of settlement* Where in a suit for possession of re sumed lands the plaintiff contends that the laws under which the lands in dispute were resumed (Bengal Regulations II of 1819 and III of 1828) contemplate assessment and not ejectment the plaintiff must prove that he had formerly applied for and been refused a settlement of the lands ABDOOL GUNNY *v* COMMISSIONER OF THE SUNDERBUNS 2 W R 239

24 ———— **Suit for land as lakhiraj**—*Dispute as to land being mal or lakhiraj* In a suit in which plaintiff claimed four plots of land as belonging to his patni and defendant alleged that they formed part of the resumed land of a jote for which he had obtained a decree in a resumption suit and of which he had ever since been in possession the parties went to trial on the issue whether the land was mal as beyond the limits of the decree or lakhiraj as included in the chittahs according to which possession was given to the defendant in execution. On a consideration of what the latter had received under the decree the first Court held that he was not entitled to retain the disputed land The Appellate Court did not look beyond the plaint iff s chittahs *Held* that the circum tances justified the first Court in deviating somewhat from the usual rule of law as regards the *onus probandi* and that the course taken by it was most consonant with justice DOSSEE *v* RAM NIDHEE KOONDOO 15 W R 183

25 ———— **Suit to declare land liable to assessment**—*Suit for ejectment by purchaser at sale for arrears of revenue on the ground that land is mal—Homestead land* The purchaser of an estate at a sale for arrears of revenue after [with drawing a suit for arrears of rent sued to eject the defendant from a piece of land on which his home stead was *i e* to declare the land liable to assess ment and to obtain khas possession *Held* that the onus lay with the plaintiff to prove that the land was mal and that he and his predecessors had received rent for it. BISSAMBHUR BANERJEE *v* KOYLASH CHUNDER BOSE 23 W R 388

26 ———— **Suit for declaration of lakhiraj title**—*Possession proof of—Title proof of* Where a plaintiff comes into Court to prove a lakhiraj title no proof of po ses ion for years (unless it be carried beyond 1790) as apparent lakhiraj can execuse him from proving his title RAM JEEBUN CHUCKERBUTTY *v* PERSHAD SHAR 7 W R 458

27 ———— **Suit for possession of lakhiraj land**—*Beng Reg XIX of 1793 s 10* Suit to recover possession of land from which the plaintiff had been ousted by the defendant under s 10 Regulation XIX of 1793 on the ground that it was an invalid lakhiraj created after 1st December 1790 *Held* that the zamindar having no right to oust the lakhirajdar unless the lakhiraj was created after 1st December 1790 must prove that the lakhi raj was created subsequently to that date and that it was not for the lakhirajdar to prove that the lakhiraj was created prior to that date MUN MO HINEE DOSSEE *v* JOYKISSEN MOOKERJEE W R F B 174

PREM SHEWUK DOSS *v* ISHREE PERSHAD 2 W R 303

TAREENEEPERSAD GHOSE *v* KALLEECHURN GHOSE Marsh 215 2 Hay 90

28 ———— *Purchaser at sale in execution of a decree* The onus of prov ing that a tenure is lakhiraj is not obviated by the circumstance that the person alleging that it is bought the tenure as lakhiraj at a sale in execution of a decree LALLA SHEEBLALL *v* GHOLAM NUBBEE Marsh 255 2 Hay 23

29 ———— *Validity of lakhiraj tenure* In a suit to recover the posse ion land from which the plaintiff claiming to be a lakhi rajdar has been forcibly evicted by the land holder the plaintiff is not entitled to a decree for pos ession unless he can show a *prima facie* case of lakhiraj tenure *Semble* If he show such *prima facie* case the Court will give a decree for possession and leave the zamindar to dispute the existence or validity of the alleged lakhiraj tenure in a resumption suit SREENATH LALL *v* JUNMEYJOY MULLICK Marsh 550 2 Hay 649

30 ———— *Long possession* [illegible]

for the zamindar who pleaded a right to oust them summarily under s 10 Bengal Regulation XIX of 1793 to prove that the lakhiraj title was invalid as having been created subsequent to 1790 MUN A RAM DOSS KURMOKAR *v* GRIDHAREE RAM DOSS 10 W R 278

31 ———— *Proof of collec tion of rents* In a suit for possession of alleged lakhiraj land [illegible] pos [illegible] the [illegible] n of [illegible] that point to be tried in this or another suit he must accept the onus of proving that the lakhiraj is held

ONUS OF PROOF—*contd.*

40 RESUMPTION AND ASSESSMENT—*contd*

on an invalid title by proving that he collected mal rents from the land and that he is not barred by limitation. GOSSAIN SHEO SUHAYE GEER *v* MAHODEO SUHAY 6 W R 294

32. ———— *Proof of previous possession rent free.* In a suit to recover possession of lakhiraj land on the allegation that the plaintiff has been wrongfully evicted the plaintiff is entitled to succeed if he proves that he previously held possession of the land as lakhiraj JOYKISHEN MOOKERJEE *v* PEAREE MOHUN DUTT 8 W R 160

33 ———— *Suit by raiyat after dispossession for invalid lakhiraj land* A zamindar obtained a decree against a raiyat for assessment on the ground that the raiyat held under an invalid lakhiraj but instead of assessing turned the raiyat out of possession. *Held* that a suit by the raiyat for recovery of the land on the ground of anterior possession was not sustainable and the raiyat must prove his title as against the zamindar his anterior possession under the invalid lakhiraj the decision as to which he did not sue to set aside within the proper time being the possession of a mere trespasser and not that of an occupant raiyat WOOMA SOONDUREE THAKOORANEE *v* KISHOREE MOHUN BANERJEE 8 W R 238

34 ———— Suit for declaration of land as lakhiraj—*Decree for rent evidence of* ...

upon the plaintiffs to show that they were holding the land as true lakhiraj and that the Collector s decree was wrong HUBENDUR KISHORE *v* KEDAR NATH MITTER 10 W R 188

35 ———— In a suit for confirmation of possession and declaration of lakhiraj right against purchasers at a sale for arrears of Government revenue it is necessary for the plaintiff to prove affirmatively that the land has been held rent free from the time of the permanent settlement PAM CHURN LALL *v* HATEE MAHTOON 13 W R 247

36 ———— *Proof of possession for twelve years* In order to lands being re ...

37 ———— Suit for confirmation of possession of lakhiraj—*Proof of title* In a suit for confirmation of possession of mokurari and ...

ONUS OF PROOF—*concld*

40 RESUMPTION AND ASSESSMENT—*concld*

See KHELATCHUNDER GHOSE *v* POORNO CHUNDER ROY 2 W R 258

38 ———— Evidence of land being lakhiraj—*Production of rent free sanad* The production of a lakhiraj sanad is not necessary to prove that land is held rent free The fact may be legally established by long and uninterrupted possession without payment of rent raising the presumption that the land had been held rent free from the decennial settlement DHUNPUT SINGH *v* RUSSOMOYEE CHOWDHRAIN 10 W R 461

39 ———— *Suit for rent* If no rent has ever been paid for land this is *primâ* ...

service due and rendered to the zamindar or otherwise by the zamindar s permission. If the holding were merely permissive it could not prejudice the zamindar s right. ALI BUX *v* ROOP KOOER 2 N W 106

41 SALE OF GOODS

———— Sale of goods by sample—*Proof of inequality of sample.* In a sale of goods by sample the onus is on the party alleging that the goods are not equal to sample ISHERA YARN MILLS COMPANY *v* ABDOOL KURREEM Bourke O C 276

42 SALE FOR ARREARS OF REVENUE

1 ———— Suit by purchaser—*Incumbrances—Title—Possession* In a suit by an auction purchaser of a permanently settled estate to recover certain julkurs of which the defendants had been admittedly in possession for nearly fifty years and which they claimed as incidents to a tenure which existed before the date of the permanent settlement it was held that the onus was on the plaintiff to prove his title affirmatively FORBES *v* MEER MAHOMED HOSSEIN 12 B L R P C 210 20 W R 44

2 ———— *Suit for rents and profits of uncultivated land brought into cultivation* Suit by purchaser of a mootah at a sale for arrears of revenue for the rents and profits of a hamlet consisting of lands which when uncultivated were given by the then zamindar to the defendant (respondent) The plaintiff alleged that the lands were included in the assets upon which the permanent assessment was fixed but being unable to prove his allegation his suit was dismissed VENCATA NILADRY ROW *v* VUTCHAVOY VENCATAPUTTY RAJ 5 W R P C 80

3 ...

arrears of revenue which would be protected by s 54

ONUS OF PROOF—*contd*

42 SALE FOR ARREARS OF REVENUE—*concld*

of Act XI of 1859 it is for the party setting up such incumbrance to establish its *bonâ fide* character MONOHUR MOOKERJEE *v* JOYKISHEN MOOKERJEE 5 W R 1

4 ——— Claim to protection from ejectment by auction purchaser—*Act XI of 1859 37* Where a raiyat claims protection from ejectment by an auction purchaser under the proviso to s 37 Act XI of 1859 the onus is on the raiyat to prove the character of his holding DOMUN LOLL *v* PUDMUN SINGH W R 1864, Act X, 129

5 ——— Revenue sale law—*Act XI of 1859 s 37—Purchaser of estate sold at auction rights of* The onus of proving that under tenures

HARA MONI DEBIA I L R 15 Calc 555

6 ——— *Act XI of 1859 s 37—Incumbrance annulment of—Burden of proof—Tenure held since permanent settlement* In a

found as a fact that the tenure was in existence in the year 1798 99 The plaintiff s suit was dismissed and he now contended that the facts found could not protect the tenure in the absence of proof that the tenure was in existence at the date of the permanent settlement *Held* that although in the first instance the burden of proof is upon the

rule can be laid down as to when the burden of proof shifts from one side to the other and that each case must be governed by its merits. NITYA NUND POY *v* BANSHI CHANDRA BHUNJAN 3 C W N 341

43 SALE FOR ARREARS OF RENT

1 ——— Ejectment suit for—*Avoidance of under tenure—Incumbrance—Beng Act VIII of 1869 ss 59 60 66* In a suit by the purchaser of an under tenure under ss 59 and 60 of the Ren

I L R 15 Calc 1

ONUS OF PROOF—*contd*

43 SALE FOR ARREARS OF RENT—*concld*

2 ——— Suit to set aside patni sale—*Irregularity—Non service of notice—Proof of service—Evidence Act s 106* In a suit against a zamindar to set aside the sale of a patni tenure under Regulation VIII of 1819 on the ground of non service of notice the onus of proving service lies on the defendant according to the spirit of s 106 of the Evidence Act DOORGA CHURN SURMA CHOWDHRY *v* NAJMOODDEEN 21 W R 397

44 SALE IN EXECUTION OF DECREE

1 ——— Suit to set aside sale—*Irregularity* When a judgment debtor sues to set aside a sale in execution of a decree on the ground of irregularity the onus of proving the irregularity is on him NUFUSA *v* MAHOMED AKBAR GAZEE 2 W R 74

2 ——— *Fraud proof of—Irregularity* In a suit to set aside an execution sale on the ground of fraud the *onus probandi* rests on the plaintiff to prove his allegation mere irregularity in the issue of processes will not of itself prove fraud even where the auction bids were so small as to excite suspicion KUBEERUN *v* SUFEE HUN 24 W R 388

3 ——— *Proof of irregularity—Non affixing of notices previous to sale* Several years after the purchase by the defendant of immoveable property at a sale in execution of a decree the judgment debtor sued this purchaser for the lands on the ground amongst others that the notices required by Bengal Regulation XX of 1795 *s 12* had not been affixed previous to the sale *Held* that the onus of proving the default in affixing the notices lay upon the plaintiff the judgment debtor MOHESH NARAIN SINGH *v* KISHNANUND MISSER Marsh 592 2 Ind Jur O S 1 5 W R P C 7 9 Moo I A 324

4 ——— *Allegation of fraud—Knowledge of fraud* In a suit to set aside a sale in execution of decree on the ground of fraud where the plaintiff alleges the fraud only came to his knowledge at a certain time —*Held* that the burden of proving such knowledge on the part of the plaintiffs prior to the time stated by them lay on the defendants NATHA SINGH *v* JODHA SINGH I L R 6 All 406

5 ——— *Bonâ fides* In

ment creditor purchased the same at the auction and sold it to the defendant who ousted the plaintiff who thereupon sued to recover possession under his conveyance *Held* that the onus was not entirely on the plaintiff to prove the *bona fides* of the sale but that the evidence adduced by the defendant should be examined also DEBI *v* MADAN MOHAN SINGH 2 B L R A C 326

ONUS OF PROOF—*contd*

44 SALE IN EXECUTION OF DECREE—*concld*

6 ———————— *Purchase by granddaughter from grandmother—Stranger purchasing bona fide—Proof of bona fide* When a granddaughter purchases from a grandmother and attempts to oust a stranger who purchased *bona fide* and without notice full and satisfactory proof of the *bona fides* of the transaction is necessary even though no motive for fraud is proved IMDAD HOSEIN *v* ALIKOONNISSA DABEE DUTT MISSER *v* ALIKOONNISSA W R F B 77

7 ———————— *Proof of want of bona fides—Suspicion* In a suit to have a purchase made at an execution sale set aside on the ground that it was not *bona fide* but collusive the burden of proof is upon the plaintiff and it is not

not sufficient for him to produce a deed executed by a judgment debtor the plaintiff must free his case of such suspicions as may arise from his own position with reference to the vendor and from any such circumstance as the improbability of such a purchase having been made ROOP RAM DASS *v* SASFERAM NATH KURMOKUR 23 W R 141

See GOLUCKNATH GHOSE *v* SREENATH BOSE 24 W R 209

8 ———————— *Suit for confirmation of sale—Suit to set aside order cancelling sale—Sale for inadequate price allegation of—Material irregularity proof of* In a suit for confirmation of a sale held in execution of a decree by the Collector under s 320 Civil Procedure Code and to set aside an order by the Collector cancelling the

BANDI BIBI *v* KALKA I L R 8 All 602

45 SERVICE OF SUMMONS

———— **Application to set aside ex parte decree**—*Proof of service of summons* Where a judgment-debtor applies to set aside an *ex parte* judgment on the ground that there was no effectual service of summons upon him he should be called upon to give his evidence or to make out a *primâ facie* case KHUDEERUN LALL *v* CHUTTERDHAREE LALL 21 W R 242

JHUTOO KOER *v* LULITA KOER 22 W R 423

46 TRUST REVOCATION OF

———— **Religious endowment**—*Proof of revocation—Limitation* In 1813 certain lands were dedicated by deed to the religious service of an idol and in 1830 that dedication was confirmed in a partition deed The plaintiff sued to set aside alienations of the property and to have the

ONUS OF PROOF—*contd*

46 TRUST REVOCATION OF—*concld*

trusts of the dedication deeds declared The holders of the property alleged that a subsequent partition deed had been executed in 184_ and that the dealings of the family had shown an intention to revoke the trusts *Held* that it lay upon the holders to prove the revocation of the trusts and that on failure to do so they could not set up the law of limitation in answer to the plaintiff's suit JUGGUTMOHEENEE DOSSEE *v* SOKHEEMONEE DOSSEE 10 B L R 19 17 W R 41 14 Moo I A 289

47 VALUATION OF SUIT

———— **Assertion by defendant that suit is overvalued** When the defendant asserts that a suit is overvalued the onus of proving the truth of his assertion lies on him UMA SANKAR ROY CHOWDHRY *v* MANSUR ALI KHAN 5 B L R Ap 6 13 W R 327

48 WILL

1. ———————— *Evidence and proof of will—Suit for declaration that will is not genuine—Omission by party impeaching will to give evidence or cross examine witnesses* The defendants (widow and sister in law of a deceased *talukdar*) set up a will under which they alleged they took all the property of the testator absolutely whereupon the plaintiffs the next reversioners sued for a declaration that the will was not genuine and that the alleged testator died intestate *Held* by the Judicial Committee that the *onus* was on the defendants who set it up to prove that the will was genuine and not on the plaintiffs who impeached it to show that it was a forgery The fact that the plaintiffs omitted to give any evidence that the will was forged though they asserted that they would prove it to be spurious if necessary raised no presumption of the genuineness of the will Nor did the omission of the plaintiffs to cross examine some witnesses called by the Court previously to hearing to explain the alleged loss and consequent non production of the will give rise to any presumption in favour of its validity They were not bound to cross examine the witnesses which they could

49 WITNESS

1 ———— **Refusal to come into Court as witness**—*Presumption* In a suit to recover possession of land claimed by virtue of a sanad from a rajah in which plaintiff gave *prima facie* evidence of the authenticity of the sanad and subpœnaed the rajah to prove it it was held that the lower Court did very right in considering the plaintiff's

ONUS OF PROOF—*contd*

49 WITNESS—*concld*

testimony to be strengthened by defendant s (rajah s) refusal to come into Court with his own story and that the onus lay on the rajah to rebut the plaintiff s evidence or to prove minority or other personal disqualification. RADHA KISTO SING DEO v GUDADHUR BANERJEE 8 W R 453

50 WRONGFUL CONVERSION

1 ——— **Suit for wrongful conversion of timber**—*Failure to prove actual or constructive possession* In a suit under the Civil Procedure Code in which he plaintiffs allege that the defendants wrongfully and forcibly took away and were detaining timber which had been in the plaintiffs constructive possession and to which they are entitled and the relief asked for is the [illegible]

fendants to how that they were entitled to the timber In the present case the plaintiffs having failed to show their possession of the timber or the forcible or wrongful dispossession or conversion of the goods and the defendants having made good their title to the timber —*Held* that the judgment should have been for the defendants SNADDEN v TODD FINDLAY & Co 7 W R 286

51 MISCELLANEOUS CASES

1 ——— **Suit by purchaser of tora garas huk**—*Evidence of alienability* Suit by the purchaser of a certain annual payment by Government called *tora garas huk* sold in satisfaction of a decree *Held* that the onus was on the Government to prove that there was something in the nature of this payment which made it incapable of alienation and that the Government had failed to give such proof SHUMBHOO LALL GIRDHUR LALL v COLLECTOR OF SURAT

4 W R P C 55 8 Moo I A 1

2 ——— **Suit for closing new road and opening old one**—*Title—Trespass* In a suit for closing a new road opened by the defendants through the land of the plaintiff and for opening an old road which had been closed by the defendants —*Held* that the only question which can be tried in the suit is whether the defendants have trespassed on the land of the plaintiff by opening a road The onus is upon the plaintiff to prove that the land belongs to him. HIRA CHAND BANERJEE v SHAMA CHARAN CHATTERJEE

3 B L R A C 351 12 W R 275

3 ——— **Admission of assets by heir of deceased judgment-debtor**—*Proof of extent of property* When an heir of a deceased judgment debtor admits possession of some of the latter s property the onus is on the heir and not on the decree holder to prove the extent of that pro-

ONUS OF PROOF—*concld*

51 MISCELLANEOUS CASES—*concld*

perty MATUNGINEE DEBIA v GOUR CHUNDER BHOOY 2 W R Mis 41

4 ——— **Suit for share of income tax**—*Manager possession as* Suit for share of income tax by a co sharer who the lower Court found was the defendant s manager *Held* that the mere production of a deed showing that the defendant had in it nominated other persons to collect the rents of her share without proof of cessation of possession did not shift the onus from the plaintiff of proving that he had ceased to hold possession of the defendant s share as her manager or that the defendant and not the plaintiff had actually collected the rents PAMNATH GHOSE v AMRIT MOYEE DOSSEE 5 W R 168

5 ——— **Suit for disturbance of** [illegible] illegally appointed and on the defendant failing to show that the plaintiff was entitled to succeed MUHAMMAD YUSSUB v SAYAD AHMED

1 Bom Ap 10

6 ——— **Suit for share of joint property under family arrangement**—*Proof of cause of action* A plaintiff suing for a share of joint property which she claimed under a family arrangement said to have been reduced to writing as an ikrarnamah and upon the happening of the necessary conditions it was held that the rules with regard to the onus of proof which are applicable to a suit for a share of joint family property were not directly applicable and the plaintiff was bound to give some *prima facie* proof of her cause of action RAM CHUNDER MITTER v KISTOO KAMINEE DOSSEE

10 W R 194

7 ——— **Suit for share of zerait land under ticca pottah granted by co sharers**—*Effect of decision without jurisdiction* Where under a ticca pottah granted to him by several shareholders plaintiff claimed the share of rent said to be due to him by the defendant (another [illegible]

amount of his share and the only onus on an intervenor would be to prove *bonâ fide* possession A decision set aside by a superior Court as made without jurisdiction cannot have any probative force whatever between the parties SOOKRAM MISSER v CROWDY 19 W R 285

OPINIONS OF JUDGES

——— memoranda of—

See JUDGMENT—CIVIL CASES—WHAT AMOUNTS TO
B L R Sup Vol 774

OPIUM.

——— illegal possession of—

See ACT XIII OF 1867 s 20
8 B L R Ap 7

See OPIUM I L R 36 Calc 1016

See OPIUM ACT (I OF 1878) s 9
I L R 25 All 262

——— illegal sale of—

See ACT XXI OF 1856 s 38
16 W R Cr 69

1 ——— Bom Reg XXI of 1827, s 4 —*Keeping smuggled opium—Sentence on conviction.* Where more than one person is convicted under s 4 Regulation XXI of 1827 (Bombay) of keeping smuggled opium each of the convicts is liable to the whole penalty therein imposed … the forfeiture of double the value of the opium and double the amount of the duty leviable thereon REG v VAKHATCHAND 1 Bom. 50

But this was overruled by the following case which approved of the case of *R g v Rajgur Veneegur 3 Moo Fou Rep 6…* and *held* that where several persons knowingly harbour keep or conceal a parcel of smuggled opium one penalty of double the value of such opium and of double the amount of duty leviable upon it *only is recoverable* under Regulation XXI of 1827 s 4 REG v SHOWDAR GHENAR 7 Bom Cr 39

2. ——— Act XXI of 1856 s 53—*Possession by servant* Where opium was found in the possession of a person who was a servant of the …

the accused could not be convicted under s 53 Act XXI of 1856 as it had not been shown that the …

20 W R Cr 54

3 ——— Illegal possession of—*Opium Act (I of 1878) s 9 (c)—Possession of railway receipt for an undelivered parcel of contraband opium* The possession of a railway receipt relating to an undelivered parcel of contraband … a …

… Emperor, I L R … discussed and followed. ASHRUF ALI v EMPEROR (1909) I L R 36 Calc 1016

OPIUM ACT (I OF 1878)

——— Breach of license under—*Beng Act IV of 1866 ss 36 37 39 40—Beng Act II*

OPIUM ACT (I OF 1878)—*contd*

of 1876—Bengal Excise Act VII of 1878—Liability of master for servant s breach of license A who held a certificate under Act VII of 1878 (the Excise Act) from the Deputy Commissioner of Police that he was entitled to a license from the Collector to sell muddut upon the conditions set forth therein obtained such a license from the Collector under Act I of 1878 (The Opium Act) upon the conditions mentioned No license was granted by the Deputy Commissioner of Police it not being usual for licenses to be granted by the police where a license had been issued by the Collector upon a certificate from the Deputy Commissioner *A* was charged under s 40 of Act IV of 1866 [as amended by Bengal Act II of 1876] with a breach of the conditions not of the license but of the certificate the act com…

sioner of Police entitling him to a license under Act I of 1878 was liable to punishment by reason of his not having under s 39 of Act IV of 1866 also obtained a certificate from the Deputy Commissioner *See In re Bhoobun Chunder Shaw 11 C L R 404* DAVIS v KOYLASH CHUNDER GHOSE 13 C L R 336

——— s 3—*License to possess opium—Transport of opium* A person having a license for the possession of opium as a medical practitioner limited to eight pollums of opium sent his servant to buy from a licensed dealer at Sholavaram and bring to Madras four pollums of opium he was convicted of the offence of transporting opium without a license *Held* that he conviction was right QUEEN EMPRESS v RAMANUJAM I L R 13 Mad 191

——— s 4—

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—GENERALLY
I L R 19 Bom 626

——— ss 5 and 9—*Licensed vendor liability of under s 9 for keeping incorrect accounts* S 5 of the Opium Act (I of 1878) declares that … with the previous sanction …

holder of the license is to keep a daily correct account showing the quantity of opium received

OPIUM ACT (I OF 1978)—*contd*

———— s 5—*concld*

and sold and other details Art 18 ets out that on infringement of any of the conditions contained in the form or imposed by the Opium Act the license may be cancelled. The petitioner a licensed vendor of opium was convicted of having kept incorrect accounts in contravention of the rules made under s 5 of the Opium Act and having thereby com mitted an offence punishable under s 9 of that Act He was sentenced to pay a fine of R200 and in default of payment to undergo rigorous impris on ment for four months *Held* that the conviction and sentence must be set a ide there being nothing in any of the rules made under s 5 of the Act which

———— s 9—

See MAGISTRATE—GENERAL JURISDICTION
I L R 15 All 192

See MAGISTRATE—SPECIAL ACTS—OPIUM ACT I L R 19 All 465

See OPIUM ILLEGAL POSSESSION OF
I L R 36 Calc 1016

1 ———— *Liability of master for act of servant* Contrary to the conditions of his master s opium license the servant sold a prepara tion of opium between sun et and sunrise The

11 C L R 464

2 ———— *Act XIII of 1857* ... *lity of* *188* An 1878)

and not coming under s 14 of that Act is a non cognizable offence and is therefore one for which by s 4 of the Criminal Procedure Code a police officer cannot arrest without warrant and he has there fore under s 155 of the Code no authority to investigate such an offence without the order of a Magistrate nor under s 165 can he make a search in respect of it The power of arrest without

furnish the security required by that section Where a police officer therefore in respect of an offence under s 9 of the Opium Act not coming under s 14 of the Act made a search in the house of

OPIUM ACT (I OF 1878)—*concd*

———— s 9—*concld*

action for damages for the illegal search BAHARAL SHAH *v* TARAK NATH CHOWDHRY
I L R 24 Calc 691

3 ———— *Possession of illicit opium—Custody of a locked box containing opium lawfully belonging to the owner of the box* A locked box containing the stock of opium and books of a licensed vendor of opium the key of which was kept by the owner was found in the house of a person who lived next door to the shop of the opium vendor and it appeared that the opium vendor instead of taking his box home with him at night was in the habit of leaving it with his neighbour for afe custody *Held* that the custodian of the box could not properly be convicted of the offence of unlawful possession of opium inasmuch as the pos ession of the opium was not his but that of the legitimate owner EMPEROR *v* GAJADHAR (1903)
I L R 25 All 262

———— ss 9, 10 11—*Rules framed under the Act—Rule 4—Possession of opium exceeding statutory quantity—Knowledge if n cessary to constitute offence—Construction of penal statute—Common carrier if protected—Crew of boat if in possession of cargo—Possession of manjhi—Con fiscation of boat when justified* Opium in respect of which it is to be presumed that an offence has been committed must be opium in the posses ion of the accused but such possession need not be to the knowledge of the accused Where the provision of an enactment is penal it must be read plainly There being no reservation in favour of common carriers in s 10 of the Opium Act a common carrier is not exempted from the provisions of the section which is of a character that is exceptional but by no means uncommon Where opium exceeding five tolas was found in a boat of which one C was the manjhi and master and the other accused were the crew and there was nothing to shew how the opium came to be on the boat or that either C or the crew of the boat knew that it was there *Held* that C being in possession of the boat as manjhi and its master was in possession of the opium and was rightly convicted of an offence under s 9 of the Opium Act *Held* also that the crew who pre

ORAL AGREEMENT

See EVIDENCE ACT (I OF 1872) s 92 PROV 4 I L R 30 Mad 231

ORAL EVIDENCE

See EVIDENCE ACT s 92
I L R 30 Bom 426

See [illegible]NCE—PAROL EVIDENCE.

ORAL EVIDENCE—*concl*

See Specific Performance. 13 C W N 326

See Witness—
Civil Cases
Criminal Cases

ORDER.

See Appeal—
Decrees I L R 28 Calc 81
Orders.

See Appeal to Privy Council—Cases in which Appeal lies or not—Appealable Orders

See Interlocutory Order

See Letters Patent High Courts 1865 cl 15

See Letters Patent High Court N W P cl 10

See Special or Second Appeal—Orders subject or not to Appeal.

See Superintendence of High Court—Civil Procedure Code 1882 s 622.

——— appeal—

See Appeal Arbitrator. 8 C W N 37

See Award 8 C W N 207

See Civil Procedure Code 1882 s 103 8 C W N 160

See Civil Procedure Code 1882 s 244 8 C W N 573

See Probate and Administration Act s 50 8 C W N 748

——— ex parte entry in—

See Partition I L R 36 Calc 726

——— framed in alternative—

See Sanction for Prosecution—Nature Form and Sufficiency of Sanction I L R 25 All 234

——— in execution of decree—

See Appeal—Execution of Decree

See Res Judicata—Orders in Execution of Decree

See Special or Second Appeal—Orders subject or not to Appeal.
B L R Sup Vol Ap 1
1 Ind Jur O S 50 68
6 Bom A C 205
4 Mad 32
I L R 1 Mad 401
I L R 11 Calc 169

See Special or Second Appeal—Small Cause Court Suits 12 B L R 261
I L R 2 All 112
8 W R 112
12 W R 86

ORDER—*concl*

——— issue of before commencement of Act—

See Bengal Irrigation Act ss 1 6 I L R 28 Calc 487

——— made on appeal—

See Appeal to Privy Council—Cases in which Appeal lies or not—Appealable Orders 13 B L R 103
1 B L R F B 1

——— of discharge by Presidency Magistrate—

See High Court Jurisdiction of I L R 36 Calc 994

——— of Magistrate in respect of nuisance—

See Declaratory Decree Suit for—Orders of Criminal Court 6 B L R 643

See Jurisdiction of Civil Court—Magistrate s Order. Interference with

See Nuisance

——— of Magistrate, in respect of possession—

See Possession Order of Criminal Court as to

——— setting aside sale—

See Sale for Arrears of Revenue I L R 34 Calc 877

——— when a 'decree —

See Civil Procedure Code 1882 s 2—Decree definition of

——— Order on petition On every petition made before him a Magistrate should make an order either granting or refusing it An order merely to file it is improper Bhomar Munshi v Digambar Das (1902) 6 C W N 548

ORDER AND DISPOSITION

See Insolvency—Order and Disposition

ORIGINAL SIDE OF HIGH COURT

See Jurisdiction of High Court I L R 33 Calc 180

——— civil jurisdiction of—

See Right of Suit—Fraud 7 C W N 353

ORIGINAL SIDE OF HIGH COURT—*concld*

——— criminal jurisdiction of—

See COMMITMENT I L R 36 Calc 48

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15—CRIMINAL CASES 7 B L R 244 note 250 note

——— ordinary original criminal jurisdiction of—

See SPECIAL TRIBUNAL 13 C W N 605

——— powers of judge sitting on—

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE 5 B L R Ap 21

——— right to plead in—

See PRACTICE—CIVIL CASES—VAKIL AND COUNSEL I L R 30 Calc 980

See RULE OF HIGH COURT MADRAS I L R 1 Mad 24

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 622. 7 C W N 843

ORISSA

See BENGAL TENANCY ACT s 67—INTEREST 13 C W N 95

See TRIBUTARY MAHALS OF ORISSA

ORISSA LAND TENURE

See HINDU LAW—CUSTOM I L R 36 Calc 590

OSTENSIBLE OWNER

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 41 I L R 29 All 292

OUDH ACTS

See N W P AND OUDH ACTS

——— 1866—XIII—

See OUDH REDEMPTION ACT

——— XXVI—

See OUDH SUB SETTLEMENT ACT

——— 1868—XIX—

See OUDH RENT ACT

——— 1869—I—

See OUDH ESTATES ACT

——— 1870—XXIV—

See OUDH TALUKHDARS ACT

——— 1876—XVII—

See OUDH LAND REVENUE ACT

——— XVIII—

See OUDH LAWS ACT

OUDH ACTS—*concld*

——— 1879—XIII—

See OUDH CIVIL COURTS ACT

1886—XXII—

See OUDH RENT ACT

——— 1891—XIV—

See OUDH COURTS ACT

OUDH CIVIL COURTS ACT (XIII OF 1879)

——— s 27—

See DIVORCE ACT s 3 I L R 4 All 306

See HIGH COURT JURISDICTION OF—N W P—CIVIL I L R 18 All 375

OUDH COURTS ACT (XIV OF 1891)

——— s 8—

See HIGH COURT JURISDICTION OF—N W P—CIVIL I L R 18 All 375

——— *Jurisdiction—Appeal—Additional Judicial Commissioner sitting alone* Case in which an appeal heard by the Additional Judicial Commissioner of Oudh sitting alone was remanded to the Court of the Judicial Commissioner to be tried by the Judicial Commissioner and the Additional Judicial Commissioner sitting together GANGA BAKSH SINGH *v* DALIP SINGH (1901)
I L R 24 All 13 5 C W N 781
s c L R 28 I A 181

OUDH ESTATES ACT (I OF 1869)

See BIRT ZEMINDARS I L R 29 All 708 L R 34 I A 142

See HINDU LAW—PARTITION—RIGHT TO PARTITION—GENERALLY I L R 16 Calc 397

See WILL—CONSTRUCTION I L R 10 Calc 482

1 ——— Limitation—*Suit for redemption of mortgage* Under Act I of 1869 a suit for redemption is not barred where the instrument of mortgage fixes a term within which the mortgage might be redeemed and such term did not expire before 13th February 1856 KISHEN DUTT RAM PANDAY *v* NARENDAR BAHADOOR SINGH
L R 3 I A 85

2 ——— Interest of registered talukhdar—*Trustee* An Oudh talukh standing in the name of *J S* as kabuliatdar having been

OUDH ESTATES ACT (I OF 1869)
—*contd.*

the decision of the Settlement Officer that under Act I of 1869 the defendant was protected by his sanad against any claim of the plaintiffs in respect of the talukh. *Held* by the Privy Council on appeal that as a person who has been registered as a talukhdar under Act I of 1869 and has thereby acquired a talukhdari right in the whole property may nevertheless have made himself a trustee of a portion of the beneficial interest in lands comprised within the talukh for another and be liable to account accordingly the suit must be remanded for trial as to whether the defendant had agreed or become bound to hold the village comprised in the summary settlement and sanad or the rents and profits thereof in trust for the plaintiffs HARDEO BUX v JAWAHIR SINGH

I. L R 3 Calc 522, L. R. 4 I A 178

Held by the Privy Council after remand that Act I of 1869 which was passed before the suit was decided by the Court of first instance did not operate so as to change the relative conditions of the parties and to put an end to the trust upon which the defendant had previously held the estate The estate in his hands remained thereafter subject to the trust and there can be no difference in this respect between an express trust and a trust implied or presumed from a fair and reasonable interpretation of the acts and declarations of the defendant. HARDEO BUX v JAWAHIR SINGH

L R 6 I A 161

3 ———— **Interest of registered talukhdar**—*Trust—Joint estate* A talukhdari estate though entered in the name of one member of a joint family in the lists prepared in conformity with the Oudh Estates Act (I of 1869) may be subject to trust, implied from the acts and declaration of the talukhdar for the joint family as a joint estate *Hardeo Baksh* v *Jawahir Singh* *I L R 3 Calc 5-2 L R 4 I A 178* PIRTHI LAL v JOWAHIR SINGH I L. R 14 Calc 493

L R. 14 I A 37

4. ———— **Effect of sanad to confer proprietary right on a talukhdar not being a trustee**—*Claim to under proprietary right against talukhdar distinguished and not concluded b. a decree for the ...*

OUDH ESTATES ACT (I OF 1869)
—*contd*

proprietary right was made without prejudice to a claim for the under proprietary right HAIDAR ALI KHAN v NAWAB ALI KHAN

I L R 17 Calc 311
L. R 16 I A 183

5 ———— **Talukhdars—Title obtained by talukhdar under his sanad**—*Effect of confiscation of 1858 upon previous gift—Attempt to establish trust for claimants as to part of talukhdari estate—Claim to sub proprietary right distinguished* The sanad granting a talukhdar s estate confers *primâ facie* an absolute title upon the grantee A gift of villages by a talukhdar to collateral relations if effectively made in 1850 and ...

was supposed to have been given for his relations to claim —*Held* that such a claim was not established merely by the claimants having been left in possession of villages and having paid to the talukhdar only the proportion of the revenue assessed upon them during the whole time of the troubles in Oudh and afterwards *Held* also that the question of the claimants having an under proprietary right in such villages was entirely irrelevant to a claim for a declaration ...

claim was not one of them RAM SINGH v DEPUTY COMMISSIONER OF BARA BANKI

I L. R 17 Calc 444
L. R. 17 I. A 54

6 ———— **Estate of a sanad holding talukhdar**—*Lineal primogeniture by custom—Award of a body of talukhdar within s 33 of Oudh Estates Act—Withdrawal of a voluntary admission* The title to a talukhdari estate devolving upon a single heir by a custom of lineal primogeniture was contested. The plaintiff claimed to succeed his deceased brother as talukhdar The de...

... sanad had been granted and the talukhdari had been entered in list II under the Act of 1869 On the other hand it was urged that the above was consistent with the existence

OUDH ESTATES ACT (I OF 1869)
—contd

of a trust for the benefit of the titular talukhdar s uncles of whom the defendant was the survivor they having assented to the recognition of a nominal title in their nephew *Held* that in intention as

But after the Oudh Estates Act 1869 had become law the title shown by the plaintiff must prevail and he must recover the estate unless a trust for the defendant should have been established There had been no consideration given and there was nothing to create a trust There had been no transfer no estoppel and no bar by time In 1868 an award had been made by a body of talukhdars as arbitrators within s 33 of the Act between members of the family other than the present disputants This as well as a wajib ul urz of one of the villages of the talukh was admissible as evidence of what was the custom in regard to its devolution In 1879 the plaintiff had on his bro

om prevail
d in a peti
be entered
Held that

there might be a withdrawal of any gratuitous admission unless there should be some obligation not to withdraw it that there was no such obligation here and that there had been no proof of any title upon which the admission could rest MUHAMMAD IMAM ALI KHAN *v* HUSAIN KHAN

I L R 26 Calc 81
L R 25 I A 161
2 C W N 737

7 ——— **A talukhdar settled with on terms imposing a trust on him**—*Settlement of estate—Second summary settlement 1858—Effect of the confiscation—Rights of the Government* A sanad holding talukhdar whose name has been

proprietor were entitled in equal shares to the ancestral estate which in 1858 at the second summary settlement was settled with the only one of the four who presented himself to the Settlement Officer The settlement with him as talukhdar which was then made was however made upon terms providing that the absent co sharers on their return should obtain their shares This accorded with his application expressing his willingness *Held* that the question whether the talukhdar had become a trustee for the plaintiff in respect of his share depended on the terms on which the estate had

affected by the sanad. No special provision as to the co sharer s return or admission to share had

OUDH ESTATES ACT (I OF 1869)
—contd

been deemed necessary by the Chief Commissioner who authorized the settlement with the talukhdar in reliance on his assurance The right of the co sharer who returned in 1859 was accordingly established HASAN JAFAR *v* MUHAMMAD ASKARI

I L R 26 Calc 879
L R 26 I A 229
4 C W N 65

8 ——— **Title under sanad from Government**—*Trustee* Although a sanad granted by the Government of India subsequent to the proclamation of March 1858 of an estate in

a third party SHERE BAHADUR SINGH *v* DURIAO KUAR I L R 3 Calc 645

9 ——— **Mortgage**—*Birt zamindari—Settlement—Under proprietary rights—Sub settlement—Malikana—Act XXVI of 1866* An estate in Oudh which had been confiscated under Lord Canning s proclamation of the 15th March 1858 was granted to *B* as talukhdar *G S* who at the date of the proclamation was in possession of the estate as mortgagee with Birt zamindari rights under a conditional deed of sale from the former owner was thereupon dispossessed and *B* put into possession. Failing in other attempts to recover possession *G S* brought a claim in which he asserted proprietary right as mortgagee and prayed that the regular settlement might be made with him The claim was dismissed by the Settlement Officer as being for a direct settlement of a superior proprietary right and as such barred by the Oudh Estates Act (I of 1869) On appeal to the Commissioner the claim was modified into one for a sub settlement of an under proprietary right and a decree was made declaring the plaintiff s under proprietary zamindari title and awarding him possession under the terms of the deed of conditional sale till such time as the mortgage should be redeemed or the title perfected by foreclosure On appeal to the Judicial Commissioner this decree was reversed and the claim dismissed on the ground that the effect of the mortgage-deed was to convey to the plaintiff on the mortgage becoming absolute the full proprietary title and not merely a subordinate one *Held* by the Judicial Committee of the Privy Council that the Birt zamindari rights which the mortgage purported to convey implied a merely subordinate zamindari interest and that the claim of the plaintiff to a sub settlement was valid *Quære* Whether even if the interest intended to be conveyed by the mortgage was not in strictness sub proprietary a sub settlement might not have been supported *Quære* Whether under Act XXVI of 1866 *B* as talukhdar was entitled to malikana GOUR SUNKER *v* MAHARAJA OF BULRAMPORE

I L R 4 Calc 839
L R 6 I A 1

OUDH ESTATES ACT (I OF 1869) —*contd*

——— ss 2 1—

See HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN
I L R 25 All 476

1. ——— ss 2 13 14 and 22—*Transfer to person not in line of succession—Effect of transfer in changing rules of succession—Brother—Half brother—Marginal notes to sections of Act—Persons acquiring taluks by request taking effect before passing of Act I of 1869— Legatee definition of* The expression would have succession in s. 14 of the Oudh Estates Act (I of 1869) must be confined to persons in the special line of succession that would have been applicable to the particular case if the transferor or testator had died intestate and the death had occurred at the date of the transfer or (in the case of a gift by will) at the time when the succession opened. In other words the expression a person who would have succeeded according to the provisions of this Act is equivalent to the person or one of the persons to whom the estate would have descended according to the provisions of the special clause of s 22 applicable to the particular case The younger son of a talukhdar whose name was entered in lists I and II of the lists mentioned in s 8 of Act I of 1869 acquired the talukhs from his father by transfer or bequest and died intestate In a suit by his eldest brother ... the ... the ... not ... the prescribed line of succession the estate devolved on his death under s 15 of the Act as if it had been acquired from a person not a talukhdar and ...

includes a half brother Marginal notes to the section of an Indian Act cannot be referred to for the purpose of construing the Act Where a person acquired a talukh by a bequest which took effect before the passing of Act I of 1869 he was not a legatee within the definition of that term in s 2 and cannot therefore be considered as a person to whom property was bequeathed under the special provisions of the Act BALRAJ KUNWAR v JAGATPAL SINGH (1904) I L R 26 All 308

2 ——— s 2 and ss 13 20 22 (6)—*Will of talukhdar—Registration of will—Succession to talukhdari—Son of deceased elder brother preferred to younger brother* A written statement by a talukhdar made in 1860 in reply to enquiries by the Government issued in the districts under circular orders regarding the succession of talukhdars may come within the definition of a talukhdar s will in s 2 of the Oudh Estates Act (I of 1869) The statement was described by the talukhdar in a letter to the authorities in 1877

OUDH ESTATES ACT (I OF 1869) —*contd*

——— s 2—*contd*

as the will which has been submitted to the Lucknow District through the tahsil of Kursi on 6th April 1860 *Held* that this showed that he intended the statement of 1862 to be his will and that the statement as was held with regard to a similar one in *Hurpurshad* v *Sheo Dyal* L R 3 I A 259 was a will within the definition in the above section The talukhdar declared in a subsequent will of 19th August 1879 that no document ...

latter document was not registered in accordance with s 20 of the Oudh Estates Act 1869 and being inoperative as to the talukhdari estate it could not revoke the will of 1860 which also was not rendered inoperative by any of the provisions of the Act *Held* that by the true construction of s 22 sub s 6 brothers take in the same manner as sons are directed to take by the preceding sub sections and that the descendants of a deceased elder brother are preferred as heirs to the younger surviving brother HAIDAR ALI v TASSAKDDU RASUL KHAN I L R 18 Calc 1
L R 17 I A 82

3 ——— *Succession to a talukhdari—Effect of declaration by holder as to who should be his heir* The official enquiries made of talukdars at an early period of British Administration as to who were to be their successors were not intended to derogate from the rights of talukhdars in their heritable and transferable estates To such an enquiry an answer in 1862 made ...

and the son now claimed that this nomination amount to a gift of the talukhdari estate subject to a trust for the life of the then talukhdar *Held* that the answer of 1862 did not operate to confer any estate upon the person named BALBHADDAR SINGH v SHEO NARAIN SINGH
I L R 27 Calc 344
L R 26 I A 194

4. ——— s 2 and ss 16 19—*Summary settlement with member of joint Hindu family governed by Mitakshara law—Right of alienation—Will—Custom as to partition.* By the 8th paragraph of the Oudh proclamation of March 1858 it was declared that *C L* (at that time deceased) zamindar of Mourawan and others were thenceforward the sole hereditary proprietors of the lands which they held when Oudh came under British rule and which form part of the subject of these suits Summary settlement of the said lands were subsequently made with *G S* (one of the sons of *C L*) by the Government between the 1st April 1858 and the 10th October 1859 a talukhdari sanad was

OUDH ESTATES ACT (I OF 1869)
—*contd*

— s 2—*contd*

granted to him before the passing of Act I of 1869 and he entered into a kabuliat for the same His name was not entered in the second schedule annexed to the Act but *C L* s was By a document dated 7th February 1860 relating to property in the district of Oonao and by other documents similar in effect relating to property in other districts *G S* directed as follows I have been

in my family for generations past is this that the eld st member of the family continues to be the head while the others remain obedient to him but every one possesses a share in the talukh Under the custom of the family the other brothers are at liberty to have their shares separated should they wish it The head has no power under the old custom to alienate the estate without consulting

succeed In suits for partition among t the descendants of *C L* and of his brother who together constituted a Hindu joint family governed by the Mitakshara law all the property the subject of

summary settlements whether previously joint property of the family or not became the separate self acquired property of *G S* that he was the sole *malguzar thereof and that he and his sons* were the sole beneficial owners of it and that he had no power to transfer it by will or by alienation *inter vivos Held* that the sanad and summary settlements were a mere grant by the Government to one member of the family of property which belonged to the family jointly and were not intended to enure to the sole benefit of the grantee and did not affect the rights of the family As regards such property granted to *G S* (if any) which was not previously part of the family estates it was granted for services presumably rendered with the use of the joint family funds and could not therefore be separate self acquired property within the meaning of the Hindu law *Held* also that assuming any portion of such property to have been self acquired by *G S* he must in consequence of Act I of 1869 be deemed to have acquired therein a permanent heritable and transferable right and had power by will or alienation *inter vivos* to transfer the same *Held* further that the document of the 7th February 1860 and other similar documents so far as they related to the property in Oudh amounted to a will

Taken in
having re
the famil

OUDH ESTATES ACT (I OF 1869)
—*contd*

— s 2—*concld*

of an alienation *inter vivos* which in *G S* s lifetime transferred the property to the family to be held as joint family property Ss 16 19 of Act I of 1869 have no retrospective effect HURPURSHAD *v* SHEO DYAL. RAM SAHOY *v* SHEO DYAL. BAL MOKUND *v* SHEO DYAL. RAM SAHOY *v* BAL MOKUND L R 3 I A. 259 26 W R 55

— ss 3 4 8 and 22—
See SANAD
L R 5 I A 1 1 C L R 318

— s 6—
See MORTGAGE I L R 28 All 1

1 — s 8—*Talukhdar in the second list—Estate descending to single heir—Primogeniture* In the Oudh Estates Act I of 1869 rules were laid down as to the title of talukhdars whose estates the Government had created and as to the mode of succession thereto On a question whether or not a talukh to which the Act was applicable descended according to the rules of lineal primogeniture —*Held* that where a talukhdar s name was entered in the second but not in the third of the lists maintained under the above Act the estate although it was to descend to a single heir was not to be considered as pa ng according to the rules of lineal primogeniture ACHAL RAM *v* UDAI PARTAB ADDIYA DAT SINGH
I L R 10 Calc 511 L R 11 I A 51

2 — and ss 9 and 10—*Recogni*

the latter persons with full power of alienation confirmed by the Oudh Estates Act 1869 the legal owner may either by express agreement or by his

ANANT BAHADUR SINGH *v* RAGHUNATH KUAR
I L R 8 Calc 769 11 C L R 149

3 — and ss 11 and 19—*Will of a talukhdar—Customary rule of succession in a family to impartible estate—Primogeniture.* However true it may be that if there is absolutely

selected without reference to primogeniture succeeds to the impartible estate. The eldest of three brothers had succeeded to an impartible family estate and to a talukh also impartible which had been, during the lifetime of their father entered in the first and second but not in the third of the lists prepared in conformity with s. 8 of the Oudh Estates Act I of 1869 Before

OUDH ESTATES ACT (I OF 1869) —contd

———— s 8—*contd*

his death, his eldest brother made an instru

that might be born to him with maintenance to his wife on her becoming a widow *Held* with reference to the *indicia* of a testamentary character there being provisions for contingencies which might not be a certained till the death of the maker of the in strument as compared with the technical matters attending it that this instrument was not a transfer *inter vivos* but was a will and within the above Act *Held* also on the objection that a will or declaration made by the father had fixed a mode of descent which could not be altered by his successor that s 11 of the above Act giving to every heir and legatee of a talukhdar power to transfer or to be queath his estate is not controlled by the proviso in s. 19 declaring that nothing in that section shall affect wills made before the passing of the Act. The impartible family property other than the talukh descending like the latter to a single suc cessor one of these brothers the question as to which of them that one should be depended on the custom of the family On the evidence adduced as to the custom in this respect the plaintiff who was out of possession and on whom in order to make out his title was the burden of proving that the rule of primogenture prevailed failed to do so ISHRI SINGH *v* BALDEO SINGH

I. L. R. 10 Calc 792 L R 11 I A 135

4 ———— and s 22—*Descent of talukh* A talukh entered in the lists I and 2 prepared in conformity with s 8 of the Oudh Estates Act 1869 descends according to the rules pointed out in s. 22 as an impartible estate to the single heir determined by the Hindu law of inheritance *Brij Indar Bahadur Singh* v *Jankee Koer L R 5 I A 1* followed PAN BIJAI BAHADUR SINGH *v* JAGAT PAL SINGH. BISHESHAR BAKSH SINGH *v* PAN BIJAI BAHADUR SINGH I L. R. 18 Calc 111

L. R. 17 I. A. 173

5 ———— ss 8 22—*Talukh descending to a single heir—Ascertainment of that single heir distinguished from the rule of primogeniture—Family custom* An estate belonging to a talukhdar whose name is entered in the second and not in the third of the list of talukhdars in the six specified clas es prepared under the Oudh Estates Act (I of 1869) ss 8 10 is one which according to the custom of the family descends to a single heir but not necessarily by the rule of primogeniture If as happened in the present case where the estate descended to a single heir the heir according to lineal primogeniture is more remote in degree from the ancestor than other persons who may be collaterals coming within the line of heirship then according to the classification in the Oudh Estates Act nearness in degree prevails over directness of line But if two collaterals or other persons in the line of heirship are equal in degree

OUDH ESTATES ACT (I OF 1869) —contd

———— s 8—*concld*

then the person rightly entitled is indicated by

include in that law family custom when established In an attempt to prove a family custom to the effect that females should not inherit no proof was afforded by the production of certain wajib ul araiz as to which there was nothing to show that the villages of which they were recorded were the villages in suit or belonging to the family which was disputing the succession BHAI NARINDAR BAHADUR SINGH *v* ACHAL RAM

I. L. R 20 Calc 649
L. R 20 I A 77

6 ———— ss 8 10—*List of talukhdar prepared under s 8—Entry of name of deceased person in list effect of—Succession—Evidence—Interpretation of Statutes—Retrospective effect* It is not in accordance with sound principles of inter preting Statutes to give them a retrospective effect Entries of the names of deceased persons in the lists mentioned in s 8 were not contem plated by the Oudh Estates Act and ss 8 and 10 of the Act cannot be so construed as to deprive the successors of the estate of a person who had died before these sections came into operation of rights which they acquired on his death by reason merely of his name being entered in the lists after his death *Achal Ram* v *Udai Partab Addiya Dat Singh 11 I A 51* distinguished. MAHOMED ABDUSSAMAD *v* KURBAN HUSSAIN (1904) I. L. R. 26 All. 119

s.c 8 C W N 201
L R 31 I A 30

———— ss 8 13 and 22.—

See HINDU LAW—WILL—CONSTRUCTION OF WILL—ESTATES ABSOLUTE OR LIMITED I. L. R 15 Calc 725

———— s 10—*Joint family under Mitakshara law—Grant to member of talukhdari—Declaration of trust* In a suit by an adopted son against his father for a declaration of right with consequen

immoveable estate as between father and son. *Held* that the plaintiff was entitled to a declaration to that effect and that s 10 was no bar to his assertion of the interest declared to be vested in him. SETH JAIDIAL *v* SETH SITA RAM

L. R 8 I. A. 215

OUDH ESTATES ACT (I OF 1869) —*contd*

——— s 13—

See WILL—VALIDITY OF WILL.
I L R 25 All 121

1. ——————— *Will of talukhdar—Compulsory registration of will devising talukh—Deposit of will distinct from registration under Act VIII of 1871* A will devising a talukh to a sister s son of a talukhdar in the lifetime of the talukhdar s brother is not excepted from the necessity of being registered under s 13 of the Oudh Estates Act I of 1869 such sister s son not being one of those who in the event of the talukhdar having died intestate would have succeeded to an interest in his estate within the meaning of the exceptions made in s 13 sub s 1, of that Act It may be doubted whether the mere title to maintenance would be such an interest as would come within the meaning of the exceptions The deposit of a will under Part IX of Act VIII of 1871 does not amount to the registration required by the above section of Act I of 1869 ABDUL RAZZAK *v* AMIR HAIDAR
I. L. R 10 Calc 976 L R 11 I A 121

2 ——————— *Registration in accordance with the rules of 1862 regulating the place and mode of it in Oudh* An Oudh talukhdari made a grant of a village part of her talukhdari to her adopted daughter the instrument requiring in order to be valid under Act I of 1869 s 13 to be registered within one month after execution With a view to its registration she being a pardanashin sent for the neighbouring pargana registrar who attended at her house for her convenience took her acknowledgment of the document recorded the registration and filed a copy of the document in his office *Held* that this proceeding was a registration of the document complete and effective having been substantially a registration at the pargana office MAJID HOSSEIN *v* FAZL UL NISA
I L R 16 Calc 468
L R 16 I A 18

3 ——————— *Meaning of intestate as there used—Written but unregistered authority to adopt—Registration Act (III of 1877) s 17* The Oudh Estates Act 1869 requires the registration of the writing by which an authority to adopt is exercised but not the registration of the authority which is required by the Act to be in writing The Indian Registration Act (III of 1877) which does require authorities to adopt to be registered expressly excepts authorities conferred by will The word intestate in s 13 sub s. 1 of the Oudh Estates Act 1869 means intestate as to the talukhdari estate [illegible]

[illegible]

authorized his senior widow to select and adopt a minor male child of his family to be the owner of

OUDH ESTATES ACT (I OF 1869) —*contd*

——— s 13—*concld*

the entire estate [illegible]

[illegible]

not having been registered secondly one founded on the erroneous argument that the adopted son was not within the class excepted in s 13 sub s 1 and therefore could not take under an unregistered will BHAIYA PARIDAT SINGH *v* INDAR KUNWAR
I L R 16 Calc 556
L R 16 I A 53

——— ss 13 14 22—*Statute interpretation of—Marginal notes not to be referred to—Construction which gives meaning to every part of section—Talukhdar—Succession—Construction meaning of words Brother Legatee —Retrospective operation of Statute* The marginal notes in an Indian Statute cannot be referred to for the purpose of construing it The expression a person who would have succeeded according to the provisions of the Act in s 13 and 14 of the Oudh Estates Act 1869 signifies the person or one of the persons to whom the estate would have descended according to the provisions of the special clause of s 22 applicable to the particular case This construction gives meaning to every part of the section The word brother in cl (6) of s 22 includes a brother born of a different mother A person who benefited under a bequest which came into operation before the Oudh Estates Act was passed would not be a legatee within the definition of the term in the Act THAKURAIN BALRAJ KUNWAR *v* RAE JAGATPAL SINGH (1904) 8 C W N 699
s c L R 31 I A 132

1 ——— s 22—*Conduct of talukhdar as indicating his successor—Daughter s son* Where an Oudh talukhdar not having male issue is shown to have so exceptionally treated the son of a daughter as to give him in the family the place consequence and pre eminence which would naturally belong to a son of his own if one existed and would not ordinarily be conceded to a daughter s son and has thus indicated an intention that the person so treated shall be his successor such person will be brought within the enactment of the 4th clause of s 22 Act I of 1869 Circumstances affording evidence of such an intention considered PERTAB NARAIN SINGH *v* SUBHAO KOOER
I L R 3 Calc 626 1 C L R 113
L R 4 I A 228

2 ——————— *Talukh inherited by a daughter s son—Succession or inheritance—Primogeniture* The talukh to which the succession was in dispute was one of those entered in the first and second of the lists prepared in conformity with s. 8 of the Oudh Estates Act 1869 descending to a single heir by primogeniture The last talukhdar died without leaving a son but left a widow and by a former wife two daughters of whom the elder had a son The widow s claim to an estate for life under sub s 17 of s 22 of the above

OUDH ESTATES ACT (I OF 1869) —*contd*

—— s. 22—*contd*

Act was met by the defence that the daughter s son having been treated by his maternal grandfather in all respects as his own son was under sub s 4 entitled to inherit the talukh The Courts below decided in his favour *Held* that the Courts below were right as to the treatment of the daughter s son in regard to sub s 4 *Pertab Narain Singh v Subhao Kooer I L R 3 Calc 626 L R 4 I A 228* did not show that sub s 4 had been construed to require evidence on that point attaining to any special degree UMRAO BEGUM v IRSHAD HUSAIN

I L R 21 Calc 997
L R 21 I A 163

3 —————— *Oudh talukhdari estate—Succession—Elder son born of younger wife —Younger son born of first wife—Oudh Estates Act (I of 1869) s 22 cl (11)—Nature of estate—Conflict between ambiguous and unambiguous texts of Hindu law—Interpretation rule of—Communis error facit jus—Oudh Estates Act (I of 1869) list 2 ss 8 and 22 Manu Ch IX verses 122 to 125* An estate taken under cl (11) of s 22 of Act I of 1869 descends as an impartible estate under the provisions of Act I of 1869 list 2 ss 8 and 22 *Dewan Ran Bijai Bahadur Singh v Rao Jagatpal Singh L R 17 I A 173* followed. The eldest son though born of a younger wife is entitled to succeed in preference to the younger son though born of the first wife The principles upon which the first born son has been held to be entitled to succeed apply equally to a son of a first married wife and sons of other wives *Ramalakshmi Ammal v Sivanantha Perumal Sethurayar 14 Moo I A 570* and *Pedda Ramappa Nayanivaru v Bangari Seshamma Nayanivaru L R 8 I A 1* referred to and followed In construing texts of Hindu law where certain verses are inconsistent and one is reasonably free from ambiguity and the meaning of the others is at the best ambiguous and doubtful the plain language of the one ought not to be overridden or controlled by the obscure utterances of the others Where it was alleged that the interpolation of the words but of a lower class in Manu Ch IX verse 122 was by mistake attributed by Sir William Jones to Kalluka Bhatta whereas it was interpolated by a later and inferior commentator and the interpolation had been accepted by the Indian Courts *Held* that the maxim *communis error facit jus* is a sound maxim Manu Ch IX verses 122 to 125 discussed JAGDISH BAHADUR v SHEO PERTAB SINGH (1901)

I L R 23 All 369 5 C W N 602
L R 28 I A 100

4 ——— cl (7)—*Suit for declaratory decree—Cause of action to reversionary heir—Execution of will by Hindu widow as talukhdar—Adverse title set up as defence to suit for declaratory decree—Discretion of Court* The execution of a will by a limited owner such as a Hindu widow affords as a general rule no sufficient reason for granting a declaratory decree But where such a decree had been granted by the lower Courts in a suit the defence to which made it clear that the defendants relied upon an alleged title in the widow inconsistent with any present or future rights of the plaintiff or any other reversionary heir and the defendants had besides no legitimate interest in the appeal except in respect of costs which had been incurred only by the course taken by them throughout the case the Judicial Committee always slow to reverse the decisions of Courts below made in the deliberate exercise of a discretion entrusted to them by law declined to interfere with the decree on appeal JAIPAL KUNWAR v INDAR BAHADUR SINGH (1904) I L R 26 All 233

5 ——— ss 22 and 23—*Evidence—Custom proof of—Custom excluding daughters—Wajib ul arz—Evidence of custom of succession to impartible estate whether admissible in proving custom of succession to partible estate—Concurrent findings as to custom being established effect of—Declarations by kanungo—Replies by talukhdars to Government inquiries as to succession—Oudh Land Revenue Act (No XVII of 1876) s 17* In a suit by the appellant claiming as daughter of a Hindu talukhdar whose name was entered in lists 1 and 4 prepared under the Oudh Estates Act (I of 1869) an estate the succession to which was therefore regulated under s 23 of that Act by the ordinary Hindu law of the Mitakshara School the defendants male collaterals of the appellant s father set up a custom by which daughters were excluded from inheritance and both Courts in India found on evidence that the custom was proved *Held* by the Judicial Committee that if and so far as it was a conclusion of fact the concurrent finding was though not absolutely binding on the Committee entitled to the greatest weight Technical objections to declarations made by kanungos to entries in the wajib ul arzes by the officer charged by Government with that duty and to answers given to official inquiries made under Government direction as to the rules of succession prevailing in particular families were considered by their Lordships to be material rather to the weight than to the admissibility of the particular evidence which was *primâ facie* admissible as purporting to be made by the proper officer in performance of a special duty [illegible]

presumably correct record of the facts entered their value as evidence varies according to circumstances *Muhammad Imam Ali Khan v Husain Khan I L R 26 Calc 81 92 L R 25 I A 161 169* followed. It was contended that evidence of a custom regulating the succession to impartible estates where the rules of gaddi nashini prevailed was inadmissible on a question as

OUDH ESTATES ACT (I OF 1869)—*contd*

——— s 22—*contd*

to the custom of succession to a partible estate governed by the ordinary Hindu law applicable to estates in list 4 of Act I of 1869 *Held* (referring to *Katama Natchier* v *Rajah of Shivaganga* 9 *Moo I A 539* *Jogendro Bhupati Hurrochundra Mahapatra* v *Nityanand Man Singh I L R 18 Calc 151 154 L R 17 I A 128 131* and *Subramanya Panday Chokka Talavar* v *Siva Subramayana Pillai I L R 17 Mad 316 325*) that there was nothing in the mere fact of partibility to make evidence of a family custom excluding or postponing daughters to male collaterals in impartible estates necessarily inapplicable to partible estates Wajib ul arzes therefore relating to the succession to impartible estates were held to have been rightly admitted as evidence of the custom set up in the present case *Lekraj Kunwar* v *Mahpal Singh I L P 5 Calc 744 L R 7 I A 63* and two unreported cases referred to in the judgment of the Judicial Commissioners followed PARBATI KUNWAR v CHANDRAPAL KUNWAR (1909)
I L R 31 All 457

s 23—

See EVIDENCE 13 C W N 1073

OUDH LAND REVENUE ACT (XVII OF 1876)

——— s 17—

See OUDH ESTATES ACT 1869 ss 22 23
I L R 31 All 457

——— ss 52 53—*Claim to resume grant* A proprietor in Oudh claimed to resume a perpetual lease as having been granted by his ancestor at a favourable rent without the sanction but otherwise under the circumstances contemplated by s 52 of the Oudh Land Revenue Act XVII of 1876 so that the grant was resumable *Held* that the claim failed The undefined charges expenses of management and other payments incidental to the lease might have been such as to make the rent paid a reasonable one as between lessor and lessee and that the favourable nature of the rate of rent had not been established PARTAB BAHADUR SINGH v BADLU I L R 25 Calc 479

——— s 74—*Compromise—Document signed by claimants in mutation proceedings—Acquiescence in partition proceedings—Suit to dispute title and recover possession of shares to which plaintiff was entitled by Hindu law—Estoppel—Suit in Civil Court on title after partition* The plaintiff and defendants were claimants to the estate consisting of 30 villages of a deceased Hindu and though by the ordinary Hindu law the plaintiff as brother of the deceased was entitled to the whole property as against the defendants who were nephews (sons of deceased brother) the three claimants in the mutation proceedings signed in 1896 a document which stated that the property was held one moiety by the plaintiff and the other

OUDH LAND REVENUE ACT (XVII OF 1876)—*contd*

——— s 74—*contd*

moiety by the defendants and that there is no other legal heir except the deponents the mutation in respect of the deceased s share in all the villages should be allowed and nobody has any objection thereto and the revenue authorities effected mutation of names in that way In 1902 partition which left the parties in the same state as to possession was effected in accordance with the provisions of the Oudh Land Revenue Act (XVII of 1876) In a suit brought in 1904 to recover possession as heir of the deceased of the half share held by the defendants the latter pleaded (*inter alia*) that their possession was the result of a compromise come to between the parties in the mutation proceedings which was evidenced by the document of 1896 and that the plaintiff was estopped by such mutual arrangements from asserting his present claim *Held* by the Judicial Committee (affirming the concurrent decisions of both the Courts in India on the evidence) that there was no proof of any compromise The mutation of names by itself created no proprietary title The document of 1896 contained no words that could be construed as amounting to an abandonment by the plaintiff of his legal rights It was merely a statement of the facts as they existed as to the possession of the property and by its silence as to a compromise tended to support the conclusion that no compromise was ever made In the partition proceedings the plaintiff made no objection to the defendant s title under s 74 of Act XVII of 1876 but he filed an application in which he asked that the share of Mannu Singh (the deceased) should be decided at present according to possession and a separate suit will be filed in a competent Court as regards the title in respect of the property of Mannu Singh Both the Courts in India concurred in decreeing to the plaintiff the shares of the deceased in 29 of the villages but as to one village they differed the [illegible]

the present suit and also because the plaintiff have raised the question of the defendant s title in the partition proceedings and was now estopped from recovering the share which had been allotted to the defendants at the partition

[illegible]

given effect to the plaintiff's application as to the question of title for no inquiry under s 74 of Act XVII of 1876 was made and the question of title was left to be decided by the Civil Court The grounds of estoppel therefore failed and the plaintiff was entitled to the shares in all the

OUDH LAND REVENUE ACT (XVII OF 1876)—*contd*

———— s 74—*concld*

villages sued for CHOKHEI SINGH *v* JOTE SINGH (1908) **I L R 31 All 73**

———— ss. 121, 123—*Transfer of share of under proprietors in arrears of rent—Right to interest on rent from transferee—Oudh Rent Act (XXII of 1886) s 141* Under the Oudh Land Revenue Act 1876 ss 121 123 the shares of defaulting under proprietors were transferred to three of them who offered to pay The present suit was brought by the superior proprietor the talukhdar in whose estate the mehal was comprised against the whole body of under proprietors for arrears of rent accrued while the term of the above transfer was running *Held* that the provision in s 123 of the Oudh Land Revenue Act 1876 to the effect that such transfer shall not affect the joint liability of the co sharers of the mehal had not the effect of charging the co sharers other than the three transferee with any liability for rent accrued during the term of the transfer Interest was also claimed but as to this it was *held* that under proprietors were not tenants within the meaning of the Oudh Rent Act 1886 141 providing for payment of interest on rent due from tenants MUHAMMAD MEHNDI ALI KHAN *v* MUHAMMAD YASIN KHAN

I L R 26 Calc 523
L R 26 I A 41
3 C W N 218

———— s 158—

See JURISDICTION OF REVENUE COURT—OUDH RENT AND REVENUE CASES
I L R 15 Calc 515

———— ss 161 166 172—*Court of Wards power of to alienate wards property—Award beyond the terms of reference—Ultra vires award* The powers of a Court of Wards are those of a guardian supplemented by certain additional powers given by the Statute and it has no power to make a voluntary alienation of the ward s real estate in perpetuity S 172 of Act XVII of 1876 does not [illegible]

MOHAMMED MUMTAZ ALI KHAN *v* SAKHAWAT ALI KHAN (1901)

I L R 23 All 394 5 C W N 881
s c L R 28 I A 169

———— Ch VIII (ss 161 to 177 A)—

See COURT OF WARDS
I L R. 25 All 195

See DISQUALIFIED PROPRIETOR
10 C W N 849

———— ss 175 and 176—*Suit against the Collector as agent for the Court of Wards—Disqualified owner—Act XXXV of 1858 (Care of the Estates of Lunatics) s 11—Parties—Defendant—Civil Procedure Code ss 440 and 464* A decree

OUDH LAND REVENUE ACT (XVII OF 1876)—*concld*

———— s. 175—*concld*

was made against a Deputy Commissioner as Agent for the Court of Wards for a debt due from a proprietor whose estate had come under the charge of that officer in virtue of an order made by the District Court under Act XXXV of 1858 the debtor having been found to be of unsound mind and incapable of managing his affairs The Judicial Commissioner having called for the record under s 622 of the Civil Procedure Code set aside the decree which had been affirmed on appeal He was of opinion that the suit should not have been brought against the Deputy Commissioner in the above character but would only lie against a manager appointed as Act XXXV of 1858 directed or else against a guardian. This judgment having gone upon a technicality not well founded was reversed and the original decree was restored ASHARFI LAL *v* DEPUTY COMMISSIONER OF BARA BANKI

I L R. 22 Calc 729
L R 22 I A 90

OUDH LAW OF

See EJECTMENT SUIT FOR
I R 26 I A 169

See MAHOMEDAN LAW—DOWER
I L R 19 Calc 689
I L R 21 Calc 135
L R 20 I A 144

OUDH LAWS ACT (XVIII OF 1876)

See PRE EMPTION—RIGHT OF PRE EMPTION **I L R 24 All. 420**

———— s 5—

See MAHOMEDAN LAW—DOWER
I L R 19 Calc 689
I L R 21 Calc 135
L R 20 I A 144

———— s 9 cl 2—*Co sharer in mahal—Proprietor—Right of pre emption—Act XVII of 1876 (Oudh Land Revenue Act) Chapter VII ss 108 11*[illegible] *chak—* owner [illegible] revenu[illegible] settlem[illegible] year as the revenue that amount being paid through the lambardar the plaintiff did not reside in the village *Held* by the Judicial Committee that he was a co sharer of the whole mahal within the meaning of s 9 cl (2) of the Oudh Laws Act (XVIII of 1876) and as such had a right of pre emption under that section Under the provisions of Chapter VII of the Oudh Land Revenue Act (XVII of 1876) relating to the Collection of Land Revenue every proprietor liable for the revenue of the mahal is a co sharer The plaintiff was a proprietor in the sense of s. 105 and the settlement of his land had been made with a lambardar in the sense of s 112 and he was

OUDH LAWS ACT (XVIII OF 1876)—concld

——— s 9—concld

liable just as much as every other proprietor in the mahal for the whole arrear of the mahal in case of default The fact that his share in the mahal consisted of a separate chak did not make him the less a co sharer in the sense of this legislation and the circumstance that he was not a resident of the village was immaterial MUNNU LAL v MUHAMMAD ISMAIL (1904) I L R 26 All 574
s c L R 31 I A 212

——— ss 9 to 13—

See PRE EMPTION—RIGHT OF PRE EMPTION—CO SHARERS
I L R 21 Calc 496

OUDH LOANS OF 1838 AND 1842 PAYMENTS DUE UNDER

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PENSION I L R 18 Calc 216

OUDH REDEMPTION ACT (XIII OF 1866)

——— mortgage dated previous to—

See LIMITATION ACT ART 144—ADVERSE POSSESSION I L R 23 Calc 483
L R 23 I A 8

OUDH RENT ACT (XIX OF 1868)

——— ss 41 and 83 cl. 4—

See JURISDICTION OF REVENUE COURT—OUDH RENT AND REVENUE CASES
I L R 15 Calc 515

——— s 111—

See RES JUDICATA—MATTERS IN ISSUE
I L R 19 Calc 159

——— s 141—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT
I L R 26 Calc 523

See OUDH LAND REVENUE ACT ss 121 125 I L R 26 Calc 523

OUDH RENT ACT (XXII OF 1886)

See DECLARATORY DECREE SUIT FOR—SUITS CONCERNING DOCUMENTS
L R 29 I. A. 203

——— ss 12 141—*Interest—Liability for interest on arrears of rent—Under proprietor—Contract Act (IX of 1872) s 73—Interest Act (XXXII of 1839)—Suit for breach of contract—Damage—Time at which rent is payable—Statutes 3 and 4 Will IV C XLII* Although an under proprietor is not liable for interest on arrears of rent under s. 141 of the Oudh Rent Act as not being a tenant within the meaning of that section—*Muhammad Mehandi Ali Khan* v *Muhammad Jaun Khan, L R 26 I A 41 I L R 26 Calc*

OUDH RENT ACT (XXII OF 1886)—contd

——— s 12—concld

523—yet there is nothing in the Act or in that decision which excludes any liability for payment of such interest which an under proprietor might be under apart from the Act Where a compromise containing an agreement to pay rent come to between the predecessors in title of the present litigants had been followed by a decree which carried into effect the terms of the agreement *Held* in a suit for arrears of rent that the agreement was merged in the decree by which and not by the agreement was established the status of under proprietor from which the obligation to pay the rent was derived and that the suit was therefore not one for breach of contract within the meaning of s 73 of the Contract Act (IX of 1872) in which interest on the arrears could be given as damages Nor could such interest be given under the provisions of the Interest Act (XXXII of 1839) it being necessary under those provisions for the plaintiff to show that the rent was payable by virtue of some written instrument at a certain time and in this case neither the deed of compromise nor the decree prescribed any time for the payment of the rent nor contained any terms from which the time could be ascertained The Interest Act of 1839 was passed for the purpose of extending the English Act (3 and 4 Will IV C 42) to India and its provisions in this respect being the same as those of the English Act the English decisions may be referred to in construing the Indian Act *Quære* Whether under those decisions it was necessary that the actual date for payment should be fixed by the written instrument or whether it would be sufficient if the instrument only contained the basis of the calculation which made it certain *Duncombe* v *Brighton Club and Norfolk Hotel Co L R 10 Q B 371 London Chatham and Dover Railway Co* v *South Eastern Railway Co [1891] 1 Ch 120* and *Merchant Shipping Co* v *Armitage L R 9 Q B 99* referred to GANES BAKHSH v HARIHAR BAKHSH (1904) I L R 26 All 299
s c 8 C W N 521
L R 31 I A 116

——— s 108 (S)—

See OUDH SUB SETTLEMENT ACT (XXVI OF 1866) I L R 31 All 394

OUDH ROYAL FAMILY OF, PENSION TO

See TREATY CONSTRUCTION OF
I L R 17 Calc 234
L R 16 I A 175

OUDH SUB SETTLEMENT ACT (XXVI OF 1866)

See JURISDICTION OF REVENUE COURT—OUDH RENT AND REVENUE CASES
I L R 15 Calc 515

See OUDH RENT ACT s 108
13 C W N 1093

1 ——— Right to sub settlement—*Under tenures held under contract* Under tenures

OUDH SUB SETTLEMENT ACT (XXVI OF 1866)—*contd*

held under contract or under any arrangements from which a contract may be inferred are within the definition of sub proprietary rights given in the rules annexed to Act XXVI of 1866 and their holders are entitled to a sub ettlement MAHARAJAH OF BULRAMPORE v UMAN PAL SINGH
L R 5 I A 225

2 ——— Under proprietary right in Oudh—*Settlement—Circular Order 29th January 1861—Birt sankalp and khushust sankalp tenure.* A provision in the Chief Commissioner s Circular Order of 29th January 1861 in effect declared that to found a claim to a birt tenure in Oudh po session mu t be hown to have existed in 1855 the year before annexation This was assumed for the purpo es of this decision to have had the force of law at the time when the Financial Commissioner ruled in Circular Orders 5 and 6 of 5th June 1868 that a claimant who cannot ...

possession in 1855 The words of limitation in the Circular Order apply to all birt tenures

the land
talukhdar
under cont
nuousness
DPIG BIJA
L R 7 I A 17

3 ——— Right of tenant under talukhdari settlement—*Tenancy at will—Right of resumption—Absence of ...*

is nothing to show any intention to advance beyond what the ...

or on the ground that time and undisturbed enjoyment have ripened his holding into a species of ownership The issues between the parties raising only the question of some form of proprietary right still if the tenant had shown any right what ever to remain undisturbed by the talukhdar such right would have been considered on this appeal and would have received effect The allegation of a grant in perpetuity in 1826 at a rent to be varied according to the amount of revenue payable by the talukhdar not having been proved but the existence and origin of a tenancy having been shown at a rent paid down to the commence ment of the suit —*Held* that length of enjoyment coupled with such payment of rent could give no greater force to the tenant s right than it originally possessed ROHAN SINGH v SURAT SINGH
I L R 11 Calc 318 L R 12 I A 25

4 ——— *Construction of Rules in Schedule to Act—Rules 2 3 and 13—Revision of decree granting under proprietary rights made before passing of Act—Jurisdiction of Financial Commissioner—Construction of lease—Right of talukhdar to ejectment of lessee on expiry of lease—Oudh Rent Act (XVII of 1866)* The history of the Oudh Sub Settlement Act (XXVI of 1866) together with its provisions and the rules in the Schedule attached to it show that the object and purpose with which it was passed were to revise and correct what had been hastily and imperfectly or loosely done and to secure that no person should enjoy under proprie tary rights who could not establish his claim in the manner prescribed by those rules Claims which have been disposed of otherwise than in accordance with these rules in rule 13 mean claims which have not been supported by the proofs prescribed by amongst other provisions rules 2 and 3 that is proof that the claimant possesses an under proprietary right in the lands of which sub settlement is claimed that such right has been kept alive over the whole area claimed within the period of limitation and that he has by virtue only of his under proprietary right held the land ...

within the respondent s taluq On 15th March of that year a judgment was given in his favour for a permanant lease of the village with pay ment of a sum for malikana to the talukhdar which was affirmed by the Settlement Commissioner the Chief Commissioner and the Financial Commis sioner After the passing of Act XXVI of 1866 the talukhdar applied for a review of that judgment and the case was remanded to the Settlement Court for reinvestigation under the new rule and eventually the Financial Commissioner on 6th January 1869 decreed as follows — The provisions of the Sub Settlement Act ...
comp
tary
way
restores him under our rules to proprietary posses sion and makes the talukhdar who has been half

OUDH SUB SETTLEMENT ACT (XXVI OF 1866)—*concld*

a century in possession the mere recipient of malikana I decree a farming lease to plaintiff he paying the Government demand *plus* 25 per cent. to the talukhdar for a period of 30 years. *Held* that the Financial Commissioner had jurisdiction under s 13 of the rules under Act XXVI of 1866 to make the decree of 6th January 1869 and that it was a valid and binding decree *Held* also that on the construction of the decree the lea e was one for a term of 31 years from the date of the decree and on the expiration of that period the lessee was liable to ejectment in a suit in the Revenue Court under the Oudh Rent Act (XXII of 1886) MAHESHAR PARSHAD *v* MUHAMMAD EWAZ ALI KHAN (1909) I L R. 31 All. 394

OUDH TALUKHDARS RELIEF ACT (XXIV OF 1870)

———— s 3—*Hypothecation of lands under management* A talukhdar the management of whose talukh at the time was vested in an officer appointed under s 3 of Act XXIV of 1870 made an instrument purporting to hypothecate the talukh to secure payment of mon y borrowed by him *Held* that as the document contained no personal contract to pay out of personal estate or any estate other than the talukh it was unnecessary to consider whether a talukhdar whilst his talukh is under management in pursuance of the provisions of the above Act is competent to make a personal contract this being only an hypothecation of the property falling within s 4 cl 3 of the Act and invalid within its meaning NAROTAM DASS *v* SHEO PARGASH SINGH

I. L. R 10 Calc 740 L. R 11 I A 83

———— s 10—*Appeal—Appeal allowed though presented after time* Case in which having regard to exceptional circumstances and exceptional legislation an appeal to the Commissioner of Division against a decision of a manager appointed under the Oudh Talukhdars Relief Act was held to have been rightly allowed although preferred long after the period of six weeks prescribed by s 10 It appeared that the appellant in the Court below was a minor and incapable of exercising his right to appeal except through the manager who himself made the order appealed from and that the respondents (present appellants) had after the expiration of the said six weeks themselves prayed for a judicial determination of substantially the same questions as were raised by the present appeal RAMJISDAS *v* BHAGWAN BAX L. R. 5 I A. 197

———— s 25—*Manager not made party to suit—Effect on decree* Where a manager of the estate had been appointed under the provisions of Act XXIV of 1870 (The Oudh Talukhdars Relief Act) but had not been made a party to a suit relating to the right to succeed to the talukhdari —*Held* that the [illegible]

OUSTER

See ADVERSE POSSESSION
I. L. R. 29 Bom 300
I. L. R. 33 Bom. 317

OUTCASTS

See HINDU LAW—INHERITANCE—DANCING GIRLS I. L. R 13 Mad 133

———— property of—

See PROBATE—OPPOSITION TO OR REVOCATION OF GRANT
I. L. R 21 Calc 697

———— succession to—

See HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN
I. L. R 13 All. 573

OVERCHARGE

See RAILWAYS ACT 1890 ss 77 140
I. L. R. 31 Bom. 534

OWELTY MONEY

See MORTGAGE 12 C W N 373

See PARTITION I. L. R. 35 Calc 388
s c 12 C W N 373

OWNER OR OCCUPIER OF LAND

See RIOTING I. L. R 12 All. 550

———— responsibility of—

See RIOTING I. L. R 28 Calc 504

———— fine imposed on—

See BENGAL MUNICIPAL ACT III OF 1864 s 67 8 B L R Ap 9

OWNERS OF ADJOINING ESTATES

See DECREE—FORM OF DECREE—POSSESSION I. L. R 17 Calc 814

OWNERSHIP

See KHOTI TENURE
I. L. R 11 Bom. 680

———— evidence of transfer of—

See MAHOMEDAN LAW—GIFT
I L. R 19 All. 267
L. R. 24 I. A

See REGISTRATION ACT s 49
I. L. R 18 Bom. 18

———— in the soil—

See PENSIONS ACT 1871 s 3
I L. R 1 Bom 523

———— presumption of—

See BOUNDARY 9 W R 426

See ENDOWMENT I. L. R. 16 All. 412

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE. I. L. R. 12 All. 46

See ROAD OWNERSHIP OF
I. L. R. 4 Calc 206

OWNERSHIP—*contd*

——— **reputed**—

See INSOLVENCY ACT (11 & 12 VICT c 21) s. 23 I L. R. 25 Bom 659
I L. R. 25 Mad. 406

——— **right of**—

See LIMITATION ACT 18[illegible] s. [illegible]
I L. R. 16 Bom. 592

——— **transfer of**—

See CONTRACT ACT s 78
I. L. R 4 Calc 801

See VENDOR AND PURCHASER.

1. ——— **Ownership of tanks**—*Possession sufficient to bring suit* In a suit to recover possession of the beds of tanks which though gradually reclaimed and made fit for cultivation by defendants were situate within plaintiff's mal estate and had been measured and recorded in the zamindari chittahs as the khas khamar and unfit for cultivation —*Held* that plaintiffs being unable from the nature of the ground to show any direct acts of ownership the presumption was that until [illegible]

2 ——— **Enjoyment of fruit on trees**—*Disputed right to possession* Where the question as to possession was doubtful a Civil Court [illegible]

3 ——— **Uncultivated lands**—*Possession—Title* Lands which have never been occupied for cultivation and which are of such a nature and description as that no one can be said to be in possession may be presumed rightfully to belong to the parties with whom the title rests MOOCHEE RAM MAJHEE *v* BISSAMBHAR ROY CHOWDHARY
24 W R 410

See SUNNUD ALI *v* KURIMOONISSA
9 W R 124

LEELANUND SINGH *v* BASHEEROONISSA
16 W R 102

4. ——— **Act of ownership**—*Suit for possession—Disputed possession* In a suit for possession where it was found not only that all the land in dispute was comprised within boundaries specified in documents admitted by both parties but also that plaintiff had for a long time stored bamboos and wood on one portion and grazed his cattle on another —*Held* that these acts of ownership taken in conjunction with the specification of boundaries left no doubt that the lands concerned were the property of the plaintiff. RAM NARAIN ROY *v* NILMONEE ADHIKAREE 24 W R. 144

OWNERSHIP—*contd*

5 ——— *Measurement and mapping by Ameen* Where an Ameen measured and mapped land and altered his map on objection made the proceedings as being merely upon paper and not interrupting the actual possession or occupation of the land were held not to amount to an act of ownership by either of the parties concerned or to affect the question of possession JANOKEE NATH CHOWDHRY *v* BROJENDRO COOMAR ROY CHOWDHRY
25 W R 65

6 ——— **Adjoining buildings**—*Walls of adjoining building on same foundation* Where the external walls of two adjoining houses which now belong to different owners but which at one time were the property of the same person have been erected wholly or partly on the same foundation wall and there is an entire absence of evidence on either side as to the dates of the several purchases or of the terms on which they were made the presumption is that the line of demarcation of the two properties is that indicated by the superincumbent walls RADHA MOHUN ROY *v* RAJ CHUNDER DASS
2 C L R 377

7 ——— **Diversion of road**—*Right of owners of land adjoining old road—Public road* There is a presumption that a highway or waste land adjoining thereto belongs to the owners of the soil of the adjoining land NIHAL CHAND *v* AZMAT ALI KHAN I L R 7 All 382

8 — **Forest lands in Malabar**—*Hindu law—Property in the soil—Right of Sovereign* In the district of Malabar and the tracts administered as part of it there is no presumption that forest lands are the property of the Crown. According to the Hindu law a right to the possession of land is acquired by the first person who makes a beneficial use of the soil the right of the Sovereign being to assess the occupier to revenue SECRETARY OF STATE FOR INDIA *v* VIRA RAYAN I L R 9 Mad 175

9 ——— **Forest lands**—*Acts of owner* [illegible] *mrari* [illegible] *pos* [illegible] *title* [illegible] pro [illegible] orest in virtue of an istemrari sanad of the year 1803 conferring upon the grantee his heirs and successors a permanent property in the zamindari as then possessed To the sanad which was aptly worded to include the subject of this claim the acts of the zamindar had been ascribed. But it did not contain any description of the lands which it was intended to carry a marginal note only specifying three villages then comprising the zamindari The plaintiff having proved that he and his ancestors had cut wood pastured cattle and gathered forest produce in certain forests for fifty years the lower Court held that such acts of enjoyment were only evidence of an easement and not of adverse possession *Held* by the High Court that these acts as they had been done under the belief

OWNERSHIP—*contd*

and assertion that the said tracts formed portion of the zamindari and that the plaintiff and his ancestors were owners of the said tracts were evidence of adverse possession In principle an act done is one of ownership or evidence of an easement according as the person doing it asserts general ownership or a particular right in another property The enjoyment of any right of ownership over the soil is *prima facie* proof of ownership of the soil Where therefore the lower Court found such an enjoyment of a forest as proved title to the profits thereof and such enjoyment was accompanied with an assertion of ownership of the soil —*Held* that the Court was bound to find a title to the soil established SIVASUBRAMANYA *v* SECRETARY OF STATE FOR INDIA I L R 9 Mad. 285

Held by the Privy Council on appeal (affirming the decision of the High Court) that the grant was not confined to the villages so named and to an area in their immediate vicinity but that the whole tract of hill and forest was claimable on its being shown by direct evidence or reasonable inference that it was in the possession of the zamindar when he obtained a permanent title from the Government As to part of the tract the zamin

acts of possession which had been found by both the Courts below to have been done by the

mentioned rights by the zamindar was evidence

right in a tract of land had been constantly asserted all questions between the disputants as to the amount of the use of the tract by the claimant and as to the sufficiency of such use to establish his possession over the whole extent were *held* to be questions of fact. SECRETARY OF STATE FOR INDIA *v* NELLAKUTTI SIVA SUBRAMANIA TEVAR.

I. L. R 15 Mad 101
L. R. 18 I A. 149

10 ———— Property in trees—*Tree planted by mutwali of a shrine on land belonging to the shrine—Enjoyment of the fruit by mutwalis —Attachment of tree in execution of money-decree against mutwali* A tree having been planted by the predecessor of a mutwali of a shrine on land admittedly belonging to the shrine and a judgment

OWNERSHIP—*concld*

creditor of the mutwali having sought to attach the

mutwali might have derived by taking the fruit of the tree enable them to acquire any right of ownership in the tree as against the shrine The land admittedly belonging to the shrine the tree must have the same character until the contrary was proved. NURBIBI *v* MAGANLAL PARBHUDAS

I L R 16 Bom 547

11 ———— Suit for declaration of ownership—*Plaintiff's title proved—Defendant's use found to be not inconsistent with plaintiff's ownership—Presumption—Possession goes with title —Adverse possession* Plaintiff sued for a declaration that he was the owner of the land in suit *alleging that the defendant had taken wrongful* possession thereof It was found as a fact that the title to the land was in the plaintiff and that the defendant had made no permanent use of the land inconsistent with its being plaintiff's land. *Held* that plaintiff was entitled to succeed. The said circumstances made out a case for the application of the presumption that possession goes with title *Runjeet Ram Panday* v *Goburdhun Ram Panday 20 W R 25 (Civ Rul)* and *Agency Company* v *Short 13 App Cas 793* followed *Framji Cursetji* v *Goculdas Madhowji 16 Bom 338* referred to GANPATI *v* RAGHUNATH (1909)

I L R 33 Bom 712

P

PACHIS SAWAL

See HINDU LAW I. L. R. 32 Calc 158
9 C W N 330

See RIGHT OF SUIT
I L R. 32 Calc 273

PAHARAJ

See HINDU LAW—INHERITANCE
I L R 32 Calc 6
I L R 36 Calc 590

PAKKI ADAT SYSTEM

See CONTRACT I. L. R 30 Bom. 205

See PRINCIPAL AND AGENT
I L R. 29 Bom. 291

1 ———— *Contract—Incidents of the custom—Employment for reward* The plaintiffs in Bombay bought and sold in Bombay cotton and other products on the orders of the defendant who traded at Shahada in Khandesh. In respect of the transactions sued on the plaintiffs before due date had entered into cross contracts of purchase with the merchants to whom they had originally sold goods on the defendant's account The transactions were entered into on *pakki adat* terms

PAKKI ADAT SYSTEM—*concld*

The contract of a *pakka adatia* in the circumstances of this case is one whereby he undertakes or guarantees that delivery should on due date be given or taken at the price at which the order was accepted or differences paid in effect he undertakes or guarantees to find goods for cash or cash for goods or to pay the difference The evidence in the case establishes the following propositions in connection with *pakki adat* dealings. (i) That the *pakka adatia* has no authority to pledge the credit of the up country constituent to the Bombay merchant and that no contractual privity is established between the up country constituent and the Bombay merchant (ii) That the up-country constituent has no indefeasible right to the contract (if any) made by the *pakka adatia* on receipt of the order but the *pakka adatia* may enter into cross contracts with the Bombay merchant either on his own account or on account of another constituent and thereby for practical purposes cancel the same (iii) The *pakka adatia* is under no obligation to substitute a fresh contract to meet the order of his first constituent *Held* that the defendant knew of the custom which was not unreasonable as it did not involve a conflict between the *pakka adatia's* interest and duty BHAGWANDAS *v* KANJI (1905)
I L R 30 Bom 205

2. ——— *Pakki adat agency —Place of performance of contract by pakki adatya —Custom—Jurisdiction* A a Bombay merchant employed S as his agent at Akola on the *pakki adat* system. On A's instructions S entered as his agent into certain contracts at Akola

cause of action had arisen in Bombay *Held* that in the case of *pakki adat* agency primarily the place of payment is the place where the constituent resides but payment should be made in any other place if the constituent has chosen to give directions to that effect and that the High Court at Bombay had jurisdiction to try the suit *Per* CHANDAVARKAR J —A *pakki adatya's* liability ceases when hard cash has come into the hands of his constituent KEDARMAL *v* SURAJMAL (1908) I L R 33 Bom 364

PALA OR TURN OF WORSHIP

See HINDU LAW 10 C W N 825

PALAYAM NATURE OF

See HINDU LAW—INHERITANCE
I L R 28 Mad 508

——— ancient estate of Udaipur—

See HINDU LAW 10 C W N 95

PANCHALS

See HINDU LAW
I L R 33 Bom 693

PANCHANNAGRAM

——— tenure in—

See REVENUE SALE LAW s 2
13 C W N 633

PANCHAYAT

1. ——— District panchayat—*Mad Reg XII of 1816—Mad Reg VII of 1816—Madras Civil Courts Act III of 1873* Neither the total repeal of Regulation VII of 1816 by Act III of 1873 (Madras Civil Courts Act) nor the partial repeal of Regulation XII of 1816 so far as it contained

panchayat (ii) an objection from either party to such reference and a request in writing by one of the parties that the matter be referred to a district panchayet CHIKATI ZAMINDAR *v* PEDDAKIMEDI ZAMINDAR I L R 8 Mad 569

2. ——— *Mad Reg XXVII of 1802—Mad Reg XII of 1816—Cases in which a district panchayat may be appointed—Finality of award—Notice of nomination of panchayatdars* The applicability of the procedure provided in Madras Regulation XII of 1816 is not limited to cases in which a breach of the peace has taken place or is apprehended [illegible] to a decision [illegible] between [illegible] set aside except in the manner prescribed by the Regulation Such decision is not invalid because only one party consented to the reference of the matter in dispute to a panchayat or because the other party who protested against the proceedings had not notice of the time when the nomination of the panchayatdars was to take place NARAYANA *v* CHANDRA I L R 15 Mad 1

PANCHNAMA

——— refusal to attend to make—

See BOMBAY DISTRICT POLICE ACT s 53
I L R 22 Bom 970

PANNA MAHARAJAH OF

See APPEAL TO PRIVY COUNCIL
I L R 32 Calc 1

PAPER BOOKS

See PRACTICE—CIVIL CASES—PAPER BOOKS

——— disallowance of cost of printing—

See PRIVY COUNCIL PRACTICE OF—COSTS
L R 29 I A 156

——— failure to deposit costs of—

See LETTERS PATENT HIGH COURT cl 15 I L R 23 Calc 339

See LIMITATION ACT 1877 ART 168
I L R 23 Calc 339

PAPER-BOOKS—*concld*

——— failure to deposit costs of—*concld*

See REVIEW—POWER TO REVIEW
I L R 23 Calc 339
I L R 24 Calc 350

PAPER CURRENCY ACT XX OF 1882

——— s 25—

See PROMISSORY NOTE—FORM
I L R 16 Bom. 689

PARAMOUNT TITLE

——— claim of—

See MORTGAGE 11 C W N 284

See RES JUDICATA
I L R 34 Calc 868

PARDANASHIN WOMEN

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE
I L R 25 Calc 807
2 C W N 566

See ATTACHMENT—ATTACHMENT OF PERSON I L R 7 Calc 19
17 W R 86

See COMMISSION—CIVIL CASES
6 C W N 927

See COMMISSION—CRIMINAL CASES
I L R 5 All. 92
I L R 15 Calc 775
I L R 24 Calc 551

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS
1 B L R O C 28 31 note

See INSPECTION OF DOCUMENTS
I L R 8 All 265

See LIMITATION—QUESTION OF LIMITATION I L R 29 Calc 664

See ONUS OF PROOF—DECREES AND DEEDS SUITS TO ENFORCE OR SET ASIDE
10 B L R 205
13 B L R 427
L R 1 I A 192

See PAUPER SUIT—APPEALS
I L R 24 All 172

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS I L R 7 Calc 245
L R 8 I A 39

See REGISTRAR OF HIGH COURT
I L R 16 Calc 330

See UNDUE INFLUENCE
I L R 33 Calc 773

See WILL—ATTESTATION
I L R 16 Calc 19

——— deeds executed by—

See MAHOMEDAN LAW
I L R 31 Bom. 165

PARDANASHIN WOMEN—*contd*

——— execution of documents by—

See EVIDENCE 13 C W N 370

See TRANSFER OF PROPERTY ACT s 59
13 C W N 40

1. ——— Dealings with parda women —*Onus of proof—Evidence of bona fide* A Hindu [illegible]

exertion of undue influence which is presumed to have been exerted unless the contrary be shown In all dealings therefore with persons so situated it is incumbent on the party interested in upholding the transaction to show that its terms are fair and equitable the most usual mode of discharging such onus being to show that the lady had good independent advice in the matter and acted therein altogether at arm s length from the other contracting party RAKHUN *v* AHMED HOSSEIN
22 W R 443

2 ——— Execution of deed by pardanashin—*Registration of deed—Evidence of execution* In cases of transactions by parda woman mere registration does not go far to corroborate the proof of their validity unless a mutation of names takes place, which if done under a mooktearnama has not the same effect as against a parda woman as it has against a per on capable of transacting his own business and acting for himself Where the conveyance by a parda woman is impeached there ought to be clear evidence not of the mere signature by the party but that the secluded woman had the means of knowing what she was about. FUZZUL HOSSEIN *v* AMJUD ALI KHAN 17 W R 523

3 ——— *Registration—Evidence of genuineness* The mere registration of a lease is no proof of its genuineness especially in the case of a lease which was first produced as a valid instrument nearly nine years after its execution and which was alleged to have been granted by a pardanashin lady but no satisfactory evidence was given [illegible]

4. ——— *Explanation of document.* In order to charge a pardanashin woman upon an instrument or power purporting to have been executed by her it is requisite that the person relying on such a document should give satisfactory evidence that it has been explained to and understood by her SUDISHT LAL *v* SHEOBHARAT KOER
I L R 7 Calc 245

5 ——— *Onus probandi—Evidence of deed being explained—Pardanashin without legal assistance* Where the defendant who was shown to be an illiterate pardanashin lady denied on her oath that in executing a wakfnama she had any intention of creating an absolute wakf or that she understood the effect of the deed when

PARDANASHIN WOMEN—*contd*

she executed it the onus was on the plaintiffs to show that she was fully aware of the character of the document and its legal effect and that she had proper professional advice at the time of its execution. In the absence of such proof —*Held* that the deed was not binding on her DELROOS BANOO BEGUM *v* ASHGAR ALLY KHAN

15 B L R 167 23 W R 453

Held in the same case on appeal to the Privy Council who affirmed the judgment of the High Court a Court when dealing with the disposition of her property by a parda woman ought to be satisfied that the transaction was explained to her and that she knew what he was doing specially in a case where without legal assistance no consideration and without any equivalent she has executed a document written in a language she does not understand which deprives her of all her property In the case of a pardanashin woman who has no legal assistance the ordinary presumption that if a person of competent capacity signs a deed he understands the instrument to which he has affixed his name does not arise. ASHGAR ALI *v* DELROOS BANOO BEGUM I L R 3 Calc 324

See also the cases of MANOHAR DASS *v* BHAGABATI DASI 1 B L R O C 28

KANAILAL JOWHARI *v* KAMINI DEBI 1 B L R O C 31 note

THAKOORDEEN TEWARY *v* ALI HOSSEIN KHAN 13 B L R 427 21 W R 340 L R 1 I A 192

SOONDUR KOOMAREE DEBIA *v* KISHOREE LAL SEIN 5 W R 246

POOP NARAIN SINGH *v* GUJADHUR PERSHAD NARAIN 9 W R 297

6 ——— *Death bed disposition—Proof of bona fide intention* Where a deed purports to have been executed by a parda woman the Court should see that it was fairly taken from her and that she was a free agent and duly informed of what she was about When the disposition is in the nature of a death bed disposition the Court that uphold it ought from whomsoever it proceeded to be satisfied that it was the free voluntary act of the party by whom it purports to have been executed and expressed her real intention GRISH CHUNDER LAHOREE *v* BHUGOBUTTY DEBIA.

14 W R P C 7 13 Moo I A 419

7 ——— *Mooktearnamah validity of* The issue being as to whether a certain mooktearnamah which purported to have been signed by the respondent was valid or not the validity of the mooktearnamah was pronounced against as there was no legal proof of its execution and the absence of legal proof was not compensated [illegible]

PARDANASHIN WOMEN—*contd*

8 ——— *Document obtained by chief male member of family* A document obtained by the chief male member of a family from a parda woman should receive a strict construction SOOKYABOYE AMMAL *v* LATCHMI AMMAL.

13 W R P C 3

9 ——— *Contract with pardanashin woman—Proof as to knowledge of transaction before execution of document* Where two Nambudri females—a mother and daughter (plaintiff)—executed a document in favour of defendant a male relative (nephew of the former) which purported to divest the plaintiff and her mother of the entire property of the illom of which they were the sole proprietors and to vest it in the defendant in consideration of his promise to marry and raise up heirs to the illom to which the plaintiff and her mother belonged and to maintain the [illegible]

rule laid down by the Privy Council in *Ashgar Ali v Delroos Banoo Begam I L R 3 Calc 324* and in *Tacoordeen Tewarry v Ali Hossein Khan L R 1 I A 192* had been complied with and that defendant had discharged the burden of proof upon him. TAMARASHERRI SIVITHRIS ANDARJANOM *v* MARANAT VASUDEVAN NAMBUDRIPAD

I L R 3 Mad 215

10 ——— *Raising of unnecessary defence by legal adviser* Observations regarding instructions by a pardanashin lady in a warrant of attorney to her pleader to do necessary acts MONMOHINI DASSI *v* KALIDAS] AHIRI

2 C W N 292

11 ——— *Conditions necessary to the valid execution of a document by pardanashin—Suit to set aside deed—Onus probandi* Where a deed executed by a pardanashin woman is sought to be set aside it is for the party wishing to uphold the deed to show affirmatively that [illegible]

[illegible]

PARDANASHIN WOMEN—*contd*

son Y Y was betrothed to a daughter of one F and one of S s daughters was married to one S H Those two persons vi F and S H were mainly instrumental in procuring the execution of the deed in question The deed was drafted in very artificial language and it was not shown that the executant ever understood its contents or effect. The executant was moreover at the time of execution in ill health and great mental distress owing to the death of her son H which had happened some months previously The deed was also executed in the absence of the person who was at that time the executant s chief adviser and the manager of her property Lastly it appeared that as soon as the executant came to know what the true nature of the deed was and that proceedings had been initiated in the Revenue Department for mutation of names she took immediate measures to show her dissent from the provisions of the deed and her disapproval of what had been done thereunder *Held* that under the circumstances above set forth the deed in question could not be considered as having been executed under the conditions necessary in such cases and must be set aside *Ashgar Ali* v *Delroos Banoo Begam I L R 3 Calc 324 Mahomed Baksh Khan* v *Hosseini Bibi I L R 15 Calc 684 Behari Lal* v *Habiba Bibi I L R 8 All 267* and *Kaniz Fatima* v *Abbas Ali I L R 8 All 627* referred to MARIAM BIBI v SAKINA

I. L. R. 14 All 8

12 ——————— *Proof of explanation of deed—Gosha women deed executed by—Onus of proof* In a suit on a mortgage it was held that two gosha women who had executed the instrument in conjunction with their son and brother respectively were not under the circumstances entitled to have their shares exonerated for want of proof that the transaction had been explained to them *Ashgar Ali* v *Delroos Banoo Begum I L R 3 Calc 324* distinguished BADI BIBI SAHIBAL v SAMI PILLAI

I L R 18 Mad. 257

13 ——————— *Proof of explanation of deed executed by pardanashin woman—Mortgage of ancestral property made by Hindu widow under power of attorney given by her to male relative* It is absolutely necessary, before holding that a pardanashin lady or her property is liable on a contract alleged to have been made by her or in consequence of an alleged execution by her of a general power-of-attorney to be reasonably satisfied that the liability she was incurring and the nature of the transaction were explained to her and more particularly is this the case if it is sought by a person [illegible]

I. L. R. 17 All. 125

Upheld by Privy Council in SHAM SUNDER LAL v ACHHAN KUNWAR I. L. 21 All. 71
L. R 25 I. A. 183

14. ——————— *Dealings with pardanashin—Quasi pardanashin—Proof of incapacity for business* A woman cannot be held to be a *quasi* pardanashin. If she is not actually a pardanashin, sufficient incapacity for business must be proved in order to throw upon those dealing with her the duty of taking special precautions HODGES v DELHI AND LONDON BANK

L R 27 I A 168

15 ——————— *Variance between pleading and proof* Judgment of the High Court dismissing a plaintiff s suit confirmed on the evidence in a case in which plaintiff sought in the lower Court to set up a deed of alleged sale from a Mahomedan pardanashin lady in favour of her niece [illegible]

bounty the sale being colourable for the purpose of giving effect to a gift which otherwise it might be difficult to make under the Mahomedan law KUMEEROONISSA BEGUM v SYUFFOOLLAH

16 W R P C 33

Affirming s c KUMEEROONISSA BEGUM v SYFOOLLAH KHAN 5 W R 198

16 ——————— *Gift by Hindu lady to mooktear—Onus* Where a mooktear sued his client a Hindu widow upon a purwannah bearing the clients seal and purporting to give away valuable properties without any substantial consideration —*Held* that the onus was on the plaintiff to satisfy the Court fully as to the circumstances under which the clients seal was obtained and to prove that the gift was made advisedly RAM PERSHAD MISSER v PHOOLPUTTEE 7 W R 98

17 ——————— *Gift by Mahomedan* [illegible]

out independent professional advice and without the advice of the heads of her caste it was decreed at the instance of her heirs after her death, that the deed should be set aside RUJABAI v ISMAIL AHMED 7 Bom. O C 27

18 ——————— *Proof of execution—Evidence of knowledge of contents and of free* [illegible]

for registration by a person who professed to be authorised by a power-of-attorney in that behalf. The only proof given by the plaintiff that this power of attorney was executed by the ladies or with their knowledge and consent was the evidence of a witness who deposed that he was not personally acquainted with them nor did he know their voices that he went to their residence that there were two women behind a parda who the executants of the

PARDANASHIN WOMEN—*contd*

bond said were their respective wives and that these women acknowledged they had made the power of attorney There wa nothing to show that the ladies had ever benefited in any way from the money advanced under the bond *Held* that even if the ladies behind the parda were in fact the two defendant this evidence would not be enough to bind them and that it was for the plaintiff who ought to bring their property to sale on the strength of a transaction with them to show that they were free agent in the matter and having a clear knowledge of what they were doing accorded their con ent to it *Bu loor Raheem v Sumsoon nissa Begum 11 Moo I A 551 Ashgar Ali v Delroos Banoo Begum I L R 3 Calc 324* and *Sudisht Lal v Sheobarat Koer I L R 7 Calc 245* referred to by MAHMOOD J BEHARI LAL *v* HABIBA BIBI I L R. 8 All. 267

19 —————— *Mahamedan law —Sale of an undivided share—Burden of proving validity of sale by a gosha woman* Suit for partition and po ession of an undivided share of property sold to plaintiff by an aged gosha lady of the class of Canarese Mahomedans called Navayats The property sold was the vendor s share as heiress of her father brother and sister who died in 1856 1866 and 1871 respectively but it appeared that the property of the family had been in the po session of one managing member since 1856 *Held* that the plaintiff having discharged the burden of proving that the conveyance to him was voluntarily executed and that the transaction evidenced by it was real and *bona fide* the conveyance was operative KHATIJA *v* ISMAIL I L. R. 12 Mad. 380

20 —————— *Sale of villages by a wife to her husband—Proof of execution of deed*

due execution of the sale deed sued the husband who had obtained possession claiming in the alternative either that they should obtain their shares in the property of the deceased or if the sale of the villages should be maintained that they should receive their proportion of the price as due to the estate left by her The two Courts below concurred in finding that the wife a pardanashin was capable

Committee found that there not being a case of undue influence exercised either made by the plaint or raised by the issues they found no evidence that the price stated was inadequate or the sale an improvident one or that the husband had been re

PARDANASHIN WOMEN—*contd*

lea ed from having to pay the price From the findings on the evidence the presumption was that the wife intended to pass the property for some purpose and that the suggestion of a gift being excluded the deed operated as a sale according to what it purported to be They did not throw any doubt on the sound doctrine laid down in numerous cases as to the obligations upon persons taking benefits from pardanashin ladies To the one surviving plaintiff was awarded a moiety of the price payable by the husband who himself inherited the balance MUHAMMAD IKRAM UD DIN *v* NAJIBAN I L R 20 All 447 L R 25 I A 137 2 C W N 545

21 —————— *Want of legal advice—Misapprehension* A deed conveying the interest of a native married woman in land will not be set aside on the ground of want of legal advice or misapprehension where the husband is aware of the alienation and it is not shown that there is a gross inadequacy of price MONOHUR DOSS *v* KHOOOLSUN BEGUM Cor 121

22 —————— *Loan for Mahomedan women on bond executed under mooktear namah—Onus on lender—Necessity* Where A

satisfying himself that it was taken for their use and was required by them for the purposes stated in the mooktearnamah (*i e* for the payment of their debts) and also that the money was applied to the use of the ladies GOLAM SOBHAN *v* MUDDUN MOHUN PAUL 18 W R 257

23 —————— Attendance of pardanashin in Court—*Personal attendance of accused person—Criminal Procedure Code s 205 Held* where a Magistrate had issued a summons to a pardanashin woman alleged to be of good position

24 —————— Examination of pardanashin—*Witness—Right to be examined on commission* A pardanashin woman summoned as a witne s in a criminal case has a right to be exempted from personal attendance at Court and to be examined on commission *In the matter of the petition of* HORRO SOONDERY CHOWDHRAIN I L R 4 Calc 20 3 C L R 93

25 —————— *Privileges of as witnesses—Attendance in Court* Privileges of pardanashin ladies when attending Court in palanquins as witnesses considered. The general rule is that the lady should be admitted into Court in her pa an

PARDANASHIN WOMEN—*contd*

quin and give her evidence in it after being properly identified. QUEEN v. ROBERTS
1 B L R S N 5

26 ——— *Attendance in Court* The Court will extend the privileges of parda to women who though not parda are not accustomed generally to appear before the public KISTOMOHUN MOOKERJEE v. ADARMONEY DABEE
2 Hyde 88

27 ——— *Attendance in Court—Identification* The examination by commission of a pardanashin woman is not necessary where she can be examined in Court in a palki or otherwise on a proper identification NUSRUT BANOO v. MAHOMED SAYEM 16 W R 230

28 ——— *Right of pardanashin lady to be examined on commission—Civil Procedure Code (Act XIV of 1882) s 640* The defendant applied for a commission to examine a Hindu pardanashin lady The plaintiff objected on the ground that the lady had prior to this appeared in public and had also been examined in Court in a palki. *Held* that the lady being a pardanashin she was entitled to be examined on commission MOHESH CHUNDER ADDY v. MANICK LALL ADDY
I L R 26 Calc 650
3 C W N 751

CHAMATKAR MOHINEY DABEE v. MOHESH CHUNDER BOSE I L R 26 Calc 651 note
3 C W N 750

29 ——— *Civil Procedure Code (Act XIV of 1882) s 640—Commission to examine witnesses* In an application to examine the plaintiff under commission it was admitted that she had appeared personally in the Police Court and had been examined by the Magistrate Ordered that a commission do issue to examine the plaintiff PROVAT KUMAREE DASSEE v. OPURBA KISSEN SETT
3 C W N 753

30 ——— *Privileges of as witnesses—Civil Procedure Code 1859 s 21* In the case of an unmarried girl of some 12 years of

MOOPTA KOOER 24 W R 375

31 ——— *Irregularity in mode of examination on prejudicing the accused* Where the complainant were pardanashin ladies and the Deputy Magistrate went to their residence and took their depositions in the presence of the accused who had no opportunity of cross examining inasmuch as the deponents were in a shut up room —*Held* that the Deputy Magistrate's procedure was unusual and uncalled for and the accused was prejudiced by the way in which the examination was taken and that the complainants should have been called upon to make their charge through some one who knew the facts *In the matter of the petition of* JUDOO NUNDON LALL 24 W R Cr 22

32 ——— *Personal appearance in Court—Practice* Although there is no provision in the Criminal Procedure Code which protects pardanashin ladies from appearing in a Court of Justice nevertheless it is very undesirable to compel the attendance of such persons It cannot be admitted as a general principle that pardanashin ladies whose evidence is required in criminal trials are to be allowed to compel the Courts to examine them at some other place than the Court house itself *In the matter of the petition of Din Tarini Debi I L R 15 Calc 775* and *In re Farid un nissa I L R 5 All 92* referred to Where a Magistrate considered it necessary to take the evidence of a pardanashin lady who objected to appear in Court the High Court directed him to make arrangements so as to take her evidence either in an empty Court-room in the presence of himself the accused and the pleader for the prosecution or if no empty Court room were available in his own private room or some other room in the Court building *In the matter of the petition of* BASANT BIBI
I L R 12 All 69

33 ——— *Attendance of pardanashin—Warrant case—Issue of summons—Criminal Procedure Code 1882 ss 204 205—Discretion of Court* In a warrant case the accused being a pardanashin the Magistrate can dispense with her attendence under s 205 of the Criminal Procedure Code if he issues a summons in the first instance and this he has a discretion to do under s 204 BASUMOTI ADHIKARINI v. BUDRAM KALITA
I L R 21 Calc 588

34 ——— **Exemption from arrest—** *Execution of decree—Civil Procedure Code 1859 s 21* Exemption from arrest on process of execution under s 21 Act VIII of 1859 does not extend to all women of rank but is limited to the women therein described —women that is who according to the custom and manners of the country ought not to be compelled to appear in public DAVIS v. MIDDLETON 8 W R 282

35 ——— *Execution of decree* Pardanashin women or women who according to usage of the country ought not to be compelled to appear in public are not exempt from arrest in execution of a decree MAHARANI OF BURDWAN v. BARADASUNDARI DEBI
1 B L R F B 31 10 W R F B 21

RAJCHUNDER ROY v. SHAMA SOONDURI DEBI
I L R 4 Calc 583

See also KADUMBINEE DOSSEE v. KOYLASH KAMINEE DOSSEE. I L R 7 Calc 19 8 C L R 25

36 ——— **Execution of deed by—** *Execution of mortgage deed—Separate explanation necessary where executants are in separate interest.* Among the executants of a deed of mortgage of a

PARDANASHIN WOMEN—*concld*

testator s estate to ecure debts for which it was liable were two pardana hin ladies one an executrix of the will the other a donee of villages from the tes tator in his lifetime which in her hands were not liable to the te tator s debts *Held* that to raise one i sue as to the due execution of the deed as affecting both ladie wa an error in procedure Even if the executrix was rightly hel l liable there must never thele s be clear evidence of a eparate explanation of the deed to the donee of the villages and a clear under-tanding by her that she was assuming liability for del ts not her own and was charging her villages therewith ANNODA MOHUN ROY CHOWDHARY v BHUBAN MOHINI DEBI (1901)
I L R. 28 Calc 546 s c 5 C W N 489
L. R 28 I A. 71

37 ——————— *Non production of mukhtarnama—Evidence—Insufficiency of evi dence that deed was explained to her and that she understood it* In a suit brought against a *pardana hin* lady on a mortgage bond which purported to be igned in her name by the pen of Soonder Lal on in law and *am mukhtar* under a *mukhtar nama* which was not produced —*Held* that second ary evidence of the *mukhtarnama* was on the facts put forward to account for its non production in admis ible but even if admis ible it was not suffi cient to show that Soonder Lal had authority to execute the bond Although the bond was said to have been read out to the lady it was not shown that it was explained to her or that she understood its conditions and effect *Held* therefore (affirming the decision of the High Court) that she was not bound by it *Sudisht Lal v Sheobarat Koer I L R 7 Calc 245* followed SHAMBATI KOERI v JAGO BIBI (1902)
I L R 29 Calc 749 s c 6 C W N 682
L. R. 29 I A 127

38 ——————— **Will**—*Will of a Mahomedan lady—Rules applicable to the execution thereof—Undue influence—Indian Succession Act (X of 1865) s 48—Will of a pardanashin lady—Onus probandi* When dealing with the case of a will or a deed executed by a *pardanashin* lady a particular and peculiar *onus* rests upon those who come forward to support the document to show that the execu tant thoroughly understood what she was doing and was thoroughly and fully acquainted with the terms of the document she was executing The presumptions as to the knowledge of the executant of the contents of the document she is executing do not equally apply in the case of a *pardanashin* lady as in the case of other persons As to what constitutes undue influence in this country a useful guide is afforded by s 48 of the Indian Succession Act It is true that that sec tion does not apply to the wills of Mahomedans but for all that it is a useful guide as to what does or does not constitute undue influence KHAS MEHAL v ADMINISTRATOR GENERAL OF BENGAL (1901) **5 C W N 505**

PARDON

See APPROVER.

PARDON—*contd*

See CONFESSION—CONFESSIONS TO MAGISTRATE **I L R 2 All 260**
I L R 22 Calc 50

See CRIMINAL PROCEDURE CODE ss 337 338 **I L R 30 Bom 611**

See CRIMINAL PROCEDURE CODE ss 337 TO 339

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED
I L R 1 Bom 610
I L R 2 All. 260
8 W R Cr 53
14 W R Cr 10
5 N W 217
I L R 11 Calc 580
I L R 10 Bom 190
I L R 28 Bom 213

See SESSIONS JUDGE—JURISDICTION OF
I L R 15 Mad 352
I L R 22 Calc 50

——————— **omission to state reasons for granting—**

See REFERENCE TO HIGH COURT
I L R 36 Calc 629

1 ——————— **Application for pardon**—*Prisoner duly convicted—Fresh evidence sufficient for acquittal—Procedure* Where a prisoner has been duly convicted of a criminal offence and afterwards there turns up fresh evidence which would in the opinion of the Judge if it had been available at the trial have produced an acquittal the proper course to take is not to acquit the prisoner but to apply to the proper authority for a pardon REG v HART **1 Ind. Jur N S 333**
s c NUSSUR ALI v HART **6 W R Cr 42**

2 ——————— *Application for* [illegible]
Government QUEEN v SAJOWRA
7 W R. Cr 100

3 ——————— **Tender of pardon**—*Power of Magistrate—Witness* A Magistrate is competent to tender a pardon to any person The fact of such party being directly or indirectly concerned in the [illegible]

4 ——————— *Criminal Procedure Code 1861 s 210* [illegible]

5 ——————— *Tender of conditional pardon—Criminal Procedure Code 1861 s 209—Power of Magistrate* The provi ions of s 209 Criminal Procedure Code applied to cases

PARDON—*contd*

appeal to the High Court —*Held* that the convic

pardon which had been granted had not been forfeited under s 339 it was still in force and the accused should be discharged As the law stands the question in such cases is whether the accused has forfeited his pardon by some act of his own The question is one of fact in which the Magistrate may hold one opinion and the Sessions Judge another as may happen in the case of any other question of fact in issue in the case The Sessions Court has to determine for itself on the evidence whether the pardon has been forfeited for if not the accused who has accepted such pardon cannot be tried *Quære* Whether the examination at the committal proceedings before the Magistrate of a person who has accepted a pardon satisfies cl 2 of s 337 of the Code which provides that every such person shall be examined as a witness in the case or whether such person must be examined as a witness at the trial *Queen Empress* v *Bhau I L R 23 Bom 493* doubted KING EMPEROR *v* BALA (1901) I L R 25 Bom 675

17 ———————— *Pardon granted after accused has had an opportunity of cross examining the witnesses for the prosecution—Withdrawal of pardon and subsequent commitment* Where a pardon was tendered by a Magistrate to an accused person after he had had an opportunity as an accused person of cross examining the witnesses for the prosecution and on its appearing that he had not made a full and true disclosure of the facts of the case such pardon was withdrawn and he was committed along with his co accused to the Court of Session —*Held* that the commitment was not open to objection *Queen Empress* v *Brij Narain Man I L R 20 All 529* followed EMPEROR *v* BUDHA (1906) I L R 28 All 24

18 ———— **Power of Local Government to tender conditional pardon**—*With drawal of prosecution—Accomplice s evidence—Criminal Procedure Code (Act V of 1898) ss 30 494* A Local Government in India has no power to tender a conditional pardon to an accomplice for the purpose of his being examined as a competent witness against others accused with him An accomplice if he is not an accused under trial in the same case is a competent witness and may be examined on oath the prosecution must be withdrawn and the accused discharged under s. 494 of the Criminal Procedure Code before he would become a competent witness. But if the Court purporting to act under s. 494 Criminal Procedure Code sanctions the withdrawal of the prosecution but omits to record an order of discharge and the accused continues to be kept in custody his position is in no way changed from that of an accused The utmost caution is necessary in admitting or using the evidence of an approver It not only requires corroboration in material particulars for its use but its evidentiary value depends considerably upon the circumstances under which its evidence is tendered *Reg* v *Hanumanta I L R 1 Bom 610 Empress of India* v *Asghar Ali I L R 11 All 260 Queen Empress* v *Mona Puna I L R 16 Bom 661 Empress* v *Durant I L R 23 Bom 213 Winsor* v *Queen L R 1 Q B 289 Queen* v *Payne 1 C C R 349 Queen* v *Behary Lall 7 W R 44 Mohesh* v *Mohesh 10 C L R 553 Queen Empress* v *Tirbeni Sahai I L R 20 All 426 Reg* v *Remedios 3 Bom H C 59 R* v *Rudd (1775) Cowp 331* and *Paban Singh* v *Emperor 10 C W N 847* referred to BANU SINGH *v* EMPEROR (1906) I L R 33 Calc 1353

PARENT AND CHILD

See FIDUCIARY RELATIONSHIP I L R 30 Mad 169

PARENTAGE PROOF OF

See EVIDENCE ACT s 9 I L R 18 All. 98

See LEGITIMACY

PARLIAMENT PROCEEDINGS IN

See LIBEL I L R 36 Calc 883

PAROL EVIDENCE

See EVIDENCE—PAROL EVIDENCE.

PARSI INTESTATE SUCCESSION ACT (XXI OF 1865)

See PARSIS

———————— *Law governing Parsis in the mofussil before the introduction of the Act—Rules of equity and good conscience—Practice of English Equity Courts* Before the passing of the Parsi Intestate Succession Act 1865 the law governing Parsis in the mofussil was the ascertained usage of the community modified by the rules of equity and good conscience It is true that in such cases the practice of the English Equity Courts would also be followed with necessary modifications but the reference to these Courts would be not for the purposes of introducing special or peculiar doctrines of English law but rather with the purpose of elucidating the principles of equity and good conscience and of giving uniform effect to them Before the passing of the Succession Act a Parsi husband did not acquire that particular right which in English Law accrued to a husband over his wife s personality SHAPURJI *v* DOSSABHOY (1905) I L R. 30 Bom 359

PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865)

See LIMITATION ACT 1877 SCH. II ART 35 I L R. 25 Bom. 644

See PARSI

PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865)—*contd*

——— ss 3 and 30—

See HIGH COURT JURISDICTION OF—BOMBAY—CIVIL
I L R 13 Bom 302
I L R 16 Bom 136

——— s. 28—

See MARRIAGE I L R 16 Bom. 639

——— s 30 —*Suit for divorce—Guardian ad litem—Minor—Age of majority—Husband and wife.* In a suit by a husband for divorce under s 30 of the Parsi Marriage Act (XV of 1865) the defendant if under the age of 21 years although more than 18 must be deemed to be a minor and a guardian of the defendant for the suit must be appointed SORABJI CAWASJI POLISHVALA *v* BUCHOOBAI I L R 18 Bom 366

PARSI RELIGION

See MUKTAD CEREMONIES
I L R 33 Bom 122

PARSI TOWER OF SILENCE

See GRANT I L R 35 Calc 478

See NATIVE STATE.
I L R 35 Calc 478

PARSIS

See CHARITABLE TRUSTS
I L R 33 Bom 509

See GRANT I L R 35 Calc 478

See HUSBAND AND WIFE.
I L R 2 Bom 75
I L R 16 Bom 630

See LETTERS OF ADMINISTRATION
I L R 17 Bom 689
I L R 19 Bom 828

1 ——— Laws applicable to Parsis—*Statute of Frauds (29 Car II c 3)* The Statute of Frauds (29 Car II c 3) except so far as it has been repealed applies to Parsis in India BAI MANECKBAI *v* BAI MERBAI I L R 6 Bom 363

2 ——— *Act IX of 1837—Immoveable property of Parsis* Statement of circumstances which led to the passing of Act IX of 1837 relating to the immoveable property of Parsis Application of English law to Parsis in Bombay NAOROJI BERAMJI *v* ROGERS 4 Bom O C 1

3 ——— *Suit for redemption—Parsi defendant—Bom Reg IV of 1827 s 26* In a suit brought by a Mahomedan to redeem from the defendant who was a Parsi certain ... ncestor ... litional ... under ... defend ... law for ... equity ... nd the ... cessary modifications the practice of the Courts of equity

PARSIS—*contd*

in England MANCHARSHA ASHPANDIARJI *v* KAMRUNISA BEGAM 5 Bom A C 109

4 ——— *Parsis in mofussil of Bombay Presidency—English law—Rule against perpetuities—Equity and good conscience—Gift to heirs of A from generation to generation* The law applicable to Parsis in the mofussil of the Presidency of Bombay is in the absence of evidence of any specific law or usage applicable to the particular case justice equity and good conscience alone In applying justice equity and good conscience to the facts of any particular case the Courts will be guided by the general principles of English law applicable to a similar state of circumstances and so as if possible to give effect to the intentions of the parties concerned where such intentions are clearly expressed and are not repugnant to any general principle of English law The Courts will not in ... h ... e

of one Framji Cowasji Banaji deceased entered into an agreement with one another bearing date the 24th May 1851 by which they agreed that the remaining income after paying the deceased's debts of a certain estate which had belonged to the deceased called the Poway estate an estate situated in the Island of Salsette and therefore in the mofussil of the Presidency of Bombay—should be apportioned to the heirs mentioned in cl 7 (of the agreement) —i e among the various heirs of Framji Cowasji Banaji deceased the parties to the agreement— but after their death their shares are to be enjoyed and received by their heirs and children from generation to generation for ever It was contended that Parsis being subject to English law these words conferred an absolute estate in their respective shares upon the various parties to the agreement under the rule in *Shelley's Case*. *Held per* BAYLEY J that the plain intention of the parties to the agreement appearing on the face of the agreement was that they themselves should take only a life estate to the extent of their respective shares in the remaining income of the Poway estate and that the rule in *Shelley's Case* should not be applied so as to defeat that plain intention *Held* on appeal (affirming the order of BAYLEY J) that even assuming English law to be applicable the English law so to be applied could not include the rule in *Shelley's Case* which is a law of property or tenure based on feudal considerations and unsuited to the circumstances of India that the rule of construction to be applied to the agreement must in any case be to give effect to the intention of the parties according to the plain meaning of the language and that to construe the agreement as given more than a life interest to the parties thereto would be to defeat their obvious intention. MITHIBAI *v* LIMJI NOWROJI BANAJI I L R 5 Bom. 506

s c on appeal I L R 6 Bom. 151

PARSIS—*contd*

5 ——————— The same agree

each signatory was in law a valid settlement and not void as creating a perpetuity In the absence of words in the context showing that they were intended to take less the respective heirs and children of the signatories took an absolute estate

MITHIBAI I L R 22 Bom 500

6 ——— Marriage of Parsis—*Act XV of 1865 s 30—Bigamy—Divorce* A Parsi residing in Bombay after the passing of Act XV of 1865 but before it came into operation contracted a second marriage during the lifetime of his wife from whom he had not been divorced and whom he moreover wilfully deserted for two years On appeal from an order by the Judge of the Parsi Chief Matrimonial Court rejecting a plaint for divorce by the first wife on the ground that the subject matter of the plaint did not constitute a cause of action under s 30 of Act XV of 1865 and Act VIII of 1859 s 3— —*Held* that the facts alleged in the plaint did not amount to bigamy coupled with adultery nor to adultery coupled with wilful desertion within the meaning of s 30 of Act XV of 1865 as a second marriage contracted by a Parsi husband during the lifetime of his first wife was not unlawful before the Act came into operation nor did the provisions of the Act in any way affect the validity or the consequence of such a marriage AVABAI *v* JAMASJI JAMSHEDJI

3 Bom A C 113

7 ——— Husband and wife—*Parsi Matrimonial Court—Act XV of 1865—Suit by wife for judicial separation—Alimony after decree dismissing wife's suit and pending appeal—Alimony pending petition for review of judgment—Practice in allotment of alimony—Discretion of Court* A wife sued her husband for judicial separation in the Parsi Matrimonial Court Alimony was granted to her by an order dated 11th July 1891 which directed the defendant to pay allmony to her from the 15th April 1891 until the final decree herein be passed On the 18th July 1891 the suit was dismissed and after that date

in the a review She now applied for an order directing the defendant to pay her all the arrears of alimony *pendente lite* from the date of filing the suit or so much as had not been paid and that he should pay her further alimony until the final disposal of the appeal *Held* (i) dismissing the application that the words final decree herein contained in the order of the 11th July 1891 by which alimony was granted, meant the decree in the suit and not in the appeal (ii) that the Parsi Matrimonial Court constituted under Act XV of 1865 had no power to award alimony *pendente lite* after decree and pending appeal (iii) an unsuccessful wife is not entitled to claim alimony after final decree and pending appeal nor for the period during which she is seeking review of judgment *Quære* Whether the Court where a petition for review is

13 P D 91 hould guide the practice of the Parsi Matrimonial Court in allotment of alimony for the time following a decree *nisi* HIRABAI *v* DHUNJIBHOY BOMANJI **I L R 17 Bom 146**

8 ——————— *Parsi Marriage and Divorce Act (XV of 1865)—Alimony—Charge on husband's immoveable property—Widow—Distributive share* By an order of the Parsi Matrimonial Court the deceased was directed to execute a proper instrument charging his immoveable property with the payment of R70 per mensem by way of permanent alimony to his wife during her life The instrument was executed accordingly On his death his widow was held entitled in addition to the R70 per mensem charged on her deceased husband's immoveable property to a distributive share in his estate MOTIBAI *v* MOTIBAI

I L R 24 Bom. 465

9 ——————— *Marriage—Husband and wife—Agreement for separation—Suit by husband for restitution of conjugal rights—Parsi Marriage and Divorce Act (XV of 1865) s 36* Under s 36 of the Parsi Marriage and Divorce Act (XV of 1865) a contract by which a husband has agreed to allow his wife to live separate is a good defence to a subsequent suit by him for restitution of conjugal rights KAWASJI EDULJI BISNI *v* SIRINBAI **I L R 23 Bom. 279**

10 ——— Infant marriage among Parsis—*Consent of father or guardian—Suit to declare an infant marriage null and void—High Court—Parsi Matrimonial Court—Jurisdiction—Act XV of 1865—Letters Patent s 12—English law—Subsequent consent or repudiation—Adoption of Hindu practice by Parsis* In 1868 the plaintiff and defendant then of the ages of seven and six years respectively went through the ceremony of marriage in the presence of their respective parents and according to the rites of their religion

iff was

uncle w

he had

wards th

PARSIS—*contd*

a declaration that the pretended marriage was null and void and did not create the status of husband and wife between the plaintiff and defendant The defendant resisted the suit and claimed to be the lawful wife of the plaintiff The plaintiff and defendant never lived together as man and wife nor was the marriage ever consummated *Held* that under the circumstance the formal consent of the uncle and the tacit con ent of the father were enough to sati fy the requirements of s. 8 of Act XV of 1865 which requires the previous

[illegible]

XV of 1865 the jurisdiction to try it remained in the High Court to which it had been given by s 12 of the Letters Patent *Held* also that the law to be applied was the English law (subject however to

[illegible]

practice of infant marriages is one which finds no warrant in their own religious system the Parsis in Western India have in the course of centuries so generally adopted such practice from their Hindu neighbours as to give such marriages amongst them selves all the validity they possess amongst Hindus making them independent of any question of sub sequent con ent or non consent by the parties there to PESHOTAM HORMASJI DUSTOOR *v* MEHERBAI

I L R. 13 Bom. 302

11. ———— *Infant marriage among Parsis—Custom—Suit for declaration of nullity of infant marriage—Age of majority applicable in case of such suit—Indian Majority Act (IX of 1875) ss 2 and 3—Parsi Marriage and Divorce Act (XV of 1865) s 3—Limitation Act (XV of 1877) Art 120* A Parsi female within three years after she had attained the age of tweenty one brought a suit in the Court of the Subordinate Judge at Broach for a de claration that a marriage ceremony performed in 1869 when she was not three years old did not create the status of husband and wife between her and the defendant She had never lived with the defendant as his wife The Subordinate Judge held that the marriag was valid and binding being of opinion that the custom of infant marriage among the Parsis was well established and recognized On appeal the Judge con firmed the decree holding that at all events in 1869 when the marriage took place the custom was common and recognized as binding

PARSIS—*contd*

On second appeal the High Court concurred with the opinion expressed in *Peshotam v Meherbai I L. R 13 Bom. 302* that the Zoroastrian system did not contemplate marriage in infancy but the lower Courts having found a custom had grown up among Parsis in India validating such marriages and that the custom was in force in 1869 did not consider it open on second appeal to arrive at an independent finding as to whether the evidence established the existence of such a custom *Held* that a Parsi suing to have a marriage declared void is acting in the matter of marriage and therefore the Indian Majority Act (IX of 1875) which makes the age of eighteen the age of majority does not apply to a question of limitation with regard to such suit The age of majority in such a case is that prescribed by the Parsi Marriage and Divorce Act (XV of 1865) viz twenty one years *Held* also that Art 120 of the Limitation Act (XV of

[illegible]

not barred Act XV of 1865 contains no provision as to the age at which a Parsi marriage can be validly contracted the matter being left to the general law which governs Parsis in that particular just as the English Marriage Act (4 Geo IV c 76) leaves it to be dealt with by the common law of England BAI SHIRINBAI *v* KHARSHEDJI NASARVANJI MASALAVALA I L R 22 Bom 430

12 ———— Widower—*Parsi Succession Act (XXI of 1865) s 5— Widower meaning of word—A widower on second marriage is still a widower relatively to deceased wife* In s 5 of the Parsi Succession Act (XXI of 1865) the word widower means a widower relatively to the de ceased wife only and without consideration of the fact or possibility of the widower re marrying *D* a Parsi died intestate on the 19th September 1885 leaving a widow (the defendant) and two daughters and the heirs of a pre deceased daughter *J* him surviving *J* had been the wife of the plaintiff and had died thirty four years before the date of this suit leaving as her heirs her husband (the plaintiff) and one daughter who was still living After *J*s death the plaintiff married again and his second wife was living at the date of this suit Letters of administration to *D*s estate were granted to his widow the defendant The plaintiff claimed a share in *D*s estate contending that he was the widower of *J* one of the daughters of the intestate and entitled as such under s 5 of the Parsi Intestate Succession Act (XXI of 1865) *Held* that he was the widower of *J* within the meaning of the section and as such was entitled to a share in *D*s estate JEHANGIR DHANJIBHAI SURTI *v* PEROZBAI

I. L. R. 1 Bom. 11

13 ———— Intestate succession among Parsis—*Parsi Succession Act (XXI of 1865) s 7 Sch II cl 9—Next of kin* One Jerbai a Parsi widow died inte tate and without issue her father mother three brothers and two sisters having predeceased her Two of her brothers

PARSIS—*contd*

and one sister had left children Some of these children had al o predecea ed her leaving children (grand nephews and nieces of Jerbai) Two of this last mentioned class ha dalso predeceased her, leaving children (great grand nephews and nieces of Jerbai) *Held* that Jerbai s property should in the first instance be divided into three shares *i e* one for each of the two predeceased brothers who left children and one for the predeceased sister who left a child Each brother s share to be two fifths and the sister s one fifth These shares to be sub divided among the descendants of the two brothers and the sister respectively no descendant being entitled to share concurrently with his or her ances tor and on each division and sub division each male taking double the share of each female standing in the same degree of propinquity In Art 2 of the second Schedule of the Par i Succession Act (XXI of 1865) the gift to lineal descendants is substitu *tional in the sense that they take nothing if the* head of their branch of the family is living whereas if he is dead they stand in his place and take the share which he would have taken In distributing an estate therefore among brothers and sisters and the lineal descendants of such of them as have pre deceased the inte tate the primary division must be *per stirpes* If there are surviving brothers and lineal descendants of a predeceased brother then each surviving brother will take equal shares with the lineal descendants collectively If all the brothers are dead then the share which each would have taken had he survived will be taken by his lineal descendants If in either case the pre deceas d was a sister her lineal descendants will take her half share only In both ss 6 and 7 of the Parsi Succession Act the words next of kin and relatives are synonymous and are collective names for the persons mentioned in the first and second Schedules re pectively HIRJIBHAI CURSETJI BHANDUPWALA *v* BARJORJI SARABJI ASHBURNER.

I L R. 22 Bom. 909

14 ——————— *Act XXI of 1865 s 8—Succession Act s 42—Advancement—Statute of distribution* In excluding by s 8 of the Par i Succession Act from application to Parsis s 42 of the Succession Act which repeals the English rule as to advancement contained in the Statute of Di tribution s 5 it was not the intention of the Legi lature to pre erve the last mentioned rule in force for the Parsi community DHANJIBHAI BOMANJI GUGRAT *v* NAVAZBAI

I L R 2 Bom. 75

15 ——————— *Act XXI of 1865—Effect of words excluding from inheritance Heir at law* A a Parsi inhabitant of Surat died there on the 13th February 1879 leaving him surviving the following relation *viz* a daughter *J* (the respondent) by his first wife who had prede ceased him his second wif Dhanbai who lived apart from him his third wife who had been divorced by him and whose son *A* did not recognize as his own and his three sisters *D S* and *G* the first named of whom had been married to *K* and whose son *E* was the appellant. By his will *A* expres ly directed that neither his daughter *J* nor his widow Dhanbai should take any share of his property the whole of which he bequeathed to his brother *R* who however predeceased him On the [illegible]

she nor her husband resided permanently within the Presidency of Bombay The District Judge granted limited letters of administration to *J* s husband as her attorney under s 214 of Act X of 1865 On an appeal to the High Court by *E* alone —*Held* that *A* had died intestate not having made any bequest or devise of his property which could take effect inas much as his sole devisee (*R*) had predeceased him [illegible]

his widow Dhanbai from succeeding to their share of the estate Under the Parsi Succession Act (XXI of 1865) widows and children rank befor brothers and sisters S 7 Sch II Art 2 of the Parsi Succession Act is applicable only where the deceased leaves neither lineal descendants nor a widow or widower ERASHA KAIKHUSRU *v* JERBAI

I L R 4 Bom 537

16 ——————— *Act XXI of 1865—Childless widow of intestate son of Parsi*—It is not a condition precedent to the application of s 5 of Act XXI of 1865 that the predeceased son of an intestate Parsi shall have left a widow and issue Where an intestate Parsi left him surviving a widow sons daughters children of a predeceased son and the widow of another predeceased son who had died without issue and a posthumous daughter was after wards born to the intestate —*Held* that such last mentioned widow was entitled to one moiety of the share in the intestate s estate which her husband would have taken had he survived the intestate and [illegible]

17 ——————— Parsi will, evidence of genuineness of—*Adoption* An adoption made by a Parsi immediately before his death would render extremely improbable the execution of a will by [illegible]

18 ——————— *Usage among Parsis* The will of a Parsi in favour of his wife and daughter upheld notwithstanding a rule or usage set up by a brother of the testator to the effect that among Parsis no disposition could be made by will to the total di heri on of the heir such rule or usage

PARSIS—concld

no being proved MODEE KAIKHOOSROW HORMUSJEE v. COOVEERBHAEE.
4 W R P C 94 6 Moo I A 448

19 ———— **Atash Behram (Parsi fire temple)**—*Parsi community of Udwada—Trust—Suit—Capacity to hold property—Civil Procedure Code (Act XIV of 1882) s 539—Mandatory injunction—Trespass* In this country a fluctuating body of persons such as a village community is capable of owning property It is opposed to the notion of the Parsi community that the Iran Shah (sacred fire) should be regarded as capable of or the subject of ownership but even if there be difficulty or doubt as to its ownership it is obvious that there must be some one entitled to protect from improper invasion the temple property and those who can predicate of themselves that they have exercised the management authority and supervision as alleged in the plaint are so entitled The Parsi inhabitants of Udwada as the Anjuman (that is a constituted council or assembly to which all questions regarding their peculiar customs are referred) of that town are vested with the control management and supervision of the Atash Behram

because those who cause the obstruction happen to have been nominated trustees A mandatory injunction should not be granted against a trespasser compelling him to come on the land on which he had trespassed to remove an encroachment made thereon by him NAVROJI MANEKJI WADIA v DASTUR KHARSEDJI MANCHERJI (1904)
I L R 28 Bom. 20

PARTIES

PARTIES—contd

PARTIES—*contd*

See Appeal I L R 30 All 48

See Appeal—Execution of Decrees—Parties to Suits

See Assignment of Chose in Action I L R 24 Mad. 252

See Bengal Tenancy Act 1885 ss 65 159 188 9 C W N 34

See Bengal Tenancy Act 1885 s 88 10 C W N 216

See Bengal Tetancy Act 1885 s 153 12 C W N 835

See Civil Procedure Code 1882 s 43 8 C W N 54

See Civil Procedure Code 1882 s 244—Parties to Suit

See Civil Procedure Code 1882 ss 278 283 I L R 28 All 41

See Civil Procedure Code 1882 s 362 I L R. 30 All. 117

See Civil Procedure Code 1882 s 583 244 I L R 33 Calc 857

See Company I L R. 31 Calc 106

See Compromise—Remedy on Non performance of Compromise 5 C W N 386

See Co sharers—Suits by Co sharers with respect to the Joint Property—Kabuliyats 7 C W N 670

See Costs—Special Cases —Defendants or Respondents

See Costs—Special Cases—Parties

See Costs—Special Cases—Third Persons Payment of Costs by

See Court Fees Act (VII of 1870) s 7 cls V XI (e) I L R 31 Mad. 14

See Divorce Act (IV of 1869) ss 7 11 and 45 I L R 30 Calc 489
I L R, 30 Calc 490 note
7 C W N 504

See Evidence—Civil Cases—Decrees—Decree not inter partes 7 C W N 54

See Execution of Decree I L R 30 Mad 215

See Execution of Decree—Execution by and against Pepresentatives. 7 C W N 678

PARTIES—*contd*

See Hindu Law 9 C W N 829 1033

See Hindu Law—Endowment—Dealing with and Management of Endowment 5 C W N 273

See Hindu Law—Joint Family I L R. 29 All. 311

See Land Acquisition Act s 50 13 C W N 116

See Landlord and Tenant 13 C W N 635

See Libel I. L R 36 Calc 907

See Magistrate I L R. 32 Calc 287

See Mesne Profits I L R 33 Calc 32

See Misjoinder

See Mortgage—

Redemption—Right of Redemption 5 C W N 83

Sale of Mortgaged Property—Rights of Mortgagees I L R. 30 Calc 599

See Mortgage 11 C W N 1078
13 C W N 281

See Multifariousness

See Partition—Jurisdiction of Civil Courts in suits respecting Partition I L R 28 Calc 769

See Plaint Form and Contents of Plaint—Plaintiffs

See Possession Order of Criminal Court as to—

Parties to Proceedings

Notice to Parties 7 C W N 705

Disputes as to Right of Way Watep etc 5 C W N 67

See Practice I L R 32 Calc 746

See Pre emption 8 C W N 549

See Receiver 6 C W N 829
I L R 30 Calc 593 721

See Pes Judicata—Parties

See Resumption—Effect of Resumption—Effect on Patta L R. 30 I A 159

See Pight of Suit—Possession Suits for—Co defendants 6 C W N 314

See Sale 8 C W N 657

See Sale for Arrears of Revenue—Setting aside Sale—Parties

See Sale in Execution of Decree—Setting aside Sale—General Cases I. L R 29 Calc 682

See Special or Second Appeal—Other Errors of Law or Procedure—Parties

PARTIES—*contd*

See Specific Relief Act s 9
13 C W N 303

See Suit Right of
I L R 31 Calc 832

See Transfer of Property Act (IV of 1882)
I L R 28 All 174

See Transfer of Property Act (IV of 1882) s. 85
I L R 30 All 240
I L R 31 All 11

———— addition of—

See Hindu Law—Gift—Power to make and accept Gifts.
I. L. R 27 Bom 31

See Insolvency—Claims of Attaching Creditors and Official Assignee
I L R 25 Mad. 406

See Land Acquisition Act (I of 1894) ss. 30 and 53
I. L. R. 25 All. 133

See Lease
I. L. R. 36 Calc. 675

See Limitation Act 1877 s 22

See Partnership—Suits respecting Partnerships
I L R 27 Bom. 157

See Trade Mark
I L R. 25 Bom 433

———— appearance or non appearance—

See Appeal—Default in Appearance

See Civil Procedure Code 1882 ss 102 113

See Civil Procedure Code 1882 s 108

———— death of—

See Death

———— defect of—

See Appeal
10 C W N 981

See Civil Procedure Code 1882 315
10 C W N 279

———— misjoinder of—

See Civil Procedure Code 1882 s 28
I. L. R 31 Bom 516
I. L. R 33 Bom 293

See Plaintiff substitution of
I L R 34 Calc 612

———— misjoinder of defendants—

See Appeal—Orders—Order rejecting a plaint
6 C W N 585

———— non appearance of—

See Non Appearance.

———— omission to join as—

See Appeal
13 C W N 167

PARTIES—*contd*

———— privilege of—

See Defamation
5 C W N 293

See Libel
I L R. 27 Bom 585

———— same party cannot be plaintiff and defendant in one suit—

See Partnership—Suits respecting Partnerships
I. L R 25 Bom 606

———— Secretary of State for India—

See Land Acquisition Act s 50
13 C W N 116

———— substitution of—

See Appeal—Order—Order under s. 372 Civil Procedure Code
I L R 24 All 532

See Limitation Act 1877 Art 175c
I L. R. 16 Bom. 27

See Practice—Civil Cases—Parties

See Privy Council Practice of—Death of Party to Appeal
I L. R 19 Calc 513

See Privy Council Practice of—Substitution of Appellant
I. L. R. 17 Calc 693

See Right of Appeal.
I. L. R. 12 All. 200

See Right of Suit—Survival of Right
I L. R. 22 Calc 92

———— suits by some of a class as representatives of class

See Right to Use of Water
I L. R 29 Calc 100

1 PARTIES TO SUITS.

1 ———— **Advocate General**—*Suit for account of endowed property on death of last surviving trustee Quære* Whether the Advocate General must not be made a party in all cases where an account is sued for of property left by will to a charitable institution of which the last surviving trustee has died. Notice of the decree directed to be given to the Advocate General in case he should think fit on behalf of the Crown to propose a scheme for the management of the charity Powers of the Advocate General THAKOOR DOSS SETT *v* HOGG Cor 68

2 ———————— *Suit to administer funds of Hindu charity* A suit to administer the funds of a Hindu charity is properly brought in the name of the Advocate General who should however only exercise a general control over such suit and not interfere in the minute details of the religious charity to be administered ADVOCATE GENERAL *v* VISHVANATH ATMARAM 1 Bom. Ap 9

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

procedure LALA MANOHUR DASS v KISHEN DYAL 3 N W 175

LADLEE PERSHAD v GUNGA PERSHAD 4 N W 59

FIAZOODDEEN v PUDMEE 4 N W 68

NUBEEN CHUNDER PAUL v STEPHENSON 15 W R 534

4 ———— *Suit brought in agent s name—Suit by agent for principal* Where an attorney sues for his principal the suit should be brought in the name of the principal CHOONEE SOOKUL v HUR PERSHAD 1 N W Ed. 1873 277

JUGGUNNATH v BECK 2 N W 60

HURSARUN SINGH v PURSHUN SINGH 2 N W 415

5 ———— *Suit as agent—Act X of 1859 s 69*—*Held* (by MARKBY J) that no one can be plaintiff in a suit for rent except the person who has the right to recover the only effect of s 69 Act X of 1859 being to enable the person who is employed in the collection of rents to sue as agent MODHOOSOODUN SINGH v MORAN & Co 11 W R 43

See MEAJAN KHAN v AKALLY Marsh 384 2 Hay 426

6 ———— *Suit against agent—Liability of firm for act of gomashta* A gomashta of a firm should not be sued in respect of a debt due from the firm even if he contracted it with authority PHOOL CHUND v SHIVA PERSHAD 2 Agra Mis 4

7 ———— *Gomashta—Recognised agent—Beng Act VIII of 1869 s 13* A gomashta holding a written authority from his employer and suing for rent in the name and on behalf of the latter should be admitted as the recognised agent of such employer within the meaning of s 13 Beng Act VIII of 1869 RAM LALL KURFURMA v RAM TARUN KOONDOO 16 W R 254

8 ———— *Bengal Rent Act 1869 s 32—Principal and agent—Plaintiff—Gomashta* Under s 32 of Bengal Act VIII of 1869 a gomashta has no right to bring a suit in his own name He can only sue in the name of his employer and conduct the suit for him like any other agent KOONJO BEHARY ROY v POORNO CHUNDER CHATTERJEE I L R 9 Calc 450 12 C L R 55

9 ———— *Gomashta—Plaintiffs* Where a gomashta sued on behalf of a firm it was ordered that the parties themselves whom he represented should be made parties and a guardian appointed for such of them as were minors GOBIND DASS v JAYKISHEN DASS 2 Agra 101

10 ———— *Suit by manager of indigo concern—Right to sue* In an action brought by the manager of an indigo concern on the basis of a contract executed by defendant and addressed to a previous manager now deceased it was held that as the plaint did not disclose that the plaintiff had any interest of his own in the suit and as the contract was not in terms with him personally he could not maintain the action in his own name GLASCOTT v GOPAL SHEIKH 9 W R 254

11 ———— *Suit by Official Assignee—Agent of assignee* In a suit by the

plaint should be returned for amendment CARTER v MISREE LAL 2 N W 179

12 ———— *Agent suing instead of corporate body* Where a corporate body—e g the East Indian Railway Company—is sued not in its corporate capacity but through an agent the suit is brought in a wrong form NUBEEN CHUNDER PAUL v STEPHENSON 15 W R 534

13 ———— Benamidars—*Suit by benamidar—Acquiescence in or waiver of objection* The real owner of property is the person who should institute a suit for it A benami holder may sue as trustee on behalf of the beneficial owner without disclosing the name of the real owner and if the defendant does not object to the suit proceeding in that form and raises no issue upon the real title of the plaintiff the suit may proceed and be decided PROSUNNO COOMAR ROY CHOWDHRY v GOOROO CHURN SEIN GOOROO CHURN SEIN v OOJULMONEE CHOWDHRAIN 3 W R 159

14 ———— *Right of suit—Suit for declaration of title to and for possession of immoveable property—Disclaimer of real owner* In a suit for a declaration of the plaintiff s right by purchase to and for possession of certain immoveable property it was found on the evidence that the plaintiff was merely a benamidar for one of the defendants and had no right to the property That defendant in his evidence disclaimed any title to the property *Held* that the plaintiff had no right to sue being a mere benamidar and neither the disclaimer of the real owner nor the fact that he was a party to the suit was sufficient to enable the plaintiff to maintain the suit when instituted or to entitle him to have the real owner added as a co plaintiff *Prosunno Coomar Roy Chowdhry* v *Gooroo Churn Sein 3 W R 159* followed HARI GOBIND ADHIKARI v AKHOY KUMAR MOZUMDAR I L R 16 Calc 364

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

15 ———————— *Suit for land sold in execution of decree—Actual purchaser* In a suit for possession of land sold in execution of a decree by a person who claimed to have brought the right title and interest of the judgment debtor in the land but who in fact was not the real purchaser —*Held* the suit must be dismissed because of the non joinder as plaintiff of the real purchaser KALLY PROSONNO BOSE v DINONATH MULLICK
11 B L R 56 19 W R 434

16 ———————— *Benami purchase —Suit for possession—Real purchaser* A suit for possession of property which has been purchased benami cannot be maintained in the name of the nominal purchaser the real purchaser should be made a plaintiff in the suit FUZEELUN BEEBEE v OMDAH BEEBEE
11 B L R 60 note 10 W R 469

MEHEROONISSA BIBEE v HUR CHURN BOSE
10 W R 220

TAMIZOONISSA v WOOJJULMONEE DOSSEE
20 W R 72

17 ———————— *Suit on title for possession of immoveable property—Right of benamidar to sue in his own name* A benamidar suing for the recovery of immoveable property on title can sue in his own name and when such a suit is instituted by a benamidar it must be held to [illegible]

[illegible] *Adhikari* v *Akhoy Kumar Mozumdar I L R 16 Calc 364* dissented from *Fuzelun Beebee* v *Omdah Beebee 10 W R 469* and *Mehroonissa Bibee* v *Hur Churn Bose 10 W R 220* distinguished *Gopeekrist Gosain* v *Gungapersaud Gosain 6 Moo I A 53* explained *Ram Bhurosee Singh* v *Bisessur Narain Singh 18 W R 454* *Gopi Nath Chobey* v *Bhugwat Pershad I L R 10 Calc 697* and *Shangara* v *Krishnam I L R 15 Mad 267* referred to NAND KISHORE LAL v AHMAD ATA ANMOLI BIBEE v AHMAD ATA. BHOLE BIBI v AHMAD ATA I L R 18 All 69

18 [illegible]
dar
favour
was b
bond *J* the real mortgagee made over the debt on a date previous to the suit but executed the formal deed of assignment on a date subsequent thereto *Held* that the benamidar might maintain the suit BHOLA PERSHAD v RAM LALL
I L R 24 Calc 34

19 ———————— *Suit for foreclosure of mortgage—Beneficial owner not made a party—Transfer of Property Act (IV of 1882) s 85—Right of suit* A suit for foreclosure of a mortgage may be brought by the person named in the mortgage deed as the mortgagee although he was in fact only the benamidar of the beneficial owner and such a suit should not be dismissed because the beneficial owner is not added as a party SACHITANANDA MOHAPATRA v BALORAM GORAIN
I L R 24 Calc 644

20 ———————— *Suit for ejectment* [illegible]
ejectme
sion of
Akhoy [illegible]
followed
Ata I L R 18 All 69 dissented from ISSUR CHANDRA DUTT v GOPAL CHANDRA DAS
I L R 25 Calc 98
3 C W N 20

21 ———————— *Benami purchaser—Right of benamidar to sue for possession of immoveable property* A benami purchaser of immoveable property has no right to sue for recovery of possession of the same *Hari Gobind Adhikari* v *Akhoy Kumar Mazumdar I L R 16 Calc 364* and *Issur Chundra Dutt* v *Gopal Chandra Das I L R 25 Calc 98* followed *Nand Kishore Lal* v *Ahmad Ata I L R 18 All 69* referred to *Gopi Nath* [illegible]
Calc 69[illegible]
v DINO [illegible]

22 ———————— *Suit for sale on a mortgage—Right of benamidar mortgagee to sue* *Held* that the mortgagee named in a deed of mortgage is competent to sue in his own name for sale on the mortgage though he is admittedly only a benamidar from some third person *Nand Kishori Lal* v *Ahmad Ata I L R 18 All 69* followed *Gopi Nath Chobey* v *Bhugwat Pershad I L R 10 Calc 697* *Bhola Pershad* v *Ram Lall I L R 24* [illegible]
Baloram Gor[illegible]
v *Krishnan*
Kulkarni v [illegible]
Bom 679 and *Dagdu* v *Balvant Ramchandra Katu I L R 22 Bom 820* referred to *Hari Gobind Adhikari* v *Akhoy Kumar Mozumdar I L R 16 Calc 364* *Issur Chandra Dutt* v *Gopal Chandra Das I L R 25 Calc 98* and *Baroda Sundari Ghose* v *Dino Bandhu Khan I L R 25 Calc 874* dissented from YAD RAM v UMRAO SINGH
I L R 21 All. 380

23 ———————— *Plaintiff found to be a mere name lender without interest in suit—Redemption suit for by puisne mortgagee—Joinder* [illegible]

be brought on to the record. On its appearing that it had not been intended that the plaintiff should take any interest under the mortgage sued on —*Held* that the second appeal should be dismissed CHINNAN v RAMACHANDRA I. L. R 15 Mad. 54

PARTIES—*contd*

1 PAPTIES TO SUITS—*contd*

24 ———————— *Suit in nam of benamidar* Where a suit is brought in the name of a benamidar only the Court ought to direct that the beneficial owners hould be made parties and not to dismiss the suit SITA NATH SHAHA v NOBIN CHUNDER ROY 5 C L R 102

See GOPI NATH CHOBEY v BHUGWAT PERSHAD I L R 10 Calc 697

25 ———————— *Suit by benami purchaser—Civil Procedure Code 1859 s 260* A purchased at a Sheriff s sale in the name of his son the interest of a mortgagee in certain property and before Act VIII of 1859 came into operation

Act VIII of 1859 on suits of this character ? BHAISHANKAR NARBHERAM v HARIVALLABH 1 Bom. 20

26 ———— Bonds suits on—*Suit by a signee of bond after death of obligee—Representative of obligee* In a suit by A on a bond in favour of B the plaintiff may show by oral evidence that the money secured by the bond was his own but where B has died A must either entitle himself as B s personal representative or make B s personal representative a party to the suit DEVA RAU v VENTESA ACHARIYAR 1 Mad 452

27 ———————— *Indemnity bond* A bond of indemnity was given to five persons to secure the fidelity of a naib The naib was afterwards employed by three only out of the five obligees in the bond. *Held* that on the naib misconducting him elf the three obligees could not sue alone on the bond *Semble* Neither in uch case could the five obligees have sued as the faithful service intended to be secured by the bond was service to five per ons and not to three only PARBUTTINATH ROY v TEJOMOY BANERJI I L R 5 Calc 303

28 ———————— *Suit by assignee on bond—Liability of obligee* The obligee of a common money bond of which a *bona fide* valid assignment has been made is not liable to be ma le a defendant in a suit by his as ignee to enforce payment of the bond and to a decree against him elf jointly with the obligor ANONYMOUS v MUTTUSAMIYA PILLAI 1 Mad 140

29 ———— Contracts suits on—*Suit for pecific performance—Stranger to contract—Civil Procedure Code (Act X of 1877) ss 28 and 45*

...and as against another for a declaration that he was not ent tled to any charge upon the said lands —*Held* that the latter defendant was improperly made a party to the suit. LUCKUMSEY OOKERDA v FAZULLA CASSUMBHOY I L R. 5 Bom. 177

PARTIES—*contd*

1 PAPTIES TO SUITS—*contd*

30 ———————— *Suit for specific performance—Receiver* Where the receiver in a suit had by order of Court sold certain property in the suit and had executed the contract of sale in his own name a plaint praying for specific performance against the purchaser for refu ing to complete the contract was admitted with the receiver as co plaintiff he having obtained leave to sue. WILKINSON v GANGADHAR SIRKAR 6 B L R 486

31 ———————— *Suit for specific performance* In a suit for spec fic performance of a contract —*Held* that the principle laid down in the ca es of *De Houghton v Money L R 2 Ch App 166* and *Luckumsey Ookerda v Fazulla Cassumbhoy I L R 5 Bom 177* —*viz* that a stranger to the contract cannot be a party to the suit —is only applicable where from the plaintiff s case it appears that a third party not a party to the contract has a distinct interest from that of the other parties to the contract which intere t is sought to be declared null and void MOKUND LALL v CHOTAY LALL I L R 10 Calc 1061

32 ———————— *Suit by mortgagee without co sharers* Where a mortgage bond was executed in favour of the plaintiff alone the fact that there were other persons members of the joint family co sharers with the plaintiff did not render it nece sary to make them parties to a suit on the mortgage as the plaintiff might be regarded as contracting on behalf of himself and the other members of the family as undis lo ed principals BUNGSEE SINGH v SOODIST LALL I L R 7 Calc 739 10 C L R 263

33 ———————— *Agreement to share profits of trade—Suit for share under agreement* Four persons each of whom owned a ginning factory entered into an agreement which (*inter alia*) provided that they should charge a uniform rate of R4 8 0 per palla for ginning cotton that of this sum R2 8 0 hould be treated a the actual cost of ginning and that the remaining R2 should be carried to a common fund to be divided each year between the parties to the agreement in proportion to the number of ginning machines which each of

pay the plaintiff his share of the amount He also refused to pay the other two parties their shares The accounts had been duly made up showing the sums which the defendant under the agreement had to pay both to the plaintiff and the two other parties to the agreement. The plaintiff sued the defendant for his share The defendant contended that the plaintiff ought to have made the other parties to the agreement parties to the suit *Held* that the other parties to the agreement were not necessary parties to the suit. The accounts had been made up and were admittedly correct and they showed that the defendant had nothing to receive from any of the parti s to the agreement

PARTIES—*contd*

I PARTIES TO SUITS—*contd*

but that he was indebted in a definite sum to the plaintiff. HARIBHAI MANEKLAL *v* SHARAFALI ISABJI I L R 22 Bom. 861

34. — — *Co contractors—Right of some of several co contractors to sue alone —Refusal to join in the suit as plaintiff effect of* Where two parties contract with a third party a suit by one of them making the other a co defendant ought not to be dismissed merely because the plaintiff has not proved that the co defendant had refused to join as a co plaintiff PYARI MOHUN BOSE *v* KEDARNATH ROY I L R 26 Calc 409

PYARI MOHAN BOSE *v* NABIN CHUNDER ROY 3 C W N 271

TARINI KANT LAHARI *v* NUND KISHORE PATRO NOVIS 12 C L R 588

BISSESSUR ROY CHOWDHRY *v* BROJO KANT ROY CHOWDHRY 1 C W N 221

(*Contra*) DWARKANATH MITTER *v* TARA PROSUNNA ROY I. L. R 17 Calc 160

35 — Co sharers—*Joinder of parties—Right of co sharer to sue alone* Unless there is a special provision of the law co owners are not permitted to sue through some or one of their members but all co owners must join in a suit to recover

36 — *Suit for arrears of rent—Appeal amendment on* In a suit for

should have been joined as parties and that as this had not been done the suit was bad. OBHOY GOVIND CHOWDHRY *v* HURYCHURN CHOWDHRY I L R 8 Calc 277

37 — *Lease—Suit by one of several joint lessors for his share of rent* One of several joint lessors of certain land sued the lessee for his share of the rent payable under the lease to all the lessors making the other lessors defendants. *Held* that the suit was not maintainable and the making of the other lessors defendants did not cure the defect in the suit MANOHAR DAS *v* MANZUR ALI I L R 5 All. 40

38 — *Suit for ejectment —Landlord and tenant—Possession suit for by one of several proprietors* The owners of a 13 anna share of a julkur sued to eject a lessee on his refusal to pay an enhanced rent *Held* that he could not be ejected by a suit brought by one only of several proprietors A lease granted by all the proprietors cannot be varied or terminated at the suit of one BOLLYE SATEE *v* AKRAM ALLY I L R 4 Calc 961

39 — — *Suit for possession—Lessors* Plaintiff sued to recover possession of certain land said to have been included in a talukh pottah given him by the zamindars alleging that defendants were obstructing his possession For the defence it was averred that these lands fell within a 9 anna share which belonged to one *D* and that by process of sale they became the right of other parties under whom defendants held as lessees *Held* that it was unnecessary to make the lessors on either side parties in the case NAGUB CHAND *v* DOORGA DOSS CHOWDHRY 11 W R 137

40 — *Suit by co sharer against mortgagee for share of profits—Act XIV of 1863 s 1* A co sharer can only sue such persons in the Revenue Court under cl 2 s 1 Act XIV of 1863 as are appointed or entitled by custom to make the collections of rent on behalf of the proprietary body of the estate or any part thereof and who are bound to pay the revenue and village expenses and to account to co parceners for receipts and expenditure as their representatives SREE KISHEN *v* ESHREE PURTAUB RAI 2 Agra 299

41 — Debtor and creditor suits between—*Bond—Suit for a share of a debt* *A B* and *C* were uterine brothers Mahomedans to whom jointly a sum of money was due on a bond *A* the elder brother sued the debtor for recovery of the debt and after successfully resisting the claim of *B's* widow to be made a party to the suit obtained a decree for the principal and interest to the date of decree together with subsequent interests and costs *A* realized the decree for the principal and interest to the date of decree only *B's* widow on behalf of herself and two minor sons

realized under *A's* decree minus the share of her two daughters NURUNNISSA *v* ROUSHAN JAN 2 B L R Ap 1

42 — *Trustees for benefit of creditors* The creditor of an insolvent who has assigned all his property to trustees for the benefit of all his creditors generally sued him for his debt joining the trustees as defendants on the ground that they had refused to register his claim *Held* that they were rightly joined as defendants in the suit AJUDHIA NATH *v* ANANT DAS I L R 3 All 799

43 — *Suit by trustees of deed for benefit of creditors to set aside attachment* To a suit by the trustees of an assignment for the benefit of his creditors by an insolvent trader to set aside an attachment by an execution creditor who did not assent to the assignment it is not

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

necessary to make all the creditors parties STEPHENSON *v* BAUMGARTNER 3 Agra 104

44. ———— Declaratory Decrees—*Suit to declare pottahs forgeries—Interested parties* In a suit by a superior holder (representing the zamindar by whom certain pottahs were alleged to have been granted) for a declaration that the pottahs were forgeries against a party holding a portion of land by a title derived from lessees under those pottahs it was *held* that all the parties interested in and holding under the pottahs should be made parties to the suit on the principle that all persons who are interested in the question must be made parties to a suit in a Court of equity DURHEENA MOHUN ROY *v* AMEEFOODDEEN MAHOMED
12 W R 247

45 ———— *Suit for declaration of right against proprietor—Agent* In a suit for declaration of right against a proprietor of an estate it is necessary that the proprietor himself and not his karindah only be made a party to the suit A decree against the karindah cannot bind the proprietor MADHO RAO APA *v* THAKOOR PERSHAD 3 Agra 127

46 ———— Ejectment suit for—*Suit based on lease from Government—Government as party to suit* If the plaintiff in an ejectment suit can make out a legal title to the land he is entitled to maintain a suit against the person in actual juridical possession of such land for its recovery without making the person under whom the latter claims to hold a party to the suit So where plaintiffs based their title to the land in dispute on a lease granted by Government giving occupancy right to their predecessor in title and sued the defendants in ejectment and the defendants claimed to hold the land under an occupancy title conferred on them by Government subsequent to the plaintiff s lease it was *held* that though Government might have properly been made a party so as to bind it by the decree and prevent future litigation it was not a necessary party to the suit. KASHI *v* SADASHIV SAKHARAM SHET
I L R 21 Bom 229

47 ———— *Civil Procedure Code 1882 s 32—Joinder of parties—Change in character of suit* In an ejectment suit by a landlord ...

NARAYANAN *v* ANANTHANARAYANAYYAN
I L R 20 Mad 375

48 ———— Endowments—*Parties to suit on behalf of temple* The samudayi of a temple is not competent to bring a suit on its behalf The proper parties to sue are the uralers (trustees) RAMA VARAR *v* KRISHNEN NAMBUDRI
I L R 3 Mad 270

49 ———— *Suit to redeem lands belonging to temple—Agent—Persons in whom temple is vested* Plaintiff alleging himself to be karaima samudayam of the Malamal Ayyappan devaswam sued to redeem lands which had been mortgaged by the devaswam *Held* that he was not entitled to maintain the suit that the uralers are the persons in whom the estate and property of the temple is vested and that the plaintiff was an agent accountable to the uralers and subject to be dismissed by them for misconduct KUNJUNNEPI NAMBIAR *v* NILAKUNDEN
I L R 2 Mad 167

50 ———— *Agent—Persons in whom temple is vested* A karayma samudayam of a Malabar devaswam is merely an agent or manager with a proprietary and hereditary right in his office The ownership of the property of the devaswam is vested in the uralers who are the proper parties to sue the tenants of the devaswam lands PATINHARIPAT KRISHNAN UNNI NAMBIAR *v* CHEKUR MANAKKAL NILAKANDAN BHATTA THIRIPAD I L R 4 Mad 141

51 ———— *Suit for property belonging to—Joint mutualis—Joint trustees* Where property belonging to an endowment is sought to be recovered from a third party who asserts that he is the owner thereof all the mutwalis of the endowment should be made parties to a suit instituted for the recovery of such property Such of the mutwalis as refuse to join as plaintiff should be made defendants BECHU LAL *v* OLIULLAH
I L R 11 Calc 336

52 ———— *Non joinder of a necessary party—Suit to set aside alienation of debuttur lands—Trust for religious purposes* The representatives of three out of four Hindus who were joint sebaits managing debuttur property sued to have an alienation made by the fourth sebait alone set aside They did not make the latter a party to the suit nor did the plaintiffs ask the assistance of the Court to make him one under s 73 of Act VIII of 1859 *Held* that he was a necessary party It was not enough that he was a member of the body of sebaits and although indirectly he might have gained advantage from the suit brought by the other sebaits this did not suffice to connect him with the suit as a party to it No ground for making an exception to the general rule was presented RAJENDRONATH DUTT *v* MAHOMED LAL I L R 8 Calc 42

53 ———— Executors—*Will—Hindu Wills Act (XXI of 1870)—Succession Act (X of 1865) s 179—Probate and Administration Act (V of 1881) s 4—Hindu will made outside Bombay relating to property situate partly within and partly outside Bombay—Probate of such will effect of—Representation of the estate* One *L* died at Surat in 1873 possessed of ancestral property situate partly in Bombay and partly in the Surat district He left a widow *B* and a minor son *V* At his death he made a will bequeathing his property to his son and appointing certain executors to manage the property during the son s minority The

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

son died in 1877 leaving a minor widow N In 1879 one of the executors obtained probate of *L s* will from the High Court In 1884 a suit was filed on behalf of the minor N against her mother in law *E* to recover possession of the property covered by the will of *L* One of the defences to the suit was that the property in dispute had vested in the executor who had obtained probate of the will and that as the defendant held the estate under the executor the suit was not maintainable without impleading the executor *Held* that the executor was not a necessary party to the suit S 179 of the Indian Succession Act (X of 1865) as incorporated into the Hindu Wills Act (XXI of 1870) did not apply so far as it related to property outside Bombay The property in dispute was situated in the Surat district It was joint ancestral property On the father s death it vested in the son by survivorship and on the son s death it vested in the son s widow the plaintiff in the present suit Under the provisions therefore of the Probate and Administration Act (V of 1881) s 4 (if that Act can be held to operate at all in the mofussil before a notification is issued under s 2) the estate could not vest in the executor as it had passed by survivorship to another person long before the Act came into operation. BAI HARKOR *v* MANEEKLAL PASIKDAS I L R 12 Bom. 621

54. ———— *Administration Suit for—Application for appointment of receiver—Civil Procedure Code 1882 s 408* Where a Mahomedan testator had by his will appointed three executors only one of whom had acted and got possession of the estate a suit by the testator s widow for administration of the estate was *held* sufficiently well constituted for the purpose of a motion for a receiver although only the executor who had acted was made defendant the other two executors not being parties to the suit *Quære* Whether it would not be necessary to add the said two executors before the suit came on for hearing HAFIZABAI *v* ABDUL KARIM I L R. 19 Bom. 83

55 ———— Government—*Suit to question act of State—Suit against Government* To question an act of State directly or indirectly the contention must be raised in a suit duly constituted to which the Government must be made a party UMJAD ALLY KHAN *v* MOHUMDEE BEGUM 10 W R P C 25 11 Moo I A 517

56 ———— *Secretary of State—Cause of action—Stat 21 & 22 Vict c 106 s 65* S 65 of 21 & 22 Vict c 106 does not constitute the Secretary of State a body corporate but simply lays down that that officer and department are to be sued as a body corporate A suit therefore brought against the Secretary of State is not one against any person or any real body corporate but is one brought against a nominal defendant such nominal defendant being put upon the record merely to enable the plaintiff to obtain the remedy secured to him by s 65 DOYA NARAIN TEWARY *v* SECRETARY OF STATE FOR INDIA I L R 14 Calc 256

57 ———— *Suit for redemption of gatkuli tenure* Where in accordance with a stipulation in a mortgage deed of gatkuli land the mortgagor gave in a razinama to Government by which he gave up all claim to the land which was granted to the mortgagee —*Held* in a suit to redeem the mortgage that the Government was not a necessary party it is only a necessary party in cases where the nature of the tenure is in dispute PANU VALAD AVAJI MALI *v* RAMABAI KOM MAHADU MALI 6 Bom A C 265

58 ———— *Collector—Suit to get property registered in name of vendee—Registering officer* To a suit against a vendor to compel him to procure the transfer by the revenue author

PAIYA 5 Mad 134

59 ———— *Collector—Suit for partition—Necessity of Collector as party* In a suit by a shareholder of a joint estate to establish a right to partition the Collector need not be made a party unless the public revenue is jeopardized by the contemplated partition BAMA SOONDUREE DABEE CHOWDHRAIN *v* KASHEE KISSORE ROY CHOWDHRY 22 W R 245

60 ———— *Suit for mutation of names in register* The Collector of the district is a necessary party to a suit by a purchaser against his vendor to compel mutation of names in the register VIRASAMI *v* RAMA DOSS I L R 15 Mad 350

61 ———— *Suit to set aside sale for arrears of revenue—Secretary of State—Civil Procedure Code 1877 ss 32 424* The Secretary of State is not a necessary party to a suit to set aside a sale for arrears of revenue but the Government have such interest as would on their application entitle them to be made a party S 424 of the Civil Procedure Code does not preclude a Court from adding the Secretary of State as a necessary party under s 32 of the Code BAL MOKOOND LALL *v* JIBUDHUN ROY I L R 9 Calc 271 11 C L R 466

62. ———— *Suit to set aside sale for arrears of revenue—Secretary of State for India—Res judicata* A Collector had sold an

defendants but were not respondents on this appeal and the objection was taken on the argument of this appeal and by previous petition that they

PARTIES—*contd*

I PARTIES TO SUITS—*contd*

should be made parties respondents *Held* that it was a mistaken view that a decree annulling the sale in this suit would be *res judicata* in any future question or proceeding as between the Government and the unsuccessful purchaser The Secretary of State for India therefore was not a necessary respondent His position was correctly explained in *Bal Mokoond Lal* v *Jirjudhun Roy I L R 9 Calc 271* in the judgment of MITTER J BALKISHEN DAS v SIMPSON I L R 25 Calc 833
L R 25 I A 151
2 C W N 513

63 ———— *Suit to recover chur lands claimed by Government as an island and settled with defendants* Plaintiff brought a suit for recovery of possession of land which had been thrown up by a large navigable river and which he alleged formed an accretion to his estate The defendant who was in possession claimed to hold the lands under a settlement which the Government had made with his predecessors in title the Government having three years previously taken up the lands as forming an island *Held* that the Government as claiming a proprietary right in the disputed land was a necessary party to the suit CANNON v BISSONATH ADHICARI 5 C L R 154

64 ———— *Suit to set aside settlement* In a suit by a person claiming certain lands which had been resumed by the Government and settled with another party the Government should be made a party MAHOMED ISRAILE v WISE 13 B L R P B 118 21 W R 327

KRISHNO LALL NAG v BHYRUB CHUNDER DEB 22 W R 52

65 ———— *Suit for possession of land settled by Government with successive owners* Where a piece of land has been surveyed and settled at one time as an accretion to the estate of *A* and at another as an accretion to the estate of *B* in a suit by *A* against *B* for possession of the land it is not as a rule necessary that the Government should be made a party *Mahomed Israile* v *Wise 13 B L R 118 21 W R 327* considered and explained GIRDHAREE SAHOO v HERA LALL SEAL 2 C L R 467

66 ———— *Suit for possession and declaration of right to participate in a permanent settlement of a mehal resumed under Reg II of 1819* Chur land was held by the proprietors of the adjoining estate The chur was resumed by Government in 1835 and declared to be liable to assessment under Regulation II of 1819 The [illegible]

[illegible] the rent demanded The chur was then held khas by Government for some time and subsequently leased out for temporary periods to strangers In these temporary leases Government reserved the proprietor's rights to come in and take a permanent settlement on the expiry of the temporary settlements and also reserved an allowance of 10 per cent on the rent as malikanah on their account which sum had been kept in deposit in the Collectorate treasury In 1867 the Government made a permanent settlement with the defendant one of the recorded proprietors of the contiguous estate of the entire chur and refused the application of other shareholders in the estate to be joined in the settlement. The Collector at the request of the defendant applied the deposit in his treasury in satisfaction of the Government revenue An unsuccessful shareholder brought a civil suit against the defendant for possession and a declaration of his right to participate in the settlement *Held* that it was not necessary to make the Government a party KRISHNA CHANDRA SANDYAL CHOWDHRY v HARISH CHANDRA CHOWDHRY 8 B L R 524

S C KRISTO CHUNDER SANDYAL v KASHEE KISHORE ROY CHOWDHRY 17 W R 145

67 ———— *Political Agent—Superintendent of Raj* A suit for property belonging to the Raja of Kota was brought in the name of the Political Agent and Superintendent of the Kota State on the part of the Government of India *Held* that if the Raja was the proprietor of the property he should have been the plaintiff or if his right and interest therein had passed to Government the Government should have been the plaintiff but the Political Agent and Superintendent of the Kota State was not entitled to sue for the property GIRDHARY DAS v HOWLETT I L R 2 All 690

68 ———— *Suit against Government—Local Government* In suits brought [illegible]

[illegible] GOVERNMENT [illegible] I Mad [illegible]

69 ———— *Bombay Abkari Act (I of 1878) ss 29 and 67—Suit for money illegally levied by a farmer of abkari revenue—* [illegible]

the Collector from responsibility NARAYAN VENKU v SAKHARAM NAGU I L R 11 Bom 519

70 ———— *Specific Relief Act (I of 1877) s 42—Obstruction to alleged high way* To a suit by an owner of land under s. 42 of the Specific Relief Act against one of the public who formally claims to use such lands as a public road and who thereby has endangered the title of the owner it is unnecessary to make the Secretary of State a party CHUNI LALL v RAM KISHEN SAHU I L R 15 Calc 460

71 ———— *Suit for declaration of title against a Municipality* The plaintiff sued a Municipal Council under the Madras

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

District Municipalities Act for a declaration of his title to a certain structure situated in the limits of the Municipality and of his right to put a roof over it. The structure was found to belong to the plaintiff *Held* that the Secretary of State was not a necessary party to the suit KRISHNAYYA v BELLARY MUNICIPAL COUNCIL

I L R 15 Mad. 292

72. —— Heirs The practice hitherto prevailing in the mofussil of making a dead man by his heir a party to a suit is erroneous and should be discontinued GOVIND ABAJI JAKHADI v MOHONIRAJ VINAYAK JAKHADI (1901)

I L R 25 Bom 494

73 ———— Husband and wife—*Right to sue—Hindu woman* A Hindu woman may at all time sue either alone or jointly with her husband BHOOPUB CHUNDER DOSS v MADHUB CHUNDER PAPAMANICK 1 Hyde 281

74 ———— *Married Women s Property Act 1874 s 8—Suit for separate property* In a suit against a woman married before 1874 in respect of her separate property it is not necessary to make her husband a co defendant STEPHEN v STEPHEN 10 C L R 536

75 ———— *Wife added as party—Portion of estate purchased with her separate property* Wife made party to the suit on the ground that a building on the estate was erected by her husband with money forming her separate estate GOURGOPAL DUTT v BISHONATH GHOSE Cor 41

76 ———— *Practice—Wife having an English domicile suing without her husband* Case in which it was held that a wife having an English domicile is capable of suing without joining her husband as a co plaintiff HUGHES v DELHI AND LONDON BANK

I L R 15 Calc 35

77 ———— *Hindu wife—Transaction in her own name—Wife s right to sue without joining husband* A Hindu wife living with her husband brought a suit on a deed of mortgage executed in her favour *Held* that to enforce her rights under the deed she need not join her husband MANADA SUNDARI DABI v MAHANANDA SARMA 2 C W N 367

78 ———— Idol—*Shebait* It is a settled rule of Hindu law that an idol is a juridical person who can take and hold property and when a suit is instituted in the name of an idol by the *shebait* the idol must be regarded as a party to the suit and not the individual *shebait* who merely represents and acts for it as its agent TULSI DAS MAHANTA v BEJOY KISHORE SHOME (1901)

6 C W N 178

79 ———— Joint family—*Suit by one member for specific share* To a suit by one member of a Hindu joint family living under the Mitakshara law for a specific share of the joint family property all the members of the family are necessary parties. NATHUNI MAHTON v MANRAJ MAHTON

I L R 2 Calc 149

See PAHALADH SINGH v LUCHMUNBUTTY 12 W R 256

SUDABURT PERSHAD SAHOO v LOTF ALI KHAN PHOOLBAS KOOER v LALLA JUGGESSUR SAHI 14 W R 339

s c on review PHOOLBAS KOOER v LALLA JUGGESSUR SAHOY 18 W R 48

GOKOOL PERSHAD v ETWARI MAHTO 20 W R 138

80 ———— *Suit to establish right belonging to Hindu family—Necessary parties*

family parties to the suit ARUNACHALA PILLAI v VYTHIALINGA MUDALIYAR I L R 6 Mad 27

81 ———— *Suit to set aside alienation of ancestral property—Mitakshara—Legal necessity* J L and H N brothers members of a joint Hindu family subject to the Mitakshara law borrowed money by absolute and conditional sales of their joint estate After the death of J L his son L P brought a suit against the alienees to recover possession of the lands by reversal of the deeds as to one half share thereof which he claimed as the share of his father J L on the ground that there had existed no legal necessity justifying J L and H N in alienating the property Neither H N nor any one representing him had been made a party to the suit There was nothing to show that the family had been separated or the property partitioned *Held* that the suit should have been brought by all the joint members to set aside the deeds If the other members refused to join as plaintiffs they should have been made defendants RAJARAM TEWARI v LACHMAN PRASAD

4 B L R A C 118 12 W R 478

SHEO CHURN NARAIN SINGH v CHUKRAREE PERSHAD NARAIN SINGH 15 W R 436

82 ———— *Manager of joint family—Suit by manager alone—Co parceners whether necessary parties—Civil Procedure Code (Act XIV of 1882) s 30—Amendment of pleading—Plaint amended in second appeal by adding* ... an undivided possession of he defendant brother and uncle who were his undivided co parceners ...

PARTIES—contd

1 PARTIES TO SUITS—*contd*

titled to have the plaintiff s uncle and minor brother placed on the record either as co plaintiffs or as defendant The right of a plaintiff to assume the character of manager and to sue in that character raises a question of fact and law which varies as the other members of the family are minors or adults and therefore the defendant is always entitled in such suit when the objection is taken at an early stage to have the other members of the family when they are known placed on the records to ensure him against the possibility of the plaintiff s acting without authority The plaintiff was al lowed on second appeal to amend his plaint by making the other members of the family parties to the suit HARI GOPAL v GOKALDAS KUSHABASHET I L R 12 Bom 158

83 ———————— *Transfer of Property Act (IV of 1882) s 85—Suit for sale on mortgage by father without joining sons—Non joinder of parties—Transfer of Property Act (IV of 1882) s 85—Notice of interest in mortgaged property—Liability of son to pay father s debt in curred during son s minority—Representative capa city of father—Antecedent debt—Mortgage—Civil Procedure Code (Act XIV of 1882) s S 42* In the case of a joint Mitakshara family consisting of a father and a minor son where the father exe cuted a mortgage bond hypothecating ancestral family property during the minority of his son and the mortgagee with notice of the interest of the son in the mortgaged property brought a suit against the father alone to enforce the mortgage without making the son a party to the suit and obtained a decree declaring that the mortgaged property was liable to be sold in execution thereof and where the debt was not proved to have been incurred for illegal or immoral purposes —*Held per* GHOSE J [illegible] incurred the debt in his representative capacity and as managing member of the family and the son having been substantially a party to the suit in which the said decree was passed through the re presentation of his father S 85 of the Transfer of Property Act lays down only a rule of procedure and the words all person in the section could have hardly been intended to include a Mitak hara son—much less a minor son—in a suit where the father is sued in his representative capacity *Suraj Bansi Koer v Sheo Pershad Singh I L R 5 Calc 148 L R 6 I A 88 Bissessur Lal Sahoo v Luchmissur Singh L R 6 I A 233 C L R 477 Nanomi Babuasin v Modun Mohun I L R 13 Calc 21 L R 13 I A 1 Doulat Ram v Mehr Chand I L R 15 Calc 70 L R 14 I A 187 Jurai Narain Singh v Honooman Sahai I L R 5 Calc 84 Bhagbut Persad v Girja Koer I L R 15 Calc 717 L R 15 I A 99 Mohabir Prosad v Maheswar Nath Sahai I L R 17 Calc 584 L R 17 I A 11 Jagabhai Lalubhai v Bhukandas Jagjivandas I L R 11 Bom 37* relied on *Bhawani Prosad v Kallu I L R 17 All 537* dissented from *Syud Emam Momtazud din Mahomed v Raj Coomar Dass 23 W R 187 Ramasamayyan v Virasami Ayyar I L R 21 Mad 222 Palani Goundan v Rangayya Goundan I L R 22 Mad 207* referred to *Semble (a)* in the case of a joint Mitakshara family consisting of a father and minor sons the father is necessarily the manager of the joint family and as such for all purposes is the representative of the family (*b*) and where the father the managing member mortgages family property for an antece dent debt and a suit is brought and decree obtained against the father such suit and decree should be regarded as instituted and pronounced against him in his representative capacity (*c*) and that if a son after a decree being obtained against the father upon a mortgage executed by the latter sues to have it declared that his share is not liable to satisfy the said decree or after a sale in execution thereof sues to recover possession of his share he cannot succeed unless he proves that the debt was contracted for an immoral or illegal purpose or that it was of an illusory character *Per* HARINGTON J that having regard to the provision of s 85 of the Trans fer of Property Act and those of ss 28 and 42 of the Civil Procedure Code the mortgagee was bound to make the plaintiff (the son) a party to the mort gage suit and that not having done so he was not entitled to obtain a decree affecting the plaintiff s interest in the mortgaged property *Bhawani Pra sad v Kallu I L R 17 All 537* followed *Roths child v Commissioners of Inland Revenue [1894] 2 Q B 142 Ramasamayyan v Virasami Ayyar I L R 21 Mad 222 Palani Goundan v Rangay ya Goundan I L R 22 Mad 207* referred to LALA SURJA PROSAD v GOLAB CHAND I L R 27 Calc 724 4 C W N 701

84 ———————— *Manager—Lease granted by manager—Suit for rent—Co sharers* A manager of a joint Hindu family who as such has granted a lease is during his lifetime the only person to sue for rent due under the lease but after [illegible] v GOPALJI DAYABHAI I L R 18 Bom 141

85 ———————— *Suit on bond given in name of one member of joint family for loan made out of joint family funds* A loan was made to the defendant out of joint family funds and a bond for the amount was given in the name of one of the members of the joint family He sued the defendant on the bond *Held* that the other members of the joint family were not necessary parties HARI VASUDEV KAMAT v MAHADU DAD GAVDA I L R 20 Bom 435

86 ————————*Manager of joint family—Suit for possession under mortgage.* In

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

a suit for pos e ion under a mortgage where the managing member of the joint family was made a party it was *held* not nece sary to make another member of the family a party also DHAPI v BARHAM DEO PERSHAD 4 C W N 297

87 ———— *Contract made by member of joint family in individual capacity —Right to sue alone* The firm of S & Co the partners of which were W S and F E took a con tract from Government on 12th November 1877 to con truct a barrel house at the Gunpowder Manu factory at Kirkee and on the 28th November 1877 the plaintiff agreed to advance money up to R15 000 for the purpose of enabling the firm to carry out the contract Under the agreement the plaintiff was to receive all sums to become due from the Government on the contractor s bill and to pay the balance to the firm after repaying himself all advances with interest On the same day the firm executed a power of attorney to the plaintiff authorizing him to receive from the Government Engineer all such sums to become due to the firm under the contract which power of attor-

5 10 still remained due to him after giving credit for the sums received on the bills pas ed by the Executive Engineer On 24th July 1878 the plaint iff entered into a fresh agreement with F E similar to the former one to make further advances to the firm up to R16 000 in addition to R1_ 000 on the same terms as those mentioned in the previous agreement and by means of these advances the contract was completed at the end of 1879 In

defendant to recover from him R5 034 11 9 *Held* that although the plaintiff might be a member of an undivided Hindu family still as the contract was entered into with the plaintiff in his individual capacity and as there was nothing on the face of the contract to show that the plaintiff was acting on behalf of the family the plaintiff was entitled to sue alone JAGABHAI LALLUBHAI v RUSTAMJI NASARWANJI I L R 9 Bom 311

88 ———— *Partnership— Infant sons—Mitakshara law—Promis ory note suit on—Non joinder of part es—Plea in bar of suit* In a suit on a promissory note executed by the defendant in favour of a firm who e original partners were two brothers one of whom had pre viously died leaving an infant son surviving while the other who also had infant sons was at the date of the execution of the note sole surviving partner of the firm —*Held* that a Hindu infant who by birth or inheritance becomes entitled to an interest in a joint family business does not necessarily become a member of the trading partnership carry ing on the bu iness There must be some consen tient act to that effect on the part of the infant and his partners Even therefore where parties are governed by the Mitakshara law an infant need not be joined as a co plaintiff in a suit by the father to recover a trade debt Decrees obtained in such suits by or against the managers of the business are presumed to have been obtained by or against them in their representative capacity and will be binding on the whole joint family *Bissessur Lall Sahoo* v *Luchmessur Singh L R 6 I A 233* *Petum Doss* v *Ramdhone Doss 1 Taylor 279* and *Ramsebuk* v *Ramlall Koondoo I L R 6 Calc 815* referred to LUTCHMANEN CHETTY v SIVA PROKASA MODELIAR

I L R 26 Calc 349
3 C W N 190

89 ———— *Suit for compen sation for wrong—Member of joint family suing alone* A member of a joint undivided Hindu family is not precluded from suing alone to obtain compensation in respect of a loss to himself person ally caused by wrongful destruction of property in which he had a definite share GOPEE KISHEN GOSSAIN v PYLAND 9 W R 279

90 ———— *Bond in favour of one undivided brother for the benefit of himself and others—Suit by promise alone* In a suit on a bond executed by the deceased father of defend ants in favour of the plaintiff the defendants while admitting the bond and the consideration

could not maintain the suit alone *Held* that plaint iff was entitled to sue for the family debt without joining his undivided brothers the contract on which the suit was based being in plaintiff s sole name and not purporting to have been obtained on behalf of any others but himself ADAIKKALAM CHETTI v MARIMUTHU I L R 22 Mad. 326

91 ———— *Suit by managing member on behalf of his undivided family other members not being joined—Maintainability of suit* The managing member of an undivided Hindu family sue l in his own name for the recovery

sue without making his brother the other member of the undivided family a party to the suit. *Alagappa Chetti* v *Vellian Chetti I L R 18 Mad 33* followed. *Mahabala Bhatta* v *Kunhanna Bhatta*

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

I L R 21 Mad 373 distinguished ANGAMUTHU PILLAI *v* KOLANDAVELU PILLAI
I L R. 23 Mad 190

92 ———— **Joint Hindu family**—*Letters Patent—Transfer of Property Act (IV of 1882) s 85—Hindu law—Mitakshara—Mortgage—Kurta—Decree—Statutes interpretation of—Notice—Civil Procedure Code (Act XIV of 1882) ss 437 575—Joinder of parties—Redemption* In a joint *Mitakshara* family consisting of a father and minor on the father as *kurta* of the family

[illegible]

[illegible]

27 *Calc 7.4*) that the provisions of s 85 of the Transfer of Property Act being compulsory the minor son ought to have been made a party to the mortgage suit and for the purposes of that suit he was not represented by his father the mortgagor *Held* further that the issue whether the debt was incurred for illegal or immoral purposes having been decided on its merits between the plaintiff and the defendant in the present suit adversely to the minor plaintiff it must now be taken as between him (the plaintiff) and the mortgagee to have been finally determined and under the circumstances the validity of the mortgage ought not to be allowed to be contested in another suit the plaintiff being in the same position in which he would have been had he been made a party to the mortgage suit The only right the minor plaintiff now had was the right of redemption *Bhawani Prasad v Kallu I L R 17 All 537* distinguished *Ramasamayyan v Virasami Ayyar I L R 21 Mad 222 Palani Goundan v Rangayya Goundan I L R 22 Mad 207 Devji v Sambhu I L R 24 Bom 135* referred to In interpreting a Statute it should not be considered what the law was before the passing of that Statute but what the Legislature has said is to be the law *after* the passing of the same *Bank of England v Vagliano [1891] A C 107 144 Narendra Nath Sircar v Kamalbasini Dasi I L R 23 Calc 563 Rajnarain Mitter v Katyayini Debee I L R 2? Calc (4)* referred to LALA SURAJ PROSAD *v* GOLAB CHAND (1901) **I L R. 28 Calc 517**
s c 5 C W N 640

93 ———— *Hindu law—Joint Hindu family—Mortgage—Liability of non executant members on a mortgage executed by some only of the members of a joint Hindu family—Burden of proof* In a suit for sale on a mortgage of the joint family property executed by the father and three of his sons the plaintiff made defendant besides the executants the fourth son who was a minor and four grandsons also minors *Held* that the non executant members of the family were properly arrayed as defendants to the suit inasmuch as their own interests in the joint family property would be liable under the mortgage unless they could show either that the mortgage debt was never incurred or that it no longer subsisted or that it was tainted with immorality *Jamna v Nain Sukh I L R 9 All 493* held to be no longer law *Badri Prasad v Madan Lal I L R 15 All 75* and *Nanomi Babuasin v Modhun Mohun I L R 13 Calc 21* referred to DEBI DAT *v* JADU RAI (1902) **I L R 24 All 459**

94 ———— *Joint Hindu family—Liability of other members of the family under a mortgage executed by the manager* Where a mortgage of joint family property has been executed by the managing members of a joint Hindu family the remaining members of the family are proper parties to a suit for sale based on such mortgage *Dharam Das v Angan Lal I L R 21 All 301 Muhammad Askari v Radha Ram Singh I L R 22 All 307* and *Lachman Das v Dallu I L R 22 All 394* referred to JAS RAM *v* SHER SINGH (1902) **I L R 25 All 162**

95 ———— *Contract Act (IX of 1872) s 239—Partnership—Joint Hindu family—Rights and liabilities of a partnership composed partly of individual members of a joint Hindu family and partly of strangers* In a suit for accounts and division of profits of a partnership alleged to have been previously dissolved such partnership having been composed of certain individual members of a joint Hindu family and of one person who was a stranger to the family it was *held* on a plea taken as to non joinder of necessary parties namely other members of the joint Hindu family —(i) that a member of an undivided Hindu family may enter into a contract in his individual capacity and when suing to recover moneys due to him under that contract he need not join the members of the joint family as plaintiff and (ii) that members of an undivided Hindu family who are minors and who are not shown to have been admitted into the trading firm or to have taken part in its business need not be made parties as plaintiffs to a suit to recover moneys due to the family trading firm *Kalidas Kevaldas v Nathu Bhagvan I L R 7 Bom 217 Imam ud-din v Liladar I L R 14 All 524 Samalbhai Nathubhai v Someshvar I L R 5 Bom 38 Alagappa Chetti v Vellian Chetti I L R 18 Mad 33 Jugal Kishore v Hulasi Ram I L R 8 All 264 Ram ebul v Ramlal Koondoo I L R 6 Calc 815 Jagabhai Lalubhai v Rustomji Nasarwanji I L R 9 Bom 311* and *Luchmanen Chetty v Siva Prokasa Modeliar I L R 26 Calc 349* referred to ANANT RAM *v* CHANNU LAL (1903)
I L R. 25 All 378

96 ———— **Landlord and tenant**—*Suit for possession* Where a lessor who had never been in possession granted a pottah of lands to which his title was disputed and the lessee was kept out of possession by the defendants who disputed

PARTIES—*contd*

I PARTIES TO SUITS—*contd*

the lessor s title —*Held* that the le ee could maintain his action for po e ion of the lands and need not make his les or a co plaintiff. PRANKRI HNA DEV t BISWAMBHAR SEN

2 B L R A C 207 11 W R 80

97 ———— *Joint lea e—Suit by one of joint le sors who has acquired intere t of the other—Co owners—Suit in ejectment by one co owner—Parties—Oral agreement inconsi tent with written contract—Evidence Act (I of 187) s 92* K an l P were co owners of certain property in Bombay and by a writing dated January 1883 they granted a lea e of the whole of the said property to the defendant for a term of three years

of the said property to the plaintiff On the 30th January 1886 i e a month before the expiration of the lea e the plaintiff gave the defendant notice to determine the tenancy and required him to quit on the 1st March then next The defendant refused and the plaintiff brought this suit for pos se ion and for occupation rent from the 1st March 1886 The defendant pleaded that the plaintiff was not entitled to ue alone *Held* that the uit was maintainable by the plaintiff alone EBRAHIM PIR MAHOMED t CURSETJI SORABJI DE VITRE

I L R 11 Bom. 644

98 ———— Legacy suit for—*Act IX of 1850 s 32—Suit for legacy or distributive share under intestacy—Deposit* A died leaving a will directing a certain sum to be paid to *M* his widow the unexpended balance of such sum to go at the death of *M* to his heir *M* brough a suit against the executors of A s will which was compromi ed on the payment by them to her of a certa n sum This sum she deposited with N one of the members of a firm to be invested in N s own name he paying her uch intere t as it yielded him On the dissolution of the firm the sum deposted by M was made over to N alone and on the death of N his estate and with it the sum deposited by M came into the hands of the sons of N On the death of *M* the plaintiff and two others were the heirs of A In a suit brought by the plaintiff against the sons of N for a third share of the sum deposited by *M* —*Held* that such a suit was not a suit for a distributive share under an intestacy or of a legacy under a will within s. 32 Act IX of 1850. All the parties claiming to be entitled to any interest in

99 ———— *Executor—Legacy —Suit by one legatee for a legacy—Right of executor*

PARTIES—*contd*

I PARTIES TO SUITS—*contd*

s 23 A legatee is entitled to sue an executor for a legacy bequeathed to him by a Hindu testator in the mofussil In ca e such a suit is brought by one legatee the executor may apply for his own protection that other legatees shall be made parties so that if any rateable abatement is requisite the extent of such abatement may be ascertained in a manner binding on all parties interested But any such application must be made at the earliest possible opportunity having regard to the provisions of s 34 of the Civil Procedure Code (XIV of 1882) and in any case it is within the discretion of the Court to decide whether the addition of such parties is nece ary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit (s 32) If an executor commits a breach of trust in respect of trust property that has come to his hands he is liable under s 23 of the Indian Trusts Act (II of 1882)

legatee

KALA

100 ———— Maintenance suit for—*Civil Procedure Code 1882 s 32—Suit for maintenance by member of Malabar tarwad—Necessary parties—Joinder of parties on appeal* Where a member of a Malabar tarwad sued the karnavan for an increased rate of maintenance —*Held* that all the members of the tarwad were necessary parties to the suit *Held* also the Appellate Court having reversed the decree on the ground of non joinder of such persons and directed the plaint to be returned for amendment that the proper course was for the Appellate Court to have added the necessary parties MAMMALI v PAKKI

I L R 7 Mad 428

101 ———— *Right of* [illegible]

property are not parties NARAYAN [illegible] LAVING BHARTHI

I L R 2 Bom 140

102 ———— Malicious prosecution suit for—*Defendants not sued on* [illegible] *action* In a suit claiming dama [illegible] cessful criminal prosecution of the [illegible] the first defendant and sancti ned by the [illegible] defendant as a Subordinate Ju [illegible] whether the first and second [illegible] properly be joined in such an action [illegible] DYALDAS v JAGANNATH GIRDHARI [illegible]

10 Bom 182

103 ———— Minor suit by—*[illegible] half of minor—Manager* When the tru te [illegible] manager and guardian [illegible]

PARTIES—*contd*

1 PAPTIES TO SUITS—*contd*

104. ——————— *Minor contesting will—Misjoinder of as plaintiff* A minor interested in contesting the execution and validity of an alleged will by her father having been improperly joined with the alleged executors of the said will as co plaintiff the decrees of the Courts below were rever ed and the suit remanded in order that the minor might be made a defendant and a guardian *ad litem* appointed to protect her interests KRISHNABAI v SONUBA

2 Bom 327 2nd Ed 310

105 ——————— *Defendant improperly impleaded as a minor—No objection raised by defendant during suit—Sub equent suit for declaration that decree was not binding on defendant—Estoppel* A certain defendant was impleaded in a suit as a minor under the guardianship of his mother who was his certificated guardian. He and his mother jointly defended the suit and at no period did the defendant rai e the objection that he was not a minor when the suit was instituted A decree was pas ed in favour of the plaintiff and no appeal was preferred either by the defendant or his guardian *ad litem* *Held* that it was not competent to the defendant to sue subsequently *to have the decree declared not binding upon him* upon the ground that he was in fact of full age when it was instituted and that hi mother had betrayed his interests *Sheorania* v *Bharat Singh I L R 20 All 90* and *Hanuman Prasad* v *Muhammad Ishaq All Weekly Notes (1905) 209* distinguished GANGA RAM v MIHIN LAL (1906)

I L R 28 All 416

106 ——————— Mortgages suits concerning—*Mortgage by agent—Suit for possession* ... sardar for ... —*Held* ... have been ... PUNCHUM ... II 207

107 ——————— *Redemption suit for—Co heir sharing interest in the mortgaged property at the time of the suit* A co heir of the plaintiff having an intere t in the mortgage at the time of the redemption uit is a nece ary party to the suit but not otherwise TRIMBAK JIVAJI DESHAMUKHA v SAKHARAM GOPAL

I L R 16 Bom 599

108 ——————— *Suit for redemption—Third parties claiming redemption* In a suit for redemption of a mortgage the plaintiff may implead other persons who claim the right of redemption in opposition to him. BHOOP SINGH v NIT SINGH LAL

3 Agra 144

109 ——————— *Suit for redemption—Suit by one co sharer* Where joint family property though held in certain shares by the several co parceners was mortgaged as a whole and redeemable on payment of the whole sum —*Held* in a suit by one of the joint tenants or tenants in common to redeem the whole estate that all persons in whom portions of the equity of redemption were vested must be made parties of the suit NARO HARI BHAVE v VITHALBHAT

I L R 10 Bom 648

110 ——————— *Suit for redemption of share of estate.* *Held* that any one of the mortgagors or his legal repre entatives is if the mortgage debt has been repaid entitled to sue for redemption and to be put in po es ion of his own share of the estate whatever his co parceners may choose to do in the matter and that the Judge should not have dismis ed the suit merely on account of the majority of the mortgagors who disavowed their claim not being parties thereto but should have proceeded to dispo e of the ca e according to law HURDEO v GUNESHEE LALL

1 Agra 36

(*Contra*) All the mortgagors ought to be joined in such a suit RAM BAKSH SINGH v RAM LALL DOSS 21 W R 428

And *see* CASES UNDER MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY

111 ——————— *Suit for redemption—Parties to such suit—Equity of redemption Interest in of person related to the mortgagor* The plaintiff sued the defendant to redeem certain khoti lands mortgaged by the plaintiff s father to the defendant s uncle The defendant objected that the separated uncle and cousins of the plaintiff should be made co plaintiffs in the suit These relations of the plaintiff were not joint members of the plaintiff s family at the time of the mortgage nor did they claim any intere t in the equity of redemption *Held* that the plaintiffs uncle and cousins were not nece sary parties In the ab ence of evidence to the contrary it must be presumed that the mortgage was made by the plaintiff s father in his individual capacity If the defendant had shown that at the date of the mortgage the plaintiff s father and uncles were undivided it might have been presumed that the mortgage was on their behalf as well as on his own But this the defendant had failed to do The mortgage did not purport to have been made by the plaintiff s father as manager of the family nor did it appear ...

112 ——————— *Suit for redemption or recovery of property on payment of a charge—Possession after redemption by one of several mortgagors—Adverse possession—Limitation* The plaintiff sought to recover his father s share in two portions of family property one of which had been mortgaged by the plaintiff s father and the father of the defendant No 1 jointly the other had been mortgaged by the plaintiff s father jointly with the father of defendant No 1 and the husband of defendant No 2. The first was redeemed by the father of defendant No 1 alone in 18C8 the second was redeemed by the defendant No 1 more than twelve years before the suit. The parties

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

were Mahomedan and the plaintiff had a brother and three sisters only one of whom (defendant No 2) was a party to the suit Defendant No 1 contended that the suit was defective for want of parties, and that it was time barred The Subordinate Judge awarded the plaintiff s claim The Assistant Judge on appeal held that the plaintiff s brothers and sisters were necessary parties but that it was too late to join them the suit with

cover on payment of a charge are necessary parties as otherwise the possessor may be exposed to many suits upon the same cause of action *Held* also that the plaintiff s brothers and sisters ought to have been joined as co plaintiffs the defendant No 1 s possession after redemption not being adverse to them If it was adverse at all it was adverse to the whole of the plaintiff s branch of the family so as to bar the right of the group altogether But that was no reason why the co owners should not be admitted as co plaintiff and the suit go on upon its merits BHAUDIN *v* ISMAIL

I L R 11 Bom 425

113 ———— *Suit by mortgagee for share of mortgaged property* A mort ... es ... of ... without the suit ... KISHORE NARAIN

25 W R 39

114 ———— *Suit for foreclosure against assignee of mortgaged property—Representatives of mortgagor* In a suit for foreclosure —*Held* that it was necessary to make the personal representatives of the mortgagor parties He who has the equity of redemption is the only necessary party BLAQUIERE *v* RAMDHONE DOSS

Bourke O C 319

115 ———— *Suit for mortgage —Patnidar under mortgagor* Where the mort

ant in order to give him an opportunity to redeem KASIMUNNISSA BIBEE *v* NILRATNA BOSE

I L R 8 Calc 79 9 C L R 173
10 C L R 113

116 ———— *Suit for possession by mortgagee against third party* In a suit

suit against such mortgagor DOOLAY SINGH *v* GOOLAM HOSSEIN

2 N W 72

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

117 ———— *Suit by mortgagee where property is alienated* When a mortgagee sues to enforce his lien on property which has intermediately passed by sale into other hands he is bound to bring his action not against the mortgagor alone but also against the parties in possession RAM YAD SINGH *v* LALLA SALIGRAM SINGH

16 W R 98

118 ———— *Purchaser at sale of mortgaged property* A mortgaged to his brother *B* his twelfth share in the immoveable estate of the family *C* at *B* s request became surety for *A* to Government *A* having become a defaulter *C* became liable to Government in respect of his defalcations *B* with a view to indemnify *C* transferred to him *A* s mortgage *C* at the same time assigning to *B* a debt due by *D* to *A* which had been previously assigned by *A* to *C* Government sold *A* s interest in the twelfth share which was purchased at the sale by *B* s son *E* In a suit brought by *C* against *B* to obtain possession of *A* s share —*Held* that *E* to whom only the equity of redemption passed by the purchase at the Government sale was necessarily a party to the suit which was accordingly remitted to the Court below in order that he might be made a defendant and a new decree passed upon the merits YASHAVANT SUBAJI KULKARNI *v* GOPAL LADKO BHANDARKAR

2 Bom 202 2nd Ed 194

119 ———— *Purchaser under execution against assets of testator—Suit for foreclosure* A creditor who purchases under an execution against the general assets of a testator s estate takes subject to a mortgage created in pursuance of a power contained in the will and in a suit to foreclose the purchaser is rightly made a party NILKANT CHATTERJEE *v* PEARY MOHUN DAS

3 B L R O C 7 11 W R O C 21

120 ———— *Suit by second mortgagee to recover premises when first mortgagee is paid off—Administrator General—Representative of deceased mortgagor—Act XXIV of 1867 s 1* In a suit brought by a second mortgagee against first mortgagees (admittedly overpaid) to compel the first mortgagees to convey to him the mortgaged premises the heir or legal representative of the deceased mortgagor is according to the balance of authority a necessary party Cases bearing on the above question collected and considered Where it was uncertain who was the heir and legal representative of the deceased mortgagor and the

directing him to apply for letters of administration to the estate and effects of the mortgagor and the plaintiff was allowed (in the event of letters of administration being granted to the Administrator General) to amend his plaint by making the Administrator General a party to represent the deceased mortgagor The plaintiff was however

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

ordered to give security for the probable costs of the Administrator General in the suit VITHALDAS NAROTAMDAS v KARSANDAS KESHAVDAS
5 Bom O C 76

121. ———— *Right to sale—Death of sole mortgagee leaving several heirs—Sale of mortgagee's rights by one of such heirs—Suit by purchaser for sale of mortgaged property—Transfer of Property Act (IV of 1882) s 67* Upon the death of a sole mortgagee of zamindari property his estate was divided among his heirs one of whom a son was entitled to fourteen out of thirty two share The son executed a sale deed whereby he conveyed the mortgagee's rights under the mortgage to another person In a suit for sale brought against the mortgagor by the representative of the purchaser it was found that the plaintiff acquired under the deed of sale only the rights in the mortgage of the son of the mortgagee though the deed purported to be an assignment of the whole mortgage —*Held* by the Full Bench that the plaintiff was not entitled in respect of his own share to maintain the suit for sale against the whole property the other parties interested not having been joined. PARSOTAM SARAN v MULU
I L R 9 All 68

122 ———— *First and second mortgages—Second mortgagee not made party to* ... *perty* ... *85—* ... *ort* ... *gain* ... *M* ... *cree* obtained in 1877 by *G* in a suit for sale brought by him upon the mortgage of 1871 To this suit and decree the mortgagee under the deeds of 1865 and 1873 was not a party In 1885 *M* sued the representatives of *H* for redemption of the mortgage of 18.. One of the defendants pleaded that as he was a puisne incumbrancer in the property in suit at the time of the plaintiff's suit against the mortgagors in 1877 he ought to have been made a party to that suit and thus afforded an opportunity of protecting his rights by payment of the mortgage money He did not in the Court below ask ...

... the defendant was in possession of the mortgaged property at the time of the suit of 1877 and his mortgage was a registered instrument it must be presumed that the plaintiff had notice of its existence and should therefore have made him a party and that under the circumstances he should be placed in the same position as he would have held if the decree of 18.. had never been passed. MUHAMMAD SAMIUDDIN v MAN SINGH
I L R 9 All. 125

123 ———— *Suit to determine rights of mortgagee—Representatives of mortgagors* Case in which the representatives of certain mortgagors were held to be necessary parties to the suit which was one to determine the rights of mortgagees (*inter se*) on the following grounds —(*a*) that the rights of the mortgagees could not be determined without at the same time determining the liability of the mortgagors (*b*) to avoid multiplicity of suits (*c*) to give them an opportunity of being present at the taking of any account that might be ordered as between the mortgagees and (*d*) to entitle the plaintiff or defendant to obtain costs out of the proceeds of the sale of the mortgaged property HUGHES v DELHI AND LONDON BANK
I L R. 15 Calc 35

124 ———— *Transfer of Property Act (IV of 1882) s 85—Parties to a mortgage suit—Objection in written statement as to non joinder* In a suit by a mortgagee against two of his three mortgagors the defendants objected in their written statement that the suit was bad for non joinder of the third mortgagor and also alleged that subsequent incumbrances on the mortgaged premises had been created with the ... at the ... terest ... On ... gagor and the subsequent ... ... v ... ACHALAM I L R 10 Mad. 451

125 ———— *Transfer of Property Act (IV of 1882) s 85—Suit by puisne mortgagee on his mortgage—Suit by puisne mortgagee offering to redeem prior mortgage—Determination of validity of mortgage between co-defendants* *Held* (i) in a suit by a puisne mortgagee upon his mortgage that a prior mortgagee is not a necessary party but is a party in such suit if such puisne mortgagee offer to redeem his mortgage When the validity of the prior mortgage is in question the offer to redeem should be made conditionally upon the establishment of such mortgage (ii) that the question of the validity of the prior mortgages can be determined in this suit between the co defendants RAJ COOMARY DASSEE v PREO MADHUB NUNDY
1 C W N 453

126 ———— *Prior and puisne incumbrancers—Puisne incumbrancer not made a party to suit upon prior incumbrance—Right to redeem* To a suit on his mortgage by a prior incumbrancer having notice of a puisne incumbrance the puisne incumbrancer should be joined as a party If he is not so joined the puisne ... *... Singh* I L R. 9 All. 1.. and *Gajadhar v Mul Chand* I L R 10 All 520 referred to NAMDAR CHAUDHRI v KARAM RAJI
I L R. 13 All. 315

127 ———— *Suit to bring mortgaged property to sale—Puisne incumbrancer—Transfer of Property Act (IV of 1882) s 85—Registration—Notice.* A and B jointly mortgaged

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

certain immoveable property to Y by a simple mortgage deed on the 10th September 1882. They again mortgaged the same property to Y on the 23rd February 1884. On the 6th August 1885 *A* mortgaged a portion of the said property to X. On the 1[illegible]th August 1885 *B* mortgaged a portion of the same property to Y. On the 21st August 1885 *A* mortgaged a portion of the same property to *Z* and *Z*'s mortgage was registered. On the 20th September 1886 *A* and *B* sold to Y the property mortgaged to him and with the proceeds of that sale Y's three mortgages were paid off. On the 8th January 1888 X sued *A*, *B* and Y for cancelment of the deed of sale of the 20th September 1886 and for sale of the property mortgaged to him under his deed of the 6th August 1885. X did not make *Z* a party to this suit. He did not ask for redemption of Y's mortgages nor for foreclosure of *Z*'s mortgage. *Held* that *Z*'s mortgage of the 21st August 1885 having been registered X must be taken to have had notice of it and having had notice thereof was bound to make *Z* a party to the suit for sale under his (X's) mortgage. *Damodar Devchand v. Naro Mahadev Kelkar* I L R 6 Bom 11 and *Dullabhdas Devchand v. Lakshmandas Sarupchand* I L R 10 Bom 88 referred to. *Per* MAHMOOD J.—The provisions of s. 85 of Act IV of 1882 are not absolutely imperative, and though thereunder a subsequent incumbrancer ought to be made a party to a suit by a prior mortgagee on his mortgage, the non-joinder of such subsequent incumbrancer is not a fatal defect in the suit. Registration of a subsequent mortgage is not necessarily any notice to a prior mortgagee of the existence of such subsequent mortgage, it being no part of a mortgagee's duty to be on the watch for incumbrances subsequent to his own. MATA DIN KASODHAN *v.* KAZIM HUSAIN I L R 13 All 432

128 ——————— *Suit by mortgagee and sale in execution of mortgage decree—Grant of patni by mortgagor—Patnidar—Right of redemption—Notice—Constructive notice—Transfer of Property Act (IV of 1882) ss 3 and 85.* A mouzah K was mortgaged by *D* by bonds extending from 1867 to 1879, the last bond of 5th January 1879 including the amounts borrowed on the former bond. On 7th January 187[illegible], whilst it was so under mortgage, the same mortgagor *D* executed bonds whereby he mortgaged K to the defendants, and in suits brought on the basis of those bonds came to an amicable settlement with the defendants, by which on 25th February 1879 he settled K in patni with them, the bonus for the patni going to satisfy the mortgage debts. In 1885 a suit, to which the present defendants were not made parties, was brought by the mortgagees of the bond of 5th January 1879, and in execution of the decree in that suit K was put up for sale [illegible]

patni. *Held* that the defendants as patnidars had an interest in K within the meaning of s. 85 of the Transfer of Property Act, and should therefore have been made parties to the suit in 1885, and thereby given an opportunity of redeeming the mortgage on which that suit was brought. *Kokil Singh v. Duli Chand* 5 C L R 243 and *Kasimunnissa Bibee v. Nilratna Bose* I L R 8 Calc 79 referred to. If not as patnidars, they were entitled as second mortgagees to have an opportunity of redeeming the prior mortgage and to be parties to that suit. Not having been parties, the plaintiff was not entitled to khas possession as against them. *Nunack Chand v. Teluckdye Koer* I L R 5 Calc 265: 4 C L R 358, *Dirgopal Lall v. Bolakee* I L R 5 Calc 269, and *Radha Pershad Misser v. Monohar Dass* I L R 6 Calc 316 referred to. JUGOL KISSORE LAL SINGH DEO *v.* KARTIC CHUNDER CHOTTOPADHYA I L R 21 Calc 116

129 ——————— *Suit for sale on mortgage—Non-joinder of parties—Joint Hindu family—Suit for sale on mortgage by father without joining son—Transfer of Property Act (IV of 1882) s 85.* When a plaintiff mortgagee institutes a suit for sale under s. 88 of Act IV of 1882 against his mortgagor who is the father of sons in an undivided Hindu family governed by the Mitakshara without joining as parties to the suit the sons of the mortgagor, of whose interests he has notice, and obtains a decree and an order absolute for sale against the father only, the sons can successfully sue for a declaration that the mortgagee decree-holder is not entitled to sell in execution of his decree for sale the interests of the sons in the property comprised in the mortgage given by the father, although the sole ground of their suit is that they were not parties to the suit by the mortgagee. So *held* by EDGE C J, KNOX, BLAIR, BURKITT and AIKMAN JJ (BANERJI J dissenting). *Held* by BANERJI J that where under the circumstances above described a decree has been obtained against the father alone without joining the sons, the sons cannot in the suit brought by them plead against the operation of the decree on their interests any pleas other than those which they could have urged against the claim of the mortgagee in order to relieve them from liability for their father's debt had they been made parties to the mortgagee's suit. BHAWANI PRASAD *v.* KALLU I L R 17 All 537

See LACHMAN DAS *v.* DALLU I L R 22 All 394

and HARI RAM *v.* BISHNATH SINGH I L R 22 All 408

130 ——————— *Transfer of Property Act (IV of 1882) s 85—Mortgage suit against Hindu mortgagor and two sons—Sale of mortgage premises—Subsequent suit for share of a third son.* A Hindu having three sons executed a mortgage in favour of the defendants, who subsequently obtained a decree for sale on the mortgage and brought the property to sale in execution and purchased it themselves, the mortgagor and two

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

only of his sons being brought on to the record It did not appear whether the plaintiffs in that suit were aware of the interest of the third son who now sued to recover his one quarter share of the mortgage premises claiming that the previous proceedings were not binding on him and alleging that the mortgage was unsupported by consideration *Held* that the plaintiff was entitled to have the question tried whether there was really a debt owing by the father to support the mortgage *Quære* Whether *Bhawani Prasad* v *Kallu I L R 17 All 537* lays down the right rule with reference to Transfer of Property Act s 85 RAMASAMAYYAN v VIRASAMI AYYAR I L R 21 Mad 222

See HIRA LAL SAHU v PARMESHAR RAI I L R 21 All 356

131 ———— *Suit for payment of mortgage money or foreclosure—Non joinder of person interested in the mortgaged property Effect of—Transfer of Property Act 1882 s 85—Civil Procedure Code 1882 s 32—Plea taken in appeal* [illegible]

by the action of the Court under s 32 of the Code of Civil Procedure and where such non joinder is brought to the notice of the Court the Court will give effect to the objection and dismiss the suit even though such objection be raised for the first time in appeal *Mata Din Kasodhan* v *Kazim Husain I L R 13 All 432* *Janki Prasad* v *Kishen Dat I L R 16 All 478* and *Bhawani Prasad* v *Kallu I L R 17 All 537* referred to GHULAM KADIR KHAN v MUSTAKIM KHAN I L R 18 All 109

132 ———— *Prior and subsequent mortgagees—Effect of non joinder in a suit on a mortgage of persons interested in the mortgaged property—Transfer of Property Act (IV of* [illegible]

made a party to that suit After the decree in that suit was passed but before execution *D P* brought a suit for sale on his mortgage but did not make the second mortgagees parties to that suit In that suit *D P* obtained a decree in execution of which he brought a portion of the mortgaged property to sale and some of it was purchased by *H L*. On application by the second mortgagees for an order absolute for sale in execution of their decree it was *held* that the property purchased by *H L* in execution of *D P's* decree on his prior mortgage could not be brought to sale in execution of the second mortgagees decree *Mata Din Kasodhan* v *Kazim Husain I L R 13 All 432* referred to HIRA LAL v KISHAN LAL I L R 19 All 543

133 ———— *Transfer of Property Act (IV of 1882) s 85—Foreclosure suit—Practice—Procedure* In a suit for foreclosure by a puisne mortgagee the prior mortgagee should be made a party to the suit under s 85 of the Transfer of Property Act (IV of 1882) In a suit where a prior mortgagee was not a party the Court at the hearing of the suit ordered that he should then be made a party *Mata Din* v *Kazim Husain I L R 13 All 432* followed SORABJI CURSETJI SETT v PATTONJI DOSSABHOY I L R 22 Bom 701

134 ———— *Transfer of Property Act (IV of 1882) s 85—Non joinder of parties—Subsequent mortgagee after suit upon prior mortgage filed* *Held* that s 85 of the Transfer of Property Act 1882 does not require the joinder in a suit on a prior mortgage of a subsequent mortgagee whose mortgage was only executed subsequently to the filing of such suit ISHAQ ALI KHAN v CHUNNI I L R 21 All 149

135 ———— *Transfer of Property Act (IV of 1882) s 85—Suit on a mortgage executed by a Hindu father—Sons not made parties—Notice—Onus of proof* Where the sons in a joint Hindu family came into Court seeking to get rid of the effect as against their interests in the joint family property of a decree on a mortgage executed by their father obtained in a suit to which they were not made parties the burden of proof [illegible]

BIJAI BAHADUR SINGH v MOWA LAL I L R 21 All 195 note

136 ———— *Transfer of Property Act (IV of 1882) ss 85 88—Decree for sale on mortgage in suit against Hindu father—Suit by son for declaration that decree not binding on his share* A decree having been obtained against a Hindu father in a suit on a bond hypothecating family property the sons sued for a declaration [illegible]

fer of Property Act in cases in which a decree is obtained against a Hindu father without making his sons parties to such a suit is laid down in *Ramasamayyan* v *Virasami Ayyar I L R 21 Mad 222* PALANI GOUNDAN v RANGAYYA GOUNDAN I L R 22 Mad 207

137 ———— *Mortgage by such guardian without Court's permission—Validity of such mortgage—Transfer of Property Act (IV of 1882) s 85* A was the owner of the property in dispute He mortgaged it with possession to defendant No 1 in 1884 A died leaving an adopted son Vithal a minor Thereupon one

PARTIES—*contd.*

1 PARTIES TO SUITS—*contd*

Vasudev was appointed by the Distric Court to be guardian of the person and property of the minor under Act XX of 1864 In September 1890 Vasudev mortgaged the same property to plaintiff with the sanction of the Subordinate Judge s Court obtained under s. 305 of the Code of Civil Procedure (Act XIV of 1882) In 1895 the plaintiff as second mortgagee brought this suit to redeem the earlier mortgage of 1884 *Held* that such mortgage was only voidable under s 30 of Act VIII of 1890 at the instance of any other person affected thereby *Held* further that defendant No 1 the original mortgagee was not affected by the plaintiff s mortgage and that the only person really affected by that mortgage was Vithal the owner of the equity of redemption who was a necessary party to the suit DATTARAM v GANGARAM I L R. 23 Bom 287

138 ——— *Transfer of Property Act (IV of 1882) s 85—Suit by puisne mortgagee without making prior mortgagee a party—Effect of non compliance with s 85* A prior mortgagee without making a puisne mortgagee a party to his suit sued on his mortgage obtained a decree for sale sold the mortgaged property and purchased it himself Subsequently the puisne mortgagee holding a mortgage over the same property brought his mortgage into suit without making the prior mortgagee a party and obtained a decree for sale *Held* that the puisne mortgagee could not bring the mortgaged property to sale in execution of such decree *Janki Prasad* v *Kishen Das I L R 16 All 478* followed MEHRBANO v NADIR ALI I L R 22 All. 212

JANKI PRASAD v KISHEN DAT I L R 16 All 478

139 ——— *Suit against mortgagee of administrator for property given by deceased* Where *M H* in consideration of *K V* carrying on litigation concerning a piece of land claimed by *M H* at his own expense agreed that after he should have recovered the land they should

mortgagor were not necessary parties to the suit DAMODHAR MADHAVJI v KAHANDAS NARANDAS 8 Bom. O C 1

140 ——— *Suit on mortgage bond—Alienation of property to different alienees* In a suit on a single mortgage bond where part of the property concerned is conveyed or alleged to be conveyed to different persons all these are entitled to notice and to be made parties Such a suit is not multifarious KRISHNA GOPAL GHOSE v HURRY NATH DUTT 25 W R 60

141 ——— *Suit by Mahomedan heir of zur i peshgi mortgagee to recover advance.* In a suit between Mahomedans by the heirs of a zur i peshgi mortgagee to recover the amount advanced all the heirs of the mortgagee must be represented either as plaintiffs or defendants or those who sue must claim in proportion to what they are entitled to under the Mahomedan law MUJEEDOONISSA v DILDAR HOSSEIN 14 W R 216

142 ——— *Mortgages suits concerning—Transferees from mortgagors—Transfer of Property Act (IV of 1882) s 85—Purchase with consent of mortgagee—Contribution—Frame of suit—Apportionment of debt—Redemption* The heirs of a mortgagor against whom a decree on the mortgage had been obtained by the mortgagee in execution of which the mortgaged property was sold a part being purchased by the mortgagee himself and a

debt. A suit by the mortgagee framed improperly for a declaration of the rights of the purchasers of portion of the mortgaged property of redemption to the properties purchased by them who were not

only relief to which the mortgagee in such a case is entitled is a decree for apportionment of the mortgage debt on the property purchased by the purchasers account being taken in that apportionment as well of the property transferred by the mortgagor to other parties with the consent of the mortgagee as of the portion of the mortgaged property purchased by the mortgagee himself PANMOY HAZRA v PREM CHAND NASKAR (1901) 5 C W N 423

143 ——— *Civil Procedure Code (Act XIV of 1882) s 437—Parties—Mortgage—Decree for foreclosure—Decree against executor—Application for redemption by beneficiary* Where a decree for foreclosure was obtained against *S* who was the executor of his father s estate and subsequently *A* a brother of S and *M* a purchaser of some of the mortgaged properties from *A* made an application to be made parties and to redeem *Held* that they were not entitled to be made parties MOHANAND CHATTERJEE v AKHOY KUMAR BARARI (1901) 6 C W N 488

144 ——— *Transfer of Property Act (IV of 1882) s 85—Appeal—Parties—Practice.* A jenmi having sued the kanomdar and his sub tenants obtained a decree for redemption and possession on certain terms. The sub tenants objecting to some of the terms appealed but they did not join the kanomdar to whose prejudice the

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

Mad 571n and *Vedapuratti* v *Covinda Menon (1892) I L R 25 Mad 571n* followed. VEDAPURATTI v AVARA (1901) I L R 25 Mad. 568

145 ——— *Transfer of Property Act s 85—Confirmation of possession suit for by prior mortgagee—Redemption—Puisne mortgagee right of after sale by prior mortgagee—Parties* A decree obtained by a prior mortgagee who had no knowledge of puisne mortgagees is not bad under s. 85 of the Transfer of Property Act because the latter were not made parties. Where a prior mortgagee who had purchased the mortgaged property

redeem the prior mortgage *Gopee Bunahoo Shantra* v *Kaleepudo Banerjee 23 W R 338* distinguished. A purchaser under a prior mortgage may always shield his possession and protect his

7 C W N 11

146 ——— *Transfer of Property Act (IV of 1882) s 85—Non joinder—Apportionment of mortgage debt—Purchaser of mortgaged property—Release* When a purchaser from the mortgagor of one of the mortgaged properties (subsequently released by the mortgagee from his lien) is not made a party to a mortgage suit brought by the mortgagee the proper course is not to dismiss the suit for non joinder but to apportion the mortgage debt between the property so purchased and released and the other mortgaged property In such a case the mortgage should be treated as split up into two HARI KISSEN BHAGAT v VELIAT HOSSEIN (1903)
I L R 30 Calc 755 s c 7 C W N 723

147 ——— *Parties—Mortgage suit—Transfer of Property Act (IV of 1882) s 85* Part owners of a mortgaged property who did not execute the indenture of mortgage and did not receive the money and were not interested in the equity of redemption are not necessary parties to a suit to enforce the mortgage MON MOHINI GHOSE v PARVATI NATH GHOSE (1905)
I L R 32 Calc 746

148 ——— *Suit—Mortgage—Suit on mortgage bond—Person claiming under paramount title—Misjoinder of parties—Multifariousness—Civil Procedure Code (Act XIV of 1882) ss 44 45—Transfer of Property Act (IV of 1882) s 85— Property comprised in a mortgage—Appellate Court—Other errors affecting merits of suit* To a suit to enforce a mortgage persons claiming under a title adverse to that of both the mortgagor and the mortgagee are not proper parties The term property comprised in a mortgage in s 85 of the Transfer of Property Act means not the physical object but the interest therein which the mortgagor is competent to transfer by way of mortgage at the date of the transaction. The ordinary rule is that a plaintiff mortgagee cannot be allowed so to frame his suit as to draw into controversy the title of a third party who is in no way connected with the mortgage and who has set up a title paramount to that of the mortgagor and mortgagee Under ss 44 45 of the Civil Procedure Code causes of action of this description cannot be joined in a suit to enforce a mortgage The rule is not one of convenience merely and the fact of the question of such title being determined by the Court of first instance in breach of the rule does not preclude a Court of appeal from reversing the decree The question however is not one of jurisdiction and where in a mortgage suit a question of paramount title raised by a defendant is tried without objection neither party can ask for a reversal on the ground that the issue was not properly triable in the action JAGGESWAR DUTT v BHUBAN MOHAN MITRA (1906) I L R 33 Calc 425

149 ——— **Nawab Nazim s Debts Act suit under**—*Suit brought to recover property of nizamut Held* that a suit brought by a claimant against the Government and the grantee to recover property which the commissioners

Nawab Nazim having been joint as a party OMRAO BEGUM v GOVERNMENT OF INDIA
I L R 9 Calc 704 12 C L R 595
L R 10 I A 39

150 ——— **Negotiable instruments**—*Bill of exchange suit on—Drawer and acceptor—Joinder—Civil Procedure Code 1877 s 29* The drawer and acceptor of bills of exchange can be joined as co defendants in a suit brought by the holder of such bills PESTONJEE EDULJEE GURDUR v MAHOMED ALI I L R 3 Calc 541

151. ——— *Bill of exchange—Drawer and payee* Plaintiff as payee of an order drawn by defendant at Ahmedabad where he (defendant) resided on a firm at Bankok in Siam and dishonoured on presentation sued defendant

KAHANDAS NARANDAS v DAHIABHAI
I L R 3 Bom. 182

152 ——— *Hundi suit on—Endorsee acceptor and drawer Held* that a purchaser of a hundi on its being dishonoured is at

PARTIES—*contd*

I PARTIES TO SUITS—*contd*

liberty to sue his endorser alone and it is not ab o lutely necessary to implead the acceptor and drawer in the same suit and if he does so he does not lose his right *of suing them so long as his action is* within the period of limitation GOPAL DAS *v* SEETA RAM 3 Agra 268

153 ——— *Civil Procedure Code 18[illegible] s [illegible]—Suit on lost cheque* The en

154. ——— Official Assignee—*Insolvent Act (11 & 12 Vict c 21)—Official Assignee made a party defendant* In a suit in the mofus il the defendant having been adjudicated an insolvent under the Insolvent Act (11 & 12 Vict c 21) the Official Assignee was placed upon the record as a defendant and judgment was entered against him for the sum claimed to be paid out of the insolvent s e tate *Held* that the Official Assignee was not a proper party there being nothing in the Insolvent Act which enables a suit of this kind to be continued against the Official Assignee MILLER *v* BUDH SINGH DUDHURIA I L R 18 Calc 43

155 ——— *Suit by heirs of insolvent for property acquired after insolvency* *P* became possessed of certain properties in 1872

of the property acquired after his insolvency —*Held* that the Official Assignee was not a necessary party to the suit though in case of a decree in the plaintiff's favour notice should be given him by the Court FATMABIBI *v* FATMABIBI I L R 16 Bom. 452

156 ——— *Suit against widow of insolvent as his legal repre entative*—

After his death a suit was brought by a creditor

him as her husband s representative as his estate was in his lifetime and since had continued to be

PARTIES—*contd*

I PARTIES TO SUITS—*contd*

vested in the Official Assignee —*Held* that the Official Assignee was not a necessary party to the suit The Official Assignee is not a necessary party to any suit to recover a money debt from a person who is either an in olvent at the time the suit is instituted or becomes insolvent pending the suit But a decree made against an insolvent under such circumstances should be restricted in form so as not to allow the judgment creditor by means of execution to obtain an advantage over the general body of creditors *In re Hunt Monnet & Co Ex parte Gamble* v *Bhola Gir 1 Bom H C 251* and *Miller* v *Budh Singh Dudhuria I L R 18 Calc 43* referred to In this case the decree was varied by the omission of the

CHANDMULL *v* PANEESOONDERY DOSSEE I L R. 22 Calc 259

157 ——— Partition suit for—*Share holders in joint property* A suit which is in the

SADABURT PERSHAD SAHOO *v* LOTF ALI KHAN
PHOOLBAS KOOER *v* LALLA JUGGESSUR SAHI 14 W R 339

s c on review PHOOLBAS KOOER *v* LALLA JUGGESSUR SAHOY 18 W R 48

GOKOOL PERSHAD *v* ETWARI MAHTO 20 W R 138

NATHUNI MAHTON *v* MANRAJ MAHTON I L R 2 Calc 149

158 ——— *Joint family property—Assignee of member of family* In a suit by the mother and guardian of two minors to obtain a partition of joint family property free from the encumbrances which the father and sons had put upon it wherein a third party was co plaintiff by virtue of an alleged conveyance from the plaintiff

21 W R 190

159 ——— *Suit for partition after father s death—Son s wives* In a suit for partition after the father s death between bro

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

160 ——— *Share of joint zamindari* The owner of a 12 annas share in a joint zamindari granted to the plaintiff a mokurari lease of his share in a small portion of land within the zamindari. The owners of the remaining 4 annas share granted a patni of his share in the whole zamindari to the defendants The plaintiff brought a suit against the defendants for partition of the small plot of land *Held* that such a suit would not lie because the zamindars were not made parties PARBATI CHURN DEB *v* AINUDDEEN

I L R 7 Calc 577 9 C L R 170

161. ——— *Suit for joint property without joining other owners or sharers—Defect of parties—Suit for declaratory decree* The plaintiffs based their claim to a goat sacrificed on the fourth day of each month on an alleged custom by which each of five families took certain goats in each month and sued to establish their right without making the other families parties *Held* that to make any declaration in a suit to which they were not parties would be in effect to partition joint property and to define the share of each without all the sharers being before the Court *Pahaladh Singh v Luchmunbutty 12 W R 286* KALI KANTA SURMA *v* GOURI PROSAD SURMA BARDEURI

I L R 17 Calc 906

162 ——— *Suit for partition and to set aside order disallowing objection to attachment—Purchaser or mortgagee of a co parcener's share* In a partition suit all persons interested in the property to be divided must be brought before the Court A purchaser or mortgagee of a co parcener's share in the joint property is a proper and even necessary party to a suit for partition. *A B* and *C* were members of a joint Hindu family In execution of a decree against *B* a portion of the family property was attached. Thereupon *A* intervened and objected to the attachment so far as his own share was concerned The objection was dis

partition of the whole family property In this suit he impleaded not only his co sharers *B* and *C* but also *D* the auction purchaser and *E* a mortgagee of *B's* share in the joint property The Subordinate Judge holding that the suit was bad for misjoinder of parties as well as of causes of action returned the plaint for amendment by taking out the prayer for partition On appeal this order was confirmed by the District Judge On *A's* application to the High Court under s 622 of the Code of Civil Procedure — *Held* that the suit was not bad either for misjoinder of parties or for misjoinder of causes of action Treating the suit as one for partition the auction purchaser *D* and the mortgagee *E* were proper and even necessary parties. If *A* established his right to partition he would be entitled to have the order in the miscellaneous proceedings set aside in the same suit. SADU BIN RAGHU *v* RAM BIN GOVIND

I L R 16 Bom. 608

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

163 ——— *Private partition—Patni of separate share—Subsequent partition under Beng Act VIII of 1876 s 128* The plaintiffs were co sharers in a certain estate *T* being another co sharer In 1818 a private partition took place between the co sharers in the course of which certain specific lands were allotted to *T* in severalty the rest remaining undivided *T* granted a patni lease of her share to third parties who were thence forth in possession and subsequently there was a partition of the whole estate by the Collector under Bengal Act VIII of 1876 in the course of which the specific lands alloted to *T* in the private partition were allotted to the plaintiffs who brought against the tenants of the land suits for rent to which they made the patnidars defendants *Held* that the patnidars were properly made parties to the suits in order to try the question of the right to receive the rent as between the plaintiffs and the patnidar *Kashee Ram Dass v Sham Mohinee 23 W R 227* *Ahamudeen v Girish Chunder Shamunt I L R 4 Calc 350* and *Madan Mohan Lal v Holloway I L R 12 Calc 555* referred to HRIDOY NATH SHAHA *v* MOHOBUTNESSA BIBEE

I L R 20 Calc 285

164. ——— *Partition suit for—Civil Procedure Code (Act XIV of 1882) s 32—Pending litigation—Addition of party after the decree but before it is engrossed on stamp paper—Stamp Act (II of 1899) s 2 (15) Sch I Art 45* A suit for partition even when the report of the Commissioner is confirmed and a decree is directed to be drawn in accordance therewith is a pending litigation until the Court signs the final decree A decree for partition to be operative must be engrossed on stamped paper as required by the Stamp Act and until the Judge signs the decree so engrossed it cannot be said that the suit has terminated and an order directing a party to be added under s 32 of the Civil Procedure Code can be made in such a suit before it has actually terminated *Lingammal v Chinna Venkatammal I L R 6 Mad 237* *Mohun Lal v Imtiaz Ali I L R 18 All 332* *Oriental Bank Corporation v Charriol I L R 12 Calc 642* *Heard v Borgwardt (1883) W N 173* and *Keith v Butcher L R 25 Ch D 750* discussed. JOTINDRA MOHAN TAGORE *v* BEJOY CHAND MAHATAP (1905)

I L R. 32 Calc 483

165 ——— **Partnership suits concerning**—*Death of old proprietors of firm—Suit by agent* A firm becomes dissolved when the original proprietors die and if somebody comes in their place and carries on the business of the firm the business whether carried on under the old name or not is not that of the old firm but of an entirely new firm A suit brought on behalf of such new firm must be brought in the names of the

PARTIES—*contd*

I PARTIES TO SUITS—*contd*

166 ———————— *Suit by one member for debt due to family firm* In a suit for money lent brought by the father of a joint Hindu family who carried on jointly an ancestral money lending business the plaintiff stated in examination that he had ceased to take an active part in the management of the affairs of the firm and that the control of its business was in the hands of his sons whom he described as maliks *Held* that under the circumstances the plaintiff could not maintain the suit in his individual capacity and without joining his sons as plaintiffs with him his sons being his partners in the ancestral business and he not being the managing member or proprietor JUGAL KISHORE v HULASI RAM **I. L. R. 8 All 264**

167 ———————— *Representatives of a deceased partner* The representatives of a deceased partner are not necessary parties to an action for damages under a guarantee to the original firm BURKIN YOUNG v BHOOBUN MOHUN BONERJEE **Cor 90**

168 ———————— *Suit for dissolution of partnership and account of dealing of deceased partner* To a suit for an account of dealings and transactions of a deceased partner in a Hindu family bank and for a dissolution of the partnership the heir or legal representative of the deceased partner is a necessary party JANOKEY DOSS v BINDABUN DOSS

3 Moo I A. 175

169 ———————— *Suit for dissolution on basis of compromise in absence of representative of deceased partner* Where the surviving partners of a firm in the absence of a representative of a deceased partner adjusted the partnership accounts and agreed to hand over a portion of the partnership property to one of the partners in compromise of his claim and the partner whose claim was so agreed to be compromised prayed for a dissolution of the firm upon the basis of such compromise it was held that a representative of the deceased partner was a necessary party to the suit RAMLAL THAKURSIDAS v LAKHMICHAND MUNIRAM **1 Bom Ap 51**

170 ———————— *Suit for the administration of the estate of a deceased partner* The fact that surviving partners are made parties to an administration suit of the estate of a deceased partner does not of itself alone enable the Court to

[illegible]

171 ———————— *Plaintiff—Partnership debt—Suit by sole surviving partner—Representatives of deceased partner—Contract Act (IX of 1872) s 45—Civil Procedure Code s 26* The rule of English law that in trading partnerships although the right of a deceased partner devolves on his representative the remedy survives to his co partner who alone must enforce the right by action and is liable on recovery to account to the representative for the deceased s share should be applied in India in the absence of statutory authority to the

[illegible]

172 ———————— *Joinder of parties—Partnership debt— Representatives of a deceased partner—Mitakshara family—Contract Act (IX of 1872) s 45—Succession Certificate Act (VII of 1889)* In a suit by surviving partners for the recovery of a partnership debt which became due during life of a deceased partner the representatives of such deceased partner having regard to 45 of the Contract Act (IX of 1872) are necessary

[illegible]

and s 4 of the Succession Certificate Act 1889) *Gobind Prasad v Chandar Sekhar I L R 9 All 486* dissented from RAM NARAIN NURSING DOSS v RAM CHUNDER JANKEE LOLL

I L R 18 Calc 86

173 ———————— *Suit by firm after death of a partner for a debt accrued due during his life—Representatives of deceased partner—Contract Act s 45* The representatives of a deceased partner are not necessary parties to a suit for the

[illegible]

LALLA v DADABHOY SAGUNBAKSH

I L R 17 Bom 6

174 ———————— *Suit by one member of an undivided Hindu family—Non joinder of other persons interested in a family business—Amendment of plaint—Limitation* In 1887 the plaintiff appointed the defendant to serve for three years as manager of a business in Moulmein which was the business of the undivided Hindu family to which the plaintiff belonged. In 1893 the plaintiff without joining the other members of his family sued the defendant for damages for breach of the contract of service *Held* (i) that the suit was

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

rot maintainable in the absence from the record of the other partners in the business (ii) that under the circumstances the name of the plaintiff in the cause title could not be taken as designating his partners also (iii) that by reason of the fact that the amendment might deprive the defendants of the defence of limitation and of the other ... not ... ing ... APPA ... 33

175 ———— *Suit for debt due to partnership after death of partner—Right of representative of deceased partner to sue for a specific asset—Contract Act (IX of 1872) s 45* On the death of a partner leaving a ... ng partner still ... the represen ... y sue for and ... ugh the firm s assets in the hands of the surviving partner are already sufficient to answer all the claims made on behalf of the deceased partner and although the surviving partner is willing to satisfy such claims and disapproves of and refuses to join in the suit brought by the representative of the deceased partner AGA GULAM HOSAIN v SASSOON

I L R 21 Bom. 412

176 ———— *Suit for a partnership debt—Representative of partner who dies pending the suit not a necessary party—Contract Act (IX of 1872) s 45* In a suit to recover a debt due to a trading partnership in which it happens that a deceased person was a partner up to the time of his death it is not necessary to join as a plaintiff any representative of the deceased partner *Gobind Prasad* v *Chandar Sekhar I L R 9 All 486 Ram Narain Nursing Doss* v *Ram Chunder Jankee Loll I L R 18 Calc 86* and *Motilal Bechardass* v *Ghellabhai Hariram I L R 17 Bom 6* referred to DEBI DAS v NIRPAT

I L R 20 All 365

177 ———— *Suit against partners* Where a suit was instituted ...

against M alone *Per* STANLEY J *Lukimdas Khimji* v *Purshotam I L R 6 Bom 700* and *Narayana Chetti* v *Lakshmana Chetti I L R 21 Mad 256* followed MOHIM LALL v SRI GUNGAJI COTTON MILLS CO 4 C W N 369

178 ———— *Purchase of* ...

the partnership property pledged to them by *T* for money borrowed for purposes of the property — *Held* that the Bank as *T s* representatives by purchase had been properly joined as a defendant in the suit HARRISON v DELHI AND LONDON BANK

I L R 4 All 437

179 ———— *Partners—Refusal to join as plaintiffs* *A B* and *C* and others were partners in a firm and had transactions as such partners with another firm in which also *C* was a partner In a suit by the former firm against the latter *C* and other partners in the former firm refused to join as plaintiffs *Held* (reversing the decision of the Court below) that *C* and the other partners of the former firm were rightly made defendants BISSONATH RUCKITT v GUNNESH CHUNDER DEY 2 Ind Jur N S 203

RUSTOM ALLY v AMEER ALLY SOUDAGUR

10 W R 487

180 ———— *Practice—Contract Act (IX of 1872) s 43* In a suit brought upon a contract made by a firm the plaintiff may select as defendants those partners of the firm against whom he wishes to proceed allowing his right of suit against those whom he does not make defendants to be barred LUKMIDAS KHIMJI v PURSHOTAM HARIDAS I L R 6 Bom. 700

181 ———— *Contract Act (IX of 1872) s 43—Joint promissors—Suit for money against person carrying on business of a dissolved partnership—Non joinder of parties* In a ...

consisting of the defendant and another ... when the firm was dissolved since which date the defendant had carried on the business and dealt with the plaintiff *Held* that the suit was not bad for non joinder of the late partner *Per Curiam* It is not incumbent on a person dealing with partners to make them all defendants in a suit. NARAYANA CHETTI v LAKSHMANA CHETTI

I L R 21 Mad 256

182 ———— *Suit for contribution by one member of dissolved partnership against others—Adjustment of accounts* In a civil action by one or more members of a defunct firm ...

ROY 18 W R 408

183 ———— Principal and agent—*Suit against principal for acts of agent* Where a person sues another as liable for the acts of the accredited agent of the latter it is not necessary that the alleged agent should be made a party to the suit HATHI RAM v GOBIND RAM 3 Agra 131

184 ———— *Suit to recover possession under Specific Relief Act s 9—Necessary parties—Principal and agent—Suit for ejectment by party dispossessed* The plaintiffs sued under s 9 of the Specific Relief Act (I of 1877) to recover

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

pos e sion of certain land which they alleged had been in their pos es ion ince 1856 They alleged that while retaining po es ion of the aid land through care takers appointed by them they had been in the habit of yearly elling the gra s of the

th m and their servants and *T* from entering the same. Defendant No 2 denied the dispos ession and disclaimed any interest in the land Defendants Nos 1 and 3 denied that the land in que tion belonged to the plaintiffs and alleged that it was the property of *A* of whom defendant No 1 was manager and No 3 the lessee of he said land. They al o alleged that the plaintiffs had tried to take forcible pos e ion of the said land and that defendant No 1 acting on *A s* behalf prevented them They submitted that *A* was a nece sary party to the suit. *Held* that the three defendants were properly made parties to the suit and that *A* was not a necessary party Defendant No 1 (the le see) had the physical occupation of the land sued for but all three defendants not having made any declaration in taking pos ession that it was tal en for one or two of their number acquired it jointly and handed on a derivative pos e ion to the actual occupant which as against third parties ranked as their own If it was properly a sumed they all had a right to defend it if not they might all be called on for restitution As to *A* he was not actually in possession and had taken no personal part in the disposse sion He was said to be owner but that did not imply that he committed the alleged acts of defendants o insi ted on his ownership As he had not the physical possession of the land it could not be assumed that he had the jural possession merely on the assertion of the defendants He therefore having done no palpable wrong was not a neces sary party *Held* al o that defendant No 2 was properly made a defendant and that in case the disposse ion should be established he should be retained as a defendant notwithstanding his disclaimer It was possible that No 3 held the

an exclusive occupation of immovable property is given to *A* he is the proper plaintiff in a suit for po session brought under s 9 of the Specific Relief Act (I of 1877) If *B* desires to sue immedi ately on the possessory right he hould sue in *A s* name though for an injury to the reversion he (*B*) may properly sue in his own name The intention of the Specific Relief Act (I of 1877) s 9 is not to be frustrated by any private arrangement under which the ejector has acted or by which he may consent to hold on behalf of some other person. As between him and that per on his pos e sion may be that of

months. A person who has been ejected from his property in suing to recover it under s 9 of the Specific Relief Act (I of 1877) may sue the actual ejector or the person under whose orders or by whose authority the actual ejector has acted or he may sue both but the wrong doer who has taken po ession is the one from whom primarily it is to be reclaimed If a third party desire to maintain the expulsion as an act done on his behalf it is for him to come forward and avow it He may claim to be admitted as a defend ant but if he had himself a right to do what his

agent The suit against the latter will fail if he acted on due authority where that authority is hown VIRJIVANDAS MADHAVDAS *v* MAHOMED ALI KHAN I L R 5 Bom 208

185 ———— **Purchasers**—*Purchaser pen dente lite* A grantee or vendee of the defendant during the pendency of a suit need not be made a party to the suit CULABCHAND MANICKCHAND *v* DHONDI VALAD BHAU 11 Bom. 64

186 ———————— *Purchaser pen dente lite* The purchaser *pendente lite* of property

187 ———————— *Civil Procedure Code (Act XIV of 1882) ss 108 109—Whether an auction purchaser is a necessary party to an appli cation to set aside an ex parte decree* An auction purchaser of property sold in execution of an *ex parte* decree is not a necessary party to an applica tion made by the judgment debtor to set a ide the said decree inasmuch as the auction purchaser does not come under the description of opposite party in s 109 of the Code of Civil Procedure JATINDRA MOHAN PODDAR *v* SRINATH ROY I L R 26 Calc 267 3 C W N 261

188 ———————— *Suit for arrear of rent and ejectment after sale of raiyat s interest in execution of decree—Purchaser* A talukhdar in executing a decree for rent sold his raiyat s right and interest in the tenure He afterwards instituted a suit against the same raiyat for arrears and eject ment *Held* that the execution purchaser should have been made a party to the latter suit PRO SUNNO MOYEE DOSSEE *v* BHUBO TARINEE DOSSEE 10 W R 494

reversing on review BHUBO TARINEE DOSSIA *v* PROSUNNO MOYEE DOSSIA 10 W R. 304

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

189 ———— *Suit by auction purchasers at sale for arrears of revenue to annul*

Bengal Behar and Orissa sold for arrears of revenue to avoid and annul an under tenure is a right that must be exercised by all the purchasers jointly where there are more purchasers than one JATRA MOHUN SEN v AUKHIL CHANDRA CHOWDHRY I L R 24 Calc 334

AKHIL CHANDRA CHOWDHRY v JATRA MOHUN SEN 1 C W N 314

190 ———— *Suit by auction purchaser at sale for arrears of revenue to annul incumbrance—Act XI of 1859 s 37* When an estate sold for arrears of revenue is recorded in a separate number in the Collector s rent roll with a separate revenue assessed upon it and the specification in the sale certificate shows that the estate sold was an entire estate the mere fact of a portion of the lands of that estate being joint with those of certain other estates cannot stand in the way of its having an entire estate within the meaning of s 37 of Act XI of 1859 In a suit by a purchaser of such an estate at a sale for arrears of revenue to avoid an under tenure —*Held* that the proprietors of the other estates to which the land in dispute partly appertained were not necessary parties inasmuch as what the plaintiffs really asked for was not direct or actual possession of the land but indirect or constructive possession by receipt of rent to the extent of their share from the cultivating tenants upon a declaration that the intermediate tenure was cancelled by the sale for arrears of revenue KAMAL KUMARI CHOWDHRANI v KIRAN CHANDRA ROY 2 C W N 229

191. ———— Receiver—*Practice—Application for leave to sue a Receiver* The Receiver is not a necessary party to a suit for possession of immovable property SUTTYA SUTTYA GHOSAL v GOLAP MONI DEBI (1897) 5 C W N 27

192 ———— Registration suits for—*Suit to compel registration—Registrar* To a suit to compel registration of a document under s 77 of the Registration Act 1877 after denial of execution the Registrar is not a necessary party PADHA KISSEN POWRA DAKNA v CHOONEELOLL DUTT I L R 5 Calc 445 5 C L R 172

193 ———— *Registration Act III of 1877 ss 72 77—Suit to compel registration—Necessary party—Jurisdiction* To a suit under s 77 of the Registration Act (III of 1877) to obtain registration of a document the registering officer or the Government is not a necessary party and the proper *forum* for it is the Court of the lowest competent jurisdiction. WISHWAMBHAR PANDIT v PRABHAKAR BHAT I L R 8 Bom 269

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

194 ———— Rent suits for and intervenors in such suits—*Suit by one of several dar patnidars* Where a tenant held lands in six villages under a patnidar at an admitted rent and the patnidar subsequently granted dar patnis to two different parties of two and four of the said

195 ———— *Assignment of interest—Consent of assignees for assignors to sue* In a suit by patnidars for arrears of rent where parties who had subsequently acquired an interest in the patni appeared and petitioned the Court assenting to the suit being carried on in the names of the plaintiffs —*Held* that there was a sufficiently constituted suit and a sufficient array of parties to enable the Court to give a decree SREENATH MOOKERJEE v WHITE 13 W R 126

196 ———— *Suit for rent of pattidari estate—Act XIV of 1863 s 7* In a suit for the rent of a pattidari estate the lambardar is ordinarily the proper party to be sued as being the collector of the rents but under s 7 Act XIV of 1863 the several pattidars can be sued for their respective shares of rent instead of recovering it through the lambardar BHOLANATH v BISHESHUR TEWAREE 2 Agra Pt II, 165

197 ———— *Suit for rent of property surrendered to pre emptor* To a suit by a purchaser of land who had had to surrender it to a pre emptor for the rents accruing between the date of the purchase and the subsequent transfer the pre emptor ought to be made a party BULDEO PERSHAD v MOHUN 1 Agra Rev 30

198 ———— *Person preferring claim to rent opposed to plaintiff* In any suit for rent against a tenant by a person claiming as landlord the Court ought not to put on the record a person who prefers opposing claims to the plaintiff unless it sees that his position as such opponent would be seriously compromised by the result of a decree in favour of the plaintiff *e g* as when the opposing party claims to be in actual possession by receipt of rents CHOOLIE LALL v KOKIL SINGH 19 W R 248

Nor where it would change the scope and character of the suit GOOROO PROSUNNO BANERJEE v GUGUN CHUNDER DUTT 20 W R 383

HUBEEBUL HOSSEIN v MUNEERAM 24 W R 357

PROTAB CHUNDER ROY CHOWDHRY v JOGENDRO CHUNDER GHOSE 4 C L R 168

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

and make it otherwise than a *bonâ fide* suit for rent RADHA MALAKAR v SRISHTEE NARAIN SHAHA
21 W R 88

BYKUNT KABURTO DOSS v SHUSHEE MOHUN PAUL CHOWDHRY **22 W R 526**

ISSUR CHUNDER SEIN v BIPEEN BEHAREE ROY
16 W R 132

KATTYANEE DEBIA v GIRISH CHUNDER BANERJEE **23 W R 168**

199 ———————— *Question of title* In a suit for rent against a raiyat the defendant contended that the plaintiff had no interest in the

[illegible]

beneficial owner of the tenure and entitled to the rent RADHAMONEE v RAM NARAIN DEY
22 W R 440

200 ———————— *Beng Act VIII of 1869 s 31* In a suit for rent where an intervenor on his own account who pleads a deposit in Court made under Bengal Act VIII of 1869 is made a defendant by the Court the fact of his being [illegible] as be [illegible] o as to [illegible] Bengal [illegible] nor had been sued jointly with the other defendant they might have had the benefit of it GIRDHAREE LALL SINGH PASBAN v CHUNDEE PERSHAD
21 W R 277

201 ———————— *Question of title* In a suit for rent an intervenor who claims to have acquired a share of the property for which the rent is claimed may be made a defendant at the discretion of the Court If a question of title legitimately arises between the parties to a rent suit the Court is not compelled to dismiss the suit but is bound to determine the question for the purposes of the suit CHOWRASEE KOOER v BOKHOOREE SINGH **24 W R 350**

202 ———————— *Title of third party alleged by defendant—Civil Procedure Code (Act X of 1877) s 28 Per* FIELD *J*—Where a person sued for rent sets up the title of a third party and alleges that he holds under and pays rent to him such third party ought not to be made a party to the suit so as to convert a simple suit for arrears of rent into one for the determination of the title to the property in respect of which the rent is claimed Such a suit raises only two issues *viz*—(i) Does the relation of landlord and tenant exist between the plaintiff and defendant (ii) Are the alleged arrears of rent due and unpaid? And these are questions in which the plaintiff and defendant are alone concerned and no third party claiming a title adverse to the plaintiff can properly be made a party to the trial of these issues S 28 of the Civil Procedure Code is not imperative but allows a discretion to be exercised and in such a suit it is better both in the interests of Government and for the proper adjudication of the question of title that it should be tried by a competent Court in a suit directly framed and brought for that purpose LODAI MOLLAH v KALLY DASS ROY
I L R 8 Calc 238 10 C L R 581

203 ———————— *Question of title* An intervenor in a suit for rent has no right to be made a defendant or to introduce into the suit an entirely new issue *e g* one concerning title between himself and the plaintiff still less is he entitled singly to appeal against the judgment in the case BIRESSUR PANDEY v JOGENDRO CHUNDER DEB **24 W R 281**

204 ———————— *Adding parties in rent suits* Where Act X of 1859 s 77 was no longer in force the effect of adding a party under Act VIII of 1859 s 73 in a rent suit was the same as in any other kind of suit Whatever be the class of suit the party added cannot raise an issue which would entirely change the nature and scope of the suit the Court being bound to limit its inquiry to the issues necessary in order to try the plaintiff's right to the special relief sought—*e g* where the relief sought is the recovery of arrears of rent the intervenor is competent to raise all questions whether of title or otherwise which bear upon the issue is the plaintiff entitled to recover the rent claimed? TILESSUREE KOOER v AMEDH KOOER
24 W R 101

205 ———————— *Suit for arrears of rent—Question of title* In a suit for arrears of rent in which an intervenor alleging that plaintiff was merely his benamidar was added as a defendant under the Code of Civil Procedure s 73—*Held* that it was wrong to introduce him into the case and that any issue as to the alleged benami was foreign to the suit RUGHOO NATH PERSHAD SINGH v BYJNATH SAHOY **24 W R 349**

206 ———————— *Question of benami title* Plaintiff who derived title from *A* who was the ostensible purchaser of certain immoveable property at an auction sale in execution of a decree against *B* brought a suit to recover [illegible]

Court however refused to try the question of benami as not being admissible in a rent suit On appeal—*Held* that the question of benami was properly raised in the suit and ought to have been tried *Rughoo Nath Pershad v Byjnath Sahoy 24 W R 349* cited and distinguished TARINI KANT LAHIRI v KRISHNA MONI CHOWDRAINI
5 C L R 179

207 ———————— *Question of title* In a suit for rent in which an intervenor appeared the Munsif raised the question who had up to that time been in the actual and *bonâ fide* receipt

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

and enjoyment of rent • and on deciding this question in favour of the intervenor dismissed the suit On appeal the Judge tried the question of title *Held* that the Judge was wrong in raising the question of title at all and thus proceeding on a basis other than that on which whether right or wrong the parties had chosen to litigate the matter and which the original Court had accepted *Quære* Is the Munsif's procedure in this case the right one now that Act X of 1859 s 77 has been repealed and not re enacted in the new law? AULUCK MONEE DEBEE *v* DINO NATH GHOSE 24 W R 421

See WOOMA TARA *v* BHUROSA RAM DAS 24 W R 409

208 ———————— *Intervenor irregularly added in lower Court—Civil Procedure Code 1859 s 73* In a suit for rent before the Munsif the special appellant petitioned and was irregularly admitted into the suit as intervenor as if the suit were being tried under Act X of 1859 in a Revenue Court Defendants having admitted the ...

KALEE GHOSE *v* SHIBNATH BHUTTACHARJEE 17 W R 176

See OOGNEE CHOWDHRAIN *v* KERAMUTOOLLAH 17 W R 219

BIRESUR PANREY *v* JOGENDRO CHUNDER DEB 24 W R 261

209 ———————— *N W P Rent Act (XII of 1881) s 148—Landholder and tenant—Suit for rent where the right to receive it is disputed—Third person who has received rent made party—Jurisdiction of Rent Court to pass decree for rent against such party—Question of title.* In a suit by a landholder for recovery of rent the defendant pleaded that they had paid the rent to a co sharer of the plaintiff. The co sharer made a deposition in which he alleged that he was entitled to the rent not only as a co sharer but also as the appointed agent of the plaintiff The Court thereupon made him a party to the suit under s 148 of the Rent Act and passed a joint decree against him and the tenants for rent. *Held* that the Court was justified in making him a party under s. 148 of the Rent Act but was not competent to pass a decree for rent against him. A party who is brought in under s. 148 of the Rent Act cannot be made subject to the decree for rent so as to allow execution to be taken out against him whether his *bona fide* receipt and enjoyment of the rent is proved or not The only person against whom such a decree can be passed is the tenant. *Madho Prasad v Ambar I L R 6 All 503* referred to *Per* EDGE, *C J*—*Semble* That the intention of the Legislature in allowing a third person who claims under s. 148 of the Rent Act to be made a party to the suit may possibly have been that by bringing him in he may be bound by a declaration in the suit that he had in fact received the rent so as to prevent him in the civil suit from denying the fact that he had received it. In a suit by a landholder for recovery of rent in which a third person alleged to have received such rent is made a party under s 148 of the N W P Rent Act (XII of 1881) the question of title to receive the rent cannot be determined between the plaintiff and such person but can only be litigated and determined in a subsequent suit in the Civil Court The only question between the plaintiff and the person so made a party which can be determined in the Rent Court under s 148 is the actual receipt and enjoyment of the rent GOBIND RAM *v* NARAIN DAS I. L. R. 9 All. 394

210 ———————— *Intervenors in suit for registration of names as proprietors—Civil Procedure Code 1859 s 73* Plaintiffs having succeeded in a suit for a foreclosure of a mortgage by a conditional bill of sale of a share of two mouzahs then sued for possession and registration of names as proprietors Whilst this was pending certain parties intervened and asked to be made parties under s. 73 Code of Civil Procedure on the ground that plaintiff's vendors were not entitled to the full share claimed as they themselves had purchased a portion thereof *Held* that the Court exercised a wise and proper discretion in allowing the intervenors to be made ...

SINGH 16 W R 19

211 ———————— *Unregistered tenants* Parties who have not been registered in the zamindari sherishta are not entitled to intervene and question the decree passed against the registered tenants AMATUL FATIMA KHANUM *v* TARANATH CHAND 24 W R 151

212 ———————— *Appeal—Reversal of whole decree on appeal by one defendant* *D C S* the zamindar brought a suit against *B* a raiyat for recovery of arrears of rent value below R100 *B* set up in defence that the rent was not payable to *D C S* but to *N C A* the mokurraridar *N C A* who claimed under a mokurari title and alleged that he was in the receipt of the rents from the raiyat was made a party under s. 73 Act VIII of 1859 The Munsif passed a decree in favour of the plaintiff. On appeal by *N C A* which was heard and decided by the Subordinate Judge on reference by the District Judge the decree of the first Court was reversed and the suit dismissed On appeal to the High Court —*Held* that ...

defendant to the suit. DOYAL CHAND SAHOY *v* NABIN CHANDRA ADHIKARI 8 B L. R. 180 16 W R. 235

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

KUNJAL SAHU v GURU BAKSH KOER
8 B L R 184 note 13 W R 362

KANHYE ROY v HYDER BUKSH 25 W R 29

213 ——————— *Adding plaintiff—Civil Procedure Code (Act X of 1877) s 32* In a suit for rent where the defendant alleged that a person not on record had a joint interest with the plaintiff in the property in respect of which the rent was due —*Held* where the plaintiff disputed this and objected to such course being taken that it was improper to add such person as co plaintiff and that if added at all it should be as defendant in order that the issue between him and the plaintiff might be properly tried. COOGLEE SAHOO v PREMLALL SAHOO I L R 7 Calc 148

214. ——————— *Striking out name of intervenor effect of on record of suit*

15 W R 572

215 ——————— *Appeal—Defect of parties—Death of one of plaintiffs respondents—Effect of not bringing in the heirs of the deceased on the record—Suit for arrears of rent by several plaintiffs—Joint decree in favour of all* Where in an appeal by the defendant against a decree for arrears of rent passed jointly in favour of all the plaintiffs the heirs of one of the plaintiff who died subsequent to the date of the delivery of the judgment against which the appeal is preferred were not made parties —*Held* that the appeal could not proceed and must fail by reason of defect of parties BEJOY GOPAL BOSE v UMESH CHANDRA BOSE (1901) 6 C W N 196

216 ——————— *Act XII of 1881 (N W P Rent Act) s 148—Landholder and tenant—Suit for rent—Plea of payment to third person—Suit by such third person for declaration of title and*

paragraph of the section has been brought which rent has actually been paid to a third person The proviso was not intended to abridge the period of limitation for a suit on title to obtain possession or a declaration of possession of the land out of which the rent in dispute issues *Dasrath Rai v Bhirgu Pai I L R 25 All 434* overruled. *Muhammad Salim v Abdul Rahim All Weekly Notes (1885) 261 Ganga Prasad v Baldeo Ram I L R 10 All 347 Kishen Coomer Shaha v Jeebun Singh 5 W R Act X Rulings 85 Hurronath Roy v Srishtee dhur Dos s 7 W R 159* and *Ishur Chunder Sen v Beepin Behary Roy 25 W R C R 481* followed *Bhagmanee Koonwer v Fur und Ali N W P H C Rep 1866 R C A 90* referred to by KNOX J RAM LAL v MUNAWAR SHAH (F B 1902)
I L R 25 All. 83

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

217 ——————— Reversioner—*Declaratory suit by reversioner—Non joinder of other reversioners* A suit having been brought by a Hindu reversioner for a declaration that an adoption alleged to have been made by the mother of A the owner of the estate after the estate had vested in the widow of A was invalid —*Held* that the non joinder of a reversioner of equal grade with the plaintiff was no bar to the suit THAYAMMAL v VENKATARAMA I L R 7 Mad 401

218 ——————— *Suit to recover property from Hindu widow—Reversioner* In a suit to recover possession of property held by a widow the reversioner was held to have been erroneously made a co defendant KRISTO SUNKUR DUTT ROY v KOYLASH NATH DUTT ROY
15 W R 6

219 ——————— *Right of reversioner to sue for declaratory decree* A polliam was granted to a Hindu on service tenure and the last male holder died in 1860 leaving him surviving a widow K and a daughter C In 1865 the Government discontinued the service and in lieu thereof and of the reversionary interes of the Crown imposed a quit rent and an inam pottah was issued to K by the inam Commissioner by which her title to the estate was acknowledged by the Government and the estate was confirmed to her as her absolute property subject to the quit rent In 188? C and her minor son A sued K and others to whom K had alienated portions of the estate for a declaration that they were the reversionary heirs of K and that the alienations made by K were good only during the lifetime of K The District Judge held that there being no collusion between C and the defendants A was not entitled to join in the suit —*Held* that A was entitled to join C as co plaintiff NARAYANA v CHANGAIAMMA I L R 10 Mad 1

220 ——————— Sale in execution—*Suit under s 246 Civil Procedure Code 1859 by owner against purchaser of property wrongly sold in execution—Execution creditor* In a suit under the latter portion of s 246 of the Civil Procedure Code brought by the owner against the purchaser of

BANK OF HINDUSTAN CHINA AND JAPAN v PREMCHAND RAICHAND AHMEDBHAI HABIBHAI v PREMCHAND RAICHAND 5 Bom O C 83

221. ——————— Sale proceeds suit for after distribution—*Suit by attaching creditor dissatisfied with share of sale proceeds allotted to him* Where an attaching creditor dissatisfied with the share allotted to him on a distribution of sale proceeds under Act VIII of 1859 s. 270 brings a suit against the other attaching creditors and claims to have made the first attachment he is bound to include as defendants all who have

PARTIES—*contd*

1 PAPTIES TO SUITS—*contd*

shared in the distribution BROJOKANTH CHUCKERBUTTY v BANEE MADHUB DISCHIT
23 W R 434

222 ———— **Secretary of State for India, if necessary party**—*Sale for arrears of revenue suit to set aside—Public Demands Recovery Act (Bengal Act I of 1895) ss 7 8* In a suit to set aside a sale held under the provisions of the Publi Demands Pecovery Act the Secretary of ... *Bal* ...) *Calc* ... *R* 25 ... nished
COBINDA CHANDRA SHAHA v HEMANTA KUMARI DEBI (1904) I L R 31 Calc 159

223 ———— **Specific performance**—*Suit for specific performance of single contract* In a suit for the performance of a single contract the parties on each side must be mar halled as plaintiffs and defendant KAZI SHAFIA PAHAMAN v MOHLEMUNNESSA BIBI *alias* KANU BIBI
2 C W N 42

224 ———— *Purchaser from party to contract of which specific performance was claimed* The mother and guardian of a Hindu minor entered into a contract for the sale of his land The vendee sued the minor by his mother and guardian *ad litem* for pecific performance of the contract and for posse ion and joined as a defendant a sub equent purchaser from the mother and guardian *Held* that as the cause of action (the right to obtain a sale deed and possession) concerned both the defendants and entitled the plaintiff to relief against both the purchaser was rightly joined as a party *Luchamsey Orkerda* v *Fa ulla Cassumbhoy I L R 5 Bom 177* di tingui h d *Mohund Lall* v *Chotay Lall I L R 10 Calc 1061* referred to KRISHNASAMI v SUNDARAPPAYYAR
I L R 18 Mad 415

225 ———— *Suit for spcific performance of agreement to partition—Civil Procedure Code s 28* In a suit for specific performance of an agreement by the members of a joint family for partition —*Held* with reference to s 28 of the Civil Procedure Code that the third defendant a minor wa properly in luded as a party to the suit though he was not a party to the arrangement ALAGAPPA MUDALIAR v SIVARAMASUNDARA MUDALIAR
I L R 19 Mad 211

226 ———— *Vendor and purchaser—Suit by purchaser against vendor for specific performance of contract of sale—Covenant by purcha er to bui d a t mple* On the 16th November 1893 the first defendant agreed to sell a house to the plaintiff. The contract contained a covenant on the part of the plaintiff to build a temple and to secure an annuity to the ven lor and his wife On the 21st of the same month the first defendant sol l and conveyed the same house to the second defendant and put him in possession In a suit brought by plaintiff against defendants Nos 1 and 2 for specific performance of the contract of the 16th November —*Held* that the second defendant was a proper party to the suit PAMCHANDRA GANESH PURANDHAREE v PAMCHANDRA KONDAJI
I L R 22 Bom 46

227 ———— **Sureties**—*Act X of 1859—Arrears of rent—Benami lease* Some of the defendants had taken a lease in the benami name of *C P B* and were in actual po se sion of and had paid rent for the lands demised The other defendants were ureties for *C P B* A suit was brought in the Court of the Deputy Collector against tho e who were actually in possession of the land together with the sureties for arrears of rent It did no appear from the lea e how far each defendant was interested in or entitled under it *Held* by both Judges that the suit should be dismi sed as against the sureties who could not a such be sued under Act X of 1859 ROY PRIYANATH CHOWDHRY v BEPINBEHARI CHUCKERBUTTY
2 B L R A C 237 11 W R 120

228 ———— **Tenants in common**—*Non joinder of parties—Civil Procedure Code (Act XIV of 1882) s 31—Benami mortgage—Suit by some of the heirs of the real mortgagee—Joinder of causes of action* In 1880 *A* and *B* jointly advanced moneys on the security of a usufructuary mortgage which was taken in the name of *B* In 1884 *A* alone advanced moneys on the security of usufructuary mortgages which were likewise taken in the name of *B* *A* died leaving three sons of whom the plaintiffs were two The plaintiffs having become divided from their brother now brought suits in 1894 ... ion of ... ion of ... h had ... re had ... 1889 ... l years before suit the mortgagors who had remained in possession as lessees after the execution of the mortgages having refused to attorn to *B* *Held* that the suits were not bad for the non joinder of the plaintiffs brother MAHABALA BHATTA v KUNHANNA BHATTA I L R 21 Mad 373

229 ———— **Trusts suits relating to**—*Suit as to trust for specific purpose—Surplus after performance of trust* Where a trust had been created for specific purpo es vi the performance of religious and other duties and the trustee had duly appointed another trust in his place the latter being entitled to hold the trust estate —*Held* that in a suit in which all the parties interested were not before the Court there could be no decision as to the extent of the trusts nor as to whether any surplus profits of the trust estate would or would not after the performance of the trusts belong to the trustee personally BISHEN CHAND BASAWAT v NADIR HOSSEIN I L R 15 Calc 329
L R 15 I A 1

230 ———— *Suit for removal of trustees—Parties—Alienees of trustees* In a

PARTIES—*contd*

1 PARTIES TO SUITS—*contd*

suit under s 539 of the Code of Civil Procedure for the removal of a trustee it is not necessary to make the alienees from the trustee defendant parties to the suit. *Bishun Chand Basawat* v *Nadir Hossein* I L R 15 Calc 329 L R 15 I A 1 *Chintaman Bajaji Dev* v *Dhondo Ganesh Dev* I L R 15 Bom 612 and *Attorney General* v *Port Reeve of Avon* 33 L J N S Ch 172 referred to HUSENI BEGAM v COLLECTOR OF MORADABAD
I L R 20 All. 46

231. —————— *Trusts Act (II of 1882) s 56—Suit by two out of eleven beneficiaries for possession of trust property—Maintainability of suit—Succession Act (X of 1865) s 271* Two daughters of a testator sued defendants Nos 1 and 2 the testator's sons and his administrators with the will annexed and other defendants for a declaration that certain properties devised by the testator to be held in trust and the rents divided among his eleven children were trust properties and to recover possession thereof A decree had been obtained [illegible]

[illegible]

mised it on the terms that the sale should be cancelled on payment of a certain sum by defendant No 1 but that in default of such payment the decree should take effect Default having been made the property was sold *Held* (by the whole Court) that the decree of the Court below awarding the plaintiff possession of the whole property on behalf of themselves and the other beneficiaries must be reversed *Per* BODDAM J—That the alienations made in pursuance of the compromise entered into by the administrators were binding upon the plaintiffs and that therefore neither of them had any cause of action *Per* O FARRELL J—That under all the circumstances [illegible]

[illegible]

than they were entitled to did not warrant the dismissal of the suit altogether and that the suit fell within the class of cases in which relief against a third party is such as a Court of equity will administer and a *cestui qui trust* may be entitled to sue the trustees and the third party jointly but in which he will be bound to confine his suit to that specific matter in respect of which alone the third party is liable and not to make it part of a suit for the general administration of the trust and that plaintiff No 1 was not precluded from recovering her eleventh share PADMANABHA CHETTIAR v WILLIAMS **I L R 23 Mad. 239**

232 —————— *Suit to set aside trust deed—Withdrawal of suit against trustee—Consent decree—Right of trustee to appear as a necessary party in application to set aside consent decree* In a suit to set aside *inter alia* certain trust deed the trustee who was made a party did not appear The suit was afterwards withdrawn as against the trustee and a consent decree obtained which amongst other things declared the trust deed to be not binding on any party Subsequently an application was made to set aside the consent decree and notice of motion was given to the trustee She [illegible]

I L R 27 Calc 428
4 C W N 169

2 SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS

1. —————— **Suits on behalf of community**—*Some suing for whole body of person—Decree effect of* Convenience requires that in suits where there is community of interest amongst a large number of persons a few should be allowed to represent the whole and if the whole body be represented in the suit then it is proper that the whole body should be bound by the decree though some members of the body are not parties named in the record *Venkata Swami Nayakkan* v *Subba Rau* 2 Mad 1 distinguished SRIKHANTI NARAYANAPPA v INDUPURAM RAMALINGAM
3 Mad 226

2 —————— **Civil Procedure Code 1882 s 30**—*Suit for right to worship in mosque* S 30 of the Civil Procedure Code applies only to case in which many persons are jointly interested in obtaining relief and not to a case in which individual right has been violated Every Mahomedan who is entitled to use a mosque for purposes of devotion is entitled to sue any one who interferes with his exercise of that right *Zafaryab Ali* v *Bakhtawar Singh* I L R 5 All 497 referred to *Jan Ali* v *Ram Nath Mundul* I L R 8 Calc 32 dissented from JAWAHRA v AKBAR HUSAIN
I L R 7 All 178

See THAKERSEY DEVRAJ v HURBHUM NURSEY
I L R 8 Bom 432

3 —————— *Suits by individuals for general public* S 30 of the Code of Civil Procedure was not intended to allow individuals to sue on behalf of the general public but to enable some of a class having special interests to represent the rest of the class ADAMSON v ARUMUGAM **I L R 9 Mad. 463**

4. —————— *Suit against Malabar tarwad* If it is sought to make a decree in a suit binding on a Malabar tarwad the procedure laid down in s. 30 of the Code of Civil Procedure 1877 should be followed if the members are numerous A decree against a person who happens to be the karnavan of a Malabar tarwad is not necessarily binding on the tarwad in the absence of fraud

PARTIES—*contd*

2 SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*contd*

ELAYACHANIDATHIL KOMBI ACHEN *v.* KENATUMKORA LAKSHMI AMMA I L R 5 Mad. 201

5 ———— *Suit by legatees on behalf of themselves and other legatees—Costs*

such an order the next friend was *held* liable for costs on his adducing no evidence to show that the suit was for the benefit of the minor GEEREEBALLA DABEE *v.* CHUNDER KANTO MOOKERJEE I L R 11 Calc 213

6 ———— *Suit to have land declared wakf* In a suit to have certain property declared wakf alleging that it was dedicated as wakf
and shri
ing of v
plaintiff
matter of the suit. *Held* therefore that she could only sue on behalf of those interested after having first obtained leave of the Court and otherwise complied with the provisions of s 30 of the Civil Procedure Code LUTIFUNNISSA BIBI *v.* NAZIRUN BIBI I L R 11 Calc 33

7 ———— *Non joinder of parties—Civil Procedure Codes (Act VIII of 1859 and X of 1877) s 30—Representatives of a certain caste—Chitpavans* Four persons of the Chitpavan caste brought a suit in 1876 alleging that they and the members of their caste in common with certain other castes possessed the exclusive right of entry and worship in the sanctuary of a temple and that the defendants members of the Palshe caste not being of the privileged castes infringed that right in 1871 and thereafter by entering the sanctuary and performing worship therein They prayed for a declaration of their right

latter being merely regulative not constitutive Whether or not it could be contended that they and the defendants so represented their respective castes that the decree in this suit should bind all members of the two castes would be open to argument in any future case but it might well be consistent with general

bind or benefit the whole class ANANDRAV BHIKAJI *v.* SHANKAR DAJI I L R 7 Bom. 323

8 ———— *Suit for dismissal of dharmakarta—Members of District Committee*

In a suit brought for the dismissal of a dharmakarta all the members of the District Committee should join as parties The District Committee cannot divest themselves of their rights in favour of a few of their number VIRASAMI NAYUDU *v.* ARUNACHELLA CHETTI. I L R 2 Mad. 200

9 ———— *Mahomedan Association —Suit by some members for all* The Majlis Islama or Mahomedan Association of Meerut instituted a suit in its own name by its secretary *Held* that as such association had not *per se* any status in law so to sue the suit was not maintainable *Semble* Had such association empowered one or more of its members to act for it in the matter of the suit in the manner provided

I L R 6 All 284

10 ———— *Malabar law—Joinder of parties—Suit for cancellation of deeds—Declaratory suit—Withdrawal of part of claim* A and B junior members of a Malabar tarwad sued to cancel certain mortgages executed by their karnavan and senior anandravan on the ground that the secured debt was not binding on the tarwad and to appoint A to the office of karnavan The last part of the prayer was withdrawn The mortgages were executed to secure a decree debt the decree having been passed *ex parte* against the

the plaintiff s tarwad should have been joined actually or constructively under s. 30 of the Civil Procedure Code MOIDIN KUTTI *v.* KRISHNAN I L R 10 Mad 322

11 ———— *Irregularity in*

possession of that right from the defendants who they contended had dispossessed them within six months before suit It was contended by the defendants that the plaintiffs who claimed on behalf of other fishermen of the village should have proceeded under s 30 of the Civil Procedure Code (Act XIV of 1882) *Held* that the objection was a good one but inasmuch as it was still open to the defendants to establish their right by a regular suit the irregularity in the present suit was not such as to call for the exercise of the powers of

PARTIES—*contd*

2 SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*contd*

the High Court under 622 of the Civil Procedure Code BHUNDAL PANDA v PANDOL POS PATIL I L R 12 Bom 221

12 ——— *Representation of numerous plaintiff —Advertisement—Community of interest—Decree for management of a Hindu temple—Application for execution by person interested* In a suit by certain Tengalai Brahmans for declarations as to the mode of electing dharma kartas of a certain pagoda etc an order was made for a proclamation inviting all persons interested to come in and be made parties or see that others by whom they are content to be represented are made parties and a decree was passed comprising a scheme to be carried out for such election etc A person not on the record and not a member of the Tengalai community but claiming certain rights under the decree now applied to compel the observance of the scheme *Held* that the above order did not invest the suit with a representative character and the applicant had no right to apply RAGAVA v RAJARATNAM I L R 15 Mad 57

13 ——— *Suit to remove trustee of Mahomedan endowment* The right of worship of each worshipper in a Mahomedan mosque or religious endowment is an independent right wholly irrespective of the right of the other worshippers and therefore [illegible]

[illegible]

v *Akbar Hussain I L R All 178 Lutifunnisa Bibi v Nazirun Bibi I L R 11 Calc 33* and *Zafaryab Ali v Bakhtawar Singh I L R 5 All 49* referred to MOHIUDDIN v SAYIDUDDIN *alias* NAWAB MEAN I L R 20 Calc 810

See KAMARAJU v ASANALI SHERIFF I L R 23 Mad 99

14 ——— *Joint suit by persons who have a common cause of action—Declaratory decree—Denial of right—Perpetual injunction—Specific Relief Act (I of 1877) ss 42 and 54* The plaintiffs were the hereditary gors or priests residing at Dakor who ordinarily conducted their yajmans or patrons to the temple of Shri Panchhod Raiji performed worship there on their behalf and received remuneration for their services The defendants were the shevaks or ministers of the idol it was their duty to remain in constant attendance on the idol perform the daily services at the temple collect the offerings and apply the same to the purposes of the foundation On 12th October 1883 the shevaks issued rules prohibiting people from entering the Nij Mandir and Saja Mandir which were particularly sacred chambers in the temple except on payment of certain fees Every visitor was required to purchase a ticket of admission to the interior parts of the temple The plaintiffs thereupon sued for a declaration of their right of free access to the Nij Mandir and Saja Mandir at all times and on all occasions when the temple was open for purposes of public worship They alleged that the new rules framed by the shevaks constituted an infringement of their immemorial rights of going into the said mandirs without any let or hindrance of worshipping the idol there for themselves and their patrons and of receiving whatever their patrons gave them They therefore sought for a perpetual injunction restraining the shevaks from interfering with their rights The plaintiffs were 208 in number Thirteen of them obtained leave to bring the suit on behalf of themselves and the rest under s 30 of the Code of Civil Procedure (Act XIV of 1882) The defendants contended *inter alia* that the plaintiffs had each a separate cause of action that they had no right to sue jointly that they were not entitled to a declaratory decree under s 42 of the Specific Relief Act and that the plaintiff never having been obstructed in the exercise of their rights had no cause of action *Held* that the suit was rightly constituted under s 30 of the Code of Civil Procedure The rules made by the shevaks in 1883 interfered with the immemorial rights of the gors and gave a common cause of action to all the plaintiff They were therefore entitled to sue jointly *Held* also that the plaintiffs were entitled to a declaratory decree under s 42 of the Specific Relief Act (I of 1877) as their title to free access with their patrons to the sacred shrines and to receive presents from their patrons unfettered by the rules of 1883 was denied by those rules *Held* also that the plaintiffs were entitled to further relief by way of perpetual injunction under s 54 of 1877 as the defendants had threatened to invade their enjoyment of property and the invasion was such that pecuniary compensation would not afford adequate relief *Held* also that the shevaks had no authority to issue the rules of the 12th October 1883 or to levy fees from worshippers in respect of any public religious services held in the temple KALIDAS JIVRAM v GOR PARJARAM HIRJI I L R 15 Bom 309

15 ——— *Suit to remove a mohunt— Numerous parties* The numerous parties mentioned in s 30 of the Code of Civil Procedure mean parties capable of being ascertained Two plaintiffs instituted a suit on behalf of themselves and 42 other persons named in a schedule to the plaint against a mohunt of an akhra to have certain alienations of property belonging to the idol set aside and the mohunt removed on the ground that he was wasting the idol's property and setting up an adverse title to it and to have another mohunt and trustee of the property appointed [illegible]

[illegible]

established by the evidence that any Hindu who chose was at liberty to give puja or render service and worship and that others than the

PARTIES—*contd*

2 SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*contd*

plaintiffs and the 42 persons named in fact did so and that the plaintiffs and the persons named were therefore not only persons interested in the suit The plaintiffs applied for and obtained leave to institute the suit under the provisions of s 30 of the Code A decree having been made in their favour on appeal —*Held* that the suit was not one to which the provisions of s 30 were applicable as the persons interested therein not being the whole Hindu community were incapable of ascertainment SAJEDUR RAJA *v* BAIDYANATH DEB

I L R 20 Calc 397

16 ———— *Burial ground—Land belonging in common to all the Mahomedan inhabitants of a village—Encroachment by some of the Mahomedans—Right of suit of some members of a community* Where certain Mahomedans of a village brought a suit against other Mahomedans of the same village for the removal of a wall built by the defendants upon land which was found to belong in common to all the Mahomedan inhabitants of the village for the purpose of a burial ground the Judge in appeal dismissed the suit on the grounds that all the Mahomedans were not joined as parties to the suit and that the plaintiff had not obtained the permission of the first Court to file the suit under s 30 of the Civil Procedure Code (Act XIV of 1882) On second appeal —*Held* reversing the decree that s 30 of the Civil Procedure Code was not applicable to the suit which must be regarded as one in which the plaintiffs claimed to restrain the defendants from violating the common interest they all had in the land TANUDIN *v* PANDU

I L R 18 Bom 699

17 ———— *Suit by some*

with their enjoyment of tho e rights *Phillips* v *Hulton L R 2 Ch* 943 *Smith* v *Earl Brownlow L R 9 Eq 241* and *The Mayor of York* v *Pilkington 1 Atk 282* followed *Hallows* v *Fernie L R 3 Ch 467* referred to and distinguished AMEDBHOY HABIBBHOY *v* BALKRISHNA MUKUND

I L R 19 Bom 391

18 ———— *Persons having the same interest in one cause—Civil Procedure Code 1882 ss 26 and 30* In a suit for the removal of masonry structures raised by one member of a community of Hindu priests upon a certain platform on which every member of the community had individual right to perform religious rights praying also for a declaration and injunction in connection with such removal the plaintiffs were seven persons claiming relief as the panch or committee representing the whole community and also in their individual capacity It was found by the Court that the plaintiffs did not constitute the panch and that they did not in that character represent the community *Held* that s 26 of the Civil Procedure Code 1882 was only an enabling section it allowed the plaintiffs to bring a joint action and should not be read as though all persons of the community must be joined as plaintiffs *Held* also that s 30 of the Code is an enabling section and did not debar the plaintiffs from suing in their own right in this case BAIJU LAL PARBATIA *v* BULAK LAL PATHUK

I L R 24 Calc 385

19 ———— Suit against municipality—*Misapplication of fund by municipality—Right of tax payer to sue to restrain municipality from such misapplication—Specific Relief Act (I of 1877) s 56 cl (k)* A suit will lie at the instance of individual tax payers for an injunction restraining a municipality from misapplying its funds VAMAN TATYAJI *v* MUNICIPALITY OF SHOLAPUR

I L R 22 Bom 646

20 ———— Suit by worshippers—*Religious endowment suit relating to—Leave to sue—Non joinder of Advocate General—Maintainability of suit* Four worshippers at a temple who were also entitled to vote at the election of dharmakartas filed a suit for a declaration that the election of certain persons to that office was void Notice had not been given to the other worshippers nor had leave of the Court been obtained prior to the institution of that suit *Held* that the suit was maintainable notwithstanding that the Advocate General had not been joined as a party that s 30 of the Code of Civil Procedure being permissive and

to sue as the plaintiffs was not fatal to the maintainability of the suit that the Court was competent with a view of adjudicating completely and definitively on the matter in dispute to require an amendment of the plaint and that the suit need not necessarily be dismissed that the omission to apply for leave under s 30 of the Code of Civil Procedure is not in itself ground for dismissing a suit but on objection being taken the suit should not be allowed to proceed except on the terms of the plaint being amended and the requisite leave being obtained and that the granting of leave under s 30 is not a condition precedent and may take place after the institution of the suit *Jan Ali* v *Ram Nath Mundul I L R 8 Calc 32* and *Thakersey Dewraj* v *Hurbhum Nursey I L R 8 Bom 432* considered SRINIVASACHARIAR *v* RAGHAVACHARIAR

I L R 23 Mad 28

21 ———— Leave to sue—*Leave must be granted before suit* In cases where leave under s 30

PARTIES—*contd*

2 SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*contd*

of the Civil Procedure Code is necessary such leave must be obtained before the suit is brought and can not be given subsequently HARADHONE DASS v PAMDOYAL RAI I L R 21 Calc 181 note

NITYANUND GHOSE v MOHENDRO KRISTO GHOSE I L R 21 Calc 181 note

22. ———— *Suit by numerous plaintiffs—Leave to institute suit—Right of suit* S 30 of the Civil Procedure Code does not require an express permission to be recorded by the Court but if such permission can be well gathered from the proceedings of the Court in which the suit was instituted an appellate Court may (where an objection that no permission was given is taken on appeal) infer from such proceedings that permission was really granted The dictum of STUART C J in *Hira Lal v Bhairon I L R 5 All 602* dissented from DHUNPUT SINGH v PARESH NATH SINGH I L R 21 Calc 180

23 ———— *Leave to institute suit when to be given* In a suit brought under s 30 of the Civil Procedure Code the permission of the Court required by that section may be given subsequently to the filing of the suit FERNANDEZ v RODRIGUES I L R 21 Bom 784

24. ———— *Numerous persons interested similarly in the result of a suit—Permission given to some to sue on behalf of all—Permission granted of the filing of suit by some only* Held that the permission required by s 30 of the Code of Civil Procedure may be [illegible]

I L R 22 All 269

25 ———— *Civil Procedure Code (Act XIV of 1882) s 30—Leave to sue given after commencement of action—Previous refusal—Validity of suit* Leave to sue under s 30 of the Code of Civil Procedure need not necessarily precede the commencement of the suit but may be given after it has commenced Where leave has been so given it is immaterial that an application for permission to sue has been previously refused CHENNU MENON v KRISHNAN (1901) I L R 25 Mad. 399

3 ADDING PARTIES TO SUITS

(a) GENERALLY

1. ———— Discretion of Court—*Civil Procedure Code 1859 s 73* S 73 Act VIII of 1859 was permissive not imperative Discretion is vested in a Court to make persons not before it parties to a suit PORAN MUNDUI MOLLAH v SHAM CHAND GHOSE 1 W R. 228

GYARAM SEAL v ISSUR CHUNDER CHUCKERBUTTY 2 W R. 158

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(a) GENERALLY—*contd*

2 ———— Power of Court—*Suit for share of estate of deceased—Power to change to one for administration* Where one son of a deceased party sued in the Recorder s Court another son who had obtained a certificate under Act XXVII of 1860 for his share of the deceased s estate it was *held* that the Recorder had no power to transform the suit into a general administration suit The Court may under s 73 Act VIII of 1859 order all necessary parties who claim a share in the subject matter of the suit to be made parties OH LING TEE v AWKNIFEE 10 W R. 86

3 ———— Ground for adding party—*Likelihood of being affected by result of suit* A person cannot be made a party to a suit unless he is likely to be affected by the result of the suit JOY GOBIND DOSS v GOUREEPROSHAD SHAHA 7 W R 201

4 ———— *Likelihood of being affected by result of suit—Civil Procedure Code 1859 s 73 construction of* The words in s 73 of Act VIII of 1859 who may be likely to be affected by the result construed to mean likely to be affected if added as parties NGA THA YA v MI KHAN MHAW 5 B L R 371 13 W R 443

5 ———— *Likelihood of being affected by result of suit—Interest in suit—Civil Procedure Code 1859 s 73* Under 73 Act VIII of 1859 a person was not liable to be added as a party to the suit although he might be likely to be affected by the result unless he was also entitled to or claimed some interest in the subject matter of the suit KOEGLER v PROSONNO COOMAR CHATTERJEE I L R 2 Calc 472

6 ———— *Community of* [illegible] *Procedure* [illegible] ding 23 [illegible] hat where an application is made under s 32 for the addition of a person [illegible] such person [illegible]

as heirs to *B* The Subordinate Judge on the application of the plaintiffs in these suit under [illegible]

settle all the questions involved in the suit were not proper The principles on which s. 73 of A t

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(*a*) GENERALLY—*contd*

VIII of 1859 should be interpreted enunciated by SIR BARNES PEACOCK in *Joy Gobind Doss* v *Gouree Proshad Shaha 7 W R 202 Raja Ram Tewari* v *Luchman Pra ad B L R Sup Vol 731 8 W R 15* and *Ahmed Hossein* v *Khadija 3 B L R A C 28 10 W R 369* and the remarks of PONTIFEX J in *Mahomed Badsha* v *Nicol I L R 4 Calc 355* followed and applied NARAINI KUAR v DURJAN KUAR NARAINI KUAR v PIAREY LAL

I L R 2 All 738

7 ———————— *Civil Procedure Code 1877 s 32* The object of s 32 of the Code of Civil Procedure which enables a Court to add parties whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit is to enable the Court to try and determine once for all material questions common to the parties and to third parties and not merely questions between the parties to the suit VYDIANADAYYAN v SITARAMAYYAN

I L R 5 Mad 52

8 ———— **Application to be added as a party**—*Civil Procedure Code 1882 s 32* S 32 does not contemplate any application to the Court by the person propo ed to be added MOHINDROBHOOSUN BISWAS v SHOSHEEBHOOSUN BISWAS I L R 5 Calc 882

9 ———————— *Civil Procedure Code s 32—Power of Court to add party* A [illegible]

I L R 13 Calc 90

10 ———— **Power to add parties**—*Adding parties after reference to Commissioner to take accounts* After a decree has been made whereby a suit has been referred to the Commissioner s office to have accounts taken and property sold the Court has still power (if it should be found necessary) to add as fresh parties to the suit persons who are interest in its subject matter and are likely to be affected by its results VAKATCHAND LAKHMICHAND v ADVOCATE GENERAL 8 Bom. O C 96

11 ———————— *Civil Procedure Code ss 30 32—Party added after decree* A Subordinate Judge having permitted the junior widow of a Hindu to be made a party to the proceedings in execution of a decree obtained by the senior widow against a debtor of their deceased husband the High Court declined to interfere under s 622 of the Code of Civil Procedure *Quare* Whether s 32 of the Code of Civil Procedure does not give a Court a discretionary power to add parties after adjudication of the question raised in the suit LINGAMMAL v CHINNA VENKATAMAL

I L R 6 Mad. 227

12 ———————— *Party added in appeal—Civil Procedure Code s —Party added in appeal who was not a party to the suit nor a representative of such a party—Remand* When a Court hearing an appeal is of opinion that a person not a party to the suit and not entitled to be brought on the record in a representative capacity should be a party to the record its proper course is to remand the case to the Court of first instance and to direct that Court to bring on the particular person as a defendant or as a plaintiff if he consents give him time to file his statement and opportunity to produce his evidence and try the issues raised between him and the opposite side MIHIN LAL v IMTIAZ ALI I L R 18 All. 332

13 ———————— *Parties joinder of—Suit in ejectment—Persons in actual possession necessary parties* In a suit in ejectment the persons in actual po session need be joined as parties BANUBI v NARSINGRAO (1906)

I L R 31 Bom 250

14 ———————— *Mortgage suit—Necessary party* When a person who is not a proper party to a suit allows himself to be made a party defendant without any objection and an issue relating to him is raised and decided in the suit he cannot change front and insist on the Appellate Court that an error has occurred in making him a party and that the issue was not triable in the action BHAJU CHOWDHURY v CHUNI LAL MARWARI (1906) 11 C W N 284

15 ———— **Limitation**—*Civil Procedure Code (Act XIV of 1882) s 32—Adding party to suit after period of limitation—Limitation Act (XV of 1877) s 22* *Held* (by the Full Bench) that a Court acting under the second paragraph of s 32 of the Code of Civil Procedure is bound by the provi ons of s 22 of the Limitation Act *Girish Chunder Sasmal v Dwarka Nath Dinda I L R 24 Calc 640* and *Fakera Pasban* v *Bibi A mununissa I L R 27 Calc 540* overruled. *Imam Ali* v *Baij Nath Ram Sahu 10 C W N 551* approved *Oriental Bank Corporation* v *Charriol I L R 12 Calc 642* explained RAM KINKAR BISWAS v AKHIL CHANDRA CHAUDHURI (1907) I L R 35 Calc 519

(*b*) POWER OF REVENUE COURTS TO ADD PARTIES

16 ———————— *Civil Procedure Code 1877 s 32—Act XVIII of 18 (N W P Rent Act)* B and N the mortgagees of a mehal granted the mortgagors a lea e of the mehal the mortgagors agreeing to pay the mortgagees a certain rent half yearly on account of the right they held in equal shares and that on default of payment of such rent the mortgagees should be entitled to sue for payment The mortgagors having made default in payment of the rent and N refusing to join in a suit against the mortgagors to enforce payment B sued them alone for a moiety of the rent due The Revenue Court of first in

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(b) POWER OF REVENUE COURTS TO ADD PARTIES —*contd*

tance held with reference to s 106 of Act XVIII of 1873 that *B* could not be separately *Held* by the High Court that the order of the Revenue Court of first appeal directing *inter alia* that the Court of

I L R 2 All 264

( ) PLAINTIFFS

17 ———— Time for adding plaintiff—*Civil Procedure Code 18 7 s 27 Exercise of power under* Per PONTIFEX J—The power given by s 27 of the Code of substituting or adding a plaintiff ought to be exercised before the first hear ing of the case CHUNDER COOMAR ROY *v* GOCOOL CHUNDER BHATTACHARJEE I L R 6 Calc 370

18 ———— Right of plaintiff barred by limitation—*Civil Procedure Code 1859 s 73* No person ought under s 73 to be added as a plaint iff whose right of action is barred by the law of limitation. KISHEN LALL CHOWDHRY *v* CHUNDER COOMAR ROY W R 1864 152

GOPAL KASHI *v* RAMABAI SAHEB PATVERDHAN 12 Bom 17

19 ———— *Civil Procedure Code ss 27 and 32—Limitation—Institution of suits—Change of parties* The change of parties as plaintiffs in conformity with the provisions of s 27 of the Code does not give rise to such a question of limitation as arises upon the addition of a new per on as a defendant under s 32 SUBODINI DEBI *v* GANODA KANT ROY I L R 14 Calc 400

20 ———— *Joinder when too late—Rejection of plaint—Joint cause of action—Limitation Act (XV of 1877) s 22* A who with his three brothers composed a joint Hindu

them as co plaintiff by reason of s 22 of the Limitation Act (XV of 1877, a suit on the debt being by that time time barred. The three brothers at the hearing expressed their willingness that A should sue alone *Held* that such assent did not obviate the necessity of joining all the proper parties as co plaintiffs and that the suit therefore as framed would not lie *Held* further that *A* would have been in no better position had he joined his three brothers as co plaintiffs after the suit was as regards them time barred since such a suit would have been virtually a suit by himself alone and therefore bad *Boydonath Bag* v *Grish Chunder Roy* *I L R 3 Calc 26* dissented from KALIDAS KEVALDAS *v* NATHU BHAGWAN I L R 7 Bom 221

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(c) PLAINTIFFS—*contd*

21 ———— *Suit by members of joint Hindu family carrying on business in partnership—Joint co contractors* Two of the sons out of a joint Mitakshara family consisting of a father and three sons and the widow and sons

July 1880 and came on for hearing on the 26th July when an objection was taken that all the parties who ought to sue were not on the record On the application of the original plaintiffs the names of the father and the third son were then

that the additional plaintiffs were rightly made parties to the suit notwithstanding that the suit was as far as they were concerned barred In actions of contract it is the right of the defendant if he takes the objection in proper time to insist upon all the persons with whom he con tracted being joined as plaintiff and if after the objection has been raised the plaintiff proceeds with the suit without taking steps to add the person or persons whose non joinder has been objected to and the Court finds that the objection is well founded the suit must be dismissed *Held* that inasmuch as the original plaintiffs could only enforce their claim in conjunction with the added plaintiffs and the added plaintiffs were barred by s 22 of Act XV of 1877 the claim of the original plaintiffs was also barred *Boydonath Bag* v *Grish Chunder Roy I L R 3 Calc 26* dissented from There is no equity but often much injustice in allowing one joint contractor out of many to sue a defendant notwithstanding an objection duly made by the latter and the Court has no right to allow one contractor to recover under such circumstances though he may no doubt afterwards adjust the sum which he recovers with his co contractors. RAM SHEBUK *v* RAMLALL KOONDOO I L R 6 Calc 815 8 C L R 457

22 ———— *Civil Procedure Code s 32—Suit by surviving partner for debts due to firm—Limitation Act 1877 s 22* Except possibly in the case of an assignment by the other

Chandar Sekhar I L R 9 All 486 referred to A Court may under s 32 of the Code of Civil

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(c) PLAINTIFFS—*contd*

Procedure add a party necessary to a suit although it may be obliged by the Indian Limitation Act 1877 to dismiss the suit after such party has been added *Ramsebuk* v *Ram Lall Koondoo I L R 6 Calc 815* and *Kalidas Keval Dass* v *Nathu Bhagwan I L R 7 Bom 217* referred to *Oriental Bank Corporation* v *Charriol I L R 12 Calc 64*' discussed. IMAM UD DIN v LILADHAR.

I L R 14 All 524

23 ——————— *Non joinder of parties—Application to join necessary parties refused by Court of first instance—Application granted by Court of Appeal—Order to add parties operating nunc pro tunc—Delay the act of the Court—Limitation.* The plaintiffs as sharers in certain rent alleged to be due by the defendants sued to recover their share The defendants contended that all the co sharers were necessary parties At the hearing on the 24th January 1889 the plaintiffs co sharers applied to be made co plaintiffs and to be allowed to adopt what the plaintiff had done in the suit The application was rejected and the suit was dismissed for want of parties On appeal the District Court in July 1890 holding that the lower Court ought to have joined the co sharers passed an order making them co plaintiffs and then confirmed the lower Court s decree on the ground that at the time (3rd July 1890) the co sharers were made plaintiffs the suit was barred by limitation On appeal to the High Court — *Held* remanding the case that the order of the lower Appeal Court of the 3rd July 1890 allowing the co sharers application which had been made on the 24th January 188[illegible] but had been refused by the Court of first instance should be treated as operating *nunc pro tunc* and that the co sharers should be regarded as having been made parties to the suit when their application was made The delay was attributable to the act of the Court and the plaintiffs should not suffer from it RAMKRISNHA MORESHWAR v RAMABAL

I L R 17 Bom 29

24 ——————— *Non joinder of parties—Suit in name of a firm by its manager—Addition of name of other partner as co plaintiff—Misdescription of plaintiff—Civil Procedure Code (Act XIV of 1882) s 27—Limitation Act (XV of 1877) s 2[illegible]* This suit was brought to recover a debt due to the firm of K S The plaintiff was described as the firm of K S [illegible]

[illegible]

The order of the words in the vernacular plaint showed that S the manager did not sue in his own name The defendants were entitled to have the name of the other partner disclosed but it being found as a fact that S was entitled to sue for the firm the addition of M s name on the record came within the provisions of s 27 of the Civil Procedure Code KASTURCHAND BAHIRAV DAS v SAGARMAL SHRIRAM

I L R 17 Bom 413

25 ———————**Suit by one partner on joint cause of action**—*Consent of other partners to suit proceeding—Refusal to amend plaint on appeal* A suit was instituted by one only of the partners of a firm in respect of a cause of action which had accrued to all jointly Notwithstanding that objection to the non joinder of the other partners was duly taken the plaintiff contented himself with putting in a petition on behalf of the other partners intimating their willingness that the suit should proceed in the sole name of the plaintiff instead of applying to the Court to add the other partners as plaintiff On appeal the High Court admitted the objection and refused under the circumstances to add the other partners as plaintiffs DULAR CHAND v BALRAM DAS

I L 1 All 453

26 [illegible]

administration to *B s* estate was on the application of *A* at a hearing of the suit made a co plaintiff under s 32 of the Civil Procedure Code *Held* that *C* ought not to have been joined as a plaintiff in the suit inasmuch as *A* had no right at all to sue S 32 as far as the addition of plaintiffs is concerned only applies to those cases in which the original party who brought the suit had some title to sue CHUNDER COOMER ROY v GOCOOL CHUNDER BHUTTACHARJEE I L R 6 Calc 370

27 ——————— *Joinder of a party co plaintiff having interest in a suit in which original plaintiff is found to have no interest—Civil* [illegible]

plaintiff who has an interest cannot alter the plaintiff's position or confer on him any right of suit BHANU TUKARAM SHET v KASHINATH PAND SHET

I L R 20 Bom 537

28 ——————— *Adding as plaintiff a defendant who has assigned his interest in suit where original plaintiff has no right of suit—Civil Procedure Code 188[illegible] ss 2[illegible] and [illegible]* A defendant who has assigned all his rights in the subject matter of the suit and has no longer any interest in it has no right to be made a co plaintiff A plaintiff who has no right of action when he brings his suit cannot remedy the defect and acquire the

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(c) PLAINTIFFS—*contd*

right by joining with him persons who have the right of action ABDUL HAK v GULAM JILANI
I L R 20 Bom 677

29 ——————— *Civil Procedure Code 1882 s 32—Suit by benamidar* A mortgage bond was executed ostensibly in favour of *R* but *J* was the real mortgagee A suit was brought by *R* the benamidar to enforce the bond *J* the real mortgagee made over the debt on a date previous to the suit but executed the formal deed of assignment on a date subsequent thereto The assignees were then added as plaintiffs to the suit *Held* that a benamidar may sue and distinguishing the case of *Chunder Coomer Roy v Gocool Chunder Bhuttacharjee I L R 6 Calc 370* that the assignees were rightly added as plaintiffs under s 32 of the Civil Procedure Code *Held* also that s 32 is wide enough to meet every case of defect of parties and further that the power to add parties must be exercised with reference to the interests which those parties have at the time when the addition is being considered BHOLA PERSHAD v RAM LALL I L R 24 Calc 34

30 ——————— *Action for slander* Plaintiff sued first defendant for damages for slander of plaintiff s sister The Court regarding the suit as defective for want of parties made plaintiff's sister a co plaintiff under s 73 Act VIII of 1859 *Held* that the defect was one not to be remedied under that section and that as there was no right of suit in the plaintiff the suit should have been dismissed SUBBAIYAR v KRISTNAIYAR I L R 1 Mad 383

31 ——————— *Procedure* In a suit by reversioners to set aside an alienation by the widow where the Court finds that not the plaintiffs but another reversioner not represented on the suit had such right it should not adjudicate on the propriety or otherwise of the alienation but the suit should be dismissed GOSAIN SHIVA RAM v PURGHO RAI 2 Agra 44

32 ——————— *Suit to cancel*

the original proprietors *C* and various tenants defendants *C* objected that *A* had no right of suit or cause of action as he had parted with all his rights to *D* and *E* and that as his entire interest in the estate was only 8 annas he could not sue to cancel a part only of the sub tenures *D* and *E* then applied to be added as parties and were made plaintiffs *Held* that *A* had no cause of action as he had previously parted with all his rights as zamindar to cancel these tenures in favour of *D* and *E* nor could *D* and *E* sue as they were not purchasers of an entire estate That *A* having no cause of action it was not competent to the lower Court to add *D* and *E* as plaintiffs and so introduce a right of action which did not previously exist DWARKANATH PAL v GRISH CHUNDER BANDOPADHYA I L R 6 Calc 827

33 ——————— **Consent to be added as plaintiff**—*Civil Procedure Code (Act X of 1877) s 32* Under s 32 of the Code of Civil Procedure no person can be added as a plaintiff unless he has previously consented thereto and if a person objects to be added as a plaintiff the proper course is to make him a defendant UMA SUNDARI DASI v RAMJI HALDAR I L R 7 Calc 242
9 C L R 13

See TARA CHUNDER BANERJEE v AMEER MUNDUL 22 W R 394

where it was *held* under s 73 of Act VIII of 1859 that persons might be made co plaintiffs without their consent

34 [illegible]

claim partition sued the owner of the other 4 annas for a partition making his lessors co defendants *Held* that they might properly have been made co plaintiffs and that the Court of first instance should under Act VIII of 1859 s 73 make them such GOUR CHURN SOOT v JUGOBUNDHOO SEN
22 W R 437

35 ——————— *Adoption after suit by widow—Co plaintiff* Where a Hindu widow instituted a suit in respect of rights inherited by her from her deceased husband and then adopted a son *Held* that under s 73 of the Code of Civil Procedure the adopted son might be made a co plaintiff PARAVARTANI v AMBALAVANA PILLAI *Ex parte* PARAVARTANI 1 Mad. 197

36 ——————— *Widow as guardian and in her own right* *Per* KEMP J —Where the son of a Hindu widow died after her re marriage and she sued as guardian of her daughter by her first husband claiming the estate of her son an application by her to be joined as co plaintiff in her own right was allowed OKHORAH SOOT v BHEDEN BARIANEE 10 W R 34

37 ——————— *Suit for work done ignoring power given to another to sue.* *J M* executed in favour of *P* an instrument (authorizing

PARTIES—*cont'd*

3 ADDING PARTIES TO SUITS—*contd*

(c) PLAINTIFFS—*contd*

P to recover by suit or otherwise from *Messrs W and N* a sum of R22 500 or thereabouts) which contained this clause From whatever sum *P* may recover from *Messrs W and N* he is to pay himself the sum of RS 640 which is due to himself and also the expenses he may incur in making recovery and he is to hand over the surplus to me *J M* ignoring the above instrument sued *N* for the R22 500 mentioned in it *P* thereupon applied to be made a party to the suit under s 73 of the Code His application was granted and he was joined as a co plaintiff *Held* that *P* was properly made a party but as the validity of the instrument was disputed by *J M P* should rather have been joined as a defendant than as a plaintiff PESTANJI MANCHARJI WADIA v MATCHETT 7 Bom. A C 10

38 ———— *Suit on behalf of minor without certificate—Adding party—Costs* A suit having been instituted by a guardian in the name of an infant without a certificate under Act XL of 1858 was dismissed by the lower Appellate Court The minor on coming of age applied ... record The ... 1859 ordered ... intiff and that ... But as the dismissal by the lower Court was correct so far as the materials before the Court enabled it to deal with the suit the order of remand was not to take effect until all the costs of the defendant had been paid by the plaintiffs. MADHUB CHUNDER CHOWDHRY v BUKTESSUREE DEBEA 12 W R 102

39 ———— *Suit by father for joint property—Transportation of father—Sons added as plaintiffs* I sued his brothers for his share of the estate of their deceased father the ...

estate *Held* that under the circumstances the application was properly granted BYREDDI NARAKKA v CHINNA NARAYANA REDDI.
I L R 6 Mad 331

40 ———— *Civil Procedure Code 1882 s 30—Joinder of parties—Suit for cancellation of deeds—Declaratory suit—Withdrawal of part of claim* *A* and *B* junior members of a Malabar tarwad ...

... mortgages were executed to secure a decree-debt the decree having been passed *ex parte* against the late karnavan of the tarwad No fraud was alleged but the lower Courts found that the karnavan had been guilty of fraud in allowing the decree to be passed *ex parte*. The plaintiffs had not been parties to the decree and the other junior members of the tarwad who had been joined were exempted from liability *Held per Curiam* All the members of the plaintiffs tarwad should have been joined actually or constructively under s 30 of the Civil Procedure Code MOIDIN KUTTI v KRISHNAN
I L R 10 Mad 322

41. ———— **Malabar Law**—*Non joinder of plaintiff—Endowment—Suit by one of two co uralans* In a suit by one of two co uralans of a Malabar devasom to recover land the property of the devasom the other uralan being joined as defendant there was no evidence that the latter had repudiated the right of the plaintiff to sue in conjunction with himself and it appeared that he had not been consulted as to the institution of the suit *Held* that the suit was bad for non joinder of the co uralan as plaintiff PARAMESWARAN v SHANGARAN I L R 14 Mad 489

42 ———— *Property vested in three sabhas—Suit by members representing two—Maintainability of suit* A temple was managed by three sabhas and members representing two only of such sabhas brought a suit to recover land belonging to it without alleging that the members of the third sabha had been consulted with reference to the suit or that they had repudiated the right of the plaintiff to sue in conjunction with that sabha Permission to sue as representing the whole of the members of the three sabhas had been refused *Held* that the suit was not maintainable PURAMATHAN SOMAYAJIPAD v SANKARA MENON
I L R 23 Mad. 82

43 ———— *Malabar law—Suit by one of two uralans to recover property demised on kanom—Non joinder of the only other uralan as co plaintiff—Joinder as defendant—Evidence of adverse acts—Maintainability of suit* One of two *uralans* sued to redeem property which had been demised to the defendants on *kanom* He did not join the other *uralan* as a co plaintiff but impleaded him as a defendant The other *uralan* had granted a renewal of the *kanom* and plaintiff in his suit ignored that renewal and contended that it was invalid On objection being raised that the suit ...

doubted. MARIYIL PAMAN NAIR v NARAYANAN NAMBUDIPIPAD (1902) I L R 26 Mad 461

(d) DEFENDANTS

44 ———— **Ground for adding defendants**—*Claims opposed to that of plaintiff* Only persons whose claims must necessarily be taken into consideration before deciding on the plaintiff s

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(*d*) DEFENDANTS—*contd*

title hould be joined as defendants in a suit GOVERNMENT v FERGUSSON 9 W R 158

45 ——— *Prevention of unnece ary litigation—Discretion of Judge* The object of s 73 Act VIII of 1859 is to prevent needles litigation and there are cases—*e g* as

46 ——— *Lil lihood of being affected by result of suit—Civil Procedure Code 1859 s 73—Raising unnecessary i sues*

acqui ced in the irregularity and the uit went to trial on the issues rai ed by the added defend ant the High Court did not think it necessary to quash the pro eedings PADMALOCHAN SEN v LAL CHAND GUPTA

1 B L R S N 26 10 W R 283

47 ——— *Lil elihood of being affected by esult of suit—Civil Pro edure Code 1859 s 73—Discretion of Court—Suit for posse sion—Form of decree* In a suit to recover pos se sion of a certain mouzah claimed by the plaintiff as a portion of his dar patni talukh which was

cation was granted the added defendants were found to be possessed of the share which they claimed and on the proofs which they adduced the plaintiff s claim was dismissed The plaintiff s claim as again t the original defendant who made no opposition was decreed In special appeal on the ground that they should not have been made defendants and that the plaintiff was not bound to prove his ca e against anybody else but the person again t whom he had brought the suit —*Held* that the s 73 Act VIII of 1859 leaves to the Courts of original juri diction a di cretion in such cases that the section is not limited entirely to cases where the suit as framed cannot proceed that the words persons who may be likely to be affected by the result do not mean per ons on whom the result would be legally binding KALIPRASHAD SING v JAINARAYAN ROY

3 B L R A C 24 11 W R 361

48 ——— Application to add defend ant—*Suit to set aside certificate and for posses sion* The plaintiff claimed to be entitled as cousin of one *M* to 12 annas of the estate left by *M* and brought a suit against the two widows of *M* to whom a certificate had been granted under Act XXVII of 1860 to set aside the certificate and for po session of the estate with mesne profits from the death of *M* to the institution of this suit A and others who claimed to be entitled to a portion of th property specified in the plaint intervened and a ked to be mad defendants under s 73 of Act VIII of 1859 *Held* that they were not parties likely to be affected by the result within s 73 of the suit and should not have been made parties to the suit AHMED HOSSEIN v KHADIJA

3 B L R A C 28 note 10 W R 369

49 ——— *Civil Procedur Code 1859 ss 73 350—Act XXVII of 1860 s 4—Certificate of administration—Suit by co heir against hol ler of certificate* In a suit again t a co heir who had obtained a certificate under Act XXVII of 1860 for an account of the estate of the decea ed proprietor a third party was added as a defendant under s 73 of Act VIII of 1859 it appearing from the accounts put in that a large portion of the as ets had been disposed of by him as agent of the holder of the certificate On appeal —*Held* that a co heir is entitled to follow property of the decea ed into the hands of any per on who has misappropriated it and such right is not taken away by the certificate Therefore any per on who with the consent of the holder of the certificate has im properly posses ed himself of property belonging to the deceased and misappropriated it may be joined as a co defendant The third party was rightly o joined in this case NGA THA YA v MI KHAN MHAW 5 B L R 371 13 W R 443

50 ——— *Corporate body suit by an agent—Civil Procedure Code 1859 s 73* Where a corporate body—*e g* the East Indian Railway Company—is sued not in its corpo rate capacity but through an agent the corporate body is not likely to be affected by the result of the suit A Court is justified in refusing an applica tion to make such corporate body a party in the suit under s 73 Act VIII of 1859 NUBEEN CHUNDER PAUL v STEPHENSON

15 W R 534

51 ——— Adding defendant—*Civil Procedure Code 1859 s 73—Suit for partition—Adverse title* In a usit for a butwarra on the alle gation that defendant had encroached upon certain ijmali lands the latter urged that the *said lands* were not ijmali but the elf acquired lands of his (defendant s) son who ought to be made a party *Held* on review of a previous decision that as the son s interest was not adverse both to himself and defendant unless the point raised was cleared up the butwarra could not stand and the son mu t therefore be made a party under s 73 Act VIII of 1859 JOY KISHEN MOOKERJEE v RAJ KISHEN MOOKERJEE 16 W R 101

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(*d*) DEFENDANTS—*contd*

52 ———————— *Suit for possession after foreclosure—Civil Procedure Code 1859 s 73* An intevenor claiming under a title adverse to that set up both by the plaintiff and the defendant might be made a defendant under s 73 Act VIII of 1859 if his interest in the subject matter of dispute was likely to be affected by the decision between them as in a suit for possession by foreclosure of a mortgage in which the defendant admitted the fact of the mortgage but the intervenor came in declaring the mortgage to be false and collusive between the alleged mortgagor and mortgagee for the purpose of depriving him of a mokurari tenure which he held in the alleged mortgagor s estate SARODA PERSHAD MITTER *v* KYLASH CHUNDER BANERJEE 7 W R 315

53 ———————— *Persons likely to be affected by result of suit—Intervenor—Civil Procedure Code 1859 s 73* A person could not be made a party to a suit under s 73 Act VIII of 1859 [illegible]

[illegible]

54 ———————— *Intervenors—Civil Procedure Code 1859 s 73* Plaintiff sued to recover possession of a share of an estate which he alleged he purchased from the principal defendant who denied plaintiff s title on the ground that the purchase money had not been paid Subsequently certain per[illegible] they held a [illegible] turned out [illegible] ants under [illegible] appeared that the possession sought by plaintiff was khas possession. *Held* that although it was *primâ facie* necessary for the intervenors to be made defendants yet after the intention of the [illegible] be gained [illegible] n if the [illegible] KEWUL [illegible] R 334

55 ———————— *Suit for eject*[illegible]

[illegible] could not change the character of the suit and if they do wish to establish their own title otherwise than through the tenant they should bring a separate suit. GANU BIN HANMANTRAV *v* MORO GANESH 10 Bom. 429

KARTICK NATH PARRAY *v* CHUMMUN ROY 21 W R. 51

56 ———————— *Suit for declaration of title to portion of land* In a suit for establishment of title to a portion of land with which defendants repudiated all connection alleging the land to be in the possession of third parties who were in consequence made defendants by an order of the Court under s 73 Civil Procedure Code —*Held* that these parties were rightly made defendants as having been interested both in the subject matter and in the result of the suit and even if they had been wrongly made defendants the onus would under the circumstances remain on the plaintiffs RAM TARUCK GHOSSAL *v* RADHA BULLUB SIRCAR 15 W R 97

57 ———————— *Intervenor in application for attachment before judgment—Civil Procedure Code 1859 ss 86 246* Where a plaintiff applied for attachment of certain property before judgment under s 81 and a third party intervened claiming to hold the property by purchase on his own account *Held* that such intervenor ought not [illegible]

58 ———————— *Intervenor—Suit for specific performance* In a suit to enforce the performance of a contract on the allegation that defendant had received the consideration money but refused to execute the conveyance a third party intervened alleging a subsequent conveyance [illegible]

irregular to place an intervenor upon the record and decide an issue between him and the other parties to the suit GUDADHUR CHATTERJEE *v* RAJ KRISTO ROY 13 W R 73

59 ———————— *Joint creditor* Where one of several joint creditors who has no rights separate from that of the others refuses to join in the suit as plaintiff and there is no averment of collusion on his part with the defendants he cannot rightly be made a defendant in the suit KRISHNARAV RAMCHANDRA *v* MANAJI BIN SAYAJI 11 Bom. 106

GURU PRASHAD ROY *v* RAS MOHUN MUKHOPADHYA 1 C L R 431

60 ———————— *Civil Procedure Code (Act X of 1877) ss 28 and 32—Judicature Act Order XVI rules 3 and 6* The plaintiffs brought a suit to recover certain sums of money from the defendants due to them under certain contracts which they alleged had been entered into by themselves and one *A D* as agent of the defendants and asked for an account The defendants in their written statement contended that there was no privity of contract between themselves and the plaintiffs and denied the alleged agency of *A D* The plaintiffs before the hearing applied to the

PARTIES—*contd*

3. ADDING PARTIES TO SUITS—*contd*

(*d*) DEFENDANTS—*contd*

Court to have *A D* added as a party defendant under s 28 and 32 of Act X 1877 asking to be allowed to amend their plaint so as to pray for relief in the alternative against the original defendants or the said *A D* or both against the original defendants and the said *A D* *Held* that under s 28 they were entitled to the order on the authority of the case of *Child* v *Stenning L R 5 Ch D 695* BUDDREE DOSS v HOARE MILLER & Co

I L R 8 Calc 170

61. ———— *Vendor and purchaser—Joinder—Civil Procedure Code 1877 s 32* In a suit by the purchaser of goods by sample

[illegible]

amples of the goods as a defendant alleging that the question between the plaintiff and themselves was the same as that between themselves and their vendor *Held* refusing the application that the plaintiff ought not to have made the vendor to the defendants a party to the suit and that his presence was not necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit MAHOMED BADSHA v NICOL FLEMING & Co

I L R 4 Calc 355 2 C L R 330

62 ———— *Mortgagees of property—Suit to recover title deeds* In a suit by a father against a son to recover the title deeds of certain property alleged to have been purchased by the plaintiff in the name of the defendant when the latter was about two or three years old which title deeds were said to be fraudulently retained by the son the defendant did not appear but two other persons who alleged that they were mortgagees from the son were made parties *Held* that they should not have been made parties under s 73 of the Civil Procedure Code 1859 simply on the ground that they had lent money to the son on the security of the property AKBUR ALI v MAHOMED FAIZ BUKSH 15 W R 12

63 ———— *Suit for partition—Mortgagee of interest of co owner—Civil Procedure Code (Act X of 1877) s 32* In a suit for the partition of joint family property the mortgagees of the right title and interest of the plaintiff applied under s 32 of the Civil Procedure Code to be added as parties *Held* that their presence was not necessary in order to enable the Court effectually and completely to adjudicate and settle all the questions involved in the suit within the meaning of s 32 MOHINDRO BHOOSUN BISWAS v SHOSHEE BHOOSUN BISWAS

I L R 5 Calc 882

64 ———— *Civil Procedure Code (Act XIV of 1882) ss 32 and 372—Mortgagee added as party—Purchaser pendente lite—Mortgage before suit of defendant s interest* A sued V and S to establish his right to attach a certain house in execution of a decree obtained by him in a previous suit In their written statement the defendants alleged that A had obtained the decree in question by fraud Shortly before the present suit V had mortgaged the house to H for R33 000 About three weeks after the suit had been filed H advanced a further sum of R5 000 to V on the same security and on the same day (12th December 1881) entered into an agreement with V by which he agreed to buy the house for R45 000 the sale to be completed immediately after the decision of the present suit The agreement provided that V should defend the suit but if the result of the suit should be to establish the plaintiff s right to seize the house in execution then that H should be at liberty to cancel the contract of sale Subsequently V wrote to H declaring his intention of abandoning his defence H thereupon applied to be made a defendant to the suit in order to protect the house from the plaintiff *Held* that H was entitled to be made a party under ss 32 and 372 of the Civil Procedure Code (Act XIV of 1882) AHMEDBHOY HUBIBHOY v VULLEEBHOY CASSUMBHOY *Ex parte* HASSANBHOY VISRAM I L R 8 Bom 323

65 ———— *Suit for possession after rejection of claim under s 246 Civil Procedure Code 1859* M divided her estate among her children retaining for herself one seventh which was afterwards increased by a portion of what had been given to one of the sons who died M s rights in the estate were sold in execution to D who sold them to N who sold them to K K brought a suit against certain parties who held the estate in zur i peshgi from M and her family for possession of the whole estate but obtained a decree for one seventh only giving him possession conditionally on his paying to the zur i peshgidars M s proportion of the loan This decree was confirmed on appeal and K made liable for the costs of those defendants in respect of whom his claim had been dismissed Meantime B an

[illegible]

by R a son of B whose claim was summarily rejected and K s rights were bought by one A R then brought a suit within one year to set aside

[illegible]

PARTIES—contd

3 ADDING PARTIES TO SUITS—contd

(d) DEFENDANTS—contd

claim was barred by limitation against L on the ground of non possession within twelve years and in respect of the zur i peshgidar because K's decree had lapsed by delay in execution. *Held* that L was interested in the result of the suit and the lower Courts committed no error in law in admitting her to be a defendant under s. 73 Civil Procedure Code 1859 RAM SURUN SINGH v MAHOMED AMEER 13 W R 78

66 ———— *Official Assignee—Suits against insolvent pending at time vesting order is made* The Official Assignee has no legal right under the Insolvent Act to apply to be made a party to suits against the insolvent pending at the time of a vesting order being made nor has he the power after judgment and decree have been pronounced in a suit against the insolvent prior to his vesting order to get himself made a party to such suit with a view of setting aside the judgment or appealing therefrom *In re* HUNT MONNET & Co *Ex parte* GAMBLE v BHOLAGIR MANGIR. 1 Bom. 251

67 ———— *Suit originally against owners—Amendment of plaint—Ship added a party defendant* In a suit for collision originally filed against the owners of a ship —*Held* that the plaintiffs might amend the plaint by adding the ship as a party defendant BOMBAY AND PERSIA STEAM NAVIGATION COMPANY v SHEPHERD I. L. R. 12 Bom. 237

68 ———— *Civil Procedure Code 1882 s 32—Joinder of new defendant against whom the plaint prays no relief* Suit upon a bond of which the obligor was therein described as the manager of a certain muth The defendants who were the sons of the obligor (since deceased) pleaded that the debt was contracted by their father for the benefit of the muth and as manager of the muth. The Judge ordered that the representative of the muth be joined as defendant in the suit under 32 of the Code of Civil Procedure and subsequently a decree was passed against him *Held* that the order under s. 32 was right although the plaint had prayed for no relief against the muth THIPTHASAMI v GOPALA I. L. R. 13 Mad. 32

69 ———— *Civil Procedure Code 1882 s 43 —Non joinder of parties—Persons having interest in suit.* The holder of an impartible zamindari governed by the law of primogeniture having a son, executed a mining lease of part of the zamindari for a period of twenty years by which no benefit was to accrue to the grantor unless mining operations were carried on with success and the commencement of mining operations was left optional with the lessee On the death of the grantor his minor son and successor by the Collector of the district as his next friend (authorized in that behalf by the Court of Wards), now sued the assignee of the lessee to have the lease set aside The defendant had executed a declaration of trust

in respect of his interest in favour of certain persons who were not joined. *Held per* MUTTUSAMI AYYAR and WILKINSON JJ (affirming the judgment of PARKER J) that the defendant s interests not having been shown to be hostile to those of the persons entitled under the declaration of trust the suit was not bad for non joinder BERESFORD v RAMASUBBA. I L. R. 13 Mad. 197

70 ———— *Dismissal of suit for non joinder of parties —Necessary party —Civil Procedure Code (Act XIV of 1882) ss 28 32 29 and 315—English Judicature Act 1875 Order XVI rules 11 and 48* On a suit brought by the plaintiff for the establishment of his right to and confirmation of possession to certain immoveable property and for a declaration that it was not liable to attachment and sale in execution of certain decrees held by defendants 1 to 4 against defendants 5 to 7 the defence mainly was that it was not maintainable in the absence of certain persons, who like the defendants 1 to 4 had obtained decrees against defendant 5 to 7 and had attached the property in dispute and the plaintiff preferred claims against the said attachments but they were rejected upon adjudication. *Held* that inasmuch as the absent decree holders had applied for attachment and sale of the property in dispute in execution of their decrees and had successfully resisted the claim of the plaintiff the plaintiff had a right to some relief against them (the absent decree holders) in respect of the matter involved in the suit and as their presence was necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the question involved in the suit the absent decree-holders were necessary parties to it and the plaintiff not having brought them on the record as defendant the suit was not maintainable *Mahomed Badsha v Nicol Fleming & Co I L R 4 Calc. 355* distinguished. DURGA CHARAN SARKAR v JOTINDRA MOHAN TAGORE I. L. R 27 Calc. 493

71. ———— *Civil Procedure Code 1882 s 32 —Powers conferred by s 32 exercised after an order has been passed under s 108* The powers conferred by s 32 of the Code of Civil Procedure in respect of the addition of parties are exercisable even after a suit had been reinstated on an application under s. 108 of the Code made by one of the defendants who had not been served with notice of the suit. TIKAM SINGH v KISHORE RAMANJI I. L. R. 20 All. 188

72. ———— *Civil Procedure Code 1882 s 3 —Suit for property wrongly sold in execution—Person claiming under distinct title* An order for sale was made in execution [illegible]

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(d) DEFENDANTS—*contd*

was not the property included in the mortgage on which the decree for sale was made and was not property which could be sold under that decree In the meantime the sale had taken place Thereupon the owner of the property which the High Court had held on appeal was not saleable brought a suit and made the decree holders and auction purchaser parties to it and claimed as against them his property *Held* that it was not competent to the Court acting under s 32 of the Code of Civil Procedure to introduce into this suit as a defendant a person who claimed the property in suit by a title quite distinct from that under which any of the parties to the suit claimed KALIAN RAI *v* RAM PATAN **I L R 18 All 306**

73 ———— *Application to file award and for consent decree—Application by creditor of defendant to be made a party to suit—Objection by creditor to filing award—Procedure—Civil Procedure Code (Act XIV of 1882) s 484* The plaintiff applied to file an award and for a decree in terms thereof to which the defendant consented. *K* a creditor of the defendant thereupon applied to be made a party to the suit and objected to the filing of the award and to the decree alleging that the award was fraudulent and fictitious and had been made in order to save the defendant's property from his creditors The Subordinate Judge made *K* a party to the suit and refused the plaintiff's application On application to the High Court —*Held* that *K* ought not to have been made a party to the suit His remedy was to apply under s 484 of the Civil Procedure Code (Act XIV of 1882) for an attachment before judgment of the defendant's property DUNGARSI DIPCHAND *v* UJAMSI VALSI **I L R 22 Bom 727**

74 ———— *Civil Procedure Code (Act XIV of 1882) ss 28 32—Party interested in decision—Suit for removal of a trustee* Plaintiff brought the present suit to remove the present Sardar Panda of the temple of Baidyanath and to appoint some body else It was alleged that the custom was that the Panda was elected in a certain way The defendant denied this and alleged that the succession to the office was by the rule of primogeniture One of the issues was If the defendant is removed from his position who should be appointed in his place? And should any scheme be framed for regulating the management of the debutter properties? A petition was then made by the eldest son of the eldest son (now deceased) of the defendant to be made a party *Held* that he should be added as a party and his presence was necessary in order to decide the matter effectually and completely between the parties SAILADANANDA DUTTA JHA *v* UMESHANANDA DUTTA JHA **4 C W N 462**

75 ———— *Civil Procedure Code (Act XIV of 1882) s 372—Champertor Application by to be made a party to the suit—Assignment to champertor disputed—Compromise* Case in which one *K* who had advanced moneys to the plaintiff to enable her to carry on the suit and had obtained an assignment of half of her interest which assignment was disputed by the plaintiff was made a party defendant on his own application PARARANEE DASSEE *v* DEBENDRA NATH SHAW **3 C W N 754**

76 ———— Limitation—*Power of Court—Limitation—Civil Procedure Code (Act XIV of 1882)* ...

I L R 12 Calc 642

Nor a respondent MANICKYA MOYEE *v* BORODA PROSAD MOOKERJEE **I L R 9 Calc 355**
11 C L R 430

77 ———— *Limitation—Suit for partnership accounts—Joint contract—Necessary parties omission of—Time of joinder how material* A suit was brought for partnership accounts Upon the objection of the defendant it was found that a necessary party defendant had been omitted and such party was afterwards added as a defendant at a time when the suit as against him was barred. *Held* that the whole suit was rightly dismissed PANDOYAL *v* JUNMENJOY COONDOO **I L R 14 Calc 791**

78 ———— *Civil Procedure Code 1882 s 32—Court adding a defendant—Limitation* No question of limitation arises where a Court of its own motion under s 32 of the Civil Procedure Code adds a party defendant to a suit *Oriental Bank Corporation v Charriol I L R 12 Calc 642* followed GRISH CHUNDER SASMAL *v* DWARKA NATH DINDA.
I L R 24 Calc 640

KHADIR MOIDEEN *v* RAMA NAIK
I L R 17 Mad 12

79 ———— *Civil Procedure Code (Act XIV of 1882) s 32—Limitation Act (XV of 1877) s 22—Adding party by a Court of its own motion* No question of limitation arises and s 22 of the Indian Limitation Act does not apply when the Court of ...

... *Oriental Bank Corporation v Charriol I L R 12 Calc 642* followed. *Khadir Moideen v Rama Naik I L R 17 Mad 12* referred to and *Imam ud din v Liladhar I L R 14 All 524* dissented from FAKERA PASBAN *v* BIBI AZIMUNNISSA **I L R 27 Calc 540**
4 C W N 459

80 ———— *Limitation—Debutter property—New defendant—Limitation Act*

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(*d*) DEFENDANTS—*contd*

(*XV of 1877*) *s 22—Civil Procedure Code* (*Act XIV of 1882*) *s 32—Sebait right of to be indemnified* Where relief is originally claimed against a party who had to be represented by some person the proper representation of that party subsequently made has not the effect of adding a new defendant to the suit Plaintiffs instituted a suit praying *inter alia* for a decree for a sum of money against a *debutter* estate the defendants to the suit being among other persons *P* who was impleaded as Receiver of the debutter estate and also in his personal capacity no one of the defendants was impleaded as representing the *debutter* estate Subsequently and after the expiry of the period of limitation prescribed for the suit the plaint was amended and *P* was impleaded also as *sebait* and

4 All 37 Prosunno Kumar Sen v *Mahabharat Saha 7 C W N 575* approved *Imam ud-din* v *Liladhar I L R 14 All 524 Weldon* v *Neal 19 Q B D 394 Manni Kasaundhan* v *Crooke I L R 2 All 296* referred to A *sebait* who is obliged to pay money of his own for the benefit of the *debutter* estate is entitled to have the same made good out of the estate PEARY MOHAN MUKERJEE v NARENDRA NATH MUKERJEE (1905)

I L R 33 Calc 582
s c 9 C W N 421

81 ———————— *Limitation Act* (*XV of 1877*) *s 22—Addition of party by Court after period of limitation—Effect—Civil Procedure Code* (*Act XIV of 1882*) *s 32—Mortgage suit—Remedy of mortgagee against purchaser of portion of mortgaged property not made a party within time—Bengal Tenancy Act* (*VIII of 1885*) *s 167—Sale of portion of tenure or holding—Annulment of encumbrances* When in a suit a person is added as a party defendant at the instance of the Court after the period of limitation applicable to the suit has expired s 22 of the Limitation Act applies and bars the plaintiff remedy as against the added defendant *Girish Chunder Sasmal* v *Dwarka Nath Dinda I L R 24 Calc 640 Fakira Pasban* v *Bibi Azimunnissa 4 C W N 459 s c I L R 2 Calc 540* overruled *Oriental Bank Corporation* v *Chariol I L R 12 Calc 642* explained *Imam Ali* v *Baij Nath Ram Sahu 10 C W N 551 s c 3 C L J 546* approved Where in the course of a suit to enforce a mortgage but more than 12 years after the date fixed in the mortgage bond for repayment of the mortgage money the Court directed that a purchaser of a portion of the mortgaged property be added as a party defendant —*Held* that the suit as against the added defendant was barred by limitation *Quære* Whether the portion of the mortgaged property in the hands of the added defendant was thereby exempted from liability under the mortgage

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(*d*) DEFENDANTS—*concld*

RAMKINKAR BISWAS v AKHIL CHANDRA CHOWDHURI (1907) **11 C W N 350**

82 ———— **Estoppel**—*Appeal—Procedure Held* that when a suit has been dismissed against one of two defendants by the Court of first instance and the defeated plaintiff has not appealed against that part of the decree the addition of the defendant against whom the suit has been dismissed to the array of parties does not empower the appellate Court to pass against him a decree which the Court of first instance declined to pass and in the decision of which Court the plaintiff chose to acquiesce *Ranjit Sing* v *Sheo Prasad Ram I L R 2 All 487* and *Atma Ram* v *Bal kishen I L R 5 All 266* followed *Rup Jan Bibee* v *Abdul Kader Bhuyan 8 C W N 499* dissented from FARZAND ALI KHAN v BISMILLAH BEGAM (1905) **I L R 27 All 23**

83 ———— **Persons jointly interested with plaintiff may be made defendants without proof that they refused to join as plaintiffs** Where some only out of several persons jointly interested in a cause of action bring a suit impleading the others as defendants such suit is sustainable though it is not shown that the parties joined as defendants refused to join as plaintiffs *Pyari Mohun Bose* v *Kedar Nath Roy I L R 26 Calc 409* followed *Biri Singh* v *Nawal Singh I L R 24 All 226* followed PERIA KARUPPAN v VELAYUTHAM CHETTY (1906)

I L R 29 Mad 302

84 ———— **Mutwalli**—*Suit for rent—Mutwalli—Effect of all mutwallis not being made parties to a rent suit* Where the persons liable to pay rent are *mutwallis* it is essential that all the *mutwallis* should be brought before the Court as defendant inasmuch as *mutwallis* stand in the position of trustees ABDUL RAB CHOWDHURY v EGGAR (1907) **I L R 35 Calc 182**
s c 12 C W N 160

(*e*) APPELLANTS

85 ———— **Parties addition of on appeal.** An Appellate Court has a discretionary power to substitute or add a new appellant or respondent after the period of limitation prescribed for an appeal COURT OF WARDS v GAYA PRASAD **I L R 2 All 108**

See RANJIT SINGH v SHEO PRASAD RAM **I L R 2 All 487**

86 ———— **Adding appellants**—*Persons not parties originally* Persons not parties in the original suit are not entitled to have themselves added as appellants in the Appellate Court WATSON & CO v SHURNO MOYEE **9 W R 259**

87 ———————— *Civil Procedure Code ss 32 381* There is no power in the Code of Civil Procedure (Act XIV of 1882) to make a

PARTIES—contd

3 ADDING PARTIES TO SUITS—contd

(e) APPELLANTS—concld

party to the suit a co appellant Ss 32 and 582 of the Code give to an Appellate Court power only to strike out the name of a party or to direct new parties to be added to the suit whether as plaintiffs or defendant VASUDEB BALKRISHNA v SALUBAI I L R 10 Bom 227

88 ———— *Adding assignee a party—Assignment of interest pending suit* After the dismissal of the plaintiff s suit and pending ...

the suit in the Court below The Court refused the application JAMEELA v MAHOMED HOSSEIN Marsh. 251 2 Hay 111

89 ———— *Appeal by widow of judgment-debtor—Alleged adopted son* A judgment debtor died His widow was there ...

was or was not the adopted son of the deceased judgment debtor there was no objection to entering his name on the record if the decree holder consented as it tended to his security that this should be done The applicant was accordingly made a co appellant with the widow LAKSHMIBAI v SANTAPA PEVAPA SHINTRE I L R 13 Bom 22

(f) RESPONDENTS

90 ———— Adding respondent—*Civil Procedure Code 1882 s 559—Limitation Act 1877* The discretionary power of directing a person to be made a respondent conferred on the Appellate Court by s 559 of the Civil Procedure Code is not limited by any provision in the Limitation Act (Act XV of 1877) MANICKYA MOYEE v BORODA PROSAD MOOKERJEE I L R 9 Calc 355 11 C L R 430

Nor in the case of the addition of a defendant ORIENTAL BANK CORPORATION v CHARRIOL. I L R 12 Calc 642

91 ———— *Appellate Court —Civil Procedure Code (Act XIV of 1882) s 559* ...

H The appellate Court made *A* a respondent to

PARTIES—contd

3 ADDING PARTIES TO SUITS—contd

(f) RESPONDENTS—contd

the appeal under s 559 of the Civil Procedure Code ...

availing himself of his privileges under the law by introducing for him other respondents than those he ...

I L R 5 All. 268

92 ———— *Practice—Parties* ...

of which defendant No 2 was a member and for the rightful purposes of the family The family subsequently became divided and the hypothecated property was divided between defendants Nos 1 and 2 Defendant No 1 afterwards hypothecated part of his share for a private debt to defendant No 3 who having sued on his hypothecation and brought the land to sale in execution became the purchaser The District Munsif passed a decree for the plaintiff against which defendants Nos 2 and 3 preferred separate appeals the plaintiff being the sole respondent to each appeal The District Judge on appeal passed a decree directing that the plaintiff should first proceed against all the property which was not subject to the hypothecation to defendant No 3 including the share of defendant No 2 Defendant No 2 preferred a second appeal joining all the other parties *Held* that though both defendants No 2 and 3 preferred separate appeals from the original decree they only made the plaintiff respondent and defendant No 3 omitted to make the other defendant (defendant No 2) a party to his appeal ... the relief prayed for in each appeal was that the original decree might be set aside so far as it was ... in favour and against each appellant. ... to the relief claimed ... that the appellant (defendant No 2) was a necessary party to the appeal preferred by defendant No 3 GOPALA v SAMINATHAYYAR

I L R 12 Mad ...

93 ———— *Code s 559—Joinder of respondents* ... In 1877 the plaintiff ... tion to one of two partners ... from them jointly In 18 ... alia the hypothecated property to defendant ...

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*contd*

(*f*) RESPONDENTS—*contd*

and it was arranged that the secured debt should be paid off by the vendees They failed to do this but in 1882 they executed a mortgage for the amount due in favour of the other of the two partners and he thereupon gave a written discharge to the plaintiff who was found to have been acting in collusion with him to the disadvantage of his partner the holder of

defendant 1 who was the assignee of the mortgage of

obtained a decree against defendants 2 to 4 The plaintiff now sued to have the last mentioned decree set aside and recover the balance of the purchase money from defendants 2 to 4 The Court of first instance passed a decree for the amount claimed and declared it to be charged on the land Defendant 1 preferred an appeal in which defendants 2 to 4 were joined by the Court of First Appeal which dismissed the suit *Held* that defendants 2 to 4 were rightly joined as respondents by the Court under the Civil Procedure Code s 559 KANAGAPPA v SOKKALINGA I L R 15 Mad 362

94. ———— *Power of the Appellate Court to add parties as respondents—Code of Civil Procedure (Act XIV of 1882) s 559* In a suit for contribution by the plaintiffs against the defendants the Court of first instance gave

aside the decree against the appealing defendant and passed a decree against the defendants who were added as respondents as representatives of one *S* and ordered the amount so decreed to be recovered from the estate of her (*S's*) husband On appeal

... the lower Appellate Court and ... s 559 of the Code of Civil Procedure the defendants were rightly made parties. *Atma Ram* v *Pallu han I L R 5 All 66* dissented from UPENDRA LAL MUKHERJEE v GIRINDRA NATH MUKERJEE I L R 25 Calc 565 2 C W N 425

95 ———— *Civil Procedure Code s 559—Power of Appellate Court to add respondent—Limitation Act (XV of 1877) s 22* The power of an Appellate Court to make a person a respondent under s 559 of the Civil Procedure Code is not affected by the Limitation Act (XV of 1877) In exercising its powers under s 559 of the Civil Procedure Code an Appellate Court is competent to make a person a respondent who in the original suit was arrayed on the same side with the appellant SOHNA v KHALAK SINGH I L R 13 All 78

96 ———— *Civil Procedure Code s 559—Power of Court to add respondent—Limitation Act (XV of 1877) s 22* *Held* by the Full Bench that it is competent to a Court sitting under s 559 of the Code of Civil Procedure to add a

97 ———— *Civil Procedure Code 1882 s 559—Addition of a party in second appeal* A Court cannot in a second appeal act under s 559 of the Code of Civil Procedure and add a party as a respondent unless such party was a party to the appeal below and this notwithstanding that he was a party to the suit in the Court of first instance CHUNNI v LALA RAM I L R 16 All 5

98 ———— *Civil Procedure Code 1882 ss 32 559 and 587—Addition of parties on second appeal—Appellate Court Power of* The Court on second appeal is competent to bring on the record persons who had been originally joined in the suit but were not joined in the lower Appellate Court *Chunni* v *Lala Ram I L R 16 All 5* dissented from PAYA MATATHIL APPU v KOVAMEL AMINA I L R 19 Mad 151

99 ———— *Civil Procedure Code (Act XIV of 1882) ss 372 582—Attaching creditor of decree holder seeking to be brought on to the record as a respondent* *Held* that a creditor of a decree holder who had attached the decree pending an appeal against it was not entitled to be made a party respondent to the appeal under ss 372 and 582 of the Code of Civil Procedure CHAIL BEHARI LAL v PARHMAL DAS I L R 20 All 38

100 ———— *Power of the Appellate Court to add parties as respondents—Code of Civil Procedure (Act XIV of 1882) s 559* *C* owner of a factory executed a hundi in favour of *B* and purchased land from *B* from the proceeds thereof *C* then sold his factory to *H* who obtained possession of the land In a suit brought by *B* upon the hundi *C* and *H* were made defendants but *C* did not appear in the first instance and an *ex parte* decree was passed against him alone *C* appealed against *B* without making *H* a party respondent to his appeal The lower Appellate Court passed an order adding *H* as a respondent and eventually passed a decree against *H* On second appeal by *H* to the High Court —*Held* referring to s 559 of the Civil Procedure Code (1882) that the lower Appellate Court was right in adding

PARTIES—*contd*

3 ADDING PARTIES TO SUITS—*concld*

(*f*) RESPONDENTS—*concld*

H as a party re pondent to the appeal *Atma Ram* v *Balkishen* I L R 5 All °ff dis ented from *Upendra Lal Mukerjee* v *Girindra Nath Mukerjee* I L R °5 Calc 565 and *Manickya Moyee* v *Baroda Pro ad Mookerjee* I L R 9 Calc 355 referred to HUDSON v BASDEO BAJPYE

I L R 26 Calc 109
3 C W N 76

101 ———— *Persons inter ested in the re ult of the appeal—Civil Procedure Code 188*? 9 In a suit for posse sion of land the Court of first instance decreed the plaint iff uit in part again t the defendants Some of the defendant appealed to the High Court without making the other defendants party respondents The plaintiffs preferred a cro s objection under s 561 of the Code of Civil Procedure The non appealing defendants were added as respondents by an order of the High Court to the effect that they might be made parties without prejudice to any objection that might be urged on their behalf at the hearing of the appeal The non appealing de fendants at the hearing of the appeal contended that they were wrongly made parties *Held* that the non appealing defendants were persons who were interested in the result of the appeal within the meaning of s 559 of the Code of Civil Procedure and that therefore they were rightly made parties BISHUN CHURN ROY CHOWDHRY v JOGENDRA NATH ROY I L R 26 Calc 114

102 ———— *Transfer of Property Act (IV of 188?) ss 88 89—Decree for sale —Decree a signed before the passing of an order absolute—Appeal—Assignee not made a party to appeal until after expiry of limitation—Civil Procedure Code s 3 —Lis pendens* A decree under s 88 of the Tran fer of Property Act 1882 being only a decree *nisi* and not a final decree the suit in which such a decree is passed does not terminate until an order absolute is made under s 89 Where there fore such a decree is assigned before any order absolute is made the assignee takes subject to all the liabilities resulting from the application of the doctrine of *lis pendens* Such an a signee for ex ample may properly be made a party under s 372 of the Code of Civil Procedure to an appeal from the decree preferred against his assignors and it is not competent to him to raise any defence such as a plea of limitation to the appeal which could not be rai ed by his assignors CHUNNI LAL v ABDUL ALI KHAN (1901) I L R 23 All 331

4 STRIKING OFF PARTIES

(*a*) DEFENDANTS

———— **Removal of name of defendant from record**—*Civil Procedure Code 188*? *s 3*? An order striking the name of a defendant off the re cord of a uit cannot be made under s 32 of the Code of Civil Procedure at a period subsequent to the first hearing of the suit ABBASI BEGAM v IMDADI JAN I L R 18 All 53

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES

(*a*) GENERALLY

1 ———— **Substitution of parties in execution proceedings after appeal**—*Re presentatives of judgment debtor—Civil Procedure Code 188*? *ss 361 to 372* The Civil Procedure Code does not contemplate the representatives of the judgment debtor being placed on the record after the appellate decree has been passed There is no express provision for it in the sections relating to execution Ss 361 to 372 relate to changes during suit and speak only of plaintiffs and defendants —terms which seem to show that they were only intended to apply to proceedings up to final determination by the appellate decree and not to proceedings in execution between the judgment creditor and judgment debtor HIRACHAND HARJIVANDAS v KASTURCHAND KASIDAS I L R 18 Bom 224

2 ———— **Legal representative** —*Civil Procedure Code s 365—Abatement of suit or appeal* The words the legal representative in s. 365 of the Code of Civil Procedure must where there are more than one legal representative [illegible]

3 ———— **Power of Court to substitute parties**—*Civil Procedure Code 1859 s 73* A court has no power under s 73 Act VIII of 1859 to substitute one party for another by striking one off and putting another on the record BAL GOBIND TEWAREE v HUREENATH PERSHAD SAHOO 16 W R 183

See JUDOOPUTTE CHATTERJEE v CHUNDER KANT BHUTTACHARJEE 9 W R 309

(*b*) PLAINTIFFS

4 ———— *Purchaser o plaint iff s interest* The Court has no power to allow the purchaser of the rights of the plaintiff in a suit to be substituted for him on the record. JUDOOPUTTEE CHATTERJEE v CHUNDER KANT BHUTTACHARJEE 9 W R 309

SAHEB ROY v CHOONEE SINGH 9 W R 487

BEER CHUNDER ROY v TUMEEZOODEEN 12 W R 87

See BAL GOBIND TEWAREE v HUREENATH PERSHAD SAHOO 16 W R 183

5 ———— **Sub titution of plaintiff**—*Assignee of plaintiff—Waiver of objection—Ground* [illegible]

the substitution is made before judgment in the first

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(*b*) PLAINTIFFS—*contd*

9 W R 487 considered and explained SHUSHEE BHOOSUN v MUDDON MOHUN CHATTOPADHYA
2 C L R 297

6 ———————— *Consent of parties —Irregularity—Death of plaintiff* During the pendency of a suit brought by a Hindu widow to recover possession of her husband estate the widow died and two claimants (first a female on the

parties it being for their advantage that the trial should proceed and that the co plaintiffs should be left in possession of any decision which they might obtain against the defendants and allowed to settle the question arising between themselves in other proceedings PARBUTTY v HIGGIN 17 W R 475
s c PARBATTI v BHIKUN **8 B L R Ap 98**

7 ———————— *Making defendants plaintiffs after suit by them would be barred —Limitation—Civil Procedure Code 1882 s 32 —Suit to set aside sale* A mitta held by tenants in common was sold for arrears of revenue at a time when the owners of a moiety thereof were minors In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale the plaintiffs impleaded also the other previous owners of whom one was the purchaser at the sale Two others in their written statement

far as the plaintiff s interests were concerned the sale of their interests also should be held to be null and void Before the suit came on for hearing the District Judge *suo motu* ordered that these two defendants should be made plaintiffs in the suit under s 32 of the Code of Civil Procedure At the date when this order was made the claim of these defendants had they sued to set aside the sale in their own interest was barred by limitation *Held* that the order was illegal KRISHNA v MEKAM PERUMA KRISHNA v COLLECTOR OF SALEM
I L R 10 Mad 44

8 ———————— *Death of plaintiff after judgment* When a person desires to be added as representative upon the death of a plaintiff after judgment he must satisfy the Court that he is the proper person to be so added MUHAMMAD HUSAIN v KHUSHALO **I L R 9 All 131**

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(*b*) PLAINTIFFS—*contd*

9 ———————— *Civil Procedure Code 1882 ss 365 377—Procedure when rival parties claim to be the representatives of deceased plaintiff—Rival claimants—Appeal—Appeal by one plaintiff against another* Pending a suit for redemption one of the plaintiffs died Thereupon *A* claiming as the adopted son and *B* as the daughter of the deceased made separate applications under s 365 of the Code of Civil Procedure (Act XIV of 1882) to be placed on the record The Subordinate Judge ordered both claimants to be entered on the record as legal representatives of the deceased plaintiff and proceeded with the suit At the hearing he found that *A* s adoption was proved and that *B* was not the legal heir of the deceased He therefore passed a decree for redemption in *A* s favour Against this decree *B* appealed making *A* alone the respondent in the appeal The Appellate Court held that *B* and not *A* was the heir of the deceased It therefore passed a decree in *B* s favour and against *A* On second appeal to the High Court —*Held* that the Subordinate Judge could not under s 377 of the Code of Civil Procedure admit on the record both the rival claimants as legal representatives of the deceased plaintiff or ... ms ... to ... the ... ent

plaintiffs *inter se* VITHU v BHIMA
I L R 15 Bom 145

10 ———————— *Civil Procedure Code 1882 ss 365 and 367—Representation of a deceased plaintiff* S 355 of the Code of Civil Procedure presuppo es that the party claiming to represent a deceased plaintiff is his legal representative but if the representative character is denied or when two or more persons claim it the procedure prescribed by s 377 of the Code should be followed OULA v BEEPATHEE **I L R 17 Mad 209**

11 ———————— *Dekkan Agriculturists Act (XVII of 1879) ss 49 and 74—Conciliation agreement forwarded to be filed in Court—Death of plaintiff—Substitution by the conciliator of the name of the deceased's heir on the return of the agreement by the Subordinate Judge—Practice* A plaintiff applied to a conciliator appointed under the Dekkan Agriculturists Relief Act (XVII of 1879) for an amicable settlement of a dispute between himself and the defendant and came to an agreement disposing of the matter which was duly forwarded to the Subordinate Judge to be filed in Court On receipt of the agreement the Subordinate Judge i sued notices to the parties to show cause why the agreement should not be filed and was on the day of hearing informed that the agreement could not be filed owing to plaintiff s death The agreement was then returned to the conciliator who entered therein the name of the deceased plaintiff s heir and forwarded it to the Subordinate

PARTIES—*contd*

5. SUBSTITUTION OF PARTIES—*contd*

(*b*) PLAINTIFFS—*contd*

Judge A question having thereupon arisen as to whether the conciliator could enter on the record the name of the heir of the deceased plaintiff —*Held* that although there is no provision in the Dekkan Agriculturists Relief Act empowering a conciliator to enter the name of the heir of a party and Government have not apparently under s 43 (*a*) of the Act made any rules regulating the procedure before conciliators in this respect yet when a Subordinate Judge is seized of a conciliation agreement there is a proceeding before him under the Act He should therefore under 74 of the Act follow the provisions of the Civil Procedure Code (Act XIV of 1882) in regard to placing on the record the heirs of the deceased parties NARAYANDAS SAKHARAM *v* KONDI **I L R 19 Bom 202**

12. ——————— *Representatives of deceased widow—Civil Procedure Code 1882 s 365— Legal representatives —Reversionary heirs of husband* On the death of a Hindu heire after institution of a suit to recover property belonging to her deceased husband the reversionary heirs of the husband are her legal representatives to proceed with the suit within the meaning of s 365 of the Civil Procedure Code *Pamkishore Chuckerbutty* v *Kallykanto Chuckerbutty I L R 6 Calc 479* applied. *Katama Natchiar* v *The Rajah of Shivagunga 9 Moo I A 539* and *Hari Nath Chatterjee* v *Mothurmohun Goswami I L R 21 Calc 8* referred to PREMMOYI CHOUDHRANI *v* PREONATH DHUR **I L R 23 Calc 636**

13 ——————— *Legal representative of Hindu widow—Civil Procedure Code s 365—Reversioner* A reversioner succeeding to the estate of a deceased person after the death of the widow of that person would be bound by a decree obtained against the widow provided that there was a fair trial of the suit in which the decree was passed. Consequently the widow s right to sue survives to and devolves on the heir of her husband entitled to the estate and such heir and not her personal heirs should be *held* to be her legal representative for the purposes of s 365 of the Code of Civil Procedure *Katama Natchiar* v *The Rajah of Shivagunga 9 Moo I A 539 Hari Nath Chatterjee* v *Mothurmohun Goswami I L R 21 Calc 8* and *Premmoyi Chowdhrani* v *Preonath Dhur I L R 23 Calc 636* referred to TRIBHUWAN SUNDAR KUAR *v* SRI NARAIN SINGH **I L R 20 All. 341**

14 ——————— *Civil Procedure Code (Act XIV of 1882) s 372—Application for revival of suit—Limitation—Application in a pending suit* In a suit for a declaration of the rights of the parties and for partition a preliminary decree was made on the 12th July 1887 declaring the rights of the parties and directing partition Since then no steps had been taken to carry out the decree The plaintiff the father of the petitioners died in December 1891 leaving the petitioners who now applied to have the suit revived in their name One defendant opposed the application on the ground that it was barred by limitation under s 372 Civil Procedure Code He also alleged that he was an infant at the time the suit was instituted and was not aware of any of the proceedings till notice of this application. *Held* that the application was made in a pending suit and though falling within s 372 Civil Procedure Code was not time barred the right to apply being one which accrues from day to day *Kedar Nath Dutt* v *Harra Chand Dutt I L R 8 Calc 420* and *Baroda Kant Mitter* v *Aghore Nath Neogy* (unreported) Suit No 265 of 1882 (SALE *J*)—That the question as to whether the

15 ——————— *Civil Procedure Code (Act XIV of 1882) ss 372 588 (21)—Devolution of interest pending suit—Chota Nagpore Incumbered Estates Act (VI of 1876) s 16—Manager of incumbered estate—Owner—Appeal from order disallowing objections to substitution—Reports of cases* The words devolution of interest in s 372 of the Civil Procedure Code do not mean only devolution by *death* but are applicable to a case in which pending a suit instituted by the Manager of a Chota Nagpore incumbered estate the estate is released from management and restored to the owners It is open in such a case to persons alleging themselves to be owners of the estate to apply to be made plaintiffs in the place of the Manager under s 372 of the Civil Procedure Code On an application for substitution made under s 372 of the Civil Procedure Code it was objected that the application could not be granted but the Court overruled the

16 ——————— *Civil Procedure Code (Act XIV of 1882) ss 365 367 588 cl (18) and 591—Limitation Act (XV of 1877) Sch II Art 175 A—Suit to recover possession—Death of the plaintiff pending suit—Legal representative—Private*

daughter) applied to be put on the record as his heir and legal representative It did not appear that the defendants had notice or knowledge of her application, and on the 5th June 1899 her name

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(*b*) PLAINTIFFS—*contd*

was placed on the record under s 365 of the Civil Procedure Code (Act XIV of 1882) In July 1899 Balabai applied to be allowed to prosecute the suit as a pauper The defendants opposed this but took no objection to her right to appear as Mahadev s representative In August 1899 the first defendant filed his written statement in which for the first time he raised the question as to Balabai s right to represent the deceased plaintiff Mahadev The case subsequently came on for hearing and issues were raised on the pleadings the first issue being whether Balabai was Mahadev s legal representative Evidence was taken on all the issues and the Court found all of them in Balabai s favour and passed a decree accordingly The defendant appealed and the Appellate Court being of opinion that other issues were unnecessary until the issue as to Balabai s right to represent Mahadev was decided raised only one issue upon that point It found that Balabai was not the nearest heir and legal representative of the deceased plaintiff Mahadev and thereupon it reversed the lower Court s decree and dismissed the suit On second appeal *Held* by CHANDAVARKAR and BATTY *JJ* (ASTON *J* dissenting) reversing the decree and remanding the case for a decision on the merits that the lower Appellate Court was wrong in going into the question as to Balabai s right to represent the deceased plaintiff Mahadev and in dismissing the suit on finding that she had no such right *Per* CHANDAVARKAR *J* —The Subordinate Judge acted rightly under s 355 of the Civil Procedure Code (Act XIV of 1882) in placing Balabai on the record It was doubtful whether he could afterwards re open [illegible]

But the defendant did not appeal agains t that order He appealed against the whole decree and in his appeal he objected to the order Under s 591 however he could in such case only object to the order if it affected the decision of the case It was not shown that the order made by the Subordinate Judge under s 367 had affected the decision of the case There is no provision in the Code that if a person claiming as legal representative of a deceased plaintiff fails to prove that he holds that position the suit must be dismissed Inasmuch as the defendant had failed to show that the order under s 377 had affected the decision the lower Appellate Court ought not to have reversed the decree of the Court of first instance BALABAI *v* GANESH SHANKAR PANDIT (1902)

I L R 27 Bom 162

17 ——————— *Civil Procedure Code (Act XIV of 1882) s 355—Application to be brought on record in place of deceased plaintiff—Order—Continuance of suit—Objection by defendant at late stage of case—Procedure* L instituted a suit to recover a debt and died while the suit was pending leaving no issue Within two and a half months of his decease his widow applied under s 355 of the Code of Civil Procedure as the legal representative of the deceased plaintiff to have her name entered on the record in his place She was brought on the record accordingly and adjournments took place and during several weeks thereafter the suit was partially heard A defendant then after a number of witnesses had been examined presented a petition purporting to be under ss 365 and 367 of the Code stating that it had become evident from the deposition of plaintiff s second witness that plaintiff s husband had left an undivided brother The petitioner asked the Court to decide the question under s 367 as to who was the legal representative of the deceased plaintiff The District Munsif heard the parties and (without making an elaborate inquiry) held that the widow was the proper heir (and should produce a succession certificate before judgment should be delivered) but he al o directed in order to prevent future disputes that the alleged undivided brother should be joined as a party A petition signifying his consent to be so joined was filed by the last mentioned person *Held* that the order was right Under s 365 of the Code the Court was bound to proceed with the suit after the name of the applicant had been entered on the record in place of the deceased The right if any of the defendant to object to the widow being added as legal representative in place of her deceased husband [illegible]

prosecute the suit as his legal representative Objection if raised at all hould have been raised at the earliest opportunity and failure to obeject then precluded the defendant [illegible] as he had [illegible] *Beepathee* [illegible] *Saminaday* [illegible] distinguished MEENATCHI ACHI *v* ANANTHANARAYANA AYYAR (1902)

I. L. R 26 Mad. 224

18 ——————— *Limitation Act (XV of 1877) s 22—Civil Procedure Code (Act XIV of 1882) s 437—Suit brought by executor—Beneficiaries names of subsequently substituted as plaintiffs* Where a suit for recovery of possession was brought by an executor on the 14th September 1898 and the names of the beneficiaries who took [illegible]

names of the plaintiffs did not make a new suit JANHABI CHOWDHURANI *v* BROJO MOHINI CHOWDHURANI (1903)

7 C W N 817

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(b) PLAINTIFFS—*concld*

19 ———— *Civil Procedure Code (Act XIV of 1882) s 27—Court has power to order right persons to be substituted as plaintiffs even when original plaintiff had no right to sue* Under s. 27 of the Code of Civil Procedure when a suit is

originally suing has no right to institute the suit *Chunder Coomar Roy* v *Gocool Chunder Bhuttacharjee I L R 6 Calc 370* referred to KRISHNA BOI v THE COLLECTOR AND GOVERNMENT AGENT TANJORE (1907) I. L. R. 30 Mad. 419

20 ———— *Parties substitution of—Assignment—Assignee substituted after period of limitation—Civil Procedure Code (Act XIV of 1882) s 372—Limitation Act (XV of 1877) s 22* In a suit brought within the period of limitation the name of the assignee of the original plaintiff was after expiry of the period substituted for that of the latter which was struck off the record *Held* that s 22 of the Limitation Act was applicable and that if a person who has not been on the record is substituted as a plaintiff in the place of the original paintiff under s 372 of the Code of Civil Procedure the person so substituted must be taken to be brought on the record subject to the law of limitation applicable to the case That section does not exclude the operation of s 22 of the Limitation Act and except in the case of the legal representative of a deceased party the person substituted as

Supat Singh v *Imrit Tewari I L R 5 Calc 720* disapproved and distinguished ABDUL RAHMAN v AMIR ALI (1907) I. L. R. 34 Calc 612

(c) DEFENDANTS

21. ———— Substitution of defendant —*Death of defendant* As soon as it is shown that a defendant was dead at the time the plaint was filed

22. ———— *Death of defendant—Representative of deceased defendant* Where the plaintiff in a suit prays that a person may be substituted on the record as the heir of a defendant who has died the Judge should raise an issue as to whether the person sought to be substituted is the heir of the deceased defendant KANAI LALL KHAN v SASHI BHUSAN BISWAS

I L R 6 Calc 777
8 C L R 117

23 ———— *Procedure—Death of debtor after attachment and before sale—Representatives not made parties—Sale illegal* Where a judgment debtor died after his land had been attached and the creditor brought the land to ... ves of the de... *Held* that the ... RAMASAMI ...

I L R 6 Mad 180

24 ———— *Civil Procedure Code ss 372 647—Assignment after decree in Court of first instance—Assignee made party after appellate decree for purposes of execution* S 372 of the Civil Procedure Code cannot be applied to the assignment creation or devolution of an interest subsequent to the decree in a suit The section has no application to proceedings in execution of decree and a Court has no jurisdiction reading s 372 with s 647 to bring in a party after decree and make him a judgment debtor for the purposes of execution *Gocool Chunder Gossamee* v *Administrator General of Bengal I L R 5 Calc 726* and *Attorney General* v *Corporation of Birmingham L R 15 Ch D 423* referred to Where a Court had so acted by an order which might have been but was not made the subject of appeal under s 588 of the Code —*Held* that as there was no jurisdiction to make such an order the party aggrieved was competent to object thereto on appeal from a subsequent order enforcing execution against him as a judgment debtor GOODALL v MUSSOORIE BANK I L R 10 All 97

25 ———— *Civil Procedure Code ss 234 332 588—Death of judgment debtor between order for possession in execution of decree*

on 20th August on which day the judgment debtor died. Possession was delivered on 28th August The persons possessed presented a petition under s 332 of the Code of Civil Procedure disputing his right to be put into possession on the ground *inter alia* that the judgment debtor was not represented on the record On appeal against

that order and the date on which the order was executed *Ramasami* v *Bagirathi I L R 6 Mad. 180* distinguished BIYYAKKA v FAKIRA

I. L. R. 12 Mad. 211

26 ———— *Civil Procedure Code ss 234 318—Sale in execution of decree—Death of judgment-debtor after attachment and before sale—Representatives not joined* A decree holder attached land of the judgment debtor in execution of his decree and a sale proclamation was made

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(c) DEFENDANTS—*contd*

the judgment debtor died and his legal representatives were not brought on to the record but the execution proceeded to sale *Held* that the representatives should have been substituted as parties on the record and this not having been done the sale should be set aside *Ramasami Ayyangar* v *Bagirathi Ammal I L R 6 Mad 180* followed KRISHNAYYA v UNNISSA BEGAM
I L R 15 Mad. 399

GROVES v ADMINISTRATOR-GENERAL OF MADRAS
I L R 22 Mad 119

(*Contra*) SHEO PRASAD v HIRA LAL
I L R 12 All 440

27 ——— *Civil Procedure Code* (*Act XIV of 1882*) *s 368—Bringing one out of several legal representatives of a defendant on record—Effect of decree on the estate—Income Tax Act* (*II of 1886*)*—Sale of property for arrears of tax—Lis pendens—Purchase at sale for arrears of income tax—Subsequent sale in execution of prior mortgage decree—Duty of purchaser at revenue sale to pay amount due under mortgage and prevent sale in execution* Plaintiff as the assignee of a mortgage executed by the father of first defendant sued the mortgagor in 1894 on the mortgage During the pendency of the suit and before the decree in it was passed the mortgagor died Plaintiff thereupon brought the first defendant on the record as legal representative under s 368 of the Code of Civil Procedure In December 1894 a decree for sale was passed which was never impeached as being fraudulent or collusive As a fact first defendant was not the sole legal representative of the mortgagor who left two other sons and three daughters The second son was at a date subsequent to the decree assessed to pay income tax for arrears of which the mortgaged property was sold (under the Revenue Recovery Act) and purchased by second defendant in 1896 In 1897 the mortgaged pro [illegible]

in 1898 Plaintiff was subsequently dispossessed by defendants Nos 2 to 5 and brought the present suit to recover possession of the property *Held* that the sale of the property for arrears of income tax affected only the share of the second son and not the shares of the other co heirs and that in consequence the whole of the mortgaged property had not passed to the second defendant under that sale *Held* also that the second defendant by his purchase had acquired only the equity of redemption in respect of the second son s share in the mortgaged property The effect of s. 30 of the Income Tax Act is not to convert income tax into an arrear of land revenue due in respect of the land which may be brought to sale for the realization of the income tax but merely to extend the procedure prescribed by the Revenue Recovery Act to the recovery of arrears of income tax. *Held* further that the share of the second son was bound by the decree in the mortgage suit notwithstanding that the second son was not joined in that suit as one of the legal representatives of the deceased mortgagor Where a defendant in a suit dies and the plaintiff, under s 368 of the Code of Civil Procedure brings a person on the record whom he alleges to be the legal representative of the deceased defendant such person sufficiently represents the estate of the deceased for the purposes of the suit and in the absence of fraud or collusion the decree passed in the suit will bind the estate *Held* lastly that the sale in execution of plaintiff s decree subsequently to the second defendant s purchase in the revenue sale extinguished second defendant s equity of redemption KADIR MOHIDEEN MARAKKAYAR v MUTHUKRISHNA (1902) I L R 26 Mad. 230

28 ——— *Civil Procedure Code* (*Act XIV of 1882*) *ss 368 and 32—Application for substitution to deceased defendant—Substitution* [illegible]

deceased defendant under s 368 Civil Procedure Code through want of sufficient information that probate of the will of the said deceased had been granted and subsequently applied more than six months after the death to have the names of the said heirs struck out and those of the executors substituted *Held* that the application was one under s 32 Civil Procedure Code and that even under [illegible]

HOSSEIN ALI v ABDUR RAHIM (1903)
7 C W N 529

(d) APPELLANTS

29 ——— Substitution of appellant —*Right of lessor after lease has expired to repre* [illegible]

[illegible]

Plaintiff was *held* to include an appellant in RAJMONEE DABEE v CHUNDER KANT SANDEL
I L R 8 Calc 440 10 C L R. 437

30 ——— *Civil Procedure Code 1882 ss 365 366 and 582—Administrator appointed under Bom Reg VIII of 1827 s 10—Act XIX of 1841 s 9—Administrator General s Act* (*II of 1874*) *s 18—Death of appellant—Abate-*

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(*d*) APPELLANTS—*contd*

m nt of appeal An admini trator appointed under s 10 of Bombay Regulation VIII of 1827 does not by such appointment become the legal repre sentative of the deceased or entitled to continue an appeal filed by him MALAPA SIDAPU DESAI v DEVI NAIK I L R. 21 Bom 102

31 ———— *Civil Procedure Code 1882 s 365—Legal representative—Executor—Death of appellant* A tarwad in Malabar subject to Marumakkatayam law was reduced in number to two persons viz the karnavan and his younger brother the plaintiff They quarrelled and the former without the consent of the latter adopted as members of the tarwad his son and daughter and her children On his death the plaintiff sued for po e ion of the tarwad property and for a declaration that the adoptions were invalid *Held* that the plaintiff was entitled to the relief asked for After an appeal was pre ented by plaintiff who had obtained a decree for posse ion but no other relief he died leaving a will making certain di positions of the property to which he was olely entitled on the a sumption that the adoptions in question were invalid and his executor was admitted as his legal representative for prosecuting the appeal PARANATH NANU MENON v THIRUTHIPALLI RAMAN MENON I L R 20 Mad. 51

32 ———— *Substitution of beneficiaries for trustees—Decree for possession with directions for mutual conveyances effect of—Appeal filed in the name of a wrong person—Civil Procedure Code (Act XIV of 1882) s 27—Limitation Act (XV of 1877) s 5* From an order made in execution of a decree against certain trustees the latter filed an appeal on the 18th April 1898 In the meantime in a suit instituted by the beneficiaries against the trustees a decree had been passed on the 5th April 1898 declaring that the beneficiaries were entitled to possession of the trust e tate from the 13th April and directing the trustees to make over possession to them This decree further directed that proper conveyances should be executed by the trustees when required On the 5th July 1898 the beneficiaries applied for substitution of their names in the place of the trustees in the appeal filed on the 18th April *Held* that though the trustees were directed to execute proper conveyances when required yet having regard to the direction as to delivery of possession the decree of the 5th April must be taken to have divested the property out of the trustees and vested it in the beneficiaries The trustees therefore had not any estate left in them on the 18th April sufficient to justify their being appellants That the beneficiaries can only be substituted in place of the trustees if they can bring the ca e within s. 5 of the Limitation Act S 27 of the Civil Procedure Code does not apply to an appeal filed in the name of a wrong person DWARKA NATH BISWAS v DEBENDRA NATH TAGORE 4 C W N 58

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(*d*) APPELLANTS—*concld*

33 ———— *Practice—Procedure—Appellant dead at the date of hearing of appeal—Legal representative placed on record and appeal re heard—Civil Procedure Code (Act XIV of 1882) ss 571 365* At the date of the hearing of an appeal the appellant was dead but neither his pleader nor the Court were aware of the fact The Court heard and decided the appeal Subsequently the deceased appellant s son applied that his name should be placed on the record and that the appeal should be re heard The lower Appellate Court rejected this application *Held* that under the circum tances and having regard to s 571 of the Civil Procedure Code (XIV of 1882) the decree of the lower Appellate Court was a nullity and that as the legal repre entative of the appellant applied within the prescribed period to have his name entered on the record the Court was bound under s 365 of the Civil Procedure Code to enter his name In not doing so the lower Court had failed to exerci e a juri diction vested in it by law The High Court therefore under s 622 of the Civil Procedure Code (XIV of 1882) directed the applicant s name to be placed on the record and the appeal disposed of JANARDHAN KRISHNA PADHYE v RAMCHANDRA VITHAL PAVADE (1901) I L R 26 Bom. 317

(*e*) RESPONDENTS

34 ———— Substituting respondent —*Discretion of Court to add parties as respondents* A Judge has discretion in the matter of adding a fresh respondent to the record the latter having been a party to the original suit SHOWDAMINEE DOSSEE *v* RAM ROODPO GANGOOLY 8 W R 367

35 ———— *Civil Procedure Code 1882 ss 3 368 582—Respondent death of—Practice* Having regard to s 3 of Act XIV of 1882 it is clear that the word Code in Sch II Art 171B of Act XV of 1877 applies to the present Code of Civil Procedure Act XIV of 1882 and that therefore the word defendant in s 368 of that Code when read with s 582 must be *held* to include respondent *In the matter of the petition of* SOSHI BHUSAN CHAND SOSHI BHUSAN CHAND *v* GRISH CHUNDER TALUKHDAR. I L R. 11 Calc. 694

36 ———— *Co sharer of plaintiff in suit* When a co-defendant (a co sharer with the plaintiff in the property in dispute) was thought by the Judge to be a necessary party as respondent in the appeal —*Held* that the Judge should under s 73 Act VIII of 1859 and otherwise have caused him to be made a respondent instead of dismissing the appeal. ACHUMBAH PAUREY *v* RAMSAHOY PAUREY W R. 1864, 136

37 ———— *Procedure in case of the death of respondent pending an appeal*

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(*e*) RESPONDENTS—*contd*

—*Civil Procedure Code* (*Act X of 1877*) *ss 368 582* Procedure analogous to that laid down in s 368 of the Civil Procedure Code (Act X) of 1877 in respect of the death of a defendant must be applied in the case of the death of a respondent

self into the proceedings and to claim to have his name entered as representative of the deceased respondent against the appellant s consent Persons so introduced on the record may or may not be the real representatives of the deceased respondent but the merits of their claim to be such on the ground of any right or status such as that of adoption is immaterial to the determination of the appeal LAKSHMIBAI *v* BALKRISHNA

I L R 4 Bom. 654

See RAJMONEE DABEE *v* CHUNDER KANT SANDEL I L R. 8 Calc 440 10 C L R 437

38 ———————— *Civil Procedure Code 1882 ss 368 368 and 582—Deceased sole respondent—Practice* Under s 388 of the Civil Procedure Code (XIV of 1882) a plaintiff may have the representatives of a deceased sole defendant placed on the record so that he may continue his suit against them but there is no section which allows the representatives of a sole defendant who has died to be placed on the record at their own request Consequently s 582 gives no authority to a Civil Court to place on the record at their own request the representatives of a deceased sole respondent Such an application cannot be entertained BAI JAVER *v* HATHISING

I L R 9 Bom. 56

39 ———————— *Civil Procedure Code ss 32 368—Death of respondent in appeal—Rival claims to represent deceased* Although a Court is bound by s 368 of the Code of Civil Procedure to place on the record the name of the person alleged by the appellant to be the legal representative of a deceased respondent nevertheless where a person other than the person alleged by the appellant to be such representative claims on good *primâ facie* grounds to be the representative of the deceased respondent and the interests of the person entitled to the estate of the deceased may be prejudiced the Court should under s 32 of the Code of Civil Procedure proceed to make such claimant also a party to the appeal ATHIAPPA *v* AYANNA

I L R 8 Mad 300

40 ———————— *Purchasers of share in property after decree.* On appeal to the High Court from the decree of the Court of first instance the plaintiff appellant made respondents certain persons who after the passing of that decree had purchased at execution sales the rights and interests of the plaintiff in portions of the landed estate of the family *Held* that such persons not being affected by that decree the Court could not make any order respecting their claims and they had been unnecessarily made parties to the appeal RADHA KISHEN MAN *v* BACHHAMAN I L R 3 All. 118

41 ———————— *Civil Procedure Code* (*Act XIV of 1882*) *ss 368 369 and 372—Death of a respondent pending appeal—Right of assignee of his interest to be substituted in his place* At an auction sale held in execution of a decree passed against one *G A* certain property put up for sale was purchased by one *K M* the husband of

obtained a decree declaring that he (*K A*) was entitled to a half share of the property in dispute and an order was made that he should have joint possession with the opponent of one moiety of the property On the termination of the above suit which had been brought by *K A in formâ pauperis* he was required to pay the Court fees For that purpose he procured an advance of R200 from the applicant on the security of the moiety of the property which was awarded to him by the decree. He passed a deed of sale to the applicant on the understanding that the property should be reconveyed to him by the applicant on the repayment of the advance with interest In the meantime cross appeals were filed against the above mentioned decree passed in favour of *K A* and at the hearing of the appeal the lower Appellate Court varied the decree of the Subordinate Judge holding that *K A* was entitled to the possession of the property as sought for From this decree the opponent preferred a second appeal to the High Court which, at the time of this application was still pending Before the hearing of the appeal *K A* died and the applicant thereupon applied to have his name placed on the record as respondent *Held* that the applicant was entitled to be made a party The analogy of s 368 is to be extended generally to appeals and the party appealing may choose his own respondent as representative of deceased. The more specific rule prescribed in that section must prevail in the cases to which it is exactly applicable over the more general rule in s 372 But the rule in s 368 may well be intended for the case in which the death and death only of the defendant constitutes the change of circumstances for which it was thought necessary to provide but where there

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(*e*) RESPONDENTS—*contd*

who shall be respondent but not that any particular per on shall not be a respon ent The choice of re pondents made by the appellant may be de fective through ignorance or fraud and the real repre entative of the decree holder cannot justly be refu ed an opportunity of maintaining the decision which it is ought to upset RAJARAM BHAGVAT *v* JIBAI I L R. 9 Bom. 151

42 ——— *Death of respondent—Representatives not added—Civil Procedure Code 1859 104* A suit having been dismissed plaintiff appealed from the decision and although the defendant death was notified to the Court and the plaintiff did not attempt under s 104 Code of Civil Procedure to bring in the heirs of the deceased or have decea ed in any way represented the Court tried the appeal and passed a decree ...

See ROOP NARAIN SINGH *v* PAMAYEE SINGH 3 C L R 192

43 ——— *Death of respondent before decree on appeal passed against him—Decree passed in ignorance of death of party* Where a suit which had been decreed in the first Court was dismissed on appeal after the death of the plaintiff and the representatives of the latter had not aided in keeping the defendant ignorant of his death the High Court met the difficulty as to executing a decree against a dead man by directing the lower Appellate Court to try the appeal *de novo* making the dead man s representatives respondents SHAMA PUDDO MOITRO *v* DINONATH BAGCHEE 25 W R 108

44 ——— *Death of plaintiff respondent during pendency of appeal—Application by defendant appellant for substitution of deceased s legal representative—Application by third person claiming to be such representative and to be* ...

ss ... an ... on ... of *H* was entered on the record as respondent in place of the deceased Subsequently K applied to be substituted as respondent alleging that he and not *H* was the legal representative of the plaintiff The Court passed an order making K a joint respondent with *H* To this *H* objected but he did not appeal from the order Ultimately the Court dismissed the appeal and passed a decree that the money ...

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(*e*) RESPONDENTS—*contd*

but should have taken one or the other of the courses specified in s 367 so as to determine who was the legal representative of the deceased plaintiff and that the course adopted by the Court was an exceedingly inconvenient one which ought not to have been taken even if the Court had power under the Code to take it The questions involved in the suit referred to in the second paragraph of s 32 of the Civil Procedure Code are questions between the plaintiff and the defendant and not questions which may arise between co defendants or co plaintiffs *inter se* The section does not apply to questions which are not involved in the suit but crop up incidentally during the pendency of an appeal such as the question whether one person or another is the legal representative of a deceased plaintiff respondent HAR NARAIN SINGH *v* KHARAG SINGH I L R. 9 All 447

45 ——— *Civil Procedure Code ss 365 366 367 368 582 587—Death of plaintiff respondent pending appeal—Substitution of alleged legal representative on her own application—Application by defendants appellants to substitute another person as true legal representative—Power of Court to determine which of such persons is the true legal representative* In a suit for de ...

as such The father made no objection to the proposed substitution. It was common ground that either the father alone or the widow alone was the deceased plaintiff respondent s true legal representative *Held* by the Full Bench (MAHOMED J dissenting) that having regard to the words as nearly as may be and as far as may be in s 582 of the Civil Procedure Code ss 365 366 and 367 might be applied at all events analogically to the case so as to enable the real legal representative ...

... the section so as to make s [illegible] the only provision applicable to the case that a Court of record must have an inherent power to ascertain whether or not it has before it the proper parties to an appeal if the ... fore ... the ... for ... the preliminary question whether the father or the widow was the legal representative of the deceased.

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*contd*

(*e*) RESPONDENTS—*contd*

whether the father or the widow was the legal repre entative of the decea ed plaintiff respondent *Held* by MAHMOOD J (*contra*) that the effect of

provisions of s 363 364 365 366 and 367 had no application that applying s 368 the Court was bound to implead the person named by the defendants appellants as a respondent to the appeal that applying s 32 the widow occupied a position which gave her a sufficient *prima facie* tatus to be impleaded as respondent and that as there existed no authority in the Court allowing the Court to hold an enquiry whether the father or the widow was the true legal representative of the deceased plaintiff respondent the Court should bring both upon the record as respondents and proceed to decide the appeal after hearing both *Narain Dass* v *Lajja Ram I L R 7 All 693* *Har Narain Singh* v *Kharag Singh I L R 9 All 447* *Lukshmibai* v *Bal Krishna I L R 4 Bom 654* *Rajmonee Dabee* v *Chunder Kant Sandel I L R 8 Calc 440* *Naraini Kuar* v *Durjan Kuar I L R 2 All 738* and *Athiappa* v *Ayanna I L R 8 Mad 300* referred to MUHAMMAD HUSAIN *v* KHUSHALO

I L R 10 All 223

46 ———— *Civil Procedure Code ss 368 582—Appeal—Abatement—Death of plaintiff re pondent—Application by defendants ap pellants for substitution—Application presented after the 1st July 1888—Limitation—Civil Proce dure Code Amendment Act (VII of 1888) ss 56 66 —Limitation Act (XV of 1877) Sch II Ar 175C* The plaintiff respondent in an appeal pending before the High Court died on the 17th September 1885 Subsequ ntly *D* applied to the High Court to be brought on the record as legal representative of the deceased on the 15th April 1886 he was referred to a regular suit to establish his title as such representative and on the 25th February 1887 such suit was dismis ed On the 8th February 1886 the defendants appellants applied to the High Court for judgment but the application was dismissed under the decision of the Full Bench in *Chajmal Dass* v *Jagdamba Prasad I L R 10 All 260* On 24th July 1888 they applied to the High Court to bring certain persons upon the record as the legal representatives of the deceased plaintiff respondent *Held* that the application having been made sub equent to the 1st July 1888 when the Civil Procedure Code Amendment Act (VII of 1888) came into force and being an entirely fresh appli cation not in continuation of any former proceed ings between the same parties must be dealt with under that Act and not under the Civil Proce dure Code as it stood before the amendment and that as it was made more than six months after the death of the deceased plaintiff respondent the ap peal abated with reference to s 368 of the Code and Art. 175C of the Limitation Act (XV of 1877) *Held* also that the petitioners had not shown sufficient cause within the meaning of s 368 of the Code for not making the application within the prescribed period. *Ram Jiwan Mal* v *Chand Mal I L R 10 All 587* referred to CHAJMAL DAS *v* JAGDAMBA PRASAD I L R 11 All. 408

47 ———— *Death of Hindu wife while respondent in appeal—Legal representa tives* A Hindu wife obtained a decree against her husband for maintenance He appealed and while the appeal was pending the wife died leaving two daughters The question then arose whether her

48 ———— *Devolution of in terest during pendency of suit—Assignment of de cree prior to appeal—Application to substitute name of assignee as respondent to appeal— Suit — Civil Procedure Code 1882 s 372* An appli

of the Code of Civil Procedure does not apply to a ca e where the devolution of interest occurs between the time of the passing of a decree and the time of the filing of an appeal from that decree COLLECTOR OF MUZAFFARNAGAR *v* HUSAINI BEGAM

I L R 18 All. 86

49 ———— *Devolution of in terest pending appeal—Array of parties in appeal— Civil Procedure Code 1882 ss 372 and 582—Appli cation for review* *Held* that s 372 of the Code of Civil Procedure applies as well to the case of a de volution of interest pending an appeal as to the case of a devolution of interest pending a suit *Held* also that a person may under s 372 be added or substituted as a party either on his own application or on the application of one of the parties already on the record *Held* also that an application by a respondent to an appeal whose interest had at one time been represented by an official receiver to replace upon the record of the appeal as a party respondent the name of such official receiver which

PARTIES—*contd*

5 SUBSTITUTION OF PARTIES—*concld*

(e) RESPONDENTS—*concld*

had been struck off owing to a misrepresentation of fact might be treated as an application for review of the order striking off the name of the official receiver *In the matter of the petition of* SARAT CHANDRA SINGH. GOKAL CHAND *v* SARAT CHUNDER SINGH I L R 18 All 285

50 ———— *Devolution of interest pending appeal—Array of parties in appeal—Civil Procedure Code 1882 ss 372 582* By virtue of the first portion of s 582 of the Code of Civil Procedure s 372 of the Code applies to appeal in cases of assignment creation or devolution of any interest pending the appeal otherwise than by death marriage or insolvency *In the matter of the petition of Sarat Chunder Singh I L R 18 All 285* followed. *Rajaram Bhagwat* v *Jibai I L R 9 Bom 151* and *Pamji Morarji* v *J E Ellis I L P 20 Bom 167* referred to *Collector of Muzaffarnagar* v *Husaini Begam I L R 18 All 86* distinguished *In the matter of the petition of* DURGA PRASAD I L R 22 All 231

6 TRANSPOSITION OF PARTIES

1 ———— **Making a defendant plaintiff and making the plaintiff a defendant**—*Partnership suit—Civil Procedure Code (X of 1877) s 32* The plaintiff in a partnership suit to which there were twenty one defendants applied to the Court for leave to withdraw the suit or that the suit might be dismissed Ten of the defendants supported the plaintiff s application Two of the defendants objected and applied under s 32 of the Civil Procedure Code (X of 1877) that they might be made plaintiffs and that the plaintiff might be made a defendant The Court granted their application EDULJI MANCHERJI WACHA *v* VULLEBHOY KHANBHOY I L R 7 Bom. 167

2 ———— **Making parties defendants into plaintiffs against their consent** In a suit for arrears of rent certain parties intervened alleging that they were co sharers with the plaintiff They were placed by the first Court on the record as defendants and the suit was dismissed The lower Appellate Court transferred the intervenors against their will to the side of the plaintiffs and remanded the case for re trial *Held* that this proceeding was without authority or jurisdiction as a person cannot be made a plaintiff against his will unless there is such an equity on the part of another as to compel him to be such BEHAREE LALL DOSS *v* PADHA NATH DOSS 22 W R. 229

3 ———— **Making defendant a plaintiff**—*Civil Procedure Code 1859 s 73—Adding parties after amendment of plaint* A Court could under s 73 Act VIII of 1859 add parties to a suit as well as transpose a party from his position as *pro formâ* defendant and array him amongst the plaintiffs after amendment of the plaint under s 29 PITAMBUR PYNE *v* TOOLSEE DOSSEE 7 W R 39

See KRISHNA *v* MEKAMPERUMA KRISHNA *v* COLLECTOR OF SALEM I L R 10 Mad 44

4 ———— *Parties to suit—Practice—Suit by some only of several persons entitled to sue the others being joined as co defendants* Where out of several persons who apparently had a right to bring a suit as co plaintiffs some only appeared as plaintiffs and joined the others as co defendants *Held* that the suit ought not to have been dismissed merely because the plaintiffs failed to show that the persons whom they joined as co defendants refused to appear with them as plaintiffs *Pyari Mohun Bose* v *Kedar Nath Roy I L R 26 Calc 409* followed *Dwarka Nath Mitter* v *Tara Prosunna Roy I L R 17 Calc 160* referred to BIRI SINGH *v* NAWAL SINGH (1898) I L R 24 All. 226

7 PARTIES WITH VARYING RIGHTS

———— **Joinder of parties with varying rights effect of**—*Alteration of rights of parties* When two or more parties have been joined in a suit with rights various in degree and kind the mere fact of such joinder cannot confer on any of the parties so joined new rights or rights adverse to those of the others PARBUTTEE *v* KRISHAN PUPTAB BAHADUR SAHIE 1 N W Ed 1873 44

8 PARTIES IN TWO CAPACITIES

———— **One person party both as plaintiff and one of the defendants**—*Objection validity of* The plaintiff as heir of his mother sued a firm in which he was himself a partner to recover the amount of certain loans which he *alleged that his mother in her lifetime* had made to the said firm It was objected that the suit was improperly framed inasmuch as the plaintiff was also made a defendant. *Held* that the objection was not maintainable the plaintiff being a defendant in a different capacity PREMJI LUDHA *v* DOSSA DOONGERSEY I L R 10 Bom 358

9 DISABILITY TO SUE

———— **Deaf and dumb person**—*Right to sue* A deaf and dumb person is not on that account alone to be deemed incompetent to sue or to be sued BUGGEE RAM *v* BULDEO SINGH 2 N W 414

10 OBJECTION AS TO DEFECT OF PARTIES

1. ———— **Effect of omission to join necessary parties**—*Civil Procedure Code 1859*

PARTIES—*contd*

10 OBJECTION AS TO DEFECT OF PARTIES—*concld*

s 73 *Held* that it was opposed to the spirit of the Civil Procedure Code to dismiss a suit merely on account of there being defect of parties —the Court under s 73 of the Code being vested with the power of making the persons who seem to be interested in the subject matter parties to the suit RUCHPAUL *v* JOHUREE 1 Agra 147

By s 31 of the Codes of Civil Procedure of 1877 and 1882 a suit is not to be dismissed for mere mis joinder of parties

2 ——— **Objection by defendant to want of parties**—*Civil Procedure Code, 1877 s 34* S 34 of the Civil Procedure Code (Act X of 1877) limits the time within which a defendant may object for want of parties but it does not so limit the right of the plaintiff to add parties In some casss s 34 would not prevent even a defendant from objecting to the want of a proper party after the first hearing —*e g* where after the first hearing and before decree a co parcener or remainder man or re *versioner is born or where a woman (who is a party)* is married to a man who is not a party to the suit The objection did not exist at or before the first hearing and therefore could not have been made or waived by the defendant and if he made it at the earliest opportunity after it came into existence he would have satisfied the spirit of s 34 MODHE *v* DONGRE I L R 5 Bom 609

3 ——— **Special appeal objection taken on**—*Irregularity not affecting merits of case Per* PRINSEP *J* —The objection as to the defect of parties after the case had passed through two Courts is not one affecting the merits of the case so as to be a ground of special appeal BOYDONATH BAG *v* GRISH CHUNDER ROY I L R 3 Calc 26

But *see* SHIVRAM VITHAL *v* BHAGIRTHIBAI 8 Bom A C 20

11 PRIVILEGES OF PARTIES

See ARREST—CIVIL ARREST

1. ——— **Non attendance in Court**—*Appearance by agent* A Rajah instituted a suit under Act X of 1859 through an agent appointed in that behalf The Deputy Collec tor cited the Rajah himself to appear and be examined. He excused himself on the ground of the privilege under Act VIII of 1850 s 22 and at the same time petitioned that the evidence of his general agent might be taken The Deputy Collector without examining the general agent dismissed the suit on the ground that the

Rajah who had the privilege which he claimed and his appointment of a special agent or mukhtear for

PARTIES—*concld*

11 PRIVILEGES OF PARTIES—*concld*

the purposes of the suit instead of his general agent were no grounds for dismissing the suit. JUGGUD INDUR BUNWAREE *v* SOORJKOOMAR CHOWDHRY Marsh 627

2 ——— *Mahomedan lady of rank* Where a Mahomedan lady of position residing within the town in which a Court held its sitting was willing to admit the Court to an interview at her own residence the Judge was *held* to have done wrong in insisting upon her personal appearance in Court. ZOHURUTOOLLAH CHOWDRY *v* ASALOODDEEN CHOWDHRY 15 W R 129

12 PARTIES TO CRIMINAL PROCEEDINGS

——— *Parties in conflict with one another cannot be dealt with in one enquiry—Such joinder illegal* Two or more persons are not

a joinder is not a mere irregularity but an illegality which will vitiate the proceedings GANAPATHI BHATTA *v* EMPEROR (1908) I L R 31 Mad 276

PARTIES TO CONVEYANCE

See RECEIVER 6 B L R 492 note

——— **Mortgagor and mortgagee**—*Sale of mortgaged properties in execution of decree—Pur chase by mortgagee* Where a mortgagee becomes the purchaser of property sold under a decree for sale obtained by him on his mortgage it is not necessary that the mortgagor should join in the conveyance of the property to the mortgagee. JALEERAM *v* CHUNDER COOMAREE DOSSEE 12 B L R Ap 7

PARTITION

See ACCOUNT 13 C W 309

PARTITION—*contd*

See AGRA LAND REVENUE ACT (XIX OF 1873) ss 113 114 241

See APPEAL—N W PROVINCES ACTS
I L R 25 All 141

See BABUANA GRANT 12 C W N 958
I L R 35 Calc 823

See CIVIL PROCEDURE CODE 1882 ss 13 43 I L R 26 All 531

See CIVIL PROCEDURE CODE 1882 s 396
I L R 29 Bom 366
I L R 29 All 235

See CRIMINAL PROCEDURE CODE s 145
8 C W N 485

See DECLARATORY DECREE SUIT FOR—MISCELLANEOUS SUITS
I L R 25 Mad 504

See DECREE—FORM OF DECREE—PARTITION

See EXECUTION OF DECREE MODE OF EXECUTION—PARTITION

See HINDU LAW 8 C W N 11 146
I L R 31 Calc 214 262 476
658 763 1065
I L R 36 Calc 75

See HINDU LAW—

CUSTOM—IMPARTIBILITY

JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—

GENERALLY
I L R 25 Bom. 367

GIFT I L R 31 All. 359

EVIDENCE OF SEPARATION
I L R 29 Calc 797

See HINDU LAW—PARTITION

See JURISDICTION
I L R 32 Calc 1036

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION

See LANDLORD AND TENANT
12 C W N 568

See LETTERS PATENT CL 12
I L R 28 Mad. 216 487

See LIFE ESTATE 13 C W N 611

See MALABAR LAW—PARTITION
I L R 17 Mad. 184

See MORTGAGEE (PREVIOUS)
13 C W N 81

See NORTH WESTERN PROVINCES LAND REVENUE ACT s 113
I L R 26 All 225

See N W P LAND REVENUE ACT ss 132 241 I L R 31 All 41

See OUDH LAND REVENUE ACT s 74
I L R 31 All. 73

PARTITION—*contd*

See PARTIES I L R 32 Calc 483

See RELIGIOUS ENDOWMENTS ACT s 5
8 C W N 440

See STAMP ACT II OF 1899 s 2
I L R 32 Bom 509

See TRANSFER OF PROPERTY ACT s 118
5 C W N 724

See VALUATION OF SUIT—SUITS—PARTITION I L R 24 All 381

See VENDOR AND PURCHASER—INVALID SALES—PURCHASER WITH KNOWLEDGE OF LIABILITY TO PARTITION
I L R 26 Bom 519

———— costs of—

See COSTS I L R 34 Calc 878

———— effect of—

See PRE EMPTION—CONSTRUCTION OF WAJIB UL ARZ I L R 24 All. 493

———— instrument of—

See JOINT POSSESSION 11 C W N 143

See STAMP ACT II OF 1899
I L R 31 Bom 68
I L R 32 Bom. 509

———— mode of—

See LAND REVENUE ACT (LOCAL III OF 1901) s 233 (*k*) I L R 31 All 541

———— partial partition

See HINDU LAW—JOINT FAMILY
I L R 32 Mad 191

———— requisites for—

See HINDU LAW I L R 31 All. 412

———— right to—

See CO SHARER—SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY
I L R 28 Calc 223

See HINDU LAW—CUSTOM—IMPARTIBILITY

See LIMITATION ACT (XV OF 1877) SCH. II ART 127 I L R 30 Mad. 201

———— suit for—

See APPEAL—OMISSION TO APPEAL IN TIME AGAINST PRELIMINARY ORDER OR DECREE I L R 29 Calc 758

See CIVIL PROCEDURE CODE 1882 ss 373 582 I L R 29 Bom. 13

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
I L R 23 All. 219

See COSTS—SPECIAL CASES—PARTITION
2 B L R A C 337
11 B L R Ap 32
1 Hyde 125
I L R 21 Calc. 904

PARTITION—*contd*

——— suit for—*contd*

See COURT FEES ACT 1870 s 7 CLS (4) (5) I L R. 33 Bom. 658

See EXECUTION OF DECREE I L R 29 Bom 79

See HINDU LAW I L R 32 Mad 271

See JURISDICTION—SUITS FOR LAND—PARTITION 6 B L R 134 I L R 4 Bom 482

See LIMITATION ACT 1877 SCH II ART 11 I L R. 26 Bom 146

See MAHOMEDAN LAW—PARTITION SUIT FOR 13 C W N 153

See PARTIES—PARTIES TO SUITS—PARTITION SUITS FOR.

See VALUATION 10 C W N 564 839

See VALUATION OF SUIT—SUITS—PARTITION

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES—PARTITION 22 W R 11 333

1 FORM OF PARTITION

1 ——— Imperfect partition—*Sanction to partition—Act XIX of 1863—Partition depending on consent of parties* Courts in their judgments should bear in mind the very distinct character of the several kinds of partition and until it has been ascertained with what description of partition they have to deal the question of the sufficiency of the sanction or confirmation given to it cannot be determined In certain cases the Commissioner s sanction is required in others that of the Collector There are partitions known as imperfect partitions depending upon the conduct of the parties and effected from first to last only with their con ent MUHUMDEE BEG *v* HOSSEIN ALI 2 N W 26

2 ——— Informal partition—*Partition by finding of Court in suit* Where plaintiff sued for certain land in dispute as his own and the lower Court found that it was his share and that defendant held his separately no further formal partition was *held* to be necessary MODHOOSOODUN CHATTERJEE *v* JUDDOOPUTTY CHUCKERBUTTY 9 W R 115

3 ——— Declaration of title to continue to enjoy separate possession of land—*Suit for partition* The plaintiffs having obtained a declaration of title to continue to enjoy separate pos es ion of certain lands sued the former defendants again for partition of the same lands *Held* that the suit was unnecessary and should be dismissed ANDI *v* THATHA I L R. 10 Mad. 347

2 PRIVATE PARTITION

1 ——— Effect of private partition—*Effect of on right of pre emption* A private partition though not sanctioned by official authority will if full and final as among the parties to it have the same effect as the most formal partition on the right of pre emption GOPAL SAHI *v* OJOODHEA PERSHAD 2 W R 47

PARTITION—*contd*

2 PRIVATE PARTITION—*contd*

2 ——— *Effect of on survey proceedings* A private partition of a joint estate is not inconsistent with subsequent survey proceedings and does not take away their legal effect HUNOOMAN CHOWBAY *v* BINDHOO TOPABA 10 W R 336

3 ——— *Effect of on parties—Government and purchasers at revenue sale.* A private butwarra though not binding against the Government or against a purchaser at a sale for arrears of Government revenue who derives his title directly from Government is binding as between the parties to the butwarra and persons claiming title under them TRIPOORAH SOONDAREE CHOWDHRAINEE *v* KALI CHUNDRA ROY CHOWDHRY 18 W R 327

4 ——— *Right to subsequent partition under Act XIX of 1814* Where an estate was divided by private agreement more than fifty years ago and the division was subsequently maintained in a judicial decision since which the co sharers had for many years exercised rights of ownership independently of each other a butwarra of the whole estate cannot afterwards be demanded even though a regular separation of one share has been intermediately obtained by a suit in a Civil Court PERMESSUR DUTT SAHEE *v* AUDH SAHAJEE 5 W R 40

5 ——— *Beng Reg XIX of 1814 s 30* A private partition is no bar to proceedings in the Revenue Courts under s 30 of Regulation XIX of 1814 JOYNATH ROY *v* LALL BAHADUR SINGH I L R. 8 Calc 126 10 C L R 146

6 ——— *Beng Reg XIX of 1814 s 30—Power of Collector—Jurisdiction of Civil Court* It is not correct to say that under s 30 of Regulation XIX of 1814 the Collector is not at liberty to make any part ... the owners

estate in applying the rules contained in the preceding sections of the Regulation and that where estates are not held in common tenancy only a portion of those rules will apply If the parties have divided the lands without agreeing as to the shares of the Government revenue to be paid by them respectively all the Collector has to do when a partition has been applied for is to make an assignment of the revenue in proportion to the interest of each shareholder If they have divided the lands and arranged amongst themselves as to the portion of the Government revenue which each is to pay it is open to the

PARTITION—*contd*

2. PRIVATE PARTITION—*contd*

Collector to accept or reject that arrangement The Civil Court has nothing to do with the matter AJOODHIA LALL *v* GUMANI LALL 2 C L R. 134

7 ——— N W *Provinces Land Revenue Act* (*XIX of 18*7*3*) *s 125* S 125 of Act XIX of 1873 does not apply to a partition by private agreement *Gaya Singh v Udit Singh I L R 13 All 596* referred to *Ram Prasad v Dina Kuar I L R 2 All 515* dissented from by KNOX AND BANERJI JJ KASHI PRASAD *v* KEDAR NATH SAHU I. L. R 20 All. 219

8 ——— *Family arrangement among co sharers—Partition among share holders in zamindari villages—Construction of agreement—Custom* On a dispute among proprietors of shares in zamindari villages as to the respective amounts of the holdings till then undivided to which they were entitled a compromise made by their common ancestor s five sons of whom the plaintiff s father was the eldest had been filed in proceedings prior to this suit This was construed to have assigned to the plaintiff s father an additional share according to a custom recorded in the khewat at settlement in virtue of which the eldest brother was entitled to a share greater than that allotted to the others —a right termed hakh jetharnsi. MANICK CHAND *v* HIRA LAL I L R 20 Calc 45

9 ——— *Patni of separate share—Subsequent partition under Beng Act VIII of 1876 s 128* The plaintiffs were co sharers in a certain estate *T* being another co sharer In 1818 a private partition took place between the co sharers in the course of which certain specific lands were allotted to *T* in severalty the rest remaining undivided *T* granted a patni lease of her share to third parties who were thenceforth in possession and subsequently there was a partition of the whole estate by the Collector under Bengal Act VIII of 1876 in the course of which the specific lands allotted to *T* in the private partition were allotted to the plaintiffs who brought against the tenants of the land suits for rent to which they made the patnidars defendants *Held* that the patnidars were properly made parties to the suits in order to try the question of the right to receive the rent as between the plaintiffs and the patnidars *Kashee Ram Dass v Sham Mohinee 23 W R 227 Ahamudeen v Girish Chunder Shamunt I L R 4 Calc 350* and *Madan Mohan Lal v Holloway I L R 12 Calc 555* referred to *Held* also that assuming

the plaintiffs were bound notwithstanding the subsequent partition by the Collector *Ahmedoolah v Ashruff Hossein 13 W R 447 Obhoy Churn Sircar v Hurs Nath Roy I L R 8 Calc 72* and *Juggessur Doyal Singh v Bissessur Pershad 12 C L R 231* approved *Bytnath Lal v Ramoodeen*

PARTITION—*contd*

2. PRIVATE PARTITION—*concld*

Chowdhry L R 1 I A 106 distinguished. S 128

I L R Calc 285

10 ——— *Stamp Act* (*II of 1899*) *s 2 cl 15—Undivided brothers—Documents purporting to be lists of properties—Each document signed by the brothers excepting the one retaining it—Each document formed the title of the brother retaining it with respect to his share—Instrument of partition—Stamp* Four undivided brothers made four lists of the family property Each list was signed by three brothers and not by the fourth who retained it A question having arisen whether the list constituted a partition between the brothers and required to be stamped as such under the St-

Act (

form

tion

Stam

3 RIGHT TO PARTITION

(*a*) GENERAL CASES

1 ——— Co sharers—*Effect of partition* In cases of joint ownership each party has a right

parties under their contract with the zamindar SHAMASUNDARI DEBI *v* JARDINE SKINNER & Co 3 B L R Ap 120 12 W R 160

2 ——— Joint owners in right of worship of idol—*Performance of worship by turns* The reasons for which one of several joint owners is entitled to a partition of the joint property apply also to the case of a joint right of performing the worship of an idol The joint owners of such a right are entitled to perform their worship by turns MITTA KUNTH AUDHICARRY *v* NEERUNJUN AUDHICARRY 14 B L R 166 22 W R 437

MANCHARAM *v* PRANSHANKAR I. L. R 6 Bom 298

3 ——— Patnidars—*Right to enforce partition—Patnidar of undivided share* One patnidar of an undivided share of a zamindari held by joint proprietors has no right to sue to enforce partition against another patnidar where there is no contract between the two or between the patnidar and his zamindar to divide PIDAI NATH SANDYAL *v* ISWAR CHANDRA SAHA

4 B L R Ap 57 note

PARTITION—*contd*

3 PIGHT TO PARTITION—*contd*

(*a*) GENERAL CASES—*contd*

4 ———— **Co parceners**—*Joint possession—Suit by subordinate tenure holder for partition against superior landlord* Joint possession alone is not a suffi ient ground for compelling a partition In order that persons may be co parceners and so have a right to partition not only must they be in joint possession but that joint posses

h

e

plaintiffs were proprietors of a 12 anna share and dar talukdars of the other 4 anna share of talukh A which consisted of a 7¼ anna share of so much of the lands of three villages D B and T as appertained to an estate in the Collectorate No 23 Estate No 23 with three other estates represented fractional shares in three parganas comprising about 500 villages

was held under the plaintiff In a suit against L for partition of such of the lands of talukh A as appertained to estate No 23 and were separate from

KUNDA LAL PAL CHOWDHRY *v* LEHURAUX
I L R 20 Calc 379

5 ———— **Estate held in separate possession**—*Suit b; on of several shareholders—Beng Reg XIX of 1814 s 30* When an e tate is held n separate possession a batwara of the whole for the purpose of apportioning land accord ng to the jummas of the shareholders who had severally entered int engagements with the Government cannot be in i ted upon by one of the proprietors under s. 30 Regulation XIX of 1814. BUJPUNGEE LALL *v* VELAET HOSSEIN KHAN 5 W R 186

6 ———— **Separate holders under private partition**—*Right to have partition by Coll ctor after private arrangement and disagree m nt* Parties holding separate portions of an estate according to a private arrangement previously made are not in a condition to apply to the Collector for a batwara when unable afterwards to agree among themselves AJOODHYA PERSHAD *v* KRISTO DYAL
15 W R 165

See KHOOBUN *v* WOOMA CHURUN SINGH
3 C L R 453

7 ———— **Joint proprietors**—*Joint lands each proprietor getting rent separately* Lands held in joint possession each proprietor receiving his proportion of the rent according to his interest in the land cannot be divided under the batwara laws DOORGA KANT LAHOORY *v* RADHA MOHUN GOOHO NEOGY 7 W R 51

8 ———— **Division between zamindars**—*Beng Reg XIX of 1814* One of the co sharers of a joint estate suing conjointly with the others would under Regulation XIX of 1814 be entitled to a separation of a mouzah from the rest of the zamindari and an assessment upon it of a proper proportion of the total jumma and having done this he would alone be entitled to have an order for partition of that mouzah as between himself and his co sharers therein If the zamindari which the plaintiff seeks to have divided is so intermixed with the neighbouring zamindaris that the line of boundary cannot be reasonably identified he cannot call upon the Collector to make a new line But if the Collector has the means of ascertaining where the boundary lies he is bound to carry out a partition BHUBRUT THAKOOR *v* MURTAZA 21 W R 225

9 ———— **Zamindars**—*Separate liability for payment of revenue—Arrangement for separate payment—Assent to by maafidar* A partition

e

from assenting to any arrangement which the zamindars may make for the conversion of their joint into separate liability SURNOMOYEE *v* RAMCHURN SINGH 3 Agra 251

10 ———— **Purchaser of specific portion of estate**—*Right to partition of whole estate* The purchaser of a specific portion of the land of an estate separately registered with a separate jumma under s 11 Act XI of 1859 is not entitled to claim a batwara of the whole estate and to obtain a share of the whole land proportioned to the amount of the sudder jumma paid by him FUKEER CHUNDER SHAHA *v* NOBODEEP CHUNDER SHAHA
W R 1864, 59

11 ———— **Party with decree for partition which he fails to execute till barred**—

PARTITION—*contd*

3. RIGHT TO PARTITION—*contd*

(a) GENERAL CASES—*contd*

Act XIX of 1863 s 4 Where a person obtained a decree from the Civil Court declaring his right to certain shares in the village and directing a partition but did not execute his decree within the prescribed period of limitation —*Held* that he was not entitled to partition under s 47 Act XIX of 1863 KISHEN SINGH v DABEER SINGH 2 Agra 272

12. ——— Right in suit where title has been declared to have precept to Collector to partition—*Beng Reg XIX of 1814*

iff's title was established he was also entitled under s 5 Regulation XIX of 1814 to a precept to the Collector directing him to award to the plaintiff a share corresponding with that title ABDOOL REZA v JEBUNNISSA BIBEE 16 W R 34

13 ——— Shikmi tenure—*Rights of Government the zamindars and the shikmidars* Partition of a shikmi tenure allowed on the ground that the order could not affect the rights of Government of the zamindars nor the plaintiff s co shikmidars OOMESH CHUNDER SHAHA v MANICK CHUNDER BONICK 8 W R 128

14. ——— Lakhiraj tenure—*Beng Reg XIX of 1814* Though a partition of a lakhiraj

15 ——— Common lands of mirasi villages—*Pungavaly tenure Semble* The right to enforce a partition or allotment of the common lands of mirasi villages held in *pungavaly* tenure probably does exist SITARAMAIYAR v ALAGIRY IYER 4 Mad. 285

16 ——— Co parceners—*Order binding whole estate* There is no statutory bar against a raiyat s right to partition as between himself and his co parcener where he does not ask for such a distribution of the patni rent as would bind the zamindar or limit the latter s right over the whole tenure as a joint one GOUREE SUNKUR ROY v ANUND MOHUN MOITRO 9 W R 487

See MOTHOOR CHUNDER KURMOKAR v MANICK CHUNDER BUNGO 6 W R 192

17 ——— Hindu widow—*N W P Land Revenue Act XIX of 1873 s 108—Hindu widow—Reversioners* A childless Hindu widow who has succeeded to her deceased husband s share of a mehal such share having been his separate property and is recorded as a co sharer of such mehal is as much entitled under s 108 of Act XIX of 1873 as any other recorded co sharer is to claim a perfect partition of her share The circumstance that she may after partition alienate her share contrary to Hindu law will not bar her right as a co sharer to partition If she acts contrary to the Hindu law in respect of her share the reversioners will be at liberty to protect their own interests JHUNNA KUAR v CHAIN SUKH I L R 3 All 400

18 ——— *Revenue paying estate—Beng Act VIII of 1876 s 10* A Hindu widow who has succeeded to a share in a revenue paying estate as heir to her deceased husband is not

partition of a revenue paying estate at her instance if a proper case for the passing of such a decree be made out by her *Jadomoney Dabee v Saroda prosono Mookerjee 1 Boulnois 120 Phool Chand Lall v Rughoobuns Sahoy 9 W R 108 Katama Natchiar v Rajah of Shivagunga 9 Moo I A 539* and *Bhagbutti Daee v Chowdhry Bholanath Thakoor L R 2 I A 256* referred to Principles on which Courts should order partition at the instance of a Hindu widow stated MOHADEAY KOOER v HARUK NARAIN I L R 9 Calc 244

19 ——— Partition between owners of separate shares in permanently settled estate—*Effect of as against Government* In the year 1226 F (1819) a fourteen anna eight gunda share of a certain mouzah was permanently settled. The remaining one anna twelve gunda share was permanently settled in 1861 This share was sold for arrears of Government revenue in 1873 and pur

sent suit to which he made the Collector a party to obtain a declaration that he was entitled to have his share separated from the 14 anna 8 gunda share by metes and bounds and also for a decree directing a partition of the whole mouzah into two parts *Held* that so far as the plaintiff on the one

DURBHUNGAH
I L R 9 Calc 419 11 C L R 550

20 ——— Grantees of inam village—*Suit by co sharer in melvaram of inam village for division of lands—Parties to suit—Liability to Government for quit rent* Where the grantees of an inam village subject to a favourable quit rent enjoy the rent payable by the permanent tenants in defined shares any one of the grantees may sue his co sharers for a partition of the lands of the village

PARTITION—*contd*

3 RIGHT TO PARTITION—*contd*

(a) GENERAL CASES—*contd*

to enable him the more easily to recover his share of the rent although he cannot without the consent of Government put an end to his joint liability for the entire quit rent. It is not necessary for the plaintiff in such suit to implead any raiyat whose rights are unquestioned. The partition in such a case must be carried out by the Collector after a preliminary decree and when partition is carried out by the Collector a final decree should be passed. RAMANUJA AYYANGAR v VIRAPPA TEVAN

I L R 6 Mad 90

21. ———— Civil Procedure Code 1882 s 265—*Revenue paying estate—Beng Act VIII of 1876 Part II and s 4 cls (8) and (9)—Civil Procedure Code (Act XIV of 1882) s 265* In 1851 an estate was brought under butwarra under the provisions of Regulation XIX of 1814. At such butwarra a portion of the estate being covered with water and unfit for cultivation was not divided but left joint amongst all the co sharers the land revenue payable on account of the whole estate being apportioned amongst the several estates into which the portion divided was split up. Subsequently on the portion remaining joint becoming dry and fit for cultivation, an application was made by one of the co sharers to the Collector to partition the same under the provisions of Bengal Act VIII of 1876 but that officer refused to do so on the ground that the land did not bear an assessed revenue and was not shown in the towzi. In a suit brought under the above circumstances to compel the Collector to make the partition and in the alternative to have it made by the Civil Court —*Held* that though the reason given by the Collector for refusing was an erroneous one he was not bound to make the partition under the provisions of Bengal Act VIII of 1876 as the land in suit was not liable for the payment of one and the same demand of land revenue and was therefore not a joint undivided estate within the terms of s. 4 cl. (9) of that Act. *Held* also that the word estate as used in s. 265 of the Civil Procedure Code must not be construed in the same limited and defective sense in which it is used in Act VIII of 1876 but must be taken to be there used in its ordinary signification, and that consequently the plaintiff was entitled to a decree for partition under the provisions of that section. *Chundernath Nundy v Hur Narain Deb I L R 7 Calc 153* approved. SECRETARY OF STATE v NUNDUN LAL

I L R 10 Calc 435

22 ———— *Suit in ejectment—Partition by Collector—Jurisdiction—Mortgage sale—Hindu law—Undivided property—Pos*[illegible]

[illegible]

to H and I who failing to pay rent were sued by R who got a decree for possession. This decree was transferred for execution to the Collector who sold the land and rateably distributed the proceeds except to V who declined to take the amount tendered as his share. The plaintiff sued V and the purchasers under R's decree to recover his mortgage debt by a sale of the property mortgaged to him. *Held* that R's decree not being for partition of the family property or for the separate possession of a share was not one contemplated by s 265 of the Code of Civil Procedure. The proceedings of the Collector were without jurisdiction and the plaintiff was entitled to ignore them and assert his claim under the mortgage. NARAYAN NAGARKAR v VITHU JAKHOJI

I L R 8 Bom 539

23 ———— *Raiyatwari land* S 265 of the Code of Civil Procedure 1877 does not apply to property held on raiyatwari tenure, but to permanently settled estates. MUTTU v KUDALALAGA

I L R 6 Mad 97

24. ———— *Partition of raiyatwari estates—Act VIII of 1859 s 265* In 1862 it was held by the Sudder Court that s. 225 of Act VIII of 1859 did not apply to raiyatwari estates. This ruling having always been acted on in the Madras Presidency —*Held* by the Full Bench that a different construction should not under these circumstances be placed on s. 265 of the Code of Civil Procedure 1882 *Mutu v Kudalalaga I L R 6 Mad 97* confirmed. MUTTUCHIDAMBARA v KARUPPA

I L R 7 Mad 382

25 ———— Suit for partition by person in possession making a false claim. B a childless Hindu and a Brahman adopted X his sister's son and subsequently apprehending that the adoption was invalid executed a will by which he left his estate to X. After B's death X obtained possession and remained in possession of the estate till his death, which occurred before he had attained majority. After this joint possession of the estate was obtained by P and S two widows of B who set up a right of inheritance from X as being in the position of mothers to him in consequence of his adoption by their deceased husband. In a suit brought by S against P for partition of the estate —*Held* that inasmuch as the parties had set up a false claim to the estate and had no estate in law which they could divide the suit for partition was not maintainable merely by reason of the fact that they were in possession. *Armory v Delamirie Smith's L C 313* and *Asher v Whitlock L R 1 Q B 1* referred to. PARBATI v SUNDAR

I L R 8 All 1

26 ———— Right of joint occupancy tenants to partition—*Jurisdiction of Civil Court—Parties* *Held* that a joint occupancy tenant is entitled to sue for and a Civil Court is competent to grant a decree for partition of the joint [illegible]

PARTITION—*contd*

3 RIGHT TO PARTITION—*contd*

(a) GENERAL CASES—*contd*

prior to the partition *Sunder v Parbati I L R 12 All 51 L R 16 I A 186 Baring v Nash 1 V & B 551 Omesh Chunder Shaha v Manick Chunder Bonick 8 W R 178* and *Bhagi v Girdhari All Weekly Notes (1895) 143* referred to MUHAMMAD BAKHSH v MANA

I L R 18 All 334

27 ——— Mortgagee s right of partition inter se—*Mortgage of different shares in an undivided area to different mortgagees by usufructuary mortgage.* Two mortgagees held separate usufructuary mortgages the one of a two thirds share the other of a one third share in an undivided

I L R 18 All 476

28 ——— Partition between zamindar and patnidars—*Partition between parties on of whom owns interest subordinate to the other* The plaintiff was proprietor of an entire estate paying an annual revenue to Government of R2 444 In 1854 his father gave a patni lease of an un

their respective shares of the rent difficulty and

entire amount of the Government revenue payable n respect of it *Held* by the Full Bench that the plaintiff was entitled to a decree for partition HEMADRI NATH KHAN v RAMANI KANTA ROY

I L R 24 Calc 575
1 C W N 406

29 ——— Right of co sharers—*Inam village—Right of manag ment by co sharers* Pro

continued practice from which a family custom may be inferred may operate to bring about the same result GOPAL HARI JOSHI v RAMAKANT RANGNATH JOSHI I L R 21 Bom. 458

30 ——— Grantees of inam village—*Inam village granted by Peishwa—Right of management of Inam property—Claim that Inam village was impartible—Right of succession—Custom* The defendant in a suit for partition alleged that his branch of a joint family to which an inam village had been granted by the Peishwa had under the

original grant nor of the sub equent orders of the ruling power nor by family custom n r by adverse po session has the defendant s branch of the family acquired a right to perpetual management of the village of Ahire or in consequence to resist its partition *Adrishappa v Gurushidappa L R 7 I A 162* referred to VINAYAK v GOPAL (1903)

I L R 27 Bom 353
s c L R 30 I A 77
7 C W N 409

31 ——— Right of person holding temporary or qualified interest—*Partition suit for—Right of suit—Division to be final* Partition should not be allowed when the interests of one or more of the persons owning interests in the property to be partitioned is of a temporary and qualified character and when there may be apprehension that the division effected may not have an enduring effect A *mokurari* lease which was by its terms to become null and void on default of payment of three instalments of the *mokurari* rent as al o upon alienation by the *mokuraridar* was not such a permanent or tran ferable interest as would ensure that any division that might be effected would be of enduring effect BEPIN BEHARI MITTER v LALA BHAGWAT SAHAI (1905)

9 C W N 699

32 ——— Suit for partition dismissed for default—*Joint Hindu Family—Partition—Fresh suit not barred* Where a suit for partition was dismi sed for default and a fresh suit was instituted *Held* that the right to enforce partition is a legal incident of a joint tenancy and as long as such tenancy subsists o long may any of the joint tenants apply to the Court for partition of the joint property *Nasratullah v Mujibullah I L R 13 All 309* followed BISHESHAR DAS v RAM PRASAD (1906) I L R 28 All. 627

33 ——— Partition suit—*Preliminary decree—Execution struck off for default—Fresh suit if lies* A previous suit for partition

I L R ...
of the C...
executio...
BAIKAN...

PARTITION—*contd*

3 RIGHT TO PARTITION—*contd*

(a) GENERAL CASES—*contd*

34 ———— **Suit in Civil Court for declaration of title**—*United Provinces Land Revenue Act (Local III of 1901) ss 110 111 233 (k) —Objections not raised before Revenue Court—Jurisdiction* On the 12th of March 1904 defendants applied to the Revenue Court for partition of their share in two mahals Proclamation was issued on that application calling upon the opposite party to appear on the 18th of April 1904 and state their objections if any to the partition The opposite party did not appear in the Revenue Court but on the 20th of April 1904 instituted a suit in a Civil Court against the applicants for partition asking for a declaration of their exclusive possession over part of the property the subject matter of the defendants application for partition in the Revenue Court *Held* that the plaintiffs suit was not maintainable *Muhammad Sadiq v Laute Ram I L R 23 All 291* and *Khasay v Jugla I L R 28 All 432* referred to NATHI MAL v TEJ SINGH (1907)
I L R 29 All 604

35 ———— **Co sharer**—*Partition decree for* A lessee held certain lands in a village under three separate temporary leases from three undivided co sharers of the village On the expiry of one of the leases the lessor in question sued for *khas* possession on partition of his separated share His other co sharers who with the lessee had been made parties to the suit raised no objection *Held* that there was no bar to a decree for partition being made in the case But the plaintiff ought to pay the entire costs of the partition as a fresh partition of the entire mouzah may be necessary on the expiry of the other leases RAM LOCHI KOERI v HEPBERT COLLINGRIDGE (1907) **11 C W N 397**

36 ———— **Hindu Law**—*Partition—Expenses for ceremonies of brother s sons—Share of step mother—Value of stridhan to be deducted from share—Expenses for ceremonies of grand children* In a suit for partition brought by a Hindu against his father and brothers the brothers are entitled to have set apart from the family property a sum sufficient to defray the expenses of their prospective thread betrothal and marriage ceremonies such sum to be calculated according to the extent of the family property A father s wife is on such partition entitled to a share equal to that of a son but from her share must be deducted the value of any *stridhan* received by her as a gift from her father in law or husband The children of a brother on such partition are not entitled to any sum for the performance of their prospective thread betrothal or marriage ceremonies JAIRAM v NATHU (1906)
I L R 31 Bom 54

37 ———— **Defendants claim on dismissal of suit**—*Partition suit for—Dismissal of suit—Defendants cannot claim partition of their shares in that suit* Where a plaintiff brings a suit for partition and fails it is not open to any of the defendants to claim that the partition suit should go on in order that the share of one or more of such defendants may be determined ASHIDBAI v ABDULLA (1906) **I L R 31 Bom 271**

38 ———— **Babuana grant**—*Ancestral property—Original grantee s power to dispose of by will—Rights of junior members* Babuana grant of ancestral property does not change the ancestral character of the property and turn it into self acquired property in the hands of the grantee or his direct male descendants The original grantee has no power to dispose of the property by will and the other members of the family have those rights in it which they can claim under the Mitakshara law *viz* the right to restrain alienation except in cases of legal necessity and the right to claim partition *Ram Chandra Marwari v Mudheswar Singh I L R 33 Calc 1158* and *Rameswar Singh v Jibender Sing I L R 32 Calc 683* followed LALITESWAR SINGH v BHABESWAR SINGH (1908) **I L R 35 Calc 823**

39 ———— **Parties**—*Partition suit—Talukdars and dar talukdars—Allowing persons not made parties to watch proceedings—Practice.* In a suit for partition persons holding interests of an inferior degree are not necessary parties A person holding a permanent interest though an interest of an inferior grade may bring a suit for partition as against persons who hold interests of a superior grade A patnidar may bring a suit for partition against his co patnidars or against dar patnidars under his co patnidars in the latter case the co patnidars must be made parties The question as to who are necessary and who are proper parties in a partition suit discussed In the present suit *held* that the dar talukdars should not be made parties as the suit would become highly complicated thereby The course adopted in the lower Court namely of allowing the dar talukdars to watch the partition proceedings though not made parties approved UPENDRA CHANDRA SINGHA ROY v MUHOMED FAIZ CHOWDHURY (1908)
12 C W N 670

40 [illegible]
[illegible]
[illegible]
of [illegible]
the share of the applicant for partition alone should be partitioned that of the non applicants remaining joint *Held* that although such com [illegible]

I L R 31 All 3

PARTITION—*contd*

3. RIGHT TO PARTITION—*contd*

(*b*) PARTITION OF PORTION OF PROPERTY

41 ——— **Partition of a portion of joint family property**—*Suit for partition of a portion of joint prop rty* A uit will not lie for partition of a portion only of joint family property JOGENDRO NATH MUKERJI *v* JOGOBUNDU MUKERJI I L R 14 Calc 122

42 ——— **Suit for partition of portion of property**—*Civil Procedure Code 18*7*, s 265* A suit will not lie for partition of portion only of a joint e tate Accordingly where the plaintiff sued for partition of a portion of a joint estate and for khas posses ion of the hare which might on the partition be allotted to him alleging that he had been deprived of po ession of that portion by his co sharers in collu ion with others it was *held* the suit would not lie Although under s 265 of Act X of 18 7 a decree may be made for partition of revenue paying land yet that decree must be car ried into execution solely by the Collector PAM JOY GHOSE *v* PAM PUNJUN CHUCKERBUTTY 8 C L R 367

43 ——— **Partition of portion of joint estate without consent of co sharers**—*Juris diction of Civil Court* Where a co sharer in a joint undivided estate sue l to have his rights ascer tained and partition made in respect of an orchard which formed part of the joint estate —*Held* that the Civil Court was not entitled to decree partition or give pos es ion of a separate share in the orchard and there is no law whi h entitles a share hol ler to obtain partition of a portion of an undivided estate against the will of the other co shar rs MITTHOO LALL *v* GHOLAM NUSEER OOD DEEN 3 Agra 276

44 ——— **Suit by mokurari lease holder of small part of estate**—*Suit against patnidars of whol estate* The owner of a 12 annas share in a joint zamindari granted to the plaintiff a mokurari lease of his share in a small portion of land within the zamindari The owner of the re [illegible]

same estate be subjected to many claims for parti tion at the suit of persons in the plaintiff s position PARBATI CHURN DEB *v* AIN UD DEEN I L R 7 Calc 577 9 C L R 170

45 ——— **Suit for partition of por tion of joint property**—*Partial partition* The plaintiffs and the defendants being jointly entitled to and in possession of three khanabaris in a village and other immoveable property the plaintiff sued for partition of one of the khana baris only *Held* that the suit would not lie HARIDAS SANYAL *v* PRAN NATH SANYAL I L R 12 Calc 566

PARTITION—*contd*

3 RIGHT TO PARTITION—*contd*

(*b*) PARTITION OF PORTION OF PROPERTY—*contd*

46 ——— **Portion of property out of and portion within jurisdiction**—*Parties* [illegible]

a suit for partition it was shown that some portion of the property was out of the juri diction of the Court objections that fresh parties would be necessary if the mofu sil property were included and that therefore the suit had not been properly brought and that the leave of the Court had not been obtain d previous to bringing the suit were overruled PADMAMANI DASI *v* JAGADAMBA DASI 6 B L R 134

47 ——— **Portion of property out of jurisdiction**—*Ancestral property—Rule as to property b ing brought into hotchpot—Property out of jurisdiction* No doubt the rule that every partition suit shall embrace all the joint family pro perty has been held to be subject to certain quali fications as for instance where different portions of it lie in different jurisdictions or where a portion is *not available for actual partition as being in the* possession of a mortgagee but there is no authority for the propo ition that a member who sues for parti tion of property in the hands of the defendants can [illegible]

I L R 7 Bom. 272

48 ——— **Partial partition**—*Jurisdic tion of High Court Original Side—Properties situate partly within and partly without jurisdiction* On the Original Side of the High Court a suit for partition of joint estate part of the property of which estate is situate within and part without the juris diction (there having be n no leave granted under s 12 of the Charter to sue concerning the portion outside the jurisdiction) is not liable to be dismissed on the ground that partial partition of a property cannot be granted but may be decreed as far as the property within the juri diction is concerned The ruling of JACKSON J in *Rattun Monee Dutt* v *Brojo Mohun Dutt 22 W P 333* explained PUNCHANUN MULLICK *v* SHIB CHUNDER MULLICK I L R 14 Calc 835

49 ——— *Property in differ ent jurisdictions—Suit for partial partition—Su t for land—Letters Patent 1865 cl 12* The plaintiff sued for partition of certain property alleging it to be joint family property It con i ted of a house in Bombay and certain fields at Vavla in the Thana District outside the jurisdiction of the Court The parties were all resident in Bombay *Held* that as to the Vavla property the Court had no jurisdiction the plaintiff not having obtained leave to sue under cl. 12 of the Letters Patent 1865

PARTITION—*contd*

3 RIGHT OF PARTITION—*contd*

(*b*) PARTITION OF PORTION OF PROPERTY—*contd*

but that the suit might proceed as regards the property in Bombay *Punchanun Mullick v Shib Chunder Mullick I L R 14 Calc 835* followed BALARAM BHASKARJI v RAMCHANDRA BHASKARJI I L R 22 Bom 922

50 ———— **Portion of land held under private agreement for exclusive use** Where an applicant for the partition of a joint undivided estate holds any portion of it for his own private use under a private agreement —*Held* that the whole estate including such portion of it as has been separately enjoyed must be brought into account before the partition can be effected LALLJEET SINGH v RAJ COOMAR 25 W R 353

51 ———— **Rectification of portion of property**—*Suit to set aside partition* Where a property had been divided and one of the sharers was dissatisfied with the result he could bring a suit to have the division entirely revised but was not at liberty to ask for a rectification of a small portion of the divided property TRIPOORA SOONDUREE v GOPAL NATH ROY 25 W R 358

52 ———— **Omission of property in possession of one party**—*Ground for dismissal* In a partition suit the fact that the plaintiff has not included or has relinquished his share in property liable to division affords no ground for dismissing the suit where the co parcener in whose possession it is is a party to the suit for it is competent to the Court in disposing of the case to make any order in respect of such property that may to it appear right JANARDAN VITHAL v ANANT MAHADEV I L R 7 Bom 373

53 ———— **Partition of mal raiyati land in Chota Nagpur**—*Reg III of 1872—Partition of trees and land—Ghatwal* As between two *mal raiyats* with whom a settlement has been made under Regulation III of 1872 there may be a partition of the waste and jungle lands though

entitled they cannot be the subject of partition but as to the trees which belong to the *mal raiyats* there may be a partition DOMAN PANDEY v PANCHU KOLE (1900) 5 C W N 185

54 ———— **Putnidar**—*Partition suit for—Right of a putnidar of a small share of an estate to claim partition* In the absence of proof of inconvenience to the other co sharers a *putnidar* whose right extends over only a fractional share of one of many mouzahs in the zemindari is entitled to maintain a suit for partition *Radha Kanta Shaha v Bipro Das Roy 1 C L J 40* and *Barahi Debi v Debkamini Debi I L R 20 Calc 682* referred to UMA SUNDARI DEBI v BENODE LAL PAKRASHI (1907) I L R 34 Calc 1026

55 ———— **Owelty**—*Partition—Allotment on partition—Mortgagee—Charge for owelty* Where co sharers have been awarded certain sums of money as owelty on a partition decree they are entitled to priority over the mortgagees of a portion of the property partitioned KAJIM SHAH v HILLS (1907) I L R 35 Calc 388 s c 12 C W N 373

56 ———— **Co owner of chaukidari chakran lands**—*Co owners not members of joint family—Suit if maintainable* One of the co owners of an estate sued the other co owners for partition of chaukidari chakran lands of one village only of the estate *Held* that the reasons against the partial partition of joint family property did not apply to such a case and the suit was maintainable HABIBUR RASUL ABDUL FAIZ v ASHITA MOHAN GHOSH (1908) 12 C W N 640

4 APPOINTMENT OF COMMISSIONER

1 ———— **Procedure**—*Civil Procedure Code 1877 s 396* *Per* PONTIFEX *J* (FIELD *J* doubting)—In a suit for partition it is competent to the Court in its preliminary decree to appoint any one person whom it thinks fit to be a Commissioner to make the partition under s 396 of the Civil Procedure Code The section uses the word Commissioners but it is not necessary for the purposes of partition that there should be more than one Commissioner and by force of the General Clauses Act the word Commissioners may be read in the singular number The intention of s 396 is that upon the first hearing of a suit the Court shall determine whether the plaintiff is entitled to a partition and shall ascertain who the several persons entitled in the property are and shall direct by a preliminary decree or order that Commissioners be appointed to make the partition GYAN CHUNDER SEN v DURGA CHURN SEN I L R 7 Calc 318 8 C L R 415

2 ———— *Suit for partition of immoveable property—Commissioner appointed to make partition—Court not competent to modify Commissioner s report* Where in a suit for partition of immoveable property a Commissioner has been appointed under s 396 of the Code of Civil Procedure to ascertain the shares of the parties the Court

Khan v Hanwant Singh All Weekly Notes (...) 45 JANTI PRASAD v GAURI SAHAI (1905) I L R 28 All 75

3 ———— *Commission to make partition—Issue of commission to one person only* A Court issuing under s 396 of the Code of Civil Procedure a commission to make partition of immoveable property not paying revenue to Government cannot legally issue such commission to one commissioner only *Per* RICHARDS *J*—But there is nothing to prevent the parties to partition proceedings agreeing that one commissioner only should

PARTITION—*contd*

4. APPOINTMENT OF COMMISSIONER—*concld*

be appointed nor does it follow that all the partition that have been made are invalid by reason of the fact that only one commissioner has been appointed MULCHAND v MUHAMMED ALI KHAN (1906)
I L R 29 All 235

5 JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION

1. ——— Suit to set aside partition—*Beng Reg XIX of 1814—Minor right of* A partition by the Collector under Regulation XIX of 1814 if consented to by all the parties is final and cannot be set aside by any party in the Civil Court but where one of the parties was a minor at the time of partition the Court remanded the suit for an enquiry whether his guardian acted in the partition proceeding *bona fide* and with a due regard to the interests of the minor HARI PRASAD JHA v MADDAN MOHAN THAKUR
8 B L R Ap 72 17 W R 217

confirmed by the revenue authorities it seems that one shareholder cannot maintain a suit in the Civil Court to have it declared that he is entitled to a share larger than he claimed in the partition proceedings RAMSAHAYA SINGH v MUZHAR ALY
2 B L R Ap 40

3 ——— Suit for larger share than that allotted by Collector—*Beng Reg XIX of 1814 ss 4 and 20 cl 2* S 20 Regulation XIX of 1814 which says the determination of the Board of Revenue or Board of Commissioners on the paper of partition shall be final refers to those questions only which can be legally determined by the revenue authorities and will not prevent a ...

fifteen days as required by cl 2 s 4 Regulation XIX of 1814. There is nothing in the butwarra law or in any other Regulation to prevent the Civil C...

less than his proper share in the estate and the plaintiff brought his suit against the co sharers generally without specifying in whose share the quantity he had lost was included —*Held* that the Court could in such suit declare the plaintiff s title to the same treating him as a shareholder to that extent only in the pottah in which it may have been included SPENCER v PUHUL CHOWDHRY
6 B L R 658 15 W R 471

See also KUNJ BEHARI SING v NERU SING
6 B L R 663 note 15 W R 291

PARTITION—*contd*

5 JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*contd*

SHEO PERSHAD SOOKOOL v SHUNKUR SAHOY
16 W R 190

4 ——— Suit for declaration of title—*Beng Reg XIX of 1814—Jurisdiction of Collector—Title* The Collector cannot try the question of title in butwarra proceedings under Regulation XIX of 1814 A suit for possession and declaration of mokurrari title to certain lands can be entertained in the Civil Court notwithstanding the butwarra proceedings AHMEDULLA v ASHRUFF HOSSEIN
8 B L R Ap 73 note

S C AHMEDOOLLAH v ASHRUFF HOSSEIN
13 W R 447

5 ——— Suit for partition—*Suit by purchaser of share of lakhiraj estate* The purchaser of a share in an undivided lakhiraj estate can sue his co parceners for a partition of his share and the Civil Court has jurisdiction to carry out the partition FATTEH BAHADUR v JANKI BIBI
4 B L R Ap 55 13 W R 74

6 ——— *Division to prevent encroachment where enjoyment is distinct* The Civil Court has jurisdiction in a suit between joint owners of talukh who have been occupying and using separate and distinct parts of premises within the estate where the object is to prevent encroachment by defendants upon the part occupied by plaintiffs without any division of the Government revenue or alteration of joint liability to pay that revenue KALEE MOHUN SEN v RAM SOONDER SEN
24 W R 243

7 ——— Dispute with regard to shares—*Parties* Where two or more proprietors of a joint estate held in common tenancy desirous of having separate possession of their respective shares apply each and all to have that estate divided in exactly the same proportionate shares and no other sharers oppose the butwarra the Collector ...

party JOYMONEE DEBIA v IMAM BUKSH TALOOKDAR
13 W R 471

8 ——— Suit for division of share of mouzah—*Civil Procedure Code, 1859 s 225* A suit for division of a share of a mouzah appertain...

9 ——— Partition of revenue paying estate Partition of an estate paying revenue to

PARTITION—*contd*

5. JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*contd*

Government cannot be effected in a Civil Court. BADRI ROY v. BHUGWANT NARAIN DOBEY I L R 8 Calc 649 11 C L R 186

RUTTUN MONEE DUTT v. BROJO MOHUN DUTT 22 W R 11

s c affirmed on appeal 22 W R 333

10 ———— *Jurisdiction of*

estates but are mere fractional shares of integral estates they cannot be partitioned in the absence of the other co sharers. DAMOODUR MISSER v. SENABUTTY MISRAIN I L R 8 Calc 537 10 C L R 401

11 ———— *Partition of mehal—Application by co sharer for partition—Notice by Collector to other co sharers to state objections upon a specified day—Objection raised after day specified by original applicant—Question of title—Distribution of land—Jurisdiction—Civil and Revenue Courts—Act XIX of 1873 ss 111 112 113 131 132 241 (f)—Civil Procedure Code s 11* Reading together 111 112 and 113 of the North Western Provinces Land Revenue Act (XIX of 1873) as they must be read the objection contemplated in each of them is an objection to be made by the person upon whom the notice required by s. 111 is to be served i e a person who is a co sharer in possession and who has not joined in the application for partition. So far as ss. 111 112 113 114 and 115 are concerned a Civil Court is the Court which has jurisdiction to adjudicate upon questions of title or proprietary right either in an original suit in cases in which the Assistant Collector or Collector does not proceed to inquire into the merits of an objection raising such a question under s. 113 or on appeal in those cases in which the Assistant Collector or Collector does decide upon such questions raised by an objection made under s. 112 The remaining sections relating to partition do not provide for or bar the jurisdiction of the Civil Court to adjudicate upon questions of title which may arise in partition proceedings or on the partition after the time specified in the notice published under s. 111 S 132 is not to be read as making the Commissioner the Court of Appeal from the Assistant Collector or the Collector upon such questions, nor does s. 241 (f) bar the jurisdiction of the Civil Court to adjudicate upon them. Where therefore after the ...

applicants for partition raised for the first time an objection involving a question of title ...

objection was not one ...

guished. *Sundar v Khuman Singh I L R 1 All 614* referred to MUHAMMAD ABDUL KARIM v MUHAMMAD SHADI KHAN I L R 9 All 429

12. ———— *Proceedings under Bengal Act VIII of 1876 s 31 effect of* The jurisdiction of the Civil Court in matters of partition of a revenue paying estate is restricted only in questions affecting the right of Government to assess and collect in its own way the public revenue *Held* accordingly that the pendency of partition proceedings before the Collector under s 31 of Bengal Act VIII of 1876 was no bar to a suit for a declaration that under a partial partition effected between the co sharers a portion of land had been separately allotted to the plaintiff ZAHRUN v GOWRI SUNKAR I L R 15 Calc 198

13 ———— *Jurisdiction of Revenue Court—Suit for partition and possession of a share in a particular plot in a patti—N W P Land Revenue Act (XIX of 1873) s 135 241 (f)* A suit by a co sharer in a joint zamindari estate for partition and possession of his proportionate share of an isolated plot of land is not maintainable in a Civil Court with reference to 135 and 241 of the N W P Land Revenue Act (XIX of 1873) *Ram Dayal v Megu Lal I L R 6 All 452* distinguished. ISRAIL v KANHAI I L R 10 All. 5

14 ———— *Partition by Civil Court of a portion of a revenue paying estate —Civil Procedure Code (Act XIV of 1882) s 265 —Revenue paying estate partition of into several revenue paying estates* The meaning of s. 265 of the Code of Civil Procedure is that where a revenue paying estate has to be partitioned into several revenue paying estates, such partition must be carried out by the Collector *Zahrun v Gouri Sunkar I L R 15 Calc 198* approved. DEBI SINGH v SHEO LALL SINGH I L R 16 Calc 203

15 ———— *Objection to partition—N W P Land Revenue Act (XIX of 1873) ss 111 113 241* The procedure provided by s. 113 of Act No. XIX of 1873 does not become obligatory on a Collector or an Assistant Collector in partition proceedings unless an objection to the partition has been made by a co sharer in possession, and unless such objection was made ... the day specified in ...

Unless, therefore such objection has been made a Civil Court is not empowered to exercise any jurisdiction in the matter of the distribution of the land

PARTITION—*contd*

5 JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*contd*

or the allotment of the mehal by partition HARDEO SINGH *v* NARPAT SINGH I L R 20 All 75

16 ———————— *Civil Procedure Code (Act XIV of 1882) s 265—Partition effected by Collector in execution of a decree* When the Collector makes a partition under s 265 of the Code of Civil Procedure the Civil Court has no power to examine his work or to direct him to make a fresh partition *Dev Gopal Savant v Vasudev Vithal Savant I L R 12 Bom 371* followed SHRINIVAS HANMANT *v* GURUNATH SHRINIVAS I L R 15 Bom 527

17 ———————— *Sheri lands—Lease by Government for a certain number of years—Civil Procedure Code (Act XIV of 1882) s 265* Under s 265 of the Civil Procedure Code a Civil Court cannot effect partition of lands paying revenue to Government The Collector alone is empowered under that section to do so DATTATRAYA VITHAL *v* MAHADAJI PARASHRAM I L R 16 Bom 528

18 ———————— *Claim for partition of share of property—Decree for partition of defendants share inter se—Subordinate Judge Jurisdiction of* In a suit instituted in the Court of a Munsif by a member of a Mahomedan family to have her share of the family property partitioned the value of the plaintiff s share was found to be less than R1 000 and the value of the whole family property exceeded R1 000 The lower Appellate Court decreed partition not only of the plaintiff s share but also of the shares of the defendants *inter se* though such partition was not asked for *Held* [illegible]

I L R 12 All 506

19 ———————— *Suit for partition of lands in different estates—Assam Land and Revenue Regulation (I of 1886) s 154 cl (e) and s 96* In a suit for partition without division of revenue of certain lands held jointly by the parties in four different estates governed by the Assam Land and Revenue Regulation (I of 1886) — *Held* that although the decision asked for may not include all the lands of each of the four estates still such division would result in a division of each of those estates the lands left out forming one portion and the lands sought to be divided forming another The suit therefore was one for an imperfect partition within the definition in s 96 of the Assam Land and Revenue Regulation and s 154 cl (e) of that Regulation barred the jurisdiction of Civil Courts in such a suit ABDUL KHALIQ AHMED *v* ABDUL KHALIQ CHOWDHRY I L R 23 Calc 514

20 ———————— *Suit for partition — Perfect and imperfect partition—Entire estate—Assam Land and Revenue Regulation (I of 1886) ss 96 97 and 154* An estate does not cease to be an entire estate within the meaning of the Assam Land and Revenue Regulation (I of 1886) because a few plots of land are common to it and some other estate or because they are brahmutter or debutter or because they are held in some undefined way jointly with other persons Where a suit was brought for the partition of an estate [illegible]

by 154 of the Regulation SARAT CHANDRA PURKAYESTHA *v* PROKASH CHUNDRA DAS CHOWDHURY I L R 24 Calc 751

21 ———————— *Power of Civil Court to appoint Commissioner—Civil Procedure Code 1882 s 265—Collector* In a suit brought in the Civil Court for a partition of the lands in a [illegible]

have the partition made by the Collector according to the law for the time being in force for partition of estate *Debi Singh v Sheo Lall Singh I L R 16 Calc 203* distinguished MEHERBAN RAWOOT *v* BEHARI LAL BARIK I L R 23 Calc 679

22 ———————— *Estates Partition Act (Beng Act VIII of 1876)—Code of Civil Procedure 1882 ss 265 and 396* S 265 of the Code of Civil Procedure does not apply to a suit for partition of a revenue paying estate when no separate allotment of revenue is asked for A Civil Court therefore has jurisdiction to decree partition in such a case and a suit for possession after partition of a share in part of an undivided estate [illegible]

ruled JOGODISHURY DEBEA *v* KAILASH [illegible] LAHIRY I L R 2 C[illegible]

23 ———————— *Tr[illegible] decree for partition to Collector for [illegible] tion by Collector—Civil [illegible] s 265—Jurisdiction of Civil [illegible] tions to the division ordered by [illegible]* decree for partition of an estate [illegible] by the District Court to the Co[illegible] under s 265 Civil Procedure [illegible] made the decree is not deprived [illegible] to hear and decide objections [illegible] estate made by the Collector [illegible] *v* KRISHNAVANAMMA I L R [illegible]

24. ———————— Parti[illegible] suit for—*Parties—[illegible] party if accounts [illegible] claimed—Agreement [illegible] consideration.* The [illegible] Nos 2 3 and 4 me[illegible]

PARTITION—*contd*

5 JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*contd*

agreed to remain joint and appointed the defendant No 1 as their common manager for a period of ever [illegible]
1896 [illegible]
notice [illegible]
longer [illegible]
No 1 from the managership of his share of the properties The defendants denied the plaintiffs right to be separate without a formal deed of partition or suit in Court The plaintiff thereupon brought this suit for partition and accounts against all the defendants On objection being taken that all the joint properties were not included in the schedule to the plaint the plaintiff applied for the [illegible]

purpose of deciding that question and dismissed the suit on the ground that all the joint properties were not included in the suit On appeal it was *held* that before dismissing the suit the Subordinate Judge ought to have acceded to the prayer of the plaintiff for the appointment of a Commissioner that the common manager (defendant No 1) and other defendants were rightly joined together in the same suit because they made a common cause to defeat the plaintiff claim for separation and also because accounts were claimed for the period covered by the managership of the defendant No 1 and the other defendants are intimately connected with and interested in taking such accounts and that though it may be competent to the parties to enter into an agreement not to divide their joint properties for a limited period and not in perpetuity yet such an agreement must be for sufficient consideration *Radha Nath Mukerjee v Tarruck Nath Mukerjee 3 C W N 196* referred to SRIMOHAN THAKUR v MACGREGOR (1901)

I L R 28 Calc 769

25 ——— Title question of—*Act XIX of 1873 (North Western Provinces Land revenue Act) ss 112 113 241 (f)—Trees a proper subject of partition by the Revenue authorities—Question of title not raised at the time of partition but subsequently by a suit in a Civil Court—Jurisdiction—Civil and Revenue Courts* If a party to a partition which is being conducted by the Revenue authorities under Ch IV of the North Western Provinces Land revenue Act 1873 desires to raise any question of title affecting the partition he must do so according to the procedure laid down in ss. 112 to 115 of the Act If a question of title affecting the partition which might have been raised under ss. 112 and 113 of the Act during the partition proceedings is not so raised and the partition is completed s 241 (f) of the Act debars the parties to the partition from raising subsequently in a Civil Court any such question of title *Muhammad Abdul Karim v Muhammad Shadi Khan, I L R 9 All 429* and so far as in conflict with the present case *Nasrat ullah v Mujibullah I L R 13 All 309* overruled *Hardeo Singh v Narpat Singh I L R 20 All 75* referred to *Held* also that trees growing upon land the subject of partition by the Revenue authorities go with the land and may properly be partitioned along with it by the Revenue authorities MUHAMMAD SADIQ v LAUTE RAM (1901)

I L R 23 All 291

26 ——— Bengal, N W P and Assam Civil Courts Act s 21—*Act XII of 1887—Act XIX of 1873 (N W P Land revenue Act) ss 113 114—Determination by Revenue Court of a question of title—Appeal—Jurisdiction* *Held* that s 21 of the Bengal N W P and Assam Civil Courts Act 1887 applies to partition cases in which under s 113 of the N W P Land revenue Act 1873 a Court of Revenue has determined a question of title and that the value of the original suit if not the value of the entire property sought to be partitioned is at any rate the value of the share which the applicant for partition seeks to have divided off SHEO SINGH v BALDEO SINGH (1903)

I L R 25 All 277

27 ——— Mesne profits—*Joint family estate—Possession by one member—Partition—Mesne profits—Remand* Plaintiff No 1 and defendant No 1 were brothers Plaintiff sued defendant for partition of the joint family property Defendant was in possession of the whole of certain landed property including plaintiff s share in it. Defendant s explanation that he held it for three years as a security for debt due to him from plaintiff was unsupported by evidence The Judicial Commissioner decreed *inter alia* that plaintiff be given three years enjoyment of defendant s share to make up for losses caused to plaintiff by his being kept out of possession *Held* by the Judicial Committee that the Judicial Commissioner had under the circumstances done justice between the parties though in a somewhat rough manner and it would not be to the interest of the parties to remand the case for a more precise determination of the amount of mesne profits GANGARAM v SITARAM (1902)

6 C W N 698

28 ——— Order for sale—*Partition Act (IV of 1893) s 2—Preliminary decree—Order for sale—Civil Procedure Code (Act XIV of 1882) s 396* Where in a suit for partition a Commissioner appointed under s. 396 Civil Procedure Code to make a partition after the preliminary decree had been passed submitted a report and the Court on consideration of the report was of opinion that the property could not conveniently be partitioned and then passed an order for sale of the property under the provisions of s 2 of the Partition Act (IV of 1893) —*Held* that the Court could pass an order [illegible]

6 C W N 128

PARTITION—*contd*

5 JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*contd*

29 ——————— *Partition Act (IV of 1893) s 2—Order for delivery of share in house to decree holder—Application in execution—Order for sale under Partition Act* S 2 of the Partition Act of 1893 which empowers a Court to order a sale of property in t ad of a divi ion in partition suit may be applied thou h a preliminary order defining the hare of a plaintiff and directing partition has been pa ed KADIR BACHA SAHEB v ABDUL RAHMAN SAHEB (1901) **I L R 24 Mad. 639**

30 ——— **Trees**—*Act XIX of 1873 (N W P Land revenue Act) s 112 113 241 (f)—Trees a prop r subject of partition by the Revenue authorities* Trees growing upon land the subject of partition by the Revenue authorities go with the land and may properly be partitioned along with it by the Revenue authorities MUHAMMAD SADIQ v LAUTE RAM (F B 1901) **I L R. 23 All. 291**

31. ——— **Estate Partition Acts**—*Estates Partition Act (Beng VIII of 1876) s 63 and (Beng V of 1897) s 2, cl (b)—Private Partition—Partition Proceedings commenced under Beng Act V of 1876 whether governed by B ng Act V of 1897—Partition by Collector whether open to objection—Limitation Act (XV of 1877) Sch II Art 14—Order Sheet ex parte entry in—Specific Relief Act (I of 1877) s 42—Dispossession during pendency of suit—Plaint amendment of* Where a partition proceeding commenced under s 63 of Beng Act VIII of 1876 before Beng Act V of 1897 came into operation and the Subordinate Judge decided that the suit was not maintainable under the provisions of Beng Act V of 1897 — *Held* that under s 2 cl (b) Beng Act V of 1897 where a suit had been instituted under Beng Act VIII of 1876 all subsequent proceedings for partition must be carried on under Beng Act VIII of 1876 as if Beng Act V of 1897 had not been pa sed and the question of the maintainability of the suit should have been determined with reference to the provisions not of Beng Act V of 1897 but of Beng Act VIII of 1876 ...

by th[illegible] uph[illegible] was Beng tion [illegible]

Revenue on appeal decided that the private partition set up was not established and the Collector proceeded with the partition and sub equently in a suit to set aside the partition by the Collector it was decided by the Subordinate Judge that the finding of the reality of the alleged partition by the Revenue Court was conclusive and that the Civil Court had no jurisdiction to investigate the competency of the Collector to make the partition in view of s 12 of Beng Act VIII of 1876 —*Held* that the Civil Court was competent to decide the matter

PARTITION—*contd*

5 JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*concld*

in controversy and that therefore the suit was maintainable Where in a partition suit commenced under Beng Act VIII of 1876 the provisions of s 25 of Beng Act V of 1897 were applied and it was decided that the suit was barred —*Held* that provi ions of s 25 of Beng Act V of 1897 were not applicable but the corresponding section of Beng Act VIII of 1876 and that the suit was not barred under that ection or under Art 14 of the Limitation Act (XV of 1877) *Laloo Singh* v *Purna Chander Benerjee I L R 24 Calc 149 Raj Chandra Roy* v *Fazuddin Hossein I L R 32 Calc 716 Narendra Lal Khan* v *Jogi Hari I L R 32 Calc 1107* and *Alimuddin* v *Ishan Chandra Dey I L R 33 Cal 693* referred to *Parbati Nath Dutt* v *Rajmohun Dutt I L R 29 Calc 367* distinguished An *ex parte* entry in the order sheet of the Collector is no evidence of posses ion of a party *Mir Tapurah Hossein* v *Gopi Narayan 7 C L J 251* referred to An amendment of the plaint would be allowed when the plaintiff had been dispossessed during the pendency of the suit so as to make it appropriate to a suit for possession *Jugdeo Singh* v *Habibullah Khan 6 C L J 612* followed ANANDA KISHORE CHOWDHRY v DAIJE THAKURAIN (1909) **I L R 36 Calc 726**

6 QUESTION OF TITLE

1 ——— **Power of Collector to try question of title**—*Beng Reg XIX of 1814* The Collector cannot try the ques ion of title in butwarra proceedings under Bengal Regulation XIX of 1814 AHMEDULLA v ASHRUFF HOSSEIN **8 B L R Ap 73 note**

S C AHMEDOOLLAH v ASHRUF HOSSEIN **13 W R 477**

2 ——— **Decision by Collector of questions of title**—*Act XIX of 1863* Act XIX of 1863 contained no provision for th judicial deci ...

3 ——— **Claim to right of occupancy for cultivation**—*Suit for partition under Act XIX of 1863—Partition of s r land Held* that a question involving a claim to cultivating right of occupancy wa not one whi h could be properly decided in a suit for partition under Act XIX of 1863 under which only questions of conflicting proprietary title could be determined AMAN SINGH v JOY GOPAL SINGH **3 Agra 164**

4 ——— **Dispute as to title**—*Beng Reg XIX of 1814* When in the preparation of a butwarra under Regulation XIX of 1814 it is ascertained that the parties are at variance on a question of title the Coll ctor s proper course is to stay proceedings until all such que tions are decided by competent Court the revenue authorities not having

PARTITION—*contd*

6 QUESTION OF TITLE—*concld*

authority under the law to decide them finally MUDDUN MOHUN *v* KARTICK NATH PANDEY
14 W R 335

7 MODE OF EFFECTING PARTITION

1. ——— **Joint property in sole possession of sharer**—*Protection of sharers from liability for debts* In effecting a partition account must be taken of any joint property in possession of any sharer and before transfer of shares provision should be made for the protection of other sharers from an undue liability on account of debt ALLY HOSSEIN *v* ALLY HOSSEIN *alias* CHOTEY MIRZA
2 Agra 96

2 ——— **Mode of allotment of land**—*Land in exclusive possession of one party* In a suit for partition the land in dispute being in the exclusive possession of a single co sharer should fall as a whole in the share of one or other of the co owners and not be subdivided among them PUDDOMONEE DOSSEE *v* DWARKANATH BISWAS
25 W R 335

3 ——— **Land varying in value** Each party to a butwarra need not have the same quantity of land nor should the land awarded be always in exact proportion to the jumma paid The object of the butwarra being to divide the lands in as compact a form as possible one party may have to pay the jumma on a smaller area than another though on more valuable land AFTAROODDEEN *v* SHUMSOODDEEN MULLICK 18 W R 461

4. ——— **Convenience**—*Ground for objection to allotment on partition*—*Inconvenience* Where a party concerned objects in appeal to a

all SUMMUN JHA *v* BHOOPUT JHA
18 W R 498

5 ——— **Compensation for expenditure by certain members of joint family on joint property** In a suit for partition it appeared that the defendants who were members of a joint family had at their own expense enhanced the value of portion of the lands belonging to the joint estate *Held* that the partition should proceed on the basis of each co sharer having an equal share of similar land compensation being allowed to each co sharer for any private expenditure from which it could be shown the value of the partible property had been increased and that unless it could be shown that there were other lands of similar description out of which the share of the plaintiff could be made up the plaintiff was entitled on paying compensation to the defendants to portion of the lands the value of which had been enhanced by the defendants KALLIAN BANERJEE *v* MODHUSUDUN BANERJI 8 C L R 259

6 ——— **Principle of adjustment after partition between co sharers**—*Beng Reg XIX of 1814* After partition of an estate among share holders under Regulation XIX of 1814 one shareholder *A* claimed from another shareholder *B* 2½ bighas of land as having been allotted to him by *B* under a prior agreement in lieu of certain lands originally held by him which fell into *B's* putti The Collector left the parties to settle the matter between themselves and *A* brought a suit against *B* for his claim in the Civil Court *Held* that in a case of this kind the only principle that can be adopted is that the Court should ascertain the relative value of the lands originally made over by the defendant to the entire lands of the defendant and that it should assign out of the present share of the defendant lands bearing the same relative value to the whole that the former lands bore this to be done without interference with the proceedings of the Collector under the batwarra law and the plaintiff (if successful) to be brought in as a co sharer to a limited extent in the land as owned by the defendant OOMA DUTT CHOWDHRY *v* HUNOOMAN CHOWDHRY 22 W R 453

7 ——— **Land in separate possession by consent**—*Right of co parceners on partition* Co parceners may on partition retain possession severally of such joint lands as they may have taken separate possession of with the consent of at least a majority of the co parceners SREENATH DUTT *v* NANDKISHORE DOSS 5 W R 208

8 ——— **Family dwelling house**—*Consent of co parceners*—*Execution of decree* A decree directed partition of a family dwelling house with its appurtenances including a poojah dalan and courtyard adjoining it In execution of that decree the Civil Court Ameen at the request and with the consent of two out of three co parceners did not partition the poojah dalan and courtyard To this the third co parcener objected but her objection was overruled by the lower Courts and it was directed that the property in question should remain undivided. *Held* that the Court would be disinclined to order the property to be divided without giving the co parcener or co parceners who might wish to keep it entire an opportunity of doing so *Held per* WHITE J that having regard to the form of the decree it was not open to the Court executing it to order that any part of the property should remain joint except with the consent of all the co parceners who were parties to the suit *Semble per* MITTER J that the lower Courts were not precluded by the decree from dealing with the property in the mode in which they had done RAJCOOMAREE DASSEE *v* GOPAL CHUNDER BOSE
I L R 3 Calc 514

9 ——— **Property consisting of several houses**—*Principle of partition*—*Commission of partition*—*Act XII of 1887 s 396*

PARTITION—*contd*

7 MODE OF EFFECTING PAPTITION—*contd*

Where in a uit for partition po e ion was ought of a definite hare of a property con i ting of a number of hou es —*Held* that the principle in such ca es is that if a property can be partitioned without destroying the intrin ic value of the whole property or of the hare uch partition ought to be made but where partition cannot be made without destroying the intrin ic value of the property then a money compensation hould be given. ASHANUL LAH *v* KALI KINKUR KUP I L R 10 Calc 675

10 ———— Power of Revenue Courts as to partition of building —*N W P Land Reve nue Act (XIX of 18) s 107 124* In a partition under the North We tern Provinces Land Revenue Act 1879 neither buildings nor the materials there of can be partitioned what is partitioned is the land in the mehal Where such land is covered with buildings the Court making the partition has to follow the provisions of s 124 of the Act but it can decide no que tion of right to the buildings nor can it partition them ASHIQ HUSAIN *v* MUHAMMAD JAN I L R 22 All 329

11 ———— Suit by transferee for partition—*Partition Act (IV of 1893) s 4—Suit for partition by sharer against transferee—Procedure* S 4 of the Partition Act (IV of 1893) applies only where the tran feree sues for partition Where the suit is brought by the sharer against the transferee s 2 must be applied. In ca es where s 4 applies the Judge hould make a valuation of the share of the tran feree only and direct its sale BALSHET GOPALSHET SONAR *v* MIRAN SAHEB I L R 23 Bom. 77

12 ———— Dwelling house belonging to undivided family—*Partition Act (IV of 1893) s 4—Application of section—Re acquisition by members of such family after it has been sold to a stranger does not give any right under the section as aga nst such stranger* A dwelling house belonged to four brothers *K R V* and *P* joint members of a Hindu family In 1874 the shares of *K* and *P* were sold in execution of decrees against them and in 1877 the remaining shares were sold and finally the house became the property of the plaintiff and one *A* in equal moities The plaintiff sued *A* for partition and obtained a decree but pending execution *A*

allowed to buy the plaintiff s moiety *Held* that he was not entitled to the advantage given by the section It is ownership not occupation that gives the right After the sales in 1877 the house no longer belonged to an undivided family *V* and his brothers were then either tenants in the house or trespassers The question was whether the dwelling house at the time the shares therein which had not been sold to *A* were transferred to the plaintiff belonged to an undivided family When the plaintiff purchased his moiety he and *A* became the owners in common of the house and as between them

s 4 of the Partition Act had no operation The subsequent purchase of *A s* interest by *R* and *V* did not confer upon them any rights which *A* did not possess It was in their hands re acquired ancestral property but not property belonging to an undivided family within the meaning of s 4 VAMAN VISHNU GOKHALE *v* VASUDEV MORBHAT KALE I L R 23 Bom 73

13 ———— Mortgage by one owner of undivided share of estate—*Rights of mortgagee and other sharers on partition* Where the owner of an undivided share in a joint and undivided es

an undivided share of the whole into a defined portion held in severalty Where such a partition is effected under the provisions of Regulation XIX of 1814 before the mortgagees have completed their title by foreclosure and the consequential decree for pos ession the mortgagees of the undivided share of one co sharer who has no priority of contract with the other co sharers would have no recourse against the lands allotted to such co sharers but must

21 W R 233 L R 1 I A 106

14 ———— Easement—*Partition of houses one of which has continuous easement over the other* Where two houses are held jointly by everal owners deriving their title from a common source and one of such houses enjoys a continuous as distinguished from an occasional easement over the other such easement will upon a partition of the premises pass to the dominant tenement both by implication of law and under the usual general words contained in the deed of partition RATANJI HORMASJI *v* EDULJI HORMASJI 8 Bom O C 181

15 ———— Partition of a joint family house—*Effect of partition by a consent decree where the decree does not reserve any right to the use of light and air—Implied grant of easement upon severance of tenement* On partition of a family dwell

equity and good conscience should be applied to the case and that the plaintiff was entitled to the right claimed even in the absence of any express provision in the decree reserving such right *Quære*

PARTITION—*contd*

7 MODE OF EFFECTING PARTITION—*contd*

Whether the principle of an implied grant of ease ment in severance of tenements would apply in the ca e where the partition was effected by a decree of the Court in a contested suit and not by a con sent of parties KADAMBINI DEBI v KALI KUMAR HALDAR I L R 26 Calc 516

16 ———— Mode of division—*Beng Peg XIX of 1814—Evidence of partition* Proceedings for partition having been instituted under Regula tion XIX of 1814 it was proposed in order to make equality of partition that three villages hould be divided in unequal proportions and a go hwara was

dated October 1864 directing the Nazir to require the raiyats to pay their rents according to the extent of the shares as set forth in the first mentioned column of the goshwara that is according to the quantity instead of according to the quality and

go hwara in which the a e ed jumma was set forth HURRO SOONDARI DEBIA v KESHUB CHUNDER ACHARJEE 5 C L R 257

17 ———— Decree for partition referred to Collector—*Civil Procedure Code 1882 s 265—Execution—Collector boun l to partition and deliver over possession to several allottees under decree—Practice* The duty of the Collector to whom a decree has been referred under s 265 of the Civil Procedure Code (Act XIV of 1882) for partition is

18 ———— Mortgage by one owner of undiv ded share of estate—*Rights of mortgagee on partit on where the undivided share is allotted to a sharer other than the mortgagor* Where A mortgaged to the plaintiff his undivided share in certain land which he held jointly with B and sul equently to the mortgage by a decree in a partiti n suit to which the plaintiff was not a party the mortgaged pr perty was allotted to B other pro perty in substituti n being allotted to A —*Held* in a suit against B and the representatives of A to

Ramoodeen Choudhry L R 1 I A 106 21 W R 233 followed in principle HEM CHUNDER GHOSE v THAKO MONI DEBI I L R 20 Calc 533

19 ———— *Co sharers—Mortgage by co sharer of undi ided share—Parti tion suit subsequently brought by other co sharer to which mortgagee not a party—Mortgaged property allotted to a sharer other than mortgagor—Rights of such co sharer—Partition re opened—Fraud of mortgagor and mortgagee* Four b others viz D L B and P were joint owners of certain land For purposes of convenience each was in po session of a certain portion but there was no formal partition The particular land in question in this suit (plots Nos 1 and 2 of Survey No 174) was a part of the land in possession of B In 1867 without the know ledge of his brothers B mortgaged these plots of land to the first defendant for R2 800 In 1886 D sued for partition of the whole property and in 1891 L brought a similar suit By the decrees in these suits plot No 1 was allotted to D and plot No 2 was awarded to L The mortgagee was not a party to either suit the plaintiffs in the e suits (as found by the High Court) having had no notice of the mortgage D and L on attempting to get pos session of the lands allotted to them respectively by the partition decrees were obstructed by the mortgagee and now brought these suits against him and the heirs of B (defendants Nos 2—9) claiming po session of the lands allotted to them free of the mortgage debt or that the partition should be re opened and that unencumbered land should be allotted to them and the mortgaged land given to B s branch of the family (defendants Nos 2—9) *Held* that the partition should be re opened and the mortgaged land assigned to the defendants Nos 2 to 9 Where a co harer of joint property has mortgaged his share without the knowledge of his co harers and there has sub equently been a partition suit to which through the fraud of the mortgagor and the mortgagee the latter has not been made a party he (the mortgagee) will only be allowed to proceed for the recovery of his mort gage debt against that portion of the property whi h has been allotted to his mortgagor *Hem Chunder Ghose v Thako Moni Debi I L R 20 Calc 533* approved LAKSHMAN v GOPAL I L R 23 Bom 385

20 ———— Incumbrance created by a co sharer before partition—*Estates Partition Act (Beng Act VIII of 1876) ss 112 and 128—Effect of partition by Collector where the land so incumbered fell exclusively into the share of another co sharer* On partition by Collector under the Estates Partition Act (Bengal Act VIII of 1876) when any land of an undivided joint estate which was incumbered by any co sharer is allotted to any other co sharer the latter takes it free from the incumbrance so created *Khan Ali v Fe tonji Eduljee Guydar I C W N 62* distingui hed The cases of *Nuthoo Lall Choudhry v Saadat*

PARTITION—*contd*

7 MODE OF EFFECTING PARTITION—*concld*

Lall W R 1864 2 1 and *Ahmedoollah v Ashruff Hossein 13 W R 44, 8 B L R Ap 73 note* have been overruled in effect by the decision of the Privy Council in the case of *Byjnath Lall v Ramoo deen Chowdry L R 1 I A 106* JOY SANKARI GUPTA v BHARAT CHANDRA BARDHAN

I L R 26 Calc 434
3 C W N 209

21. ——— Lease granted by co sharer pending partition suit—*Land leased falling to share of another co sharer—Lis pendens—Transfer of Property Act (IV of 1882) s 52* Plaintiff purchased a one third share in an undivided estate and brought a suit for partition During the pendency of the partition suit the defendants the two remaining co sharers granted a lease of a particular plot of land included in the undivided estate to the present defendant By the decree for partition the plot of land under the lease was allotted to the plaintiff who brought the present suit to recover possession of the piece of land on the ground that he was not bound by the lease *Held* that s. 52 of the Transfer of Property Act does not apply to cases where the shares of the parties and their rights to those shares are not disputed The mode in which the lands should be allotted between the ascertained sharers does not affect the right to any specific property *Held* also that the tenant not having been a party to the partition suit was not bound by the decree and the plaintiff was only entitled to khas possession of the one third share of the plot leased out by his co sharers KHAN ALI v PESTONJI EDULJEE GUJDAR 1 C W N 62

22 ——— Partition without new wajib ul arzes being framed—*N W P Land Revenue Act (XIX of 1873) s 107* When a mehal is divided by perfect partition into two or more separate mehals a separate record of rights should be framed for each of the new mehals ABDUL HAI v NAIN SINGH I. L. R. 20 All 92

8 EFFECT OF PARTITION

1. ——— Decree for partition—*Nature and effect of decree in partition suit* A decree for partition is not like a decree for money or the ... properly drawn up is in favour of each shareholder or set of shareholders having a distinct share KHOORSHED HOSSEIN v NUBBEA FATIMA

I. L. R. 3 Calc 551 2 C L R 187

2. ——— *Effect of decree as creating severance—Appeal* A decree for partition does not operate as a severance so long as it remains under appeal. SHAKARAM MAHADEV v HARI KRISHNA I. L. R 6 Bom. 113

PARTITION—*contd*

8. EFFECT OF PARTITION—*contd*

3 ——— Finality of proceedings—*Beng Reg XIX of 1814* A butwarra by revenue authorities under Regulation XIX of 1814 is final ZAKER ALI CHOWDHRY v JUGDESSUREE

1 W R 323

4. ——— *Under tenure holders* A butwarra is only conclusive between the shareholders themselves but not between them and other parties holding under tenures at the time WOMESH CHUNDER MOJOOMDAR v DWARKANATH POY 4 W R 80

5 ——— *Beng Reg XIX of 1814 s 20* Butwarra proceedings under s 20 Regulation XIX of 1814 are only final as to land which are the subject of partition HURPEE MOHUN THAKOOR v ANDREWS W R 1864 30

6 ——— Extinguishment of title—*Effect of partition on others than allottee* The allotment of land to one person by partition extinguishes another's right altogether his subsequent possession is either that of a trespasser or a tenant at will his dispossession is not illegal and he has no legal right of suit for recovery of possession NOWAB BEGUM v RUSTUM KHAN 2 Agra 149

7 ——— *Effect of partition among co sharers* By partition a co sharer's proprietary right to the land which has fallen in another putti becomes extinguished and he becomes a mere cultivator in respect to that land and liable to rent ZALIM RAI v DOORGA RAI

1 Agra Rev 69

8 ——— Extinguishment of rights—*Tenant rights effect of partition on* A butwarra does not extinguish rights of tenants, and the mere circumstance that one of the proprietors of the estate was himself the tenant does not destroy his tenant right because another of the proprietors has had the land allotted as part of his share of the divided estate NUTHOO LALL CHOWDHRY v SAADAT LALL W R 1864 271

9 ——— *Co sharers—Paiyati and proprietary rights* Plaintiffs sued their co heirs to recover huq elagaun —that is the half share of the produce of trees planted on a portion of the land by their ancestor before his death —on the ground that although by a butwarra entered into by the heirs the trees fell to the share of the defendants ... the proprietary right and that no raiyati right existed AMEERUN v SUNJEEDA 11 W R 226

10 ——— *Proprietary right in sir land* When an estate in which the proprietors ... land is ... such part among the ... is no ... by any ... by cul ... not co ...

PARTITION—*contd*

8 EFFECT OF PARTITION—*contd*

understood effect and consequence of partition that co sharers retain no right of occupancy in respect of any *sir* land which may have passed under the partition into the share of other co sharers as a *sir* hold proprietor has no cultivating right distinct from and independent of his proprietary character When therefore by partition he loses his proprietary title to any particular land any cultivating right which he had in virtue of his proprietary character necessarily ceases AMAN SINGH v JEY GOPAL SINGH 3 Agra 164

11 ———— *Right of holder of mokurari lease* A joint and undivided estate having been subjected to private partition 4 bighas which were in the portion held by *A* were granted by him in mokurari Subsequently on the application of the parties the Collector made a regular partition by which two bighas of the mokurari land were allotted to the other sharers who refused to

harers AHMEDOOLLAH v ASHRUFF HOSSEIN 13 W R 447 8 B L R Ap 73 note

12 ———— Re distribution by Collector after private partition—*Right of mokurarıdar of co sharer* Subsequently to a private partition by which the land in dispute was allotted to *A* one of the co harers a butwarra re distributing the shares was made by the Collector In the meantime *A* had granted a mokurari to *B* in re pect of the land allotted to him under the private partition *Held* that although the co sharers must be taken to have consented to the re distribution yet *A* could not by

guished *Ahmedoollah v Ashruff Hossein 8 B L R Ap 73 note 13 W R 447* followed JUGGESSUR DOYAL SINGH v BISSESSUR PERSHAD 12 C L R 281

13 ———— Butwarra award effect of —*Intervenor* A butwarra award is no absolute proof of title and no estoppel in the way of an intervenor who can prove that he has received and enjoyed the rents claimed from a date subsequent to the butwarra SREENATH GHOSSAL v JOY NARAIN KAYAR 3 W R Act X 11

14. ———— Family dwelling house—*Partition wall—Open space of ground—Easement* Upon partition of joint property in Calcutta by mutual conveyances whether under the direction of a Court of law or otherwise it is implied that the parties take their respective shares with easements of light and air as between themselves in accordance with the existing state of the premises In a suit for the partition of a family dwelling house it was directed that the parties should take their respective shares by mutual conveyances with liberty to the plaintiff to raise a partition wall. The shares were allotted but no conveyances executed. *Held* that in equity the parties must be deemed to have taken as if under mutual conveyances in so far as concerned ea ements of light and air BOLYE CHUNDER SEN v LALMONI DASI I L R 14 Calc 797

See DWARKANATH PAUL v SUNDER LALL SEAL 3 C W N 407

and KADAMBINI DEBI v KALI KUMAR HALDAR I L R 26 Calc 516 3 C W N 409

15 ———— Partition of estates—*Bengal Tenancy Act (VIII of 1885) s 188—Joint landlords* A tenure was held under a zamindari which originally formed one entire e tate The estate was subsequently partitioned by the revenue authorities into four several estates The rent of the tenure was thereupon allotted proportionately to each of the four estates thus formed although the land form ng the tenure remained undivided. In a suit for enhancement of the rent of the tenure brought by the proprietor of some of the estates —*Held* that the effect of the partition of the parent estate was to create separate and distinct tenures out of the original single tenure under the proprietors of each of the estates that the proprietors of the several estates were not joint landlords of the tenure within the meaning of s 188 of the Bengal Tenancy Act and that therefore a suit for enhancement of rent would lie by a proprietor ... rent allotted ... v *Someer* ... *rat Soondary* ... *Bulma Ghuuack I L R 5 Calc 273* followed HEM CHANDRA CHOWDHRY v KALI PRASANNA BHADURI I L R 26 Calc 832

16 ———— Co owners—*Dispossession—Adverse possession—Constructive possession—Waste land—Limitation* To effect a partition the property if susceptible of division must be transformed into estates in severalty and one of such estates assigned to each of the former occupants for his sole use and as his sole property Althou... part onl... undiv de... be inclu...

PARTITION—*contd*

8 EFFECT OF PARTITION—*concld*

the partition suit was to leave untouched the joint title and possession of the parties (in the remainder) and that the present suit for recovery of joint possession may well be maintained. *Barnes* v *Boardman 15 Mass 4 9 s c 3? N E 6,0* and *Cartmell* v *Chambers 54 S W 362* referred to and *Jagatjit Singh* v *Sarabjit Singh I L R 19 Calc 159* followed The fundamental rule is that the entry and possession of land under the

21 *Doe* v *Taylor 5 B & Ad 575 McClung* v *Ross 5 Wheaton 116* and *Clymer* v *Dawkins 3 Howard 6 4* referred to and approved of *Mahomed Ali Khan* v *Khaja Abdul Gunny I L R 9 Calc ~74 Baroda Sundari Debia* v *Annoda Sundari Debia 3 C W N 741 Ujalbi Bibi* v *Umakanta Karmokar I L R 31 Calc 9 0 Ittappan* v *Manavikrama I L R 21 Mad 153 Mahesh Narain* v *Naubat Pathak I L R 32 Calc 837 s c 1 C L J 437 Jagar Nath Singh* v *Jai Nath Singh I L R 2? All 88* and *Phani Singh* v *Nawab Singh I L R 28 All 161* followed To prove title to land by adverse possession for the statutory period it is not sufficient to show that some acts of possession have been done the possession required must be adequate in continuity in publicity and in extent to show that it is possession adverse to the competitor in other words the possession must be actual visible exclu

Howard 3. referred to and approved of *Leigh* v *Jack 5 Ex D 264* and *Wali Ahmed Chowdhry* v *Tota Meah Chowdhry I L R 31 Calc 397* referred to The doctrine of constructive possession applies only in favour of a rightful owner and must not as a rule be extended in favour of a wrong-doer whose ... of which he is ... *ohan Roy* v ... *256 Radha* ... *Udit Narain Singh* v *Golabchand Sahu I L R 27 Calc 221 Ananda Hari Basak* v *Secretary of State 3 C L J 316* and *Vithaldas Kanushet* v *Secretary of State I L R 26 Bom 410* followed *Hunnicut* v *Peyton 102 U S 3?9* referred to JOGENDRA NATH PAI v BALADEO DAS (1907)

I L R 35 Calc 961
s c 12 C W N 127

9 LIABILITY AFTER PARTITION

——— Liability to account for portion of property if in possession—*Co sharers* Every one who is entitled to a share in a joint family property in a suit for partition must account for such portion as may have come into his hands. GOUR PERSHAD MOOKERJEE v KALEE PERSHAD MOOKERJEE 5 W R 121

10 MISCELLANEOUS CASES

——— Beng Reg XIX of 1814 s 20— *Case where no partition takes place* *Held* that s 20 Regulation XIX of 1814 had no reference to a case where no partition had been made and plaintiff was not a co sharer FOOLBASHEE KOWAR v ARZUN SAHOO 12 W R 134

2 ——— Suit for confirmation of possession—*Beng Reg XIX of 1814* To a partition effected by the Revenue authorities under Regulation XIX of 1814 the plaintiff presented a petition of objection in which he alleged that his share had been included in and declared to be part and parcel of the defendant s share In a suit for a declaration of his right to the share claimed by him and for confirmation of possession thereof both the lower Courts gave a decree for the plaintiff On

by which the property sued for was included in the plaintiff s share *Held* that the suit would lie that there was no necessity for the plaintiff who claimed to be in possession of his proper share and sued only for a declaration of his title thereto to include in his plaint an application for the renewal of the partition proceedings and that those proceedings were final INDRABATI KUNWARI v MAHADEO CHOWDHRY 1 B L R S N 6

3 ——— Suit for house allotted on partition—*Agreement to pay rent for house—Onus*

4. ——— Beng Reg XIX of 1814 s 9 *Dwelling houses of co sharers—Liability to assessment* Suit for khas possession of land made over to plaintiff on a butwarra The defendant pleaded twelve years adverse possession and that he was entitled to retain possession on payment of rent as the lands were occupied by gardens made by his ancestor *Held* that s. 9 Regulation XI of 1814 did not apply to the lands made over to the

PARTITION—*contd*

10 MISCELLANEOUS CASES—*contd*

5 ———— **Mortgage by co sharer**—*Incumbrance—Cause of action—Beng Reg XIX of 1814* A one of the shareholders of a talukh consisting of several mouzahs mortgaged his share in one of the mouzahs named Kishoopore to *B* Upon a partition being made under Regulation XIX of 1814 the mouzah Kishoopore was allotted to *C* and *D* co parceners in the talukh and other mouzahs were allotted to *A* In a suit by *C* against *B* for obtaining possession of his share in Kishoopore — *Held* that there was no cause of action. Upon a partition of a joint property a co parcener is bound by the incumbrances created by another co parcener in respect of a portion of the property if such portion be allotted to him upon a partition between the co parceners NISHAN SING *v* JUGDEO SING

4 B L R Ap 97

6 ———— **Suit to set aside sale for arrears of revenue**—*Sanction of Board of Revenue—Completion of partition* Per BAYLEY J — The completion of the partition was not necessary under Act XI of 1838 before the amount of unpaid expenses could become an arrear realizable by sale *Semble* The Government need not give its sanction in each case but a general sanction will be sufficient HAR GOPAL DAS *v* RAM GOLAM SAHI

5 B L R 155 13 W R 381

7 ———— **Objection to application for partition**—*Act XIX of 1863—Procedure* When

the procedure prescribed by Act VIII of 1859 But his failure to follow that procedure would not deprive the parties of their right of appeal to the Judge who must dispose of the appeal in due course RAMESHUR RAI *v* SUBHOO RAI

1 N W 81 Ed 1873 134

8 ———— **Application by co sharer for partition**—*Objection by co sharer in possession—N W P Land Revenue Act (XIX of 1873) ss 111 113* Reading together ss 111 112 and 113 of the N W P Land Revenue Act (XIX of 1873) as they must be read the objection contemplated in each of them is an objection to be made by the person upon whom the notice required by s 111 is to be served *i e* a person who is a co sharer in possession and who has not joined in the joint application for partition MUHAMMAD ABDUL KARIM *v* MUHAMMAD SHADI KHAN

I L R 9 All 429

9 ———— **Order for partition by Assistant Collector confirmed by Collector**—*Object on subsequently made to mode of partition—Question of title—N W P Land Revenue Act (XIX of 1873) s 113* Upon an application made under s 108 of the N W P Land Revenue Act (XIX of 1873) for partition of a share in a mehal no question of title or proprietary right of the nature contemplated by s 113 was raised nor any serious objection made by any of the co sharers and the Assistant Collector recorded a proceeding setting forth the rules which were to govern the partition and this proceeding was confirmed by the Collector under s 138 An Amin was ordered to carry out the partition and in taking steps to do so stated the principle upon which he proposed to distribute the common land An objection was then for the first time raised by two of the co sharers in the Court of the Assistant Collector to the inclusion of a particular piece of land in the partition on the ground that it appertained exclusively to their share This objection was disallowed by the Assistant Collector and on appeal by the District Judge *Held* that at the stage of the proceedings when objections were taken it was too late to determine questions of title under s 113 of the Act that accordingly the Assistant Collector could not be said to have done so that the objections could therefore only be regarded in the light of objections to the mode in which it was proposed to make the partition and that consequently there was no appeal from the order of the Assistant Collector to the District Judge or from the District Judge to the High Court TOTA RAM *v* ISHUR DAS

I L R 9 All 445

10 ———— **Suit to stay partition by Collector**—*Bengal Act VIII of 1876 s 26—Specific Relief Act (I of 1877) s 42—Declaration of specific rights—Limitation* A person bringing a suit under s 42 of the Specific Relief Act to stay a partition directed by the Collector under Bengal Act VIII of 1876 on the ground that a private partition has already been come to must prove not only that there has been a private partition but also that under that partition he is entitled to and was in possession of in severalty some specific portion of the property again sought to be partitioned by the Collector and such person is entitled to no declaration affecting the rights of other shares in the parent estate *Khoobun v Wooma Churn Singh 3 C L R*

I L R 16 Calc 117

11 ———— **Decree in suit for partition**—*Code of Civil Procedure 1882 s 39—Application for effecting partition—Limitation Act (XV of 1877) Sch II Arts 178 and 179* Plaintiff obtained a decree for partition in 1885 and first made an application to have the partition effected by an arbitrator in 1886 This application was struck off and a second application was made on the 23rd July 1888 The arbitrator then declined to act and the application was struck off The present application was made on the 1st August 1891 and an objection was raised that more than three years having elapsed from the date of the previous application the present one was barred under Art 179 of Sch II of the Limitation Act The lower Court

PARTITION—*contd*

10 MISCELLANEOUS CASES—*contd*

of appeal held that Art 178 and not Art 179 applied to the case but that the plaintiff having applied within three years from the date when the arbitrator declined to act the application was in time *Held* with reference to the provisions of s 396 of the Code of Civil Procedure that the proceedings for the purpose of effecting the partition were proceedings in the suit itself and not proceeding in execution of the decree that no formal application was necessary the Court being bound to proceed with the suit and make a final decree and that the application made on the 1 t August 1891 was not one to which limitation was applicable DWARKA NATH MISSER v BARINDA NATH MISSER I L R 22 Calc 425

See MUHAMMAD KHAN v HASWANT SINGH I L R 20 All 311

12 ———— Interlocutory decree—*Partition Act (IV of 1893) s 10—Partition—Offer by a party to a partition suit of compensation—Decree in partition suit when final—Civil Procedure Code s 396* *Held* that s 10 of Act IV of 1893 would apply to a suit for partition in the stage where an interlocutory decree for partition has been made but that decree had not become final by the Court s acceptance of the lots prepared by the officer appointed for that purpose *Muhammad Khan* v *Hanwant Singh I L R 20 All 311* and *Zubaida Jan* v *Muhammad Taieb All Weekly Notes (1898) 99* referred to ABDUS SAMAD KHAN v ABDUR RAZZAQ KHAN I L R 21 All 409

13 ———— Minor s share—*Joint property—Minor co parceners—Guardian s defalcations respecting joint property* In a partition suit the minor plaintiff s share ought not to be burdened with the liabilities of his guardian merely because his guardian committed defalcations in respect of the joint property of the parties to the suit in the absence of any allegation or proof that the plaintiff had derived benefit therefrom SONU v DHONDU (1904) I L R 28 Bom. 330

14 ————Prior purchaser or incumbrancer—*Priority not a right but an equity—Circumstances of each case—Account of past transactions—Death of a co parcener pending appeal by him —Representation by the co parcener s widow in and for purposes of appeal* The principle laid down in *Pandurang* v *Bhaskar 11 Bom H C 72* and *Udaram* v *Panu 11 Bom H C 76* has settled the law governing decrees for partition Prior purchasers or incumbrancers are as far as possible entitled to priority but not as a matter of right It is only an equity and the question how and where the equity should be invoked in aid of a party must depend upon equitable considerations which again must depend on the circumstances of each case In a partition suit no co parcener has any right to an account of past transactions A co parcener (who claimed the whole of the property in suit but who was only allowed a share in that property by the lower Courts) having died pending second appeal by him his widow was allowed to represent him in or for the purposes of the second appeal notwithstanding the application of the co parceners of the deceased that they were entitled to his share NARAYAN BIN BABAJI v NATHAJI DURGAJI (1904) I L R 28 Bom 201

15 ———— Appeal—*Preliminary Decree —Final Decree—Appeal against preliminary decree after final decree legality of—Civil Procedure Code (Act XIV of 1882) s 562—Practice* Where in a partition suit a final decree had been made and an appeal was preferred against the preliminary decree only —*Held* that it was not open to the appellant to challenge the correctness of the preliminary decree without preferring an appeal against the final decree *Madhu Sudan Sen* v *Kamini Kanta Sen I L R 32 Calc 1023* referred to *Baikunta Nath Dey* v *Nawab Salimulla Bahadur 6 C L J 547* followed *Uman Kunwari* v *Jarbandhan I L R 30 All 479* *Sheo Nath Singh* v *Ram Din Singh I L R 18 All 19* not followed MACKENZIE v NARSINGH SAHAI (1909) I L R 36 Calc 762

16 ———— Stay of proceedings—*Civil Procedure Code (Act V of 1908) Order XLV rule 13 —Preliminary decree for partition—Appeal to Privy Council—High Court if may stay further proceeding* The High Court has no power to stay proceedings in a suit following a preliminary decree for partition against which it has granted leave to appeal to the Privy Council The Privy Council which has seizin of the appeal can alone do so LALITESSUR SINGH v BHABESSUR SINGH (1909) 13 C W N 690

PARTITION ACT (IV OF 1893)

———— s 2—

See PARTITION—MISCELLANEOUS CASES 5 C W N 128 I L R 24 Mad. 639

1. ———— *Decree for partition—Partition of a house in two divisions—The mode of division found inexpedient in execution of the decree—Power of Court to order sale of the house and to divide the sale proceeds* A decree for partition of a house ordered its division into two equal moieties In execution of the decree this mode of division was found inexpedient and the Court therefore ordered the house to be sold and the sale proceeds to be equally divided between the parties under s 2 of the Partition Act (IV of 1893) On appeal *Held* that the order was right for s 2 of the Partition Act (IV of 1893) applies not only where the Court has to pass a decree in a suit for partition but also where after the Court has passed such a decree directing the partition to be effected in a particular mode it is found that that mode is impracticable or

PARTITION ACT (IV OF 1893)—*concld*

——— s 2—*concld*

inexpedient and one of the parties asks the Court to modify the decree by passing an order under this section *Kadir Bacha Saheb v Abdul Rahiman Saheb I L R 24 Mad 637* and *Hira moni Dasi v Radha Churn Kar 5 C W N 128* followed BAI HIRAKORE v TRIKAMDAS (1907)
I L R 32 Bom. 103

1 ——— s 4—*Transfer of Property Act (IV of 1882) s 44— Undivided family —S 4 of the Partition Act applicable to Mohomedans Held* that Mahomedans are not excluded from the benefit of s 4 of the Partition Act (IV of 1893) *Kalka Parshad v Banley Lall 9 Oudh Cases 158* approved *Imme Rahom v Zia Ahmad I L R 13 All 282* referred to *Hashmat Ali v Muhammad Umar I L R 29 All 308* overruled SULTAN BEGAM v DEBI PRASAD (1908)
I L R 30 All 324

2 ——— *Dwelling house belonging to an undivided family—Mahomedans Held* that the expression a dwelling house belonging to an undivided family as used in s 4 of the Partition Act 1893 is not applicable to a house belonging to a Mahomedan family *Amme Raham v Zia Ahmad I L R 13 All 282* referred to HASHMAT ALI v MUHAMMAD UMAR (1907)
I L R 29 All 308

——— s 10—

See PARTITION—MISCELLANEOUS CASES
I L R 21 All. 409

PARTITION ACT (BENG V OF 1897)

——— ss 46 48—*Board of Revenue rules framed by—Batwara proceedings—Rent entries as to payable by tenants if evidence against tenants—Publication presumed in the absence of certificate* Entries in batwara papers as to the amount of the rents payable by tenants are evidence in the same way as entries in the record of rights prepared under Chap X of the Bengal Tenancy Act are evidences under s 103B of the Bengal Tenancy Act though they may not be very valuable evidence Absence of the certificate of local publication not sufficient to show that there was no publication A presumption should be made of the regularity of the proceedings of an officer conducting a partition JANKI DOBEY v KIRTARATH ROY (1908) 13 C W N 93

——— s 81—

See LANDLORD AND TENANT
10 C W N 818

PARTNERS

See CIVIL PROCEDURE CODE 1882 s 28
I L R 27 Mad. 80

See CRIMINAL BREACH OF TRUST
I L R 35 Calc 1108

See MALICIOUS PROSECUTION
I L R 28 Bom. 226

PARTNERS—*concld*

See PARTIES—PARTIES TO SUITS—PARTNERSHIP SUITS CONCERNING

See PARTNERSHIP

See PLAINT—VERIFICATION AND SIGNATURE 5 B L R Ap 89
14 B L R 35

See SUMMONS SERVICE OF 1 Hyde 97
7 B L R Ap 58
11 B L R Ap 26

PARTNERSHIP

See ACT IX OF 1887
I L R 28 All. 293

See BOMBAY TOLLS ACT s 7
I L R 20 Bom 668

See COMPANIES ACT s 4.
13 C W N 638

See HINDU FAMILY—

JOINT FAMILY—NATURE OF JOINT FAMILY I L R 25 Mad 149

DEBTS AND JOINT FAMILY BUSINESS

See LIMITATION ACT 1877 ss 7 AND 8 AND SCH II ART 106
I L R 25 Mad 26

See LIMITATION ACT 1877 s 17
9 C W N 537

See MULTIFARIOUSNESS 9 C W N 498

See PARTIES—PARTIES TO SUITS—JOINT FAMILY I L R 25 All 378

See PARTIES—PARTIES TO SUITS—PARTNERSHIP SUITS CONCERNING

See PLAINT—FORM AND CONTENTS OF PLAINT—FRAME OF SUITS GENERALLY—PARTNERSHIP SUIT

See SALE OF GOODS
I L R 25 Mad 580

——— assets of or share or interest in—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PARTNERSHIP PROPERTY

——— books of—

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS.
4 B L R P C 31
13 Moo I A 365

See INSPECTION OF DOCUMENTS
I L R 1 Bom. 498

PARTNERSHIP—*contd*

——— decree for dissolution of—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES
I L R 27 Bom 556

See MADRAS ABKARI ACT
I L R 24 Mad 401

——— registration of deed of—

See REGISTRATION ACT (III OF 1877) s 17 CLS (*b*) AND (*h*)
I L R 30 Calc 1016

——— suit for account of—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—PARTNERSHIP ACCOUNT

——— suit for adjustment of account of—

See CONTRACT ACT s 265
I L R 6 Calc 251

See JURISDICTION OF CIVIL COURT—PARTNERSHIP
1 Agra 226

——— suit for dissolution of—

See CONTRACT ACT s 265

See JURISDICTION OF CIVIL COURT—PARTNERSHIP
I L R 7 All 227

——— suits respecting partnerships—

See CIVIL PROCEDURE CODE 1882 s 153
I L R 25 Bom 378

——— transfer of share in—

See STAMP ACT 1879 SCH I ART 21
I L R 12 Calc 383

1 WHAT CONSTITUTES PARTNERSHIP

1 ——— Participation in profits—*Application of English law* *M M & Co* merchants in London carrying on business with *W M W & Co* merchants in Calcutta sought to make the defendant liable as a partner in the latter firm under a particular memorandum of agreement

rule of law which imposes partnership liability upon a man who advances to others money for the purpose of carrying on their business and in return secures to himself a share of the profits which may arise from the employment in the business of the money so advanced by him PRATAB CHUNDRA SINGH *v* MOLLOW MARCH & Co
3 B L R A C 238

s c COURT OF WARDS *v* MOLLOW MARCH & Co
12 W R 56

On appeal to the Privy Council —*Held* that

PARTNERSHIP—*contd*

1 WHAT CONSTITUTES PARTNERSHIP—*contd*

although a right to participate in the profits of trade is a strong test of partnership and there may be cases where from such participation alone it may as a presumption not of law but of fact be inferred yet whether that relation does or does not exist must depend on the real intention and contract of the parties To constitute a partnership the parties must have agreed to carry on business and to share profits in some way in common but where a contract is entered into between partners and a third person for the protection of that person as a creditor whereby it is agreed that he shall receive in consideration of advances commission on the net profits of the partnership business and large powers of control over the business are given to him but no power to direct transactions the Court if satisfied that the contract was one of loan and security will not interpret it as constituting a partnership In applying the English law of partnership to cases in India the usages of trade and habits of business of the people of India so far as they may be peculiar and differ from those in England ought to be borne in mind MOLLOW MARCH & Co *v* COURT OF WARDS
10 B L R 312 18 W R 384
L R I A Sup Vol 86

2 ——— Agreement to share profits—*Money paid as rent to one party* The parties had entered into a contract of partnership to work certain supposed mines plaintiff to receive a bonus and also six monthly payments as rent for the land both parties to share the profits and bear the losses it being stipulated that in case coal should not be discovered the bonus and any sum paid a rent would be refunded *Held* that this was a partnership arrangement and the payment of the money which went by the name of rent was not as by a tenant to a landlord but as consideration money for land forming a portion of the capital SREEMUNJUREE DOSSEE *v* POORSUTTUN DOSS
9 W R 499

3 ——— *Contract Act ss 239 240—Loan of money* *Held* on the construction of the agreement in this case that such

4 ——— Joint Hindu family—*Separation among members of* Circumstances under which the Court will infer a partnership between members of a Hindu family alleged to have separated. MISSREELOLL *v* PARMNARAIN Cor 63

5 ——— *Account* There is no analogy in respect of the manager being liable to account between a joint Hindu family and a partnership Where it was arranged amongst the members of a joint Hindu family that the accounts of a banking business carried on by them should be kept on the understanding that the profits when

PARTNERSHIP—*contd*

1 WHAT CONSTITUTES PARTNERSHIP—*contd*

realized should be divided amongst the individual members in certain proportions and that the expenses of each member should be credited and charged in the name of each member —*Held* that this was in the nature of a partnership and an account was decreed RANGAKMANI DASI v KASINATH DUTT 3 B L R O C 1

6 ——— Ancestral business—*Account* An ancestral trade may descend like other inheritable property upon the members of a Hindu undivided family The partnership so created or surviving has many but not all of the elements existing in an ordinary partnership For example the death of one of the partners does not dissolve the partnership nor as a rule can one of the partners when severing his connection with the business ask for an account of past profits and losses SAMALBHAI NATHUBHAI v SOMESHVER I L R 5 Bom 38

But *see* ABHAY CHANDRA ROY CHOWDHRY v PYARIMOHAN GUHO 5 B L R 347

7 ——— Document creating partnership—*Determination of partnership* Where a document creating a partnership for a particular business is silent as to the date at which the partnership is to commence and end —*Held* that the partnership is conterminous with the business for the purpose for which it was created BUDDREENATH v ISREE PERSHAUD Cor 114

8 ——— Continuing firm—*Partnership for a fixed term—Death of partner—Power of partner to nominate a successor—General device not an exercise of power—Effect of default in exercising power of nomination—Good will—Valuable asset*

new company to take over its assets and liabilities and to cause themselves to be appointed agents of the new company under the firm of *V J S & Co* and under that name to act as agents of the new company subject to the terms of the agreement The agreement provided that the firm of *V J S & Co* should take the agency of the new company for a period of thirty years that of the profits to be derived by the said firm out of the agency V should receive 39 cents *J* 31 cents and *S* 30 cents that in case of a vacancy in the firm of *V J S & Co* caused by the death or retirement of any of the partners ... tiring part ... and should ... should exer ... f this agree ... d Weaving ... ew company ... nning and ... formed and registered Both the memorandum and articles of association of the said new company contained clauses providing that the firm of *V J S & Co* or

whatever member or members that firm for the time consist of should be agents of the company

date of the present suit No other business was done by the firm and the three partners divided the profits realized by the firm out of the agency business in the shares specified in the agreement as above mentioned V died in 1874 leaving a will whereby in exercise of the right vested in him by the agreement he nominated and appointed his wife *K* as his successor in the firm and she accordingly became and was recognized as a partner therein. In August 1875 she assigned her interest in the firm to *H* and he thereupon became a partner

henceforth consisting only of these two partners

did not refer to the firm or nominate any successor in the partnership In the present suit *B* as executrix claimed to be entitled to 60 cents or shares in the firm of *V J S & Co* up to the date of the testator s death and to a like share in the profits earned subsequently to his death or to be earned by the firm so long as it continued to carry on the said agency business of the company The defendant admitted the right of the plaintiff to the share claimed in the profits earned prior to the testator s death but resisted her claim to any portion of the subsequent profit *Held* (i) on the authority of *Beamish* v *Beamish Ir Rep 4 Eq 120* that the testator s will did not operate as an exercise of the power of nominating a successor in the firm so as to make the plaintiff a partner (ii) That having regard to the nature of the duties of the firm as agents and to the language of the agreement constituting the firm coupled with the fact that there was no capital employed in the business it must have been intended that in default of nomination

death therefore survived to the defendant *Held* also that although the plaintiff was entitled to an account up to the date of the testator s death she was not entitled to a share of the good will as an asset of the firm. The good will of a firm is attached to the name and in the present case by the

PARTNERSHIP—*contd*

1 WHAT CONSTITUTES PARTNERSHIP—*contd*

with its being an asset at all BACHUBAI *v* SHAMJI JADOWJI **I L R 9 Bom 536**

9 ——— **Intention of parties**—*Profits participation in—Contract Act (IX of 1872) ss 212 295—Broker* A right to participate in profits is sometimes a strong test of partnership but whether or not the relation of partners does or does not exist depends on the real intention and agreement of the parties and not upon the mere fact of participation in profits *Davis v Davis [1894] 1 Ch 393* referred to The facts that *B* an assistant in a firm of brokers received over and above his salary a share in the profits and that with the knowledge of the partners he occasionally signed on delivery orders which came from buyers in favour of the firm the signature for Carritt & Co (the name of the firm) with his own initials or name underneath that he occasionally signed with his own signature letters dealing with mere matters of detail and that he purported to make firm offers to buyers and sellers and initialled alterations in some contracts do not constitute him a partner in that firm The duties and responsibilities of a broker discussed MORRISON *v* VERSCHOYLE (1901) **6 C W N 429**

10 ——— **Partnership tests of**—*Participation in profits by lender—Taking active interest in business—Contract Act (IX of 1872) ss 240 241—Holding out as partner to strangers—Estoppel—Intention—Evidence Act (I of 1872) s 115* The right to participate in the profits of trade is in itself a strong test of partnership but participation in profits although strong evidence is not conclusive evidence of a partnership and the question of partnership must be decided by the intention of parties to be ascertained from the contents of the written instruments if any and the conduct of the parties It being established in this case with regard to a person s relation towards a business carried on with his money that he was a mere lender —*Held* that neither the fact of his participating in the profits nor that he took an active interest in the business were inconsistent with his position as a lender *Mollow March & Co v Court of Wards 10 B L R 312* and *Badeley v Consolidated Bank L R 38 Ch D 238* followed Where the question was as to whether a person though not in fact a partner did by his acts and conduct hold himself out to strangers as such so as to become liable by estoppel —*Held* that to establish such liability it was not essential to show that he acted fraudulently or negligently Even want of knowledge on his part of the effect of his acts and conduct would not absolve him from liability if his acts and conduct were such as would induce a reasonable man to believe that he was a partner and to act upon such belief *Sarat Chandra Dey v Gopal Chandra Laha L R 19 I A 203 Cornish v Abington 4 H & N 549 Carr v London and North Western Railway Company L R 10 C P* 316 *Dickenson v Valpy 10 B & C 128* referred to PORTER *v* INCELL (1905) **10 C W N 313**

2 RIGHTS AND LIABILITIES OF PARTNERS

1 ——— **Construction of deed of partnership**—*Agreement to give managing partner commission—Dissolution of partnership—Loss of commission on dissolution* By an agreement made on the 10th of January 1857 between K N and several other persons it was agreed that they should form a co partnership for the purpose of erecting a mill for the manufacture of yarn The capital of the partnership was fixed at R3 00 000 divided into 100 shares of R3 000 each By the 4th clause of the agreement it was provided that in return for the trouble K N had been at in establishing the factory whatever cotton had to be purchased for the factory K N was to purchase and whatever yarn should be made in the factory K N was to sell and for whatever he should sell on account of the factory he was duly to receive from the co partnership his commission at the rate of 5 per cent during his lifetime and it was also provided that though the purchases and sales by the co [illegible]

[illegible]

procured and set up by K N and both financially and otherwise the factory was wholly managed by him Shortly after it commenced to work it was found that the co partnership had expended all its capital and was heavily involved in debt—incurred by K N without the sanction of his co partners —and that the factory was working at a loss and at the suit of some of them but against the consent of K N and a minority of the co partners the co partnership was ordered to be dissolved K N then claimed to be entitled to compensation for the loss of the commission he should have earned upon the sale of the yarn of the factory during his lifetime *Held* that he was not so entitled that as between his co partners and K N there was no obligation on the former to subscribe more capital after the original capital of the co partnership had been exhausted and that there was no implied covenant on the part of co partnership to continue to work the factory in order that K N should be in a position to earn his commission during his lifetime Distinction between right to compensation for loss of fixed wages and right to [illegible]

[illegible]

the winding up suit LALBHAI VALLABHBHAI *v* KAVASJI NANABHAI **8 Bom. O C 209**

PARTNERSHIP—contd

2. RIGHTS AND LIABILITIES OF PARTNERS —contd

2 ———— **Payments made by partners** —*Presumption—Dissolution of partnership* Payments made by the different partners of a firm are presumed to have been made out of the funds of the firm where the contrary is not proved by any satisfactory evidence and when a firm consisting of two members is dissolved by the death of one partner the presumption is that the deceased was entitled to a moiety of the existing asset KESHAV GOPAL GINDE v RAYAPA 12 Bom. 165

3 ———— **Dormant partner liability of** —*Bond executed by one of several partners—Right of creditor* The doctrine that a dormant partner when discovered is liable for every debt incurred for the partnership by the active partner, is not absolute in the Courts in England and is not to be followed by the Courts of this country unless found in particular cases to be consonant with justice equity and good conscience Where money was lent on a bond to a malik and mukhtear of a factory on his personal credit and the security of the entire factory and it was afterwards discovered that other parties had a share in the factory it was *held* that the lender was not entitled to go beyond his contract and recover from those other parties personally NUNDEEPUT MAHATAH v URQUHART 9 W R 355

4. ———— *Bill drawn by* [illegible]

incident to the business of the firm although his name does not appear upon the face of the instrument although he be a sleeping and secret partner In order to take a case out of the principles of the general law it must be shown that the holder of the bill knew at the time he received it that the transaction was the private affair of a single partner BUNAPSEE DOSS v CHOLAM HOSSEIN 13 W R P C 29 13 Moo I A 358

5 ———— **Liability of partners on bond executed by managing partner** Where a bond is executed by the managing partner in a firm within the ordinary scope of a manager's authority to raise money for the joint purpose of the firm it binds the remaining partners AHMED HOSSEIN v KURNEEDAN 24 W R 60

6 ———— **Liability of partner for purchases made by co partner out of the scope of partnership business**—*Application of proceeds of sale to pay partnership debts* C the managing member in Calcutta of a firm of which B the other partner was absent in England made unknown to B and without authority from him various purchases from the plaintiff of articles not within the scope of the partnership business The purchases were made as for the firm and were delivered on the partnership premises by the plaintiff Subsequently the goods were taken to C's house and together with certain private property belonging to C were sold by auction and the whole proceeds of the sale were paid by C to a bank in Calcutta to the partnership account with that bank and were eventually remitted to B in England as from the partnership funds and applied in payment of certain bills of the firm then due B on coming to Calcutta took over the management of the business from C In a suit brought against B and C for the price of the goods purchased from the plaintiff —*Held* both in the Court below and on appeal that B was not liable MARTIN v BAKER 15 B L R 372

7 ———— **Liability of person joining firm as partner** Where one person joins a firm as partner in place of one of the partners he is only liable for the debts of the firm contracted after he joined it unless by special agreement GUJADHUR PERSHAD v KUNHYA LALL 3 Agra 27

8 ———— *Contract Act s 249* S 249 of the Contract Act has no application in cases where by arrangement between the parties a person becomes entitled to the profits and liable for the debts accruing to and incurred by the firm before his admission as a partner SHEWAK MAHTOON v ST JOSEPH 9 C L R 21

9 ———— **Partner dealing with Hindu joint family**—*Dealings among co partners* A co partner dealing with an undivided Hindu family is with reference to its component members in the same position that a partner according to English law is placed in with respect to his co partners and their representatives RAMLAL THAKURSIDAS v LUCHMICHAND MUNIRAM 1 Bom Ap 51

10 ———— **Lien of banian on goods under agreement with firm** —*Construction of agreement* The plaintiff became banian to the defendants under an agreement [illegible] he had a [illegible] m in their [illegible] by them [illegible] ient while there was a balance due the defendants firm took in a new partner *Held* that the words belonging to included all goods in the possession of the new firm that came to them in the way of business *Held* also that the new firm not having given notice to the contrary must be taken to have engaged the plaintiff as banian upon the terms expressed in the agreement with the old firm and to have taken over the balance due at the time when the new firm was constituted as a debt due by the new firm BALDEO DAS AGARWALLA v KAICH 3 B L R O C 80

11 ———— **Power of partner to borrow money**—*Winding up—Account—Suit for dissolution—Power of partner to mortgage partnership land* T B R and H the owners of a certain estate in equal shares in 1863 entered into a partnership for the cultivation of tea and other products upon

PARTNERSHIP—contd

2. RIGHTS AND LIABILITIES OF PARTNERS —contd

such estate In 1864 *H E* and *I* joined the firm In *18 0 H* died and in 1871 *T* purchased the shares of *E* and *I* and in 1873 of *R* In 1875 *T* gave the Delhi and London Bank a mortgage on such estate as security for the repayment of money which he had borrowed from the Bank ostensibly for the purposes of the estate The Bank obtained a decree against him personally for the money in execution of which his rights and interests in the estate were put up for sale on the 0th June 1877 and were purchased by the Bank which obtained possession of the estate in August 1877 In August 1879 *B* and *H*'s executor sued *T* and the Bank claiming a declaration that they were or had been partners with *T* in the estate that if the partnership should be held to be subsisting it might be dissolved or that if it had ceased to exist the date of its termination might be fixed and that in either event a liquidator might be appointed to take an account and after realizing assets and discharging liabilities might be ordered to pay them each one third of such balance as remained *Held* that as the effect of the purchases by *T* in 1871 and 1873 was to relieve the estates of *H E I* and *R* of all past and future liabilities of the partnership in respect of which *B* and *H* still continued as liable as *T* and to which they would have to contribute to discharge such purchases should be regarded and treated as made on behalf of the partnership and therefore at the time of the execution of the mortgage of the estate *B H* and *T* were interested in the estate to the extent of one third each that although *T* was not authorized either actually or impliedly by *B* and *H* to mortgage the estate and the mortgage therefore was not binding on them yet as they allowed him to conduct the business of the estate in such a manner as to make it appear that the control and management of it rested with him and he was for all ordinary business purposes their representative *B* and *H* were bound in any accounting that might take place to recoup the defendant Bank for such advances as were made to *T* for the necessary purposes of the estate in the same proportion as they must discharge debts due to other creditors that *T* was entitled to be reimbursed such moneys of his own as he had expended within the legitimate scope and for the proper purposes of the partnership as originally contemplated by the parties Directions to the liquidator appointed how to proceed. HARRISON *v* DELHI AND LONDON BANK I L R 4 All 437

12 ———— **Liability of partners**—*Joint contract—Joint liability—Judgment recovered against one partner* The defendants were partners trading in the name of *I G & Co* On 6th July 1895 at Ahmedabad the first defendant borrowed from the

the plaintiff was to recover the debt due to him from the partners jointly and severally On 2nd

PARTNERSHIP—contd

2 RIGHTS AND LIABILITIES OF PARTNER —contd

October 1896 plaintiff obtained a decree on an award against the first defendant in the Civil Court at Baroda for R13 909 4 0 and in execution of this decree he recovered a sum of R7 000 In 1897 plaintiff filed this suit in the Court of the First Class Subordinate Judge at Ahmedabad to recover the balance ie R6 909 4 0 from all the partners (defendants Nos 1 to 8) The Subordinate Judge dismissed the suit the plaintiff appealed to the High Court *Held* that the ori

incident of the partnership into a joint and several liability LAKSMISHANKAR DEOSHANKAR *v* VISHNURAM I L R 24 Bom 77

13 ———— **Payment to a partner in fraud of his co partners**—*Discharge of debt—Constructive notice—Lease taken by agreement in name of one partner* The defendants other than the first defendant styling themselves the agricultural association entered into three rental agreements two of them dated April 23rd 1891 and the third dated June 21st 1891 with the plaintiffs and the first defendant for the cultivation of certain lands belonging to an undivided family of which the plaintiffs and first defendant were members and took possession of and cultivated the said lands On the 17th June 1891 an agreement of which the second defendant had notice was entered into between the plaintiffs and first defendant to the effect that the first plaintiff should be the managing member of the family and should be entitled to receive the rent and give receipts for the same Subsequently disputes arising between plaintiff and first defendant the other defendants made payments of rent to first defendant alone *Held* that these payments were not a valid discharge as against the claim of the plaintiffs on its being proved that second defendant had notice of the agreement of the 17th June and that notice to him must be taken to be notice to his partners the other defendants. By an agreement between the defendants any one partner was empowered to take a lease such lease to be binding on all the partners as if executed by them. The leases were not signed by the 13th defendant (now represented by appellants 19 20 and 21) who was admittedly a

MANABHA PILLAIYAN SORIMUTHU PILLAI *v* PADMANABHA PILLAIYAN I L R 19 Mad 471

14 ———— **Authority of one partner** to bind the firm

PARTNERSHIP—*contd*

2 RIGHTS AND LIABILITIES OF PARTNERS —*contd*

due to the firm has no power in the absence of special authority to bind the firm by a submission to arbitration of the claim so brought *Stead* v *Salt 3 Bing 101* and *Strangford* v *Green 2 Mad 228* referred to RAM BHAROSE v KALLU MAL
I L R 22 All 135

15 ———— Abandonment of share—*Account ordered—Account ordered on dissolution decreed—No abandonment by plaintiff—Effect of managing partner s not having kept clear accounts—Mode of taking account* However speculative the subject-matter of a partnership may be it is a matter of inference to be drawn from the facts of the case whether there has or has not been an abandonment by a partner of his share or loss thereof consequent upon his refusing or neglecting to take his part in the business and allowing a length of time to elapse in such circumstances Where the evidence was that the plaintiff now suing for a winding up of a partnership and an account had some years before his suit declined to advance more money for the business and had left with some subsequent intervention by him the management to his co partner now defendant *Held* that there was no sufficient ground for the inference that the plaintiff had abandoned or lost by [illegible]

[illegible]

the partnership dealings and on a larger scale His agent in the timber district had expended largely but on which of the accounts it was impossible for the Court to distinguish It had been possible for the defendant to have given full accounts of certain of his transactions but he had not done so He had mixed up his own separate dealings with those of the partnership and had not kept clear accounts *Held* that the Courts below acted rightly in disallowing all charges made by the defendant that were disputed by the plaintiff and were unsupported by vouchers notwithstanding that there might have been certain expenses disallowed which had been honestly incurred MOUNG THA HNYIN MAH THEIN MYAH (1900)
I L R 28 Calc 53 s c 5 C W N 114

16 ———— Broker—*Liability of principal—Scope of agent s authority* The duties and responsibilities of a broker discussed An undertaking by a broker to refund advances made by third parties to his constituents and giving a guarantee for the repayment of advances with profits is altogether outside the scope of his ordinary business and would not bind his partner unless the latter assented to it or subsequently ratified it *Fowler* v *Hollins L R 7 Q B 616 623* referred to MORRISON v VERSCHOYLE (1901)
6 C W N 429

17 ———— Conversion of stolen goods—*Managing partner receiving the goods—Evidence of conversion—Liability of firm—Damages measure of* Where the managing partner of the defendant firm had without the knowledge and consent of the other partner received certain piece goods belonging to the plaintiff knowing that they had been stolen and had within the scope of his [illegible]

fendant firm as damages for conversion the value of all the goods belonging to him which had come into the hands of the managing partner HURRUCK CHAND v GOBIND LAL KHETRY (1906)
10 C W N 1053

18 ———— Dishonest conversion—*Partnership—Liability of a partner to account for partnership money—Penal Code (Act XLV of 1860) s 406* A partner is entitled to be called upon for an account of the expenditure of the money which he has received and it is open to him to spend the money received by him and to account for it in dealing with the partnership Where it was not satisfactorily made out that this was not done and could not be made out in the absence of a proper demand for accounts it was *held* that there was no dishonest conversion which would justify his conviction under s 406 of the Penal Code DEBI PRASAD BHAGAT v NAGAR MULL (1908)
I L R 35 Calc 1108

19 ———— Partner power of single, to mortgage partnership property—*Contract Act (IX of 1872) s 251 A single partner by objecting cannot vary articles of partnership—Transfer of Property Act (IV of 1882) s 53—Transfer cannot be impeached by any but the creditors* Where one of several partners has under arrangement with the other partners the sole management of the business he has the power of borrowing as incidental to the power to trade and the power to [illegible]

articles of partnerships Where a partner has power to borrow or mortgage for the purpose of trade he has power to give a mortgage for an antecedent debt An objection that a transfer of property was made with intent to defeat or delay creditors must be taken by the creditors and it is not open to others to object to the transfer on that ground ASAN KANI PAVUTTAR v SAMASUNDARAM CHETTIAR (1908)
I L R 31 Mad 206

20 ———— Conveyance on sale of property—*Stamp Act (II of 1899) Art 23—Pressing factory—Partnership—Transfer of a share in consideration of a certain sum—Document—Release* Where by a document the executing party purporting to be entitled to a share in a going pressing factory transfers absolutely the

PARTNERSHIP—*contd*

2. RIGHTS AND LIABILITIES OF PARTNERS —*concld*

whole of that share to the other person interested in the factory in consideration of a certain sum the document is a conveyance on sale of property HIRALAL NAVALRAM *In the matter of* (1908) I. L. R 32 Bom. 505

3 SUITS RESPECTING PARTNERSHIPS

1. ———— **Suit for account without asking for dissolution.** *Partnership dissoluble at will* A member of an ordinary trading partnership dissoluble at will cannot except under special circumstances seek an account without praying for a dissolution. GOLLA NAGABHU SHANAM v KANAKALA GANGAYYA 2 Mad. 28

2 ———— **Liability of partners to account**—*Suit for an account—Suit by partner to recover from co partner share of losses and advances* It is only in exceptional cases that a suit can be brought by one partner against another which involves the taking of partnership account prior to dissolution A suit was brought by the widow of a partner in an indigo concern against her deceased husband s co partner in respect of certain alleged losses of the concern and to recover a moiety of money expended by her husband in advances made to indigo cultivators on behalf of the partnership At the time when the suit was brought the partnership had not been dissolved *Held* that the partnership not having been dissolved the plaintiff was not entitled to an account and the suit must therefore fail *Brown* v *Lapscott 6 M & W 119* and *Helme* v *Smith 7 Bing 709* distinguished KASSA MAL v GOPI I L. R 9 All 120

3 ———— **Suit for dissolution and an account**—*Partner seeking to remove attachment on partnership property* The proper course for a partner seeking to remove an attachment on partnership property in execution of a decree against one partner only is to sue for a dissolution of the partnership and an account with a view to ascertain the amount due to the partner in execution against whom the partnership property is attached KARIMBHAI *v* CONSERVATOR OF FORESTS I L R 4 Bom. 222

4. ———— **Suit by partner against co partner**—*Suit for share of profits* A member of a subsisting partnership is not in a position to sue his partner still less one of his alleged partners for the profits which had up to a particular time accrued but he must if he desires relief sue in the ordinary way for an account DOYARAM LUSKUREE v SOOKHANUM 16 W R 141

5 ———— **Suit for general adjustment of account** In disputes between partners respecting their accounts the plaintiff should so frame his suit that there may be a general adjustment of the partnership accounts A particular item or claim should not be made the subject of a distinct suit SOONDER BIBEE v KHILLOO MULL *alias* RAM LALL 2 N W 90

PARTNERSHIP—*contd*

3 SUITS RESPECTING PARTNERSHIPS —*contd*

6 ———— **Suit against co partners for money deposited and profits**—*Necessity for taking accounts* In a suit against co partners in a joint firm to recover money deposited as plaintiff s share and to have accounts rendered of the profit before any order can be made to the effect that the plaintiff is entitled to be paid by any one of his partners or out of the assets of the firm the actual money advanced the whole accounts of the firm ought to be taken and the ultimate liability of each of the partners ascertained KALLEE CHURN SAHOO v RAM LALL SAHOO 21 W R 300

7 ———— **Suit for contribution among partners**—*Transactions by some only of partners—Obligation to ask for account of partnership dealings* Four members of a partnership consisting of seven persons borrowed certain sums on account of the partnership for which they gave their joint and several promissory notes on which decrees were afterwards obtained against them In a suit for contribution brought by one of the four members against the others as having paid more than his share under the joint decrees —*Held* that the giving of the promissory notes was not a partnership transaction so as to debar the plaintiff from a suit for contribution without asking for an account of the partnership dealings DOYAL JAIRAJ v KHATAV LADHA 12 Bom 97

8 ———— *Suit for contribution—Money borrowed by agreement by one partner and paid into partnership business—Decree against one partner—Suit for contribution by him against other partners—Adjustment of account whether necessary* In a partnership business entered into between the plaintiff and the defendants it was agreed that each member together with the gomashtas of the business should be at liberty to borrow money upon his individual credit and to pay into the firm the money so borrowed to carry on the business The plaintiff conjointly with defendants 4 and 6 in accordance with that agreement borrowed several sums of money upon promissory notes and paid the amounts so borrowed into the business After the loan the partnership business came to an end but no account was settled Afterward decrees were obtained upon those promissory notes and the plaintiff was obliged to pay up the decretal amounts To a suit for contribution by the plaintiff for money so paid against the members of the firm the defence *inter alia* was that the suit was not maintainable in the absence of adjustment of the accounts relating to the firm *Held* that the suit was maintainable inasmuch as the money secured by the promissory notes did not become an item of the partnership account *Doyal Jairaj* v *Khatav Ladha 12 Bom. 97* and *Gada Kolita* v *Joyram Das I L R 26 Calc 262 note* referred to DURGA PROSONNO BOSE v RAGHUNATH DASS I. L. R. 26 Calc 254 3 C W N 299

PARTNERSHIP—*contd*

3 SUITS RESPECTING PARTNERSHIPS—*contd*

9 ———— *Whether a suit for contribution by a partner against a co partner would lie and in what ca es—Adjustment of account whether necessary* A suit for contribution by a

al le in a ca e where the co partners expressly pro mised to contribute their share of debt after a decree had been passed upon the bond *Doyal Jairaj v Khatav Ladha 12 Bom 97* referred to GUDA KULITA v JOYRAM DAS

I L R 26 Calc 262 note

10 ———— Suit on agreement in nature of partnership deed—*Suit by one party for his share* An agreement was entered into whereby the defendant undertook to pay to the plaintiff and two other co creditors of an insolvent a hare in any sums which he might recover from the in olvent in consideration of receiving a share in any sums which might be recovered by the other creditors In a suit by one of the persons in whose favour the agree ment was pas ed without making the others parti s against the person who executed it to recover his share it was *held* that the suit was not maintainable as it could only be brought as a suit between partners for an account and the result of all the partnership transactions must be brought at once under the view of the Court PHAGTIDAS BHAGVANDAS v OLIVER 9 Bom. 418

11. ———— Suit based on rights of deceased partner—*Adju tment of partner hip accounts—Payments by partners Presumption as*

partnership was formed the amounts advanced and drawn out by the ev ral partners and the subsi ting liabilities and as ets if any must all be taken into account and the suit must demand such a sum if any a on a general account and an account between the decea ed partner and the co partnership being taken hall appear to be due Principle on which th account of a di solved part nership should be adjusted explained KESHAV GOPAL CINDE v PAYAPA 12 Bom. 165

12 ———— Suit against one of several partners for money lent—*Form of suit* A was partner in an in li o concern in the name of his son In his own name l lent moneys to the con cern for the purpo e of carrying on the bu iness and each partner was to be eparately liable for the moneys advanced in proportion to his share in the concern In a suit against one of the partners for his proportion of the moneys o lent —*Held* that the plaintiff could not sue for tho e moneys on the footing of a mere creditor and that the uit should be so framed as to determine the profits or los e of the concern and whether any and what as ets would be available to each partner to liquidate the loan in proportion to his hare CHUNDER SIKHUR BISWAS v RAM BUKSH CHETLUNGEE

1 C L R 545

13 ———— Suit by representative of a deceased partner for a share of a specific asset of the partnership recovered after the right to a general partnership account is barred A uit may be brought by the repre sentative of a decea ed partner against the surviv ing partner of a firm to recover a share in a sum received by the surviving partner in respect of a *partnership transaction within the period of limita*

A K & Co was largely indebted to the firm of Hormusji and Rustomji At the end of that year the latter firm cea ed to do bu ine s but no formal *dis olution of the partnership ever took place* In 1869 the defendant *R* filed a suit (No 461 of 1869) in the High Court of Bombay in his own name and that of
A K &
firm w
by a de
was ref
counts as prayed for On the 17th December 18[illegible] *H J* died at Hongkong intestate On 22nd February 1873 the defendant *P* a igned to the second defendant *W* for R20 000 the claim of the firm of Hormusji and Rustomji against the firm of A K & Co The plaintiff did not know of this arrangement and he only became aware of it in 1880 The plaintiff alleged that of the said sum of R20 000 the second defendant *W* paid to the first defendant *R* R10 000 in 1878 and for the remaining sum of R10 000 gave a promissory note payable in July or Augu t 1881 The plaintiff took out letters of administration to his father *H J* and brought this suit on 16th July 1880 claiming a moiety of the R10 000 already *paid by the defendant W to the first defendant R* and praying that he might be declared entitled to a moiety of the remaining sum of R10 000 payable by the defendant *W* and that the same might be paid over to him. The defendant *P* alleged that he had a igned the claim against the firm of A K & Co to the defendant *W* and had received the con ideration for such assignment in February 1873 and contended that if the plaintiff had ever any claim to any portion of the said money (which he

PARTNERSHIP—*contd*

3. SUITS RESPECTING PARTNERSHIPS—*contd*

denied) such claim was barred by limitation He al o alleged that he had carried on the suit No 461 of 1869 without any a i tance from the plaintiff s father *H J* or from the plaintiff who although applied to refu ed to a si t him and he submitted that under no circumstances was the plaintiff entitled to any of the moneys claimed by him without giving credit to the defendant for his (plaintiff s) hare of the expen e of pro ecuting the said suit and for the amount of proper remuneration to the defendant for the time and labour bestowed by him in the said uit He al o claimed that the partnership accounts of the firm of Hormusji and Pu tomji hould be taken and alleged that on uch accounts being taken a large sum would be found due to him from the partner hip The second defendant H paid into Court the R10 000 due on the promi ory note abovementioned and was

not barred by limitation in re pect of the said sums of R1 000 R6 000 and R10 000 and that the plaintiff was entitled to recover a half hare of these sums from the defendant *R* d ducting all sums expended by the defendant in the prosecution of the suit No 461 of 1869 no allowance however being made to him as remuneration for conducting the suit *Held* al o that the defendant might deduct the amount (if any) which might be found due to him on taking the partner hip accounts although a separate suit for such account would be barred by limitation MERWANJI HORMUSJI *v* PU TOMJI BURJORJI I L R 6 Bom 628

14 ———— Suit by sole surviving partner—*Repre entatives of deceased partner—Contract Act (IX of 187) s 4—Civil Procedure Code s 26* The rule of English law that in trading partnerships although the right of a deceased partner devolves on his repre entative the remedy survives to his co partner who alone must enforce the right by action and is liable on recovery to account to the repre entative for the deceased s

of a decea ed partner must be joined in an action for a partner hip debt brought by the surviving partner though it may be that they might be joined in such an action. GOBIND PRASAD *v* CHANDER SEKHAR I L R 9 All. 486

15 ———— Suit by assignee of executors of deceased partner—*Suit for declaration of right to share of partn rships and for an account* *P* prior to his death was a partner with defendants in the firm of *N C & Co* He died on 8th November 1884 On the 9th November 1885 his executors pa sed a release to the defendants which recited that *R s* share in the firm and future business had ceased on his death that the surviving partners had requested the executors to settle the account of their te tator with the firm and that after examining the books and taking accounts etc a balance of R8 395 11 0 was found due on payment whereof the executors released the defendants from all claims in respect of the share and interest of *P* On the 7th April 1887 the executors assigned over to the plaintiff a one anna share in the said firm and the plaintiff as as ignee brought the suit for a declaration of his right to the share and for an account He alleged that there had been no accurate examination of the books at the time of the release that the amount really due to the testator s estate by the firm had not been as certained and that it had been agreed on by the partners at the time of the release that in addition to the sum therein mentioned the executors as representing the testator s estate should receive a one anna share in the partner hip *Held* on the evidence that it had not been proved that all the partners
an l that
not succe
BOOWALL

16 ———— Partnership shares—*Interest.* The parties to the suit the heirs and representatives of the original partners a family carrying on a banking business made and acted upon a n w arrangement of their shares the amounts of which were found in the first Court and affirm l on appeal A decree for an account and an awar l of interest at 12 per cent on the amounts found to be due upon the hares from the date of the [illegible] the business was maintained MUTIA CHETTI *v* SUBRAMANIEM CHETTI I L R 18 [illegible]

17 ———— Alleged agreement [illegible] shares in partnerships—*Contract [illegible] 1872) s 253* In a partnership [illegible] party do s but the other party [illegible] specific agreement that the shares in [illegible] ner hip were unequal *the existing* [illegible] to the equality of the partners [illegible] burden of proof on those all[illegible] who must therefore begin. [illegible] BULLORAM DEY I L R [illegible]

18 ———— Assignment by [illegible] partners of their shares—[illegible] *up and for an account* [illegible] in lending a sum of money [illegible] a half share in the [illegible] and second defendants [illegible] plaintiff s exonerating [illegible] had as igned their shares [illegible] The a ignees were [illegible] this suit had been [illegible] judicial windin [illegible]

PARTNERSHIP—*contd*

3 SUITS RESPECTING PARTNERSHIPS—*contd*

not proved that the plaintiff had ever relinquished

ing up of the partnership and the account decreed against all the four The suit had been dismissed by the Recorder as having been prematurely brought before the complete execution of a decree already obtained before this suit was filed by the plaintiff appellant against the borrowers of the money that decree having followed upon an award of arbitrators which directed that all sums realized in the adventure should be divided in equal moieties between the plaintiff and the original defendants *Held* that this suit ought to have been allowed to proceed and should not have been dismissed The plaintiff having on this appeal agreed to account for all money received by him in the transaction an account should be directed with a declaration that the added defendants were jointly and severally liable to account with the first and second defendant for what had been received by them from the adventure DOMATY NURSIAH *v* PAMEN CHETTY

I L R 28 Calc 93
L R 28 I A 202

19 ———— **Suits by different partners for specific sums of money on adjustment of accounts**—*Accounts adjusted by Amin appointed in previous suits—Contract Act s 265—Plaint amendment of under s 53 Civil Procedure Code 1882* After dissolution of a certain partnership two separate suits were brought in 1889 by different partners for specific sums of money due to them and in the alternative for such other amount as might be found due on an adjustment of accounts Objections were raised against these suits on the grounds *inter alia* (i) that the suits were barred by the provisions of s 265 of the Indian Contract Act (ii) that separate suits for the same matter were not maintainable (iii) that the suits would not lie in the Munsif s Court and (iv) that accounts having been already adjusted there was no cause of action The Munsif overruled the first three objection and held as regards the fourth that the adjustment pleaded had been ratified by the plaintiffs he appointed an Amin who examined the accounts and ascertained the respective claims of the partner and the plaintiffs in those suits obtained decrees on the basis of the Amin s adjustment of account The present suits were brought in 1891 by certain other partners who were defendants in the suits of 1889 on the allegation that the partnership account had been already adjusted by the Amin appointed in the suits of 1889 and that the debts and dues of all parties had been determined by the Court The plaintiffs prayed for recovery of the amount due to them under the Amin s adjustment and in the alternative for such other relief as might be deemed proper by the Court to grant them against any of the defendants *Held* by NORRIS and BANERJEE JJ (RAMPINI J dissenting) that the suits were correctly framed and that such defects as there were in the plaint *viz* an incorrect statement as to the dues of all the partners having been determined in the former suit and the omission of an alternative prayer for an account were no bar to the maintenance of the present actions *Taylor* v *Shaw* 2 *Sim* & *St* 12 *Stupart* v *Arrowsmith* 3 *Sm* & *G* 176 and *Lalla Sheopro ad* v *Juggarnath* L R 10 I A 74 referred to *Prosad Doss Mullick* v *Russick Lall Mullick* I L R 7 *Calc* 157 distinguished *Held* also that an amendment of the plaint under s 53 of the Code of Civil Procedure should be allowed *Cropper* v *Smith* L R 26 *Ch* D 700 followed *Weldon* v *Neal* L R 19 Q B D 394 *Mohummud Zahoor Ali Khan* v *Thakooranee Rutta Koer* 11 *Moo* I A 468 *Joseph* v *Solano* 9 B L R 441 18 W R 124 *Ramdoyal Khan* v *Ajhoodhia Ram Khan* I L R 2 *Calc* 4 25 W R 495 and *Kurt* v *Spence* L R 33 *Ch* D 770 referred to *Held* by RAMPINI J that the amendments proposed to be made in the plaint could not be allowed under s 53 of the Code of Civil Procedure DHANI RAM SHAHA *v* BHAGIRATH SHAHA

I L R 22 Calc 692

20 ———— **Advance made by one partner to another in respect of the latter's share of partnership debt**—*Suit for contribution* A and B were partners A decree was passed against them for the payment of a certain debt each partner being liable for the whole sum and being bound to indemnify the other against the payment of more than his share *A* paid *B* s share as well as his own and brought a suit against *B* for contribution *B* contended that *A* s claim being in respect of a partnership transaction ought to be adjusted when the partnership account was settled and that the suit did not lie *Held* that the advance made by *A* to *B* by paying his share was not an advance to the partnership but to the other partner in respect of what he had to contribute and that consequently *A* was entitled to contribution from *B* SUBBARAYUDU *v* ADINARAYUDU

I L R 18 Mad 134

21 ———— **Advances**—*Several firms—Common partner—Money lent by partner to his own firm—Practice—Same party cannot be plaintiff and defendant in one suit—Debtor and creditor—Death of plaintiff pending appeal—Defendant becoming plaintiff—Power of Court of appeal to vary decree on grounds arising subsequently to decree—Partnership accounts—Contract Act (IX of 1872) s 264—Guarantee—Liability of surety—Right of surety to indemnity* Where an individual is a common partner in two houses of trade no action can be brought by one house against the other house upon any transaction between them while such individual is a common partner This doctrine is founded on the rule that the same individual even in two

PARTNERSHIP—*contd*

3 SUITS RESPECTING PARTNERSHIPS—*contd*

capacity cannot be both a plaintiff and defendant to one and the same action One partner cannot sue for money lent by him to a firm of which he is a member The advance is but an item in the partnership account It is open to the Court of Appeal to vary a decree under appeal not only for error but also on grounds which have come into existence since it was passed *Sakharam v Hari I L R 6 Bom 113* The plaintiff Purshotamda Chaturda and his son Nagindas were members of a joint Hindu family and were the owner of and equally interested in the firm of Gordhandas Bhagwanda The son Nagindas was also a partner in another firm carrying on business in the name of Pathak Shanghavi and Company The plaintiff Purshotamdas brought this suit against the latter firm which consisted of four partners including his son Nagindas (defendant 2) to recover Rs 1 419 3 1 in respect of advances made by the firm of Gordhandas Bhagwandas to the defendants firm The fifth defendant was sued as a surety for one of the partners (defendant 4) in the defendants firm The lower Court passed a decree for the amount claimed against all the defendants. One of the partners (defendant 4) and the surety (defendant 5) appealed Pending the appeal the plaintiff died and his son Nagindas (defendant 2) became sole owner of the family firm and was substituted for his father on the record

all parties interested being before the Court either as plaintiff or defendants the Court would adjust and determine their rights in accordance with the rule of justice equity and good conscience (ii) that Purshotamdas and Nagindas being equally interested in the plaintiffs firm the lower Court should have made a declaration that they were entitled to the amount advanced in equal shares and have passed a decree that one moiety thereof should be paid to Purshotamdas and the other moiety treated as a

partnership

shotamdas

his heir ha

Appeal would not pass a decree in his favour even in respect of Purshotamdas half share but would only declare that for this amount also Nagindas was entitled to credit in the partnership accounts

As to the liability of defendant 5 as surety the Court *held* on the evidence that defendant 5 had become a surety for the partnership debt The partners were the principal debtors But the liability of the surety is co extensive with that of the principal debtor therefore no decree could be now passed against defendant 5 Further Nagindas now the beneficial owner of the debt was one of the principal debtors and as such was bound to indemnify his surety and to repay any sum paid under the guarantee He therefore could not be entitled to any relief against his surety PUSTOMJI ASPANDIARJI SETHNA v SHETH PURSHOTAMDAS CHATURDAS (1901) I L R 25 Bom. 606

22 ——————— *Two firms—Common partners—Advances by one firm to the other—Suit to recover such advances—Partnership account necessary—Practice—Procedure* The two plaintiffs were the owners and sole partners of the firm of Apaji Kasinath They were also partners in the defendant firm of Ganesh Hari Narkar in which there were three other partners besides themselves Between 1891 and 1896 the firm of Apaji Kashinath advanced money to the firm of Ganesh Hari Narkar which latter firm ceased to do any business in 1897 although the partnership was not formally dissolved In 1899 the plaintiffs brought this suit against the firm of Ganesh Hari Narkar to recover their advance Being partners in the firm the plaintiffs appeared also as defendants (Nos 3 and 4) in the suit the real object of the suit being to recover from the other partners (defendants 1 2 and 5) their share of the amount alleged to be due by the firm to the plaintiffs *Held* that the suit as framed was not maintainable The money claimed was only one item in the partnership account between the plaintiffs and the defendants Without taking a general partnership account it was impossible to say whether there was anything due by the defendants to the plaintiffs *Rustomji v Purshotamda I L R 25 Bom 606* followed KASHINATH KEDARI v GANESH HARI NARKAR (1902) I. L. R 26 Bom 739

23 ——————— Joint Hindu family—*Partners—Co-partners not necessarily partners—Suit in the name of the owner of the firm—Parties—Adding parties—Civil Procedure Code (Act XIV of 1882) s 27* The plaintiffs sued as owner of a firm to

that although a person carrying on business is a coparcener in a joint family it does not necessarily follow that all his co parceners are his partners in

PARTNERSHIP—*contd*

3 SUITS RESPECTING PARTNERSHIPS—*contd*

that business entitled with him to its rights and responsible with him for its liabilities The fact of partnership must be proved by evidence showing that the persons alleged to be partners have agreed to combine their property labour or skill in the business and to share the profits and losses thereof *Held* also that if on remand it was found that the plaintiff's father and brother were partners the Court ought to allow them to be brought on the record and under s 27 of the Civil Procedure Code (Act XIV of 1882) the plaintiff was entitled to amend *Kasturchand* v *Sagarmal I L R 17 Bom 413* followed VADILAL LALLUBHAI v SHAH KHUSHAL DALPATRAM (1902)

I L R 27 Bom 157

24. ——— **Mistake in settled accounts**—*Re opening—Surcharge and falsification—General words of release—What passes* *B* and *S* partners had the partnership accounts strictly adjusted and R39 645 7 0 was found due to *B* By a deed of assignment *B* in consideration of R34 000 assigned and released his share in the firm to *S* By common mistake Government promissory notes for R7 000 were omitted from the accounts On discovery of the mistake *B* sued for a share of the notes *Held* that either the whole account might be re opened or leave given to *B* to surcharge and falsify The latter is the more proper course on the facts of this case *McKellar* v *Wallace 5 Moo I A 372 Pritt* v *Clay 9 Beav 503 Gething* v *Keighley 9 Ch D 547* referred to General words of release in a deed can only operate to pass what the parties had in contemplation and not something with which they had no intention of dealing *L & S W R Co* v *Blackmore L R 4 H L 610 Turner* v *Turner 14 Ch D 829* followed BANEY MADHUB MULLICK v SUBAL CHUNDER LAW (1907)

11 C W N 776

25 ——— **Advance by one partner to the partnership**—*One partner taking a promissory note from other members in respect of sums advanced to the partnership can sue on the promissory note.* Where one of several partners takes a promissory note from other members in repayment of an advance made by him to the partnership it is competent to him to bring a suit on the note against the members executing it It is no answer to such a suit that the general accounts of the partnership were not taken at the time the promissory note was given and that if such account were taken it would appear that nothing was due to the plaintiff Such a defence amounts to a set off of an unliquidated amount which is not allowable VALLAMKONDU SUBBIAH v MALUPEDDI VENKATARAMIAH (1908) I L R 31 Mad. 343

26 ——— **Fraud by co partner**—*Hatchitta—Material alteration by a partner to set up exclusive title to debt—Suit on behalf of firm—Maintainability—Claim if to be disallowed to the extent of the interest of the fraudulent partner—Apportionment before dissolution* A fraud committed by a partner while acting on his own separate account and not as agent for the firm is not imputable to the firm although had he not been connected with the firm he might not have been in a position to commit the fraud Where one of the partners of a firm sued to recover a debt which was really due to the firm on the allegation that it was due to himself and not to the firm and his suit was dismissed on the ground that he had materially altered the *hatchitta* executed by the debtor by striking out the other partners name without the debtor's consent —*Held* that the other partners were not precluded from suing for the debt on behalf of the firm making the first mentioned partner a defendant in the suit *Master* v *Miller 2 R R 390 4 Term Rep 320 Gour Chandra* v *Prasanno Kumar I L R 33 Calc 812* distinguished That it was not open to the Court in such a suit to give them a decree for such portion only of the claim as represented their share in the firm Questions regarding the share of the debt to be allocated to the partners *interest* can only be decided when the accounts of the partnership are taken BASIRUDDIN MULLICK v SURJA KUMAR NAIK (1908)

12 C W N 716

27 ——— **Limitation**—*Limitation Act (XV of 1877) Sch II Art 106—Suit for division of alleged partnership assets—Separate suits for property at different places* The plaintiff sued for possession of one half of certain property in the Moradabad district alleging that it had been pur [illegible] but the plaintiff said he would bring a separate suit in respect to that property The first suit was withdrawn but without permission being granted to bring a fresh suit Subsequently a second suit was brought in Naini Tal respecting the property there The plaintiff alleged himself to be in possession of this property but it was found that he was not *Held* that the second suit was barred by the operation of s 43 as well as of s 373 of the Code of Civil Procedure as also on the finding that the partnership had been dissolved more than three years before suit by Art 106 of the second schedule to the Limitation Act NIAZ AHMAD v ABDUL HAMID (1908) I L R 30 All 279

28 ——— **Suit for contribution**—*One partner compelled to pay the whole of a partnership debt after dissolution may sue for contribution although right to sue for account of and share in the partnership assets may be barred* A partner who after the dissolution of the partnership has been compelled to pay a debt due by the partnership can maintain a suit for contribution against his co partners even though a suit for general account of the partnership and a share therein is barred by

PARTNERSHIP—*contd.*

3. SUITS RESPECTING PARTNERSHIPS—*concld*

limitation The defendant however will in such a case be entitled to show that in a settlement of account he will not be liable or that his liability would be reduced *Sokkanadha Vanniamunder v Sokkanadha Vanniamunder I L R 28 Mad 344* principle applied *Subbarayudu v Adinarayudu I L R 18 Mad 131* considered The principle will apply equally whether the party suing is a partner or his representative SADHU NARAYANA AIYANGAR *v* RAMASWAMI AIYANGAR (1908)
I L R 32 Mad. 203

29 ———— **Suit by one partner against another without asking for general account when maintainable**—*Suit for specific performance of one term of partnership or for partial account—Waiver of grounds in lower Appellate Court* Where under the terms of a partnership terminable at will between *A* and *B* *A* is bound to hand over to *B* who furnished all the capital all moneys or cheques received by him in the course of the partnership business irrespective of the state of the general accounts and *A* omits to deliver to *B* one of the cheques so received *B* can maintain a suit against *A* to compel *A* to deliver such cheque or to pay him the amount of such cheque whether such payment be regarded as a claim for damages or for partial account In regard to suits by one partner against another for a partial account the general rule as applied in India is that if the account is sought in respect of a matter which though arising out of partnership business or connected with it does not involve the taking of general accounts the c t

l

account having regard to the rights of the parties under the contract There is no rule of law now in force that a partial account can be ordered only under exceptional circumstances *Fairthorn v Weston 67 Eng Rep 4 ?* followed *Golla Noga bu lanam v Kanakala Gangayya 2 Mad H C R 28* not followed Although the Court will not as a rule enforce a contract to enter into partnership while it remains executory it will when the partnership has been constituted and when the ends of justice require it enforce by injunction the performance of particular terms though it may be incompetent to enforce all the terms and the partnership is terminable at will The development of the law in England on the point considered *Subbarayudu v Adinarayudu I L R 18 Mad 131* referred to *Durga Prosonno Bose v Raghu Nath Dass I L R 26 Calc 254* referred to A party who in appealing from the decree of the Court of first instance confines himself to one only of several grounds on which such Court had decided against him cannot in second appeal be heard on any of the grounds so abandoned KARRI VENKATA REDDI *v* KOLLU NARASAYYA (1908) **I L R 32 Mad 76**

PARTNERSHIP—*contd*

4 DISSOLUTION OF PARTNERSHIP

1 ———— **Ground for dissolution**—*Adultery of partner with wife of co partner* Adultery of one partner with the wife of his co partner is a sufficient ground for dissolution of the partnership ABBOTT *v* CRUMP **5 B L R 109**

2 ———— **Death of partner**—*Deed of partnership—Contract Act s 253 cl 10* Where one party (*A*) advanced money to others to carry on business and an instrument was executed whereby the latter agreed and bound themselves to account yearly to the former for a share of the profits the transaction was held to amount to an agreement that *A* should be a party to the business *pro tanto* *Held* that by the operation of the Contract Act of 187_ s 253 cl 10 the partnership between *A* and the others was dissolved by the death of *A* and that the representatives of *A* by receiving some six months after his death an account with a portion of the money advanced and of the profits did not reconstitute partnership but rather indicated an opposite intention. PEER MAHOMED *v* NEEJAN BIBEE **25 W R 49**

3 ———— **Assignment of share in partnership**—*Contract Act ss 253 cl 6 and 265—Introduction of a new member into firm—Suit for an account* The effect of cl 6 of s 253 of the Contract Act is not to render an assignment of a share in a partnership concern illegal or void as between the parties to the assignment but only so far void as between those parties and the other partners as to cause an immediate dissolution of the partnership If no assent is given by the other partners to the assignment the assignee is on dissolution at liberty to sue for an account and for distribution not as a partner but as assignee of the right of his assignor in the partnership property S 265 of the Contract Act commented on JUGGUT CHUNDER DUTT *v* RADA NATH DHUR **I L R 10 Calc 669**

4 ———— **Right of co partners to dissolve**—*Renunciation of right* A contract between a partner and his co partners for remuneration to the former for the management of the partnership business by a commission on the sale during his lifetime does not in the absence of any express agreement to that effect imply a renunciation of the right of the co partners to dissolve the partnership if they find that it cannot be carried on except at a loss nor does it imply an obligation to pay the managing partner compensation in case the partnership is dissolved for that reason. *Rhodes v Forwood L R 1 Ap Ca 256* referred to and approved. COWASJEE NANABHOY *v* LALLBHOY VULLUBHOY
I L R 1 Bom 468 26 W R 78
L R 3 I A 200

5 ———— **Notice of dissolution**—*Liability of members for payment to partner retiring without notice.* Partners must on dissolution of partnership give full and fair notice to their customers of such dissolution or otherwise be liable to them for all payments made by them to one partner

PARTNERSHIP—*contd*

4 DISSOLUTION OF PARTNERSHIP—*contd*

in the belief that he represented the firm SHEWRAM v ROHOMUTOOLLAH W R 1864 94

6 ——————— *Contract Act (IX of 1872) s 264* S 264 of the Contract Act is not intended to be an exhaustive exposition on the question of notice of a dissolution of partnership The mode of notification of dissolution required in the case of old customers who are known to the firm as having dealt with it is an express or specific notice by circular or otherwise But in the case of the general public the most effectual public notice which can reasonably be given is requisite *Roop Chund Pundit* v *Madhub Chunder Bose I L R 8 Calc 681 note* overruled CHUNDEE CHURN DUTT v EDULJEE COWASJEE BIJNEE

I L R 8 Calc 678 11 C L R. 225

7 ——————— *Effect of dissolution as against party without notice Held* that dissolution between the members of a carrier s firm or exclusion of one of the members thereof by others in virtue of a partnership agreement would not operate against a third party (a consignor) who had no knowledge of it and who in his dealing with the firm in the absence of any notification of change supposed that the partnership continued unaltered as to its members and that such dissolution or exclusion would not exempt the retired member of the firm from liability to the consignor s claim unless it be shown that the latter was aware of the fact of the former having ceased to be a member thereof GUNGA RAM v GUNGA DHUR

1 Agra 198

8 ——————— *Contract Act s 264—Sleeping partner A B* and *C* traded to ... sleep ... olved ... r the ... who sued to recover the amounts from *A B* and *C* The plaintiffs had not dealt with the old partnership nor received notice of its dissolution and it was not alleged that they knew of *A s* previous connection with it *Held* that the suits did not lie against *A* RAMASAMI v KADAR BIBI

I L R. 9 Mad. 492

9 ——————— *Notice—Acknowledgment of debt by one partner—Indian Contract Act (IX of 1872) ss 251 and 264—Limitation Act (XV of 1877) s 21* The two defendants carried on business under the firm of Kalidas Sankhalchand. They owned two printing presses one at Ahmedabad and one at Bombay They had had dealings with the plaintiffs since 1878 and the accounts between them had been adjusted from time to time and signed by one or other of the defendants on behalf of their firm acknowledging the amount due to the plaintiffs The last adjustment was signed in December 1894 and this suit was filed in 1897 for R1 023 then admitted to be due The first defendant admitted the claim It appeared that in 1892 the defendants had quarrelled, and by arbitration the presses were divided the Ahmedabad press being given to the first defendant and the Bombay press to the second defendant At the time of this suit the books and outstandings still remained to be divided The second defendant now alleged that the partnership had been dissolved in 1892 to the plaintiff s knowledge and contended that he was not bound by the acknowledgment signed in 1894 by the first defendant and that the claim as against him was therefore barred by limitation under s 21 of the Limitation Act (XV of 1877) The lower Appellate Court held that the claim against the second defendant was ...

continued to be agents for each other *Held* (reversing the decree and remanding the case) that the questions to be decided by the Court were the following (i) whether the partnership between the two defendants had been dissolved before the date of the acknowledgment in 1894 (ii) whether (if it was then subsisting) that acknowledgment was or was not an act necessary for or usually done in carrying on the business of the partnership (s 251 of the Contract Act IX of 1872) and (iii) if the partnership had been dissolved at the date of the acknowledgment then whether notice of such ...

I. L. R. 26 Bom 42

10 ——————— Dissolution of partnership—*Appointment of Receiver—Debt of the firm—Decree against one partner—Satisfaction of the decree by the partner—Suit by the partner against his co partners for contribution—Court—Practice and procedure* The plaintiff and defendants traded in partnership from 1884 to 1894. In 1894 a suit for dissolution of the partnership was instituted with the result that on the 11th June 1897 a decree was passed appointing a Receiver with the usual directions for accounts and inquiry In the meanwhile *J* a creditor of the partnership sued the plaintiff and defendants for the debt due to him but the ...

open to any creditor of the partnership to sue the partners and obtain a decree for the recovery of his

PARTNERSHIP—*concld*

4. DISSOLUTION OF PARTNERSHIP—*concld*

debt but no creditor after the appointment of a Receiver could execute any decree obtained after that appointment to the prejudice of the other creditors of the partnership To obtain satisfaction of his decree the creditor was bound to go to the Court which had appointed the Receiver and take its directions (iii) that the plaintiff s right to recover the amount he claims from the defendants depended firstly upon the result of the accounts as between him and the defendants as partners directed to be taken in the decree which declared the partnership dissolved and appointed a Receiver and secondly upon whether *J* could under that decree and upon the accounts consequent upon it claim more than a rateable share of his money advanced to the partnership as against the other creditors if any of the partnership SHIDLINGAPPA *v* SHANKARAPPA (1904)
I L R 28 Bom 176

11. ———————— *Expulsion of one member by others if causes dissolution—Contract Act (IX of 1872) s 253 (7)—Suit for account or dissolution by excluded partner—Limitation—Limitation Act (XV of 1877) Sch II Arts 106 120* Under the the Indian law there is no dissolution of partnership when one partner expels the other A suit by the expelled partner for account or for dissolution of partnership and a share of the profits is not governed by Art. 106 but by Art 120 of Sch. II of the Limitation Act and is within time if brought [illegible] Under the [illegible] only by an [illegible] KARNANI *v* [illegible] W R 455

5 PROCEDURE

1 ———— Suit to close partnership transactions—*Issues—Civil Procedure Code 1877 Sch IV Forms 1 2 103—Accounts decree for* In a suit for an account of partnership transaction the Subordinate Judge in whose Court the suit was instituted framed certain issues with the object of ascertaining who managed the business with whom the partnership property was whether the defendant ought to account what was the capital and what the expenditure and profits of the firm [illegible]

ditions was it dissolved or ought it to be dissolved and who were the parties interested and in what shares and upon determining these questions should have directed accounts to be taken and after the accounts had been taken should have made a final decree RAM CHUNDER SHAHA *v* MANICK CHUNDER BANIKYA
I L R 7 Calc 428
9 C L R 157

PARTNERSHIP PROPERTY

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PARTNERSHIP PROPERTY

See COURT FEES ACT 1870 SCH I ART 12
I L R 1 Calc 168

1 ———— Theft—*Fraudulent removal of—Penal Code ss 378 405 and 424—Criminal misappropriation and breach of trust* *K* the servant *A* and others partners was coming out of the Small Cause Court with some books belonging to the partnership shop when *A* took them from him and kept them saying they were his and refused to give them up The Magistrate found *A* guilty of theft under s 378 *Held* that the conviction could not be sustained the possession of *K* was the possession of *A* and the partners and *A* could not therefore be convicted of theft QUEEN *v* ALLAH BUKSH
6 B L R Ap 133 13 B L R 310 note
S C KEAMUDDIN *v* ALLAH BUKSH
15 W R Cr 51

2 ———— Criminal misappropriation—*Misappropriation of partnership property—Penal Code s 405* A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted or which he has dominion over is guilty of an offence under s 405 of the Penal Code QUEEN *v* OKHOY COOMAR SHAW *In the matter of the petition of* NAGENDRA LAL CHATTERJEE
13 B L R F B 307 21 W R Cr 58

3 ———— Criminal breach of trust—*Removal of partnership property—Penal Code s 424* Also a partner who fraudulently removes partnership property is guilty of an offence under s 424 Penal Code QUEEN *v* GOUR BENODE DUTT 13 B L R 308 note 21 W R Cr 10

4 ———— Dispute relating to management of partnership property—*Criminal Procedure Code (Act V of 1898) s 145—Possession as managing partner* A dispute between partners claiming exclusive possession of the partnership property as managers is outside the purview of s 145 of the Criminal Procedure Code RADHA RAMAN GHOSE *v* BALIRAM RAM (1905)
I L R 32 Calc 249

PART PAYMENT

See LIMITATION ACT 1877 s 20
I L R 35 Calc 813
13 C W N 177

———— of mortgage debt

See LIMITATION 11 C W N 107

———— of debt—*Acknowledgment* A part payment of the principal of a debt must appear in the handwriting of the person making the part payment and not in that of any other person however authorized *Held* also that the mere crediting of interest in a banker s books cannot be regarded for the purpose of saving limitation as equivalent to a payment of interest DHARAM DAS *v* GANGA DEVI (1907)
I. L. R. 29 All. 773

PART PAYMENT—*concld*

——— **refusal to accept**—

See EXECUTION I L R 36 Calc 422

PARTY WALL

See CO SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION OF BUILDINGS I L R 19 Mad 38

See EXECUTION OF DECREE—MODE OF EXECUTION—PARTITION I L R 16 All 194

——— **liability of adjoining owner for costs of**—

See BUILDINGS ERECTED BY ADJOINING OWNERS I L R 9 Bom 183

PASSENGER

——— **by rail**—

See RAILWAYS ACT 1871 s 2 I L R 1 Bom 25

See RAILWAYS ACT 1879 ss 17 31 I L R 12 Calc 192

See RAILWAY COMPANY—LIABILITY OF COMPANY I L R 28 Calc 401

——— **infected with disease**—

See CONTRACT ACT s 56 I L R 14 Bom 147

——— **luggage of**—

See RAILWAY COMPANY I L R 36 Calc 819

PASTURAGE

See EASEMENT 8 C W N 425

See ENGLISH LAW I L R 14 Bom 213

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—BOMBAY I L R 21 Bom 684

See LIMITATION ACT 1877 s 26 I L R 14 Bom 213

See WASTE LANDS I L R 19 All. 172

1 ——— **Grazing**—*Bom. Act I of 1865 s 32*— [illegible]

[illegible] He was not the owner or lessee of any land in the village On being prevented by the Collector of Thana from thus grazing his cattle plaintiff [illegible]

[illegible] *Held* that plaintiff was not entitled to any such right The phrase village cattle in s. 32 of Bombay Act I of 1865 does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village That Act does not vest the right of sanctioning such a diversion of the village grazing ground in the villagers themselves but in the Revenue Commissioner whose consent must be obtained COLLECTOR OF THANA v BAL PATEL I L R 2 Bom 110

PASTURAGE—*concld*

2 ——— **Waste lands**—*Cultivators—Indigo concern—Zamindars—Decree form of* The plaintiffs resident cultivators of villages belonging to the defendants the proprietors of an indigo concern claimed a right of free pasturage over the waste lands of the villages and the Subordinate Judge made a decree in accordance with the finding of the two lower Courts that the plaintiffs had enjoyed the right without interruption from time immemorial The High Court in second appeal differing as to the nature of the right and the character in which it was claimed set aside the decree and made an order of remand for the case to be decided in accordance with their remarks On appeal the Judicial Committee discharged the order of remand as unnecessary and restored the decree of the Subordinate Judge with the addition of a clause that the decree should not preve[illegible] from their [illegible] was left for the plaintiffs *Held* (agreeing with the judgment of the High Court) that the right claimed was not a right in gross BHOLA NATH NUNDI v MIDNAPORE ZAMINDARI CO (1904) I L R 31 Calc 503 s c 8 C W N 425 L R 31 I A 75

PATENT

See INVENTIONS AND DESIGNS ACT s 29 I L R 26 All 96

——— **infringement of**—

See INJUNCTION—SPECIAL CASES—TRADE MARK I L R 17 Bom 584

See LIMITATION ACT 1877 ART 40 (1871 ART 11) I L R 3 Calc 17

——— **suit for account of profits of**—

See LIMITATION ACT 1877 ART 40 (1871 ART 11) I L R 3 Calc 17

1 ——— **Licensee application by under s 24 of Patent Act**—*Act XV of 1859 s 24—Petition r under Patent Act and licensee having no separate interest* A licensee under a patent cannot as between himself and the patentee challenge the soundness of the patent during the continuance of his license Case in which the petitioner on the record in a proceeding under s 24 of Act XV of 1859 was found to have had no real interest in the matter apart from that of the licensee [illegible]

2 ——— **Suit for infringement of** [illegible]

PATENT—*contd*

was obtained is no argument against its being a useful invention within s 25 Act XV of 1859 *Cannington v Nuttal L R 5 H L 205* followed as to the test of novelty in an invention In deciding whether a machine patented as an entire invention is an imitation and piracy of another machine previously patented as an entire invention the question is —Is the later patented machine substantially the same as the earlier one? The fact of considerable differences existing in the several parts of the two machines will not prevent the latter machine from being as a whole a copy of the earlier one even where an exclusive privilege might have been acquired had the alterations in the later machine been claimed as improvements on the earlier one *Clark v Adie 2 App Cas 315* followed. Where a patent has been obtained for a machine which the patentee subsequently somewhat improves a subsequent specification claiming the improved machine as a novel combination is bad though the improvement might be claimed and protected as such. Where a new arrangement of the parts of a machine is claimed as an improvement the arrangement must be clearly described in the specification The mere substitution of one mechanical equivalent for another already in use will not protect it Where a case of infringement of a patent has been made out an injunction will follow as a matter of course A plaintiff cannot pray for an account of profits and for damages He must elect between the two remedies If the plaintiff elects to take an account of the profits such accounts will only be carried back to the period of one year before the filing of the plaint in accordance with Act IX of 1871 Art 11 KINMOND v JACKSON KINMOND v LAWRIE I L R 66

3 ———————— *Act XV of 1859 s 23—Measure of damages—Evidence of particulars* *Held* by the Court in a suit under Act XV of 1859 for the infringement of a patent where the plaintiff had been in the habit of licensing the use of his invention that the loss of the amount paid for such licence was the measure of damages *Per* SPANKIE *J*—The meaning of the words publicly or actually used in s 23 of Act XV of 1859 discussed *Held per* SPANKIE *J*—That where the defendant did not allege in his written statement that the invention was publicly used at certain places prior to the date of the petition for leave to file the specification but was allowed to give evidence that the invention was so used at such places the plaintiff was not bound before trial to have called upon the defendant to supply the particulars as to such places and such evidence was not admissible SHEEN v JOHNSON

I L R 2 All 368

4 ———————— *Particulars of infringements Sufficiency of—Practice—Act XV of 1859 s 34—Stat 15 & 16 Vict c 83 (Patent Law Amendment Act 1852) s 41* In a suit for the infringement of certain invention the plaintiff did not as required by s 34 of Act XV of 1859 deliver with his plaint particulars of the breaches complained of in the suit In his plaint after describing his inventions he alleged generally that the defendant had made and used them at a certain place without his license *Held* that as required by s 34 of Act XV of 1859 the plaintiff should have delivered with his plaint particulars of the breaches complained of that the general allega

In the same case on appeal to the Privy Council —*Held* the sole object of Act XV of 1859 s 34 corresponding with s 41 of the English Patent Law Amendment Act 1852 is to give the defendant fair notice of the case which he has to meet and it is quite immaterial whether the requisite information be given in the plaint itself or in a separate paper *Talbot v La Roche 15 C B 310* and *Needham v Oxley 1 H & M 248* approved Particulars of breaches must be distinguished from particulars of objections for want of novelty In the latter case the particular instances may not be within the knowledge of the patentee and must be specified in the former the defendant must know whether and in what respect he has been guilty of infringement Where three patents of the plaintiff all related to one article—a kiln for burning bricks—and the second and third in date were for improvements upon the invention specified in the first and the plaintiff alleged a particular kiln constructed and used by the defendant and in his plaint not only referred to his patents but indicated in the case of each of them the infringements of which he complained —*Held* reversing the decision of the High Court that this was a sufficient compliance with the Act LEDGARD v BULL

I L R 9 All 191
L R 13 I A 134

PATENT ACT 1859

See LIMITATION ACT 1877 ART 40 (1871 ART 11) I L R 3 Calc 17

PATERNITY

See HINDU LAW—MAINTENANCE I L R 27 Mad 32

PATIA RAJ

See HINDU LAW—ALIENATION 9 C W N 330

PATIL.

See ILLEGAL GRATIFICATION I L R 21 Bom. 517

See SUBORDINATE JUDGE JURISDICTION OF I L R 21 Bom 773

———— duties of—

See BOMBAY VILLAGE POLICE ACT I L R 19 Bom 612

———— suit for declaration of right to officiate as—

See PENSIONS ACT 1871 s 3 4 6 I L R 1 Bom 531

PATNI TENURE

See BENGAL REGULATION VIII OF 1819 s 9 — 7 C W N 111

See CIVIL PROCEDURE CODE 1882 s 244 — I L R 32 Calc 103

See CONTRIBUTION SUIT FOR — I L R 32 Calc 643

See LIMITATION — I L R 32 Calc 669; 9 C W N 673

See LIMITATION ACT s 7 — 9 C W N 795

See LIMITATION ACT 1877 SCH II ART 29 — I L R 30 Calc 440

See PATNIDAR

See PUTNI LEASE

See PUTNI TALUK

See RENT — I L R 33 Calc 140

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS — 6 C W N 794

1 ———— **Hereditary interest**—*Construction* The words patni tenure *primâ facie* convey an hereditary and transferable interest in land. TARINI CHURAN GANGULI *v* WATSON

3 B L R A C 437 12 W R 413

2. ———— **Division or transfer of patni talukh.** A patni talukh cannot be divided except by an act of the zamindar or by an act re

[illegible]

in its entirety or the rights of the zamindar JUDOO NATH SHAHANA *v* JADUB CHURN THAKOOR

11 W R 294

3 ———— **Transfer of patni right over a specific area whether valid**—*Regulation VIII of 1819 ss 3 and 6—Transfer of Property Act*

[illegible]

be given in any particular manner MADHUB RAM *v* DOYAL CHAND GHOSE I L R 25 Calc 445

4. ———— **Suit by grantor of patni pottah as ijaradar of share in zamindari**—*Suit to set aside patni* One of several grantors of a patni pottah cannot get rid of the patni as to a share in the patni by a suit as ijaradar of that share for rent against the raiyats The patni must be upheld until set aside by a regular suit RAJ CHUNDER ROY CHOWDHRY *v* UNNODA PERSHAD MOOKERJEE 17 W R 221

5 ———— **Separate payments of rent and separate registration by patnidar**—*Cancellation of lease* The fact of a patnidar having made separate payments of rent of having registered his name with each of the sharers and of being prepared to enter into a fresh engagement with one of them does not amount to a cancellation of

PATNI TENURE—*contd*

the original lease and substitution of a new lease SHAM CHAND MITTER *v* JUGGUT CHUNDER SIRCAR

22 W R 50

MOHADEB MUNDUL *v* COWELL 15 W R 445

6 ———— **Suit by zamindar to set aside patni lease**—*Effect as between patnidar and under tenants of setting it aside with mesne profits* Where a landlord (patnidar) and his tenant were defendants in a suit by the zamindar for setting aside the patni and both were by the decree made liable for the mesne profits which the tenant eventually paid out of his own pocket —*Held* that the effect was to cancel all relation of landlord and tenant between them and to give the tenant a right to receive back what he had paid PAKHAL MONEE DOSSEE *v* BROJENDRO GOPAL ROY

23 W R 303

7 ———— **Refusal of patnidar to give security**—*Inability to collect rents owing to zamindar in consequence withholding amaldastak* If by reason of the patnidar not giving security the zamindar withholds his amaldastak and also abstains from availing himself of the power which the law gives him of collecting the rents himself it would be inequitable to allow him to recover from

[illegible]

8 ———— **Merger**—*Merger of patni interest in zamindar who purchases it—Ben Reg VIII of 1819 sale held under—Transfer of Property Act (IV of 1882) ss 111 cl (d) 117 and 2 cl (d)* A patni interest created after passing of the Transfer of Property Act is determined on a purchase of the same by the zamindar even at a sale held in execution of a decree PROMOTHO NATH MITTER *v* KALI PRASANNA CHOWDHRY (1901)

I L R 28 Calc 744

9 ———————— *Non joinder of parties—Misjoinder of causes of action—Res judicata—Putnis successive grant of—Rights of putnidars inter se—Tenure intermediate between the zamindar and putnidar if can be created* P and H were each the proprietress of an 8 annas share in each of the mehals Nos 5582 and 194 the lands of which were undivided Plaintiff was the putnidar of H's half share in mehal No 5582 and was the purchaser of its other half which belonged to R The co plaintiffs were the purchasers of the 8 annas share of the other mehal No 194 which belonged to H The other 8 annas share of this estate was purchased by I and P The defendants held putnis in respect of certain specified lands within the mehals by virtue of two leases granted by P and H The defendants putnis were prior in date to the plaintiff's putni of the entire 8 annas share in mehal No 5582 The plaintiff had formerly brought a suit in the Munsif's Court for arrears of rent against the defendants which was dismissed on the ground that the plaintiff being a putnidar had no right of suit for rent against a fellow

PATNI TENURE—*concld.*

putn.dar The present suit was brought by the plaintiff in the Court of the Subordinate Judge against the defendants for arrears of rent The co-plaintiffs were added becau e *H* was in the habit of collecting the rents due in respect of both estates jointly from the defendant. but *I* and *P* were not joint *Held* that there was no defect for non joinder of parties first because the law does not require that the owner of two different estates should sue for their rents jointly if the rent due to each is known and s condly because as a matt r of fact *I* and *P* were found to have been collecting their rents separately from the defendant That though the plaintiff's demand was ba ed upon two separate lea e the plaintiff was not bound to bring two separate suit since the plaintiff was entitled to collect the entire rent due from the defendants in one estate He might sue for the entire rent in one suit the two shares in the estate being undivided and the two leases alike *Held* further that the decision of the Munsif in the former suit was not *res judicata* in the pre ent suit becau.e the latter suit would not have been cognizable by the Mun if s Court which tried the form r suit *Gopi Nath Chowbey* v *Bhagwat Pershad* I L R 10 Calc 697 *Paghu Nath Panjah* v *Issur Chunder Chowdhry* I L P 11 Calc 153 *Kailash Chandra D* v *Tarak Nath Mandal* I L R 25 Calc 574 note and *Bhugwanbutty Chowdhrani* v *Forbes* I L R 28 Calc 78 d st ngu shed That the grant of a putn [illegible]

power to grant away a portion of his remaining rights and to create a tenure intermediate between him.elf and the defendants by granting the putni lease to the plaintiff Therefore the plaintiff was entitl d to demand the rent which the defendants were bound to pay to their superior landlord PAJKUMAP MAJUMDAR *v* PRABAD CHANDRA GANGULY (190.) 9 C W N 656

PATNIDAR

See PATNI TENURE

See RENT I L R 33 Calc 140

———— liability of—

See ZAMINDAPI DAKS

I L R 28 Calc 293

———— right of—

Se ABATEMENT OF PENT

1 W R 299
2 W R Act X 30 47
7 C W N 130
B L R Sup Vol. 70

See LAND PEGISTRATION ACT s 38
I L R 24 Calc 404

See PARTITION—RIGHT TO PARTITION
I L R 24 Calc 575

See SALE FOR ARREARS OF PEVENUE—SETTING ASIDE SALE—PARTIES
7 C W N 377

PATNIDAR AND BENAMIDAR

See LIMITATION I L R 34 Calc 711

PATTA

See POTTAH.

PATWARI

See EVIDENCE ACT s 74
I L R 18 Calc 534

See NORTH WESTERN PROVINCES AND OUDH KANUNGOS AND PATWARIS ACT
I L R 23 All 505

PAUPER

See PAUPER SUIT

See CIVIL PROCEDURE CODE 1882 ss 380 410 12 C W N 163

See CIVIL PROCEDURE CODE 1882 ss 411 412 I L R 31 Bom 10

See HIGH COURT RULES
I L R 32 Bom. 163

PAUPER SUIT

	Col
1 SUITS	9 (6
2 APPEALS	9280

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—LEAVE TO APPEAL
7 W R P C 29 4 Moo I A 114
8 W R 4

See CIVIL PROCEDURE CODE 1882 s 401
I L R 30 Bom 593

See CIVIL PROCEDURE CODE 1882 s 407
8 C W N 70

See CIVIL PROCEDURE CODE 188. s 411
I L R 29 All 537

See COMPROMISE—CONSTRUCTION ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE
7 W R P C 29 4 Moo I A 114

See LIMITATION ACT 1877 s 4
I L R 28 Calc 427

See LIMITATION ACT 1877 s 5
I L R 30 Calc 790

See LIMITATION ACT 1877 SCH II ART 1.1 I L R 7 Bom. 373

See REVIEW—ORDERS SUBJECT TO REVIEW 5 B L R Ap 29
5 B L R 318 note
I L R 4 Bom 414

See TRANSFER OF CIVIL CASE—GENERAL CASES I L R 24 All. 358

1 SUITS

1 ———— Continuation in forma pauperis of suit commenced in ordinary form —*Civil Procedure Code 1859 ss 297 310* The power of the Court to allow a suit to be instituted *in formâ pauperis* includes the power to allow a suit to be continued as a pauper suit after it has been com

PAUPER SUIT—*contd*

1 SUITS—*contd*

menced in the ordinary form NIRMUL CHANDRA MOOKERJEE v DOYAL NATH BHUTTACHARJEE
I L R 2 Calc 130

REVJI PATIL v SAKHARAM
I L R 8 Bom. 615

2 ———————— *Civil Procedure Code (Act XIV of 1882) ss 401 415* A Court has power under Ch XXVI of the Code of Civil Procedure to allow a suit instituted in the ordinary form to be continued *in formâ pauperis* THOMPSON v CALCUTTA TRAMWAY COMPANY
I L R 20 Calc 319

3 ———— Pauper defendant—*Civil Procedure Code 1877 Ch XXVI ss 401 415* Although Ch. XXVI of the Civil Procedure Code only provides for suits to be brought by a pauper the Court has power to allow a defendant to defend *in formâ pauperis* DOORGA CHURN DOSS v NITTOKALLY DOSSEE I L R 5 Calc 819
6 C L R 120

4 ———— Suit by next friend—*Next friend a pauper—Infant* A suit can be brought *in forma pauperis* by a next friend who is also a pauper GOLAUPMONEE DOSSEE v PROSONOMOYE DOSSEE 11 B L R 373

5 ———————— *Minor—Next friend a pauper* The rule of English practice which prevents a minor from instituting a suit *in forma pauperis* through his next friend unless he gives proof not only that he is himself a pauper but that the next friend is a pauper and that he cannot get any substantial person to act as his next friend is not to be found in or deduced from the provisions of the Civil Procedure Code VENKATANARASAYYA v ACHEMMA I L R 3 Mad 3

6 ———— Representative of pauper—*Right to carry on suit* There is no necessity for an inquiry whether an alleged representative of an admitted pauper is a pauper or not The Court if satisfied that he is the legal representative ought to admit him to carry on the suit BHAGBUT DOSS v BULORAM DOSS 3 W R Mis 20

7 ———— Pauper administrator—*Civil Procedure Code 1882 s 401* The administrator of the estate of a deceased person may apply to sue *in formâ pauperis* under the provisions of Ch XXVI of the Code of Civil Procedure 1882 *In re* BILL
I L R 7 Mad 390

8 ———— Presentation of petition to sue in forma pauperis—*Civil Procedure Code 1859 s 301 and s 17* *Held* that s 301 of Act VIII of 1859 requiring the petition for permission to sue *in forma pauperis* to be presented by the petitioner in person is imperative and must be held to control the provisions of s 17 of the same Act. *Ex parte* DEVGIR GURU SUMBHAGIR
4 Bom. A. C 91

9 ———— Authorized agent—*Vakil—Civil Procedure Code 1859 s 301* A vakil may be a duly authorized agent within the meaning of s 301 of the Code of Civil Procedure KISHOREE MOHUN BOSE v GOUR MONEE DOSSEE
15 W R 198

10 ———— Presentation of plaint—*Limitation—Suit when to be considered as commenced* In calculating the period of limitation in a case where it is sought to extend the time by reason of a pauper suit having been commenced the suit is commenced for this purpose when the plaint is presented to the Court and not merely at the date of its allowance SEETARAM GOWER v GOLUCKNATH DUTT Marsh 174

GOLUCKNATH DUTT v SEETARAM GOWER
W R F B 53 1 Ind Jur O S 66
1 Hay 378

VINAYAK K DHAVLE v BHAU B SAMVAT
4 Bom A C 39

11 ———————— *Civil Procedure Code 1859 s 308—Limitation* Where an application for permission to sue *in formâ pauperis* is numbered and registered and deemed to be the plaint in the suit not in consequence of proof of the plaintiff s pauperism but in consequence of his abandoning his claim to sue as a pauper and paying for the stamps required for the institution of the suit the date of such payment and not the date of the application must be taken in computing the period of limitation to be the date of the presentation of the plaint and the institution of the suit SKINNER v ORDE I L R 1 All 230

12 ———————— *Enquiry into pauperism—Civil Procedure Code 1859 s 310—Limitation Act 1859 s 14—Deduction of time—Presentation of plaint in wrong Court—Institution of suit* The plaintiff applied by petition on 20th February 1873 to the Subordinate Judge of Meerut for leave to sue *in formâ pauperis* The petition contained a statement of the claim and such particulars as are required in a plaint and a prayer that as part of the immoveable property claimed was situated in the Punjab the Subordinate Judge would seek the necessary sanction to give him jurisdiction The Subordinate Judge considering that the suit should be instituted in the Delhi district rejected the application On 3rd March the plaintiff presented the petition to the Deputy Commissioner of Delhi and was admitted by that officer to sue as a pauper The Deputy [illegible] visable that the suit should be tried at Meerut and on 10th June 1873 the Deputy Commissioner returned the petition for presentation in the proper Court in the North Western Provinces On 19th July the plaintiff presented it to the Subordinate Judge of Meerut who received and registered it as a plaint On 10th November the defendants filed written statements wherein they urged that the plaintiff ought not to be allowed to sue *in formâ pauperis* until he had proved his pauperism in the Subordinate Judge s Court. Upon this the Sub

PAUPER SUIT—*contd*

1 SUITS—*contd*

ordinate Judge threw out the suit holding that he had no jurisdiction to admit it *Held* that the Subordinate Judge if he regarded as ineffectual the order of the Deputy Commissioner admitting plaintiff to sue as a pauper should himself have entered into an inquiry into the plaintiff s pauperism and not have thrown out the suit *Held* also that the provisions of s 340 of Act VIII of 1859 were not applicable to the order of the Subordinate Judge

Court should be deducted in computing the period of limitation *Semble* That the order admitting the plaintiff to sue as a pauper which was made by the Delhi Court became ineffectual when the plaint was returned by that Court and that it became the duty of the Meerut Court when the petition was again presented to it to pass orders *de novo* on the subject SKINNER *alias* MIRZA *v* ORDE

6 N W 225

13 ———— Inquiry into pauperism—*Civil Procedure Code 1859 ss 305 306* Inquiry under ss. 305 and 306 of the Civil Procedure Code should be made by the Judge himself and not by the Sheristadar of the Court *In the matter of* EKNATH BIN MADOBA **1 Bom 102**

14. ———————— *Civil Procedure Code 1859 s 306* When a pauper petition comes on for hearing under s 306 of the Code of Civil Procedure the Judge has no power to inquire into any other circumstances than the pauperism of the petitioner DIPSANJI JITSANGJI *v* FATTLESANGJI JASVATSANGJI **5 Bom A C 59**

15 ———— *Civil Procedure Code 1859 ss 305 306—Procedure* Where a day was fixed under Act VIII of 1859 s 305 for receiving evidence of the pauperism of the plaintiff the Court refused under s 306 to entertain any objection of the defendant other than on the single question of the pauperism of the plaintiff SHIPONESSA BIBEE *v* KAMINEE BIBEE

2 Ind Jur N S 121

16 ———————— *Civil Procedure Code 1859 ss 304 306—Procedure* Where a

in the petition she had no cause of action and it was objected that no question except the pauperism of the plaintiff could be gone into under s 306 The Court allowed the plaintiff to be examined to show that on her own evidence she had no cause of action but refused to allow other witnesses to be called upon. From the plaintiff s evidence the defendant failed to show that there was no cause of action. TARAMONEY DABEE *v* HURRO MOHUN CHATTERJEE **11 B L R Ap 23**

But *see In* GUNGA DASS ADHIKAREE

11 B L R Ap 23 note 14 W R 281

where it was held that where on the day fixed for hearing evidence on the question of pauperism the defendant brings to the notice of the Court any ground on which it would have been bound to refuse to admit the petition it is in the discretion of the Court to admit or refuse to receive evidence of such ground The Judge was *held* not to have been justified in finding on evidence other than that of the petitioner that the claim was barred by limitation PARKASH OJHA *v* DUSRUTH OJHA

25 W R 74

17 ———————— *Civil Procedure Code s 401 Explanation and s 407* On an application to sue *in forma pauperis* the Court is required to deal with the question of the applicant s pauperism with reference to the definition of that word as given in the explanation to s 401 of the Code of Civil Procedure and in deciding it to ascertain the exact property its market value and the title thereto and then to deal with the case under s 407 of the Code irrespective of any surmises as to the reason why the applicant has valued his claim at a high figure MUHAMMAD HUSAIN *v* AJUDHIA PRASAD **I L R 10 All 467**

18 ———————— *Application for leave to sue as a pauper—Property admitted by the respondent to be the property of petitioners not the subject matter of the suit although claimed in the petition—Civil Procedure Code (Act XIV of 1882) ss 401 405 409 410* The petitioners prayed to be allowed as paupers to sue the respondent for certain property specified in the schedule annexed to their petition At the hearing of the petition under ss 408 and 409 of the Civil Procedure Code (Act XIV of 1882) the respondent appeared and deposited in Court some of the articles claimed by the petitioners to which he admitted they were entitled The value of the articles deposited was R100 The petitioners acknowledged that the articles were their property but declined to take possession of them *Held* that the petitioners were not paupers as defined by s 401 of the Civil Procedure Code (Act XIV of 1882) being possessed of property worth R100 other than the subject matter of the suit and that they could not therefore be allowed to sue as pauper The inquiry into pauperism under s 408 and 409 takes place before any suit is in existence for until an application to sue as a pauper is granted there is no plaint and consequently no suit (see s 410) Any property therefore found at such inquiry not to be really in dispute cannot be regarded as part of the subject matter of the suit although it may be entered in the particulars of the application for leave to sue as a pauper The ground for excluding the subject matter of the suit under s 401 is because such property is presumably out of the petitioner s reach and cannot be made use of by him to carry on his litigation In the present case the articles deposited in Court were freely at the disposal of the

PAUPER SUIT—*contd*

1 SUITS—*contd*

petitioners and could not therefore be excluded from consideration DWARKANATH NARAYAN *v* MADHAVRAV VISHVANATH I L R. 10 Bom 207

19 ———— Ground for rejecting petition—*Civil Procedure Code 1882 s 407—Rejection of application to sue as a pauper* The terms of s 407 (*e*) of the Code must not be read as limiting the Court s discretion to merely ascertaining whether the right to sue arose within its jurisdiction but have a more extended meaning namely

MAHMOOD *J*—The provisions of s 407 must be interpreted strictly inasmuch as they operate in derogation of the right possessed by every litigant to seek the aid of the Courts of Justice and an exercise of jurisdiction under that section when such

v Nayudu I L R 4 Mad 323 referred to CHATTARPAL SINGH *v* RAJA RAM I L R 7 All 661

20 ———— *Civil Procedure Code 1877 ss 403 407—Procedure* The Code of Civil Procedure does not authorize the rejection of an application for leave to sue *in formâ pauperis* for want of merits when the applicant is found to be a pauper and his allegations disclose a right to sue When an application for leave to sue *in formâ pauperis* is made the Court should not go into evidence as to the merits of the claim PANGANAYAKA AMMAL *v* VENKATACHELLAPATI NAYUDU I L R. 4 Mad. 323

21. ———— *Civil Procedure Code (Act XIV of 1882) s 407 cl (d)—Vakil—Agreement—Subject matter* Two persons being about to sue to redeem a certain jaghir village which they had mortgaged applied for permission to sue as paupers It appeared that they entered into an agreement with a vakil to pay him as remuneration for his services as vakil in the case a lump sum of R1 500 as soon as the case was decided In default of payment the vakil was authorized to recover the money out of the revenues of the said village *Held* that such an agreement was within the scope of cl (*d*) of s 407 of the Civil Procedure Code (XIV of 1882) and their application to sue as paupers was rejected MANOHAR RAMCHANDRA *v* LAKSHMAN MAHADEV I L R. 9 Bom. 371

22 ———— *Obligation to try and raise funds to sue—Civil Procedure Code 1877 s 401* A person who applies for permission to sue as a pauper is not bound to try and raise funds by mortgaging his claims

PAUPER SUIT—*contd*

1 SUITS—*contd*

23 ———— *Civil Procedure Code ss 404 406—Application for permission to sue as paupers presented by several paupers jointly* The mere fact that several persons jointly present an application for permission to sue as paupers does not authorize the Court to entertain it on behalf of applicants who do not appear in person BURGESS *v* SIDDEN I L R 10 Mad. 193

24 ———— *Petition for leave to sue as a pauper—Practice—Requisites for success of application—Civil Procedure Code (Act XIV of 1882) s 407* The plaintiff applied for leave to sue as a pauper She stated as her cause of action that a young girl had been left in her charge and had been maintained by her for a number of years that in January 1888 arrangements had been made with a Bhatia to get this girl married and that she (the plaintiff) was to receive R2 500 on the marriage that the defendant had also agreed to pay her (the plaintiff) R2 000 if she would give the girl to him in marriage that before the marriage ceremony could be performed the defendant had induced the girl to quit the plaintiff s house for immoral purposes She claimed R2 500 as damages and prayed leave to sue as a pauper *Held* following *Chattarpal Singh v Raja Ram I L R 7 All 661* that the facts being clear and the law evident the case might be finally disposed of on the plaintiff s application to sue as a pauper DULARI *v* VALLABDAS PRAGJI I L R 13 Bom 126

25 ———— *Civil Procedure Code 1882 s 407—Application for leave to sue in formâ pauperis—Applicant to make out that he has a good subsisting cause of action* Cl (*c*) of s 407 of the Code of Civil Procedure does not refer solely to a question of jurisdiction but the applicant must

Pargji I L R 13 Bom 126 and *Vijendra Tirtha Swami v Sudhindra Tirtha Swami I L R 19 Mad 197* referred to *Kola Ranganayaki Ammal v Kola Venkatachellapati Nayudu I L R 4 Mad 323* dissented from *Venkubai v Lakshman Venkoba Khot I L R 12 Bom 617* distinguished KAMRAKH NATH *v* SUNDAR NATH I L R 20 All 299

26 ———— *Civil Procedure Code 1882 ss 409 and 413—Application for leave to sue as pauper—Rejection of application—Extension of time granted for payment of Court fees—Payment of fees after period of limitation for suit has expired—Limitation Act (XV of 1877) s 4* On the 2nd February 1890 the plaintiff applied for leave to sue *in formâ pauperis* After investigation the Court on the 15th July 1890 refused leave but on the plaintiff s application granted him time to pay the Court fees He paid the fees on the 12th August 1890 At this date the suit was barred, and the defendant pleaded

PAUPER SUIT—contd

1 SUITS—contd

limitation. The plaintiff contended that the suit should be taken as instituted at the date of his appli ation for leave to sue as a paup r The lower Court held the suit barred and dismi ed it *Held* confirming the decree that the plaintiff s applica tion to sue as a pauper having been disposed of under s 409 of the Civil Procedure Code (Act XIV of 188) there was no proceeding pending which could b continued and kept alive by the payment

of that suit for the purpo es of limitation is the actual date thereof The plaintiff could not then be regarded as a pauper and s 4 of the Limitation Act (XV of 1877) would have no application KESHAV RAMCHANDRA v KRISHNARAO VENKATESH I L R 20 Bom. 508

NAPAINI KUAR v MAKHAN LAL I L R 17 All 526

ABBASI BEGAM v NANHI BEGAM I L R 18 All. 206

27 ———— *Civil Procedure Code 1882 s 409—Procedure—Res judicata—Limitation* On hearing a petition under s 409 for leave to sue *in forma pauperis* the Court must decide whether the petitioner has at the date of the petition a subsisting cause of action capable of enforcement and where the cause of action is barred by *res judicata* or limitation the petition must fail. VIJENDRA TIRTHA SWAMI v SUDHINDRA TIRTHA SWAMI I L R 19 Mad 197

28 ———— *Civil Procedure Code 1882 ss 409 and 413—Application for leave to sue in forma pauperis—Refusal of such application a bar to subsequent application in the same right—Plea of jurisdiction taken for first time on appeal* The plaintiff applied for leave to

same mortgage There being no opposition the application was granted and was registered as a suit On the 20th September 1893 when the suit had been heard nearly to the end the Government

the Subordinate Judge dismissed the suit with costs under s 413 of the Code of Civil Procedure (Act XIV

(ii) that both the applications were made in respect of the same right to sue (iii) that the order reject

PAUPER SUIT—contd

1 SUITS—contd

was not only competent but bound to take notice of it at any stage of the suit RANCHOD MORAR v BEZANJI EDULJI I L R 20 Bom 86

29 ———— Revival of application—*Act VIII of 1859 s 310* Where there has been no refusal of the application to sue as a pauper under s 310 Act VIII of 1859 the applicant may revive his application for leave to sue BHOJ SINGH v MAHA KONWER 3 Agra Mis 1

30 ———— Costs—*Pauper suit in the mofussil—Pauper appeal—Unsuccessful plaintiff—Successful defendant—Civil Procedure Code 1882 ss 220 412* S 412 and Ch XXVI of the Code of Civil Procedure of which s 412 forms a part do not

has full power to give and apportion costs in any manner it thinks fit JETHA MULCHAND v GULRAJ JASRUP I L R 8 Bom 577

31. ———— *Guardian suing for minor—Dismissal of suit* Where a guardian obtains permission to sue *in forma pauperis* on behalf of a minor the rejection of the suit supplies no ground for throwing the cost of the suit on the guardian BRIJESSUREE DOSSIA v KISHORE DOSS 25 W R 316

32 ———— *Claim of Government for costs of suit—Stamps in pauper suit* Where Government after attaching a pauper plaintiff s decree in order to recover the value of stamps under s 309 of the Code of Civil Procedure 1859 consents to the sale of the decree in execution of another decree against the pauper and obtains an order by which it secures the chance of any surplus arising from such sale it cannot afterwards when the sale is found to yield no surplus be heard to say as against the purchaser that the decree was sold subject to its claim for stamps The amount of

33 ———— *Civil Procedure Code 1859 s 309—Right of Government—Court*

a pauper and s 309 of the Code of Civil Procedure does not preclude the Crown or its representative from urging its prerogative GANPAT PATAYA v COLLECTOR OF KANARA I L R 1 Bom. 7

PAUPER SUIT—*contd*

1 SUITS—*contd*

COLLECTOR OF MORADABAD v MUHAMMAD DAIM KHAN I L R 2 All 196

34 ———— *Civil Procedure Code 1859 s 309 and s 270—Attachment and sale in execution of decree—Right to proceed—Right of Government—Court fees* A was allowed to bring a suit as a pauper His suit was dismissed the decree directing that he should pay the costs of the defendant On the defendant s application certain immoveable property belonging to A was attached in execution of this decree and was sold *Held* that the Crown was entitled to be paid first out of the proceeds of such sale the amount of the Court fees A would have had to pay if he had not been allowed to sue as a pauper The principle of the ruling in *Ganpat Pataya v Collector of Kanara I L R 1 Bom 7* followed GULZARI LAL v COLLECTOR OF BAREILLY I L R 1 All 596

35 ———— *Civil Procedure Code 18.. s 412—Order for costs—Jurisdiction* A Subordinate Judge admitted a plaint *in forma pauperis* but holding that he had no jurisdiction to try the suit returned the plaint to the plaintiff for its presentation in the proper Court and ordered each party to pay his own costs After the presentation of the plaint in another Court and before the termination of the suit the Collector applied to the Subordinate Judge for execution of the order as to costs by seeking to recover the amount of the stamp duty from the plaintiff The Subordinate Judge refused to execute the order on the ground that the pauper suit was still pending in another Court His order was affirmed by the District Judge on appeal On second appeal to the High Court —*Held* that under s 412 of Act X of 1877 the Subordinate Judge had no jurisdiction to make the order for payment of Court fees by the plaintiff The High Court accordingly in the exercise of its extraordinary jurisdiction annulled the Subordinate Judge s order about costs and all the subsequent proceedings consequent upon that order COLLECTOR OF RATNAGIRI v JANARDAN KAMAT I L R 6 Bom. 590

36 ———— **Right of Government to recover stamp fees**—*Limitation Act (XIV of 1859) s 20—Civil Procedure Code 1859 s 309* A decree had been obtained by a party suing *in formâ pauperis* against the appellant The Government now sought to recover against the appellant the amount of stamps which would have been paid by the plaintiff if he has not been permitted to sue as a pauper *Held* that the right of Government to recover the stamp fees in question under s 309 of Act VIII of 1859 was not affected by the law of limitation laid down in s 20 of Act XIV of 1859 SHAMI MOHAMMED v MOHAMMED ALI KHAN 3 B L R Ap 22 11 W R 67

37 ———— **Liability of pauper to pay stamp duty**—*Civil Procedure Code 1859 ss 308 309—Defect in stamp duty* Under ss 308 and 309 of Act VIII of 1859 a pauper cannot claim exemption from liability to pay any further stamp duty or penalty in respect of a document on which he relies and which owing to a defect in the stamp is inadmissible as evidence in the suit GOLAM GUFFOOR v EKRAM HOSSEIN CHOWDHRY 10 W R 358

38 ———— **Court fees recovery of by Government**—*Civil Procedure Code s 411—Subject matter of suit—Cross decrees under same decree* A plaintiff suing *in forma pauperis* to recover property valued at R60 000 obtained a decree for R1 439 The Court with reference to the provisions of s 411 of the Civil Procedure Code directed that the plaintiff should pay R1 196 as the amount of Court fees which would have been paid by him if he had not been permitted to sue as a pauper The Collector having applied under s 411 to recover this amount by attachment of the R1 439 payable to the plaintiff the defendant objected that (i) certain costs payable to her by the plaintiff under the same decree and (ii) a sum of money payable to her by the plaintiff under a decree which he had obtained in a cross suit in the same Court should be set off against the R1 439 payable by her to him with reference to ss 246 and 247 of the Code [illegible]

to get as a result of his success in the suit but that in the suit and the cross suit taken together the plaintiff ultimately stood to lose a small sum the defendant being the holder of the larger sum awarded altogether *Held* that the contention had no force as execution had not been taken out by the plaintiff or the defendant or both and it could not be said that the Government had been trying to execute the plaintiff s decree or was a representative of the plaintiff as holder of the decretal order in his favour for R1 439 so as to bring into operation the special rules of ss 246 and 247 of the Code between him and the defendant *Held* also that the plaintiff was one who in the sense of s. 411 had succeeded in respect of part of the subject matter of his suit and on that part therefore a first charge was by law reserved and secured to the Government which was justified in recovering it in these proceedings from the defendant who was ordered by the decree to pay it in the same way [illegible]

play no questions of set off and consequent reduction or other modification of the subject matter of the suit decreed against the defendant as payable by her to the plaintiff had arisen or could be entertained JANKI v COLLECTOR OF ALLAHABAD I. L. R. 9 All. 64

PAUPER SUIT—*contd*

I SUITS—*contd*

39 ———— Recovery of Court fees by Government—*Civil Procedure Code s 411—Sale of decree Semble* The provisions of s 411 of the Code of Civil Procedure do not justify the Court in selling a decree upon the application of the Collector inasmuch as that section provides that persons who have been successful as paupers shall so far as the subject matter of their success is concerned be liable to satisfy out of what they recover the amount of the fee which have been for a time pending the decision of their suit remitted to them *Sultan Koer v Gulzari Lal I L R 2 All 290* and *Tiruvengada Chari v Vythilinga Pillai I L R 6 Mad 418* followed JOTINDRO NATH CHOWDHRY v DWARKA NATH DEY

I L R 20 Calc 111

40 ———— Court s authority to make an order for payment of Court fees—*Civil Procedure Code 1882 ss 412 622 —Withdrawal and dismissal of suit—Power of Collector though not a party to the suit to move under s 622—Superintendence of High Court* The plaintiff after having filed his suit *in forma pauperis* came to an amicable arrangement with the defendants and asked the Court that the suit should be dismissed The Court granted this application but made no order as to the payment of Court fees Thereupon the Collector applied to the High Court under s 622 of the Code of Civil Procedure (Act XIV of 1882) to direct the lower Court to make an order for [illegible] e Code [illegible] to the [illegible] under [illegible] had no application to the present case as there was no adjudication of the rights of the parties and the plaintiff could not therefore be said to have failed in the suit The Subordinate Judge had therefore no jurisdiction to make the order desired by the Collector S 412 of the Code applies only to cases of adjudicated failure and to the other cases specified as where the plaintiff has been dispaupered or where the suit has been dismissed under s 97 or s 98 COLLECTOR OF KANARA v KRISHNAPPA HEDGE

I L R 15 Bom 77

41. ———— Liability of plaintiff for Court fee—*Civil Procedure Code (Act XIV of 1882) s 412 622—Dismissal of suit in forma pauperis without trial* A plaintiff who sues *in forma pauperis* is liable to pay the stamp duty if his suit is dismissed without trial and he may be ordered to do so under s 622 COLLECTOR OF VIZAGAPATAM v ABDUL KHARIM

I L R 21 Mad 113

42 ———— Stamp duty on a pauper s plaint—*Civil Procedure Code s 411—Decree for less than the amount of claim—Disreputable defence* A pauper sued his sister for the partition of property valued at a large sum The parties belonged to the Begam caste residing in the Godavari district The defendant pleaded that the property had been acquired by her as a prostitute and denied the plaintiff s claim to it The plaintiff obtained a decree for R100 being a moiety of the property found to have been left by their mother *Held* that the defendant was liable to pay Court fees only on the sum decreed CHANDRATEIA v SECRETARY OF STATE FOR INDIA

I L R 14 Mad 163

43 ———— Application for review of judgment in pauper suit—*Court fee—Court fees Act (VII of 1870) Sch I cl (5)—Civil Procedure Code 1882 s 410* *Held* that when an application for review is presented in a suit *in forma pauperis* that application like the plaint in the suit is not liable to any Court fee UMDA BIBI v NADIA BIBI

I L R 20 All. 410

44. ———— Court-fee payable out of the subject-matter of the suit—*Civil Procedure Code 1882 s 411—Suit in formâ pauperis —Mode of realization of Court fee by Government —Execution of decree* In a suit brought *in formâ pauperis* the plaintiff was successful and the decree directed that the Court fee which would have been payable had the suit not been *in formâ pauperis* should be the first charge on the property the subject matter of the suit and should be recoverable from the defendant in the same manner as the costs of the suit *Held* that it was not necessary for Government to bring a separate suit to recover the Court fee but that the same might be realized from the property the subject of the suit by proceedings in execution RAM DAS v SECRETARY OF STATE FOR INDIA

I L R 18 All 419

45 ———— Charge of Government for Court fees—*Civil Procedure Code (Act XIV of 1882) s 411—Court fees—First charge on subject matter of suit—Purchase of portion of subject matter at sale to recover Court fees—Subsequent purchase in execution under another decree—Validity* A suit was filed *in forma pauperis* and a decree passed in December 1895 awarding the plaintiff therein certain land A portion of that land was in 1896 put up for sale in order to recover the amount due to Government as stamp fees in connection with the pauper suit and the present plaintiff bought it The same land was attached in 1899 in execution of another decree which was passed in March 1894 Plaintiff made a claim which was rejected and the land was sold to the second defendant in execution of that other decree in September 1899 Plaintiff now sued for a declaration that the land was not liable to be sold in satisfaction of the other decree *Held* that inasmuch as the amount of the stamp fees recoverable by Government in connection with the pauper suit was a first charge on the property under s 411 of the Code of Civil Procedure the purchase by plaintiff prevailed as against the purchase by the second defendant PUTHIA VALAPPIL BAPPA v VELOTH ASSENAR (1902)

I L R. 25 Mad. 733

46 ———— *Crown debt priority of—Civil Procedure Code (Act VIII of 1859) s 309*

PAUPER SUIT—*contd*

1 SUITS—*contd*

pauper plaintiff which form a Crown debt it does not preclude the Crown or its representative from urging its prerogative and insisting on its right to precedence over all other creditors A successful *pauper* plaintiff attached and sold for her costs certain property other than the property in suit belonging to the judgment creditor The sale proceeds were paid into Court The plaintiff s Solicitor applied to have his costs paid out of the sale proceeds The Government Solicitor also applied to have his certified Court fees paid to him out of the fund in Court *Held* that the Government Solicitor was entitled to precedence and that it was not necessary for him to attach the fund before getting payment *Secretary of State* v *The Bombay Landing and Shipping Co Ld* 5 *Bom H C* 23 (*O C J*) *Gunput Putaya* v *The Collector of Kanara I L R 1 Bom 7 Gulzari Lal* v *Collector of Bareilly I L R 1 All 596 The Collector of Moradabad* v *Muhammad Daim I L R 2 All 196 Pamlas* v *The Secretary of State I L R 18 All 419* and *Bell* v *The Municipal Commissioners I L R 25 Mad 457* referred to GYANODA BALA DASEE v BUTTO KRISHNA DASS BAIRAGEE (1906) 10 C W N 857

47 ——— Religious Endowments Act (XX of 1863) s 18—*Suit sanctioned for removal of trustees—Leave to sue in formâ pauperis—Civil Procedure Code (Act XIV of 1882) ss 402 407* The provisions of Ch XXVI of the Code of Civil Procedure do not preclude a person who has obtained leave to sue under s 18 of the Religious Endowments Act for the removal of the trustees of a temple from being permitted to sue *in formâ pauperis* GURUSAMI CHETTI v KRISHNASAMI NAIKAR (1901) I L R 24 Mad 419

48 ——— Withdrawal of suit—*Civil Procedure Code (Act XIV of 1882) ss 373 412—Suit—Withdrawal of a suit with permission to bring fresh suit—Failure in the suit—Adjudication—Court fees payment of* Where a pauper plaintiff withdraws a suit with permission to bring a fresh suit he is liable to pay to the Government the Court fees which would have been paid by him if he had not been permitted to sue as a pauper The word if the plaintiff fails in the suit in s 412 of the Civil Procedure Code (Act XIV of 1882) apply to the withdrawal of a suit under the provisions of s 373 of the Code SECRETARY OF STATE v NARAYAN BALKRISHNA (1904) I. L R 29 Bom. 102

49 ——— Death of the applicant—*Application for leave to sue in formâ pauperis—Revival of the application—Personal right—Civil Procedure Code (Act XIV of 1882) ss 365 403 410 413—Limitation Act (XV of 1877) s 4*

PAUPER SUIT—*contd*

1 SUITS—*concld*

Where there is only an application for leave to sue *in forma pauperis* but no suit pending in Court

present a fresh application for leave to sue *in forma pauperis* or may institute a suit for the same relief which the deceased sought to recover if the right to sue survives in him *Chunder Mohan Roy* v *Bhubon Mohini Debea I L R 2 Calc 389 Aubhoya Churn Dey* v *Bissessvari I L R 24 Calc 889* and *Dwarkanath Narayan* v *Madhavrao Vishwanath I L R 10 Bom 207* referred to LALIT MOHAN MANDAL v SATISH CHANDRA DAS (1906) I L R 33 Calc 1163

2 APPEALS

1 ——— Application for leave to appeal—*Decision in suit in formâ pauperis—Civil Procedure Code 1859 ss 367 371—Inquiry into pauperism* An appeal lies from a decision in a suit heard *in forma pauperis* A separate formal application for inquiry into the pauperism of the applicant need not precede an application for leave to appeal *in forma pauperis* KAMOD POORY v SHEO POORY 1 N W 167 Ed. 1873 246

2 ——— *Admission of appeal—Authorised agent to sign and present petition* The Court rejected a petition of appeal presented on behalf of a pauper by a vakil who was retained under an ordinary retainer but was not duly authorized to sign as attorney for the appellant. BHUGOBUTTY KOOER v GUNESH DUTT 21 W R 308

3 ——— *Civil Procedure*

in person subject to the exemption contained in s 404 of the Code of Civil Procedure *In re* NARISI I. L R 8 Mad. 504

4. ——— Right of appeal by Government—*Civil Procedure Code ss 411 412—Right of Government to appeal in respect of Court fee on portion of plaintiff s claim dismissed* In a suit *in formâ pauperis* the District Judge decreed the plaintiff s claim in part and dismissed it in part but omitted to make any provision for payment to Government of the Court fee on the portion which was dismissed. The Secretary of State not having been a party to the litigation in the Court below then preferred an appeal in respect of the Court fee on that portion of the plaintiff s claim which had been dismissed. *Held* that such an appeal would lie though the more suitable procedure would have

PAUPER SUIT—*contd.*

2. APPEALS—*contd*

referred to SECRETARY OF STATE FOR INDIA v BHAGWANTI BIBI I. L. R. 13 All. 328

5 ———— *Right of appeal by Government—Costs of plaintiff—Decree omitting to order plaintiff to pay Court fees—Power of Collector to apply under the extraordinary jurisdiction of High Court—Amendment of decree* The plaintiff s suit *in forma pauperis* was rejected by the Subordinate Judge The decree however omitted to order the recovery from the plaintiff of the Court fees payable on the plaint The Collector applied to the High Court under its extraordinary jurisdiction for the rectification of the decree It was contended that as the omission might have been remedied by an appeal or on review the Collector could not apply under the extraordinary jurisdiction of the Court *Held* on the authority of the *Collector of Ratnagiri* v *Janardan* *I L R 6 Bom 390* that no appeal by Government would lie in the case and that in the exercise of its extraordinary jurisdiction the High Court would rectify the decree by directing the plaintiff to pay the costs of Government COLLECTOR OF KANARA v RAMBHAT I L. R 18 Bom 454

See COLLECTOR OF TRICHINOPOLY v SIVARAMARA KRISHNA SASTRIGAL I L R 23 Mad. 82

where it was held that s 440 does not apply to the case of an order passed under s 412

6 ———— Security for costs—*Civil Procedure Code 1859 ss 342 310* An Appellate Court has no power under s 3 0 Act VIII of 1859

quiring security for costs from the petitioner after his appeal had been admitted and after the Judge on inquiry had found that the appellant was a pauper was set aside NUSSEEROODDEEN BISWAS v UJJUL BISWAS 17 W R. 68

7 ———— *Civil Procedure Code 1877 s 549* A suitor *in forma pauperis* may be called on to give security for costs under s 549 of the Civil Procedure Code but very special grounds must be shown to support such an application. *Nusseeroodeen Biswas* v *Ujjul Biswas 17 W R 68* dissented from. SESHAYYANGAR v JAINULAVADIN I L R 3 Mad. 68

See also MANECKJI v GOOLBAI I L R 3 Bom 241

8 ———— Ground of appeal—*Suit after rejection of claim to attached property* N sued to set aside the sale of property which *M* had attached in execution of a decree against N s husband s brother plaintiff alleging that it belonged to her husband (though the latter s objections under s 246 Civil Procedure Code had been rejected) and asking for a declaration of her right and title N obtained a decree and both *M* and the auction

PAUPER SUIT—*contd*

2 APPEALS—*contd*

14 W R 445

9 ———— Pauper respondent—*Respondent allowed to proceed as a pauper—Power of High Court* Where a respondent is allowed in the lower Court to sue *in formâ pauperis* the High Court will not set aside that order on motion on the ground that it has been improperly obtained *In the matter of the petition of* KHODEJOONISSA 7 W R 486

10 ———— *Filing objections—Payment of stamp duty—Court Fees Act s 16—Civil Procedure Code 1859 s 348* A pauper respondent is not entitled to present objections at the trial of an appeal without payment of stamp duty BABAJI HARI v RAJARAM BALLAL I. L R 1 Bom 75

11 ———— *Civil Procedure Code 1882 s 561* Objections by a respondent to a decree under s 561 of the Code of Civil Procedure cannot be filed *in forma pauperis* *Babaji Hari* v *Rajaram Ballal I L R 1 Bom 75* followed NARAYANA v KRISHNA I L R 8 Mad 214

BROJESHWARI DASI v GUROO CHURN DAS I L R 11 Calc 735

12 ———— *Civil Procedure Code 1882 ss 412 and 414—Costs—Appeal in formâ pauperis—Withdrawal of appeal—Right of Government to costs—Compromise of suit pending appeal* The plaintiffs filed a suit *in forma pauperis* to recover possession of certain property The Court of first instance dismissed the suit Thereupon the plaintiffs preferred an appeal *in formâ pauperis* to the High Court Pending the appeal the parties entered into a compromise under which it was agreed (*inter alia*) that the appeal should be withdrawn and that the respondent should pay to Government the Court fees which the plaintiffs were liable to pay both in the first Court and in the Court of appeal When the appeal came on for hearing the appellants informed the Court of their intention to withdraw from the appeal Thereupon the Government pleader intervened and ap

Held also that it was not open to the Court to order the respondent to pay any fees on the strength of any agreement between the parties BAI CHANDABA v KUVER SAHEB BAPU SAHEB I. L. R 18 Bom 464

PAUPER SUIT—*contd*

2 APPEALS—*contd*

13 ———— Application for leave to appeal—*Code of Civil Procedure (Act XIV of 1882) ss 401 592—Presentation of application for leave*

an application for permission to sue *in forma*

subject to the rules contained in Ch XXVI of the Code but the presentation of the application itself is not subject to those rules *In re Narisi I L R 8 Mad 504* not followed MAILTHI *v* SOMAPPA BANTA (1902) I L R 26 Mad. 369

14 ———— Presentation of appeal by agent of a pardanashin woman—*Letters Patent High Courts 1865 cl 8—Presentation of appeal by a person other than an advocate vakil or attorney of the Court or a suitor—Civil Procedure Code ss 640 401 592* Where an appeal *in forma pauperis* by a parda nashin woman who had sued as a pauper in the Court of first instance was presented not by an advocate vakil or attorney of the Court nor by the appellant in person but by her duly authorized agent it was *held* that this was a good presentation clause 8 of the Letters Patent notwithstanding *Shiam Karan v Raghunandan Prasad I L R 22 All 331* distinguished WAZIR UN NISSA *v* ILAHI BAKHSH (1901) I L R 24 All. 172

15 ———— Death of plaintiff—*Civil Procedure Code ss 401 et seqq—Suit in forma pauperis—Decree passed in ignorance of plaintiff s death—Consent order for re trial—Objection to plaintiff s representative suing in forma pauperis—Estoppel* The plaintiff in a suit brought *in forma pauperis* died but in ignorance of her death the Court passed a decree in her favour The defendant appealed making respondent to his appeal a lady whom he alleged to be the legal representative of the deceased plaintiff On this appeal an order was passed by consent of parties sending back the suit to be re tried on the merits as between the defendant and the person nominated by him as plaintiff and it was so re tried and a decree was again passed in favour of the plaintiff *Held* that it was not thereafter open to the defendant to object that there had been no inquiry into the right of the representative of the original plaintiff to sue as a pauper AKBAR HUSAIN *v* ALIA BIBI (1902) I L R 25 All 137

16 ———— Right of appeal—*Civil Procedure Code ss 403 409 588—Suit in forma pauperis—Appeal—Propriety of order allowing plaintiff to sue in forma pauperis not a ground of appeal* Where after consideration of an application for leave to sue as a pauper the Court of first instance has allowed the suit to be instituted *in forma pauperis* and has

PAUPER SUIT—*concld*

2 APPEALS—*concld*

passed a decree in favour of the plaintiff it is not

17 ———— Letters Patent High Courts 1865 cl 15 Judgment —*Order refusing leave to appeal in forma pauperis* There is no appeal under cl 15 of the Letters Patent against an order passed by a single Judge under s 592 of the Code of Civil Procedure refusing leave to appeal *in forma pauperis* By s 592 a discretion is vested in the Judge to allow or disallow the application and an order passed in the exercise of such a discretion is not a judgment within the meaning of cl 15 of the *Letters Patent Sri ramulu v Ramasam I L R 22 Mad 109 Venkatarama Ayyar v Madalai Ammal I L R 23 Mad 169* and *Srimantu Raja Durga Naidu v Srimantu Raja Mallikarjuna Naidu I L R 24 Mad 358* followed. APPASAMI PILLAI *v* SOMASUNDRA MUDALIAR (1902) I L R 26 Mad 437

18 ———— Reasons for granting leave to appeal—*Civil Procedure Code (Act XIV of 1882) s 592 proviso—Pauper appeal—Leave—Reasons for granting leave to be recorded* In granting leave to appeal as pauper the Court should be careful to see that the proviso to s 592 of the Civil Procedure Code (Act XIV of 1882) is satisfied The Judge or Bench admitting a pauper appeal should express and record very briefly the reasons for granting leave so that the Bench before whom the appeal ultimately comes may have an assurance that the leave was properly given SAKUBAI *v* GANPAT (1904) I L R 28 Bom. 451

PAWNEE

———— of medal or military decoration.

See DISCIPLINE—ARMY ACT 1881 s 156 I L R 10 Mad. 108

PAWNOR AND PAWNEE

See CONTRACT ACT 1872 s 178
I L R 3 Calc 264
I L R 4 Calc 497
I L R 24 Bom. 458
I L R 30 All. 165

See LIMITATION ACT 1877 Sch II ART 57 I L R 24 All. 251

See PAWNEE

———— *Pawnor and pawnee—Pawnor not owner but having a right to possession—Suit by owner for declaration of his title* A person who had obtained possession of certain moveable property belonging to a minor in the capacity of a trustee and who had been allowed to retain possession of such property after the minor came of age pawned some of it to persons who were found to have acted negligently perhaps but honestly and in good faith *Held* that the

PAWNOR AND PAWNEE—*concld*

pledge was valid but the owner was entitled to a declaration of his right to redeem the articles so pawned. SUNDAR DEO v BHAGWAN DAS (1908)
I L R 30 All 165

PAYMENT

See INSTALMENTS

———— evidence of—

See BOND I L R 1 Bom 45
8 W R 316
3 W R Mis 23

———— in consideration of releasing person from prison—

See CONTRACT ACT s 23—ILLEGAL CONTRACTS GENERALLY 9 B L R Ap 38

———— made under forged will—

See WILL—VALIDITY OF WILL
6 C W N 767

———— of whole debt by one debtor—

See CONTRIBUTION SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR

———— on account of debt—

See LIMITATION ACT 1877 s 20

———— place of—

See PAKKI ADAT SYSTEM
I L R 33 Bom. 364

———— specified time for—

See LIMITATION ACT 1877 ART 66 (1871 ART 65) I L R 5 Calc 21

See LIMITATION ACT 1877 SCH II ART 179—ORDER FOR PAYMENT AT SPECIFIED DATES

PAYMENT INTO COURT

See BENGAL RENT ACT 1869 s 31
I L R 4 Calc 714
I L R 20 Calc 498
L R 20 I A 25

See BENGAL TENANCY ACT s 160
I L R 30 Calc 947

See CIVIL PROCEDURE CODE s 257
I L R 12 Mad 121

See COSTS—SPECIAL CASES—PAYMENT INTO COURT 1 Bom 70
14 W R 387
I L R 21 Bom 502

See DECREE—CONSTRUCTION OF DECREE—PAYMENT INTO COURT
I L R 8 Calc 528
I L R 3 All 775

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE
I L R 24 All. 479

PAYMENT INTO COURT—*contd*

See INTEREST—MISCELLANEOUS CASES—PAYMENT INTO COURT
3 B L R Ap 105 12 W R 50
2 C L R 183
16 W R 297 304

See PRACTICE—CIVIL CASE—SALE BY REGISTRAR I L R 21 Calc 566

See RIGHT OF SUIT—SALE FOR ARREARS OF REVENUE I L R 13 All 195

See TENDER I L R 16 Bom 141

1 ———— Payment of charge on estate under decree—*Authority to make deposit* Where a decree treats an estate as primarily liable to discharge a debt with interest the proprietor (or his heir) has a right to pay the money into Court to protect himself from being made responsible to indemnify the sureties and if the money is deposited for the purpose of satisfying the decree it is unnecessary for the Court to inquire whether it was deposited under authority from the proprietor or his heir BISSESSUR SINGH v NIM CHAND BOSE
12 W R 505

2 ———— Voluntary payment—*Arrest under writ of attachment—Objection by judgment debtor to money being taken out* Payment of money into Court by a judgment debtor to prevent arrest under a writ of attachment is not a voluntary payment and on application by the decree holder to take the money out the judgment debtor is not limited to those objections only which he raised to the right of the decree holder at the time of paying the money in PARESNATH MOOKERJEE v BINADIRAM SEN
4 B L R Ap 25 13 W R 29

3 ———— *Legal necessity* Where a person in order to save his indigo factory from sale in execution of a decree against a third person paid the amount of the decree into Court *Held* that the payment was not a voluntary payment but one made under legal necessity ROMZAN ALI v SOORUJBHAN 7 W R 403

4 ———— *Property unincumbered with mortgage lien* Where a plaintiff suing to obtain property unincumbered by a previous mortgage pays into Court the amount due under the lien of the defendant as mortgagee and states that he has an objection to the sum being appropriated to the payment of that lien he has no cause of action against the defendant TOOLSEE DUTT MISSER v BROJOMOHUN THAKOOR
9 W R 323

5 ———— *Money paid under wrong order of Court* Money paid over at the instance of a judgment creditor or under a wrongful order of Court may be recovered by means of a suit in the Civil Court OMANATH ROY CHOWDHRY v SUROOP CHUNDER BOSE 10 W R 485

6 ———— *Payment to stay sale in execution of decree—Suit to recover* Certain property which had been mortgaged to the plaintiff by a bond executed by J D on 5th Feb

PAYMENT INTO COURT—*contd*

ruary 1867 was sold to him in execution of a decree passed upon that bond on 3rd September 1868 Before such sale but after the above mortgage the property was attached by the first defendant in execution of a decree of 1865 (i e J D s equity of redemption was attached) and a part of the property was sold The sale was set aside for irregularity but the attachment remaining the first defendant resumed proceedings in execution and got an order for sale when the plaintiff released it from

entitled to keep the money which saved the sale GOSSAIN MUNRAJ POOREE v DEEN DYAL LALL

20 W R. 20

7 ———— *Payment by auction purchaser of mortgage decree against his purchase* Auction purchasers with notice of a mort

satisfied by payment into Court unless the mortgagee has the means of immediately taking the money out of Court or acquiesces in such payment as payment to himself LAND MORTGAGE BANK v RAM PUTTUN NEOGY 21 W R. 270

8 ———— *Payment to protect property from sale* *P* lent money to *S* upon a specially registered tumsook pledging immoveable property and afterwards obtained a decree under Act XX of 1866 s 53 for principal and interest More than four years later he brought a further suit against *S* to recover the interest due under the same bond Meanwhile plaintiffs also lent money to S under a bond by which the same property was pledged and also recovered a decree in execution of which the property was sold *P* then proceeded to attach the same property in execution of his second decree when plaintiffs objected under Act VIII of 1859 s 246 but ineffectually and after that to protect the property which they had purchased they paid a sum of money into Court which was subsequently taken out by *P* They now sued to recover that money *Held* that under the circumstances the payment of the money into Court was not a voluntary payment and the plaintiffs were entitled to recover it MUTHOORA MOHUN ROY CHOWDHRY v PEAREE MOHUN SHAHA

23 W R. 344

9 ———— Payment into Government treasury—*Purchase money—Civil Procedure Code s 308—Purchase in execution of decree—Rules of High Court of 21st June 1882* Under the Rules of the High Court dated 21st June 1882 a payment into the Government treasury is equivalent to a payment into Court for the purposes of s 308 of the Code of Civil Procedure 1882 SRINIVASA BHATTA v MALAYACHAN MANNADI

I L R. 7 Mad 211

PAYMENT INTO COURT—*contd*

10 ———— Payment by purchaser into the Post Office within time—*Money not received by the Court until after expiration of time allowed by section—Civil Procedure Code, 1882 s 307* A purchaser at an execution sale was bound under s 307 of the Civil Procedure Code (Act XIV of 1882) to pay the balance of the purchase money into Court on the 19th June 1896 On the 1[illegible]th June he paid in the amount to the Post Office at Yellapur and obtained a money order which he sent to the Nazir of the Court The Nazir did not receive the money until the 22nd June *Held* that the payment was not in time The Post Office is not the agent of the Court and the purchaser was bound to see that the money reached the Court in time to satisfy the requirements of s 307 RAMCHANDRA KRISHNAPA v BELYA

I. L. R. 22 Bom 415

11. ———— Order in execution that defendant pay money into Court—*Appeal by plaintiff against order—Payment into Court by defendant—Refusal of plaintiff pending appeal to take money out of Court—Attachment of the money so paid in by another creditor of defendant and payment to him—Subsequent application by plaintiff in execution for payment—Effect of his previous refusal* In execution of a decree against the defendant obtained by the plaintiff an order was made directing the defendant (*inter alia*) to pay into Court the sum of R140 8 0 Both parties appealed against this order but pending the appeals the defendant paid the amount into Court The plaintiff however refused to take it on the ground that he had appealed against the order under which it was paid in and the Court subsequently passed an order that the money should be returned to the defendant But before this could be done the money was attached by a third person in execu-

plaintiff was heard and the order was confirmed Thereupon the plaintiffs applied in execution (*inter alia*) for payment of the sum of R140 8 0 The defendant contended that he had already paid it The Subordinate Judge directed the defendant to pay this sum into Court within one month The

plaintiff who had not obtained a stay of execution could not refuse to take it because an appeal was pending The plaintiff s refusal therefore to take the money out of Court did not justify the Subordinate Judge in treating the money as the defendant s and in ordering it to be paid to another judgment-creditor of the defendant without his having in any way expressed his assent to

PAYMENT INTO COURT—*concld*

the money being so treated LAKSHMAN DADAJI *v* DAMODAR AMBADAS I. L. R. 15 Bom. 681

12. ———— Forfeiture of deposit—*Civil Procedure Code (Act XIV of 1882) s 307—Default of purchaser at Court sale to pay full amount* S 307 of the Code of Civil Procedure is imperative and must be given effect to Where a purchaser at a Court sale makes default in paying the full amount of the purchase money the deposit must be forfeited. The fact that the decree holder and the judgment debtor do not ask for a resale but consent to the original sale being allowed to stand is no reason why the Government should forego the forfeiture SAMBASIVA AYYAR *v* VEDIVADASAMI (1901) I. L. R. 25 Mad 535

PAYMENT TO STAY OR SET ASIDE SALE

See CONTRIBUTION SUIT FOR—VOLUNTARY PAYMENT

See CO SHARERS—GENERAL RIGHTS IN JOINT PROPERTY 14 B L R. 155
I L R 9 Calc 377
I L R. 22 Calc 600

See MONEY HAD AND RECEIVED
8 B L R 418

See PAYMENT INTO COURT

See SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE.

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

See VOLUNTARY PAYMENT
I L R. 25 Calc 305
1 C W N 458

PEACE

See RECOGNIZANCE TO KEEP PEACE.

PECUNIARY LOSS

See CRIMINAL PROCEDURE CODE s 144
13 C W N 188

PEDIGREE

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—PEDIGREE
I L R 10 Mad. 362
I L R 32 Calc 84

———— proof of—

See EVIDENCE ACT (I OF 1872) s 9
I. L R 18 All 98

See EVIDENCE ACT I OF 1872 s 32
4 C L R 173
I L R 9 All. 467
I L R. 12 Calc 219
I L R 13 Calc 42
I L R 24 Calc 265
I L R 26 Calc 536
L. R 27 I A 183
I L R 17 All 456
L R 22 I A. 139
I L R 30 All. 510

PENAL CODE (ACT XLV OF 1860)

See WHIPPING I L R 16 Bom. 357

———— application of—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS
I L R 25 Bom 636

———— exceptions in—

See CHARGE—FORM OF CHARGE—GENERAL CASES I L R 4 Calc 124

See EVIDENCE ACT 1872 s 105
I. L R 4 Calc 124

———— ss 1 2—

See CRIMINAL PROCEEDINGS
I. L R 13 Mad 353

———— s 4 (*a*)—*Information to police of taking away or detaining wife* The word complaint referred to in s 199 of the Code of Criminal Procedure means a complaint as defined by s 4 (*a*) of that Code *Jatra Sheikh* v *Reazut Sheikh I L R 20 Calc 483* referred to TARA PROSAD LAHA *v* EMPEROR (1904) 8 C W N 17

———— s 19—

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE I L R 23 Mad 540

———— s 21—

See PUBLIC SERVANT
I L R 28 Calc 344

———————— *Rules framed under by Chief Presidency Magistrate—Rule 8—Rule that in a Bench of two the opinion of Chairman shall*

the Code in so far as it directs that in a Bench composed of two members the decision of the Chairman shall prevail It is also arbitrary and not consonant with natural justice HENRY WAKEFIELD *v* HARAN SARDAR (1904) 8 C W N 862

———— s 21 cl (*b*)—

See LANDMARKS I L R 30 Calc 1084

1 ———— ss 21 and 99—Public servant —*Gorait in the district of Gorakhpur Held* that a *gorait* is a public servant within the meaning of ss 21 and 99 of the Penal Code EMPEROR *v* SIDHU
I L R 26 All 542

2 ———— ss 21 161—*Clerk to a Sub Registrar—Illegal gratification—Registration Act (III of 1877) ss 6 to 14 69 84* A clerk appointed by a Sub Registrar and paid out of an allowance given to the Sub Registrar is not a public servant within the meaning of s 21 of the Penal Code BHAGWATI SAHAI *v* EMPEROR (1905)
I L R 32 Calc 664

PENAL CODE (ACT XLV OF 1860)—*contd*

3 ———— ss 21 186—*Public servant—Obstruction to a public servant—Clerk in the cess collection department of a District Municipality—Bombay District Municipal Act (Bom Act III of 1901)* A clerk in the cess collection department of a District Municipality constituted under the Bombay District Municipal Act (Bom. Act III of 1901) is a public servant within the meaning of s 21 cl 10 of the Indian Penal Code (Act XLV of 1860) and any obstruction offered to him in execution of his duties is an offence punishable under s. 186 of the Code EMPEROR v BABULAL (1908) I. L. R 33 Bom 213

———— ss 22 24—

See THEFT I L R 10 Mad 186 255
I L R 15 Bom 702
I L R 22 Calc 669 1017
I L R 27 Calc 501

———— s 23—

See CRIMINAL BREACH OF TRUST
6 C W N 203

———— ss 23, 24—

See CHEATING 22 W R Cr 82

———— s 24—

See CRIMINAL BREACH OF TRUST
6 C W N 203

See RIOTING I L. R 15 All. 22

———— ss 24 25—

See FORGERY I L R 8 All 653
I L R 10 Calc 584
I L R 5 All 217 221
I L R 7 All 403 459
I L R 19 Calc 380
I L R 15 All 210
I L R 25 Calc 512
5 C W N 897

———— ss 28 231—*Counterfeiting coin—Definition—Intention* In order to constitute the offence defined by s 231 of the Penal Code it is not necessary that the counterfeit coin should be made with the primary intention of its being passed as genuine it is sufficient if the resemblance to genuine coin is so close that it is capable of being passed as such. EMPEROR v QADIR BAKHSH (1907) I L. R 30 All. 93

———— ss 29 30—

See FORGERY 2 B L. R A Cr 12
4 Bom Cr 28
2 Mad. 247
11 W R Cr 15

———— s 34—

See ACCOMPLICE I. L. R 14 Bom 115

See BENGAL EXCISE ACT (VII OF 1878) s 53 I L. R 29 Calc 496

See MURDER 13 C W N 680

See UNLAWFUL ASSEMBLY
I L. R 8 Calc 739

PENAL CODE (ACT XLV OF 1860)—*contd*

———— ss 34 326—

See DYING DECLARATION
I L. R 36 Calc 659

———— s 35—

See PENAL CODE s 71
8 C W N 305 483

———— s 41—

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL I L R 17 All 498
L R. 22 I A 19

———— s 44—

See CRIMINAL INTIMIDATION
I L R 30 Calc 418

———— s 52—

See CULPABLE HOMICIDE
I L. R 14 Calc 566

See WRONGFUL RESTRAINT
I L R 12 Bom. 377

———— ss 52 499 Excep (9)—

See DEFAMATION
I L R 36 Calc 875
13 C W N 340

———— s 59—

See SENTENCE—TRANSPORTATION

———— s 62—

See FORFEITURE OF PROPERTY
8 W R. Cr 35
12 W R Cr 17

———— ss 62 124A—

See CONFISCATION
I L R. 34 Calc 986

———— ss 62 406—*Criminal breach of trust—Sentence. Held* that the special sentence provided for by s 62 of the Indian Penal Code is a sentence which should only be inflicted in rare cases—those in which crimes of an atrocious nature are exposed or in which offences have been committed under aggravated circumstance *Queen v Mahomed Akhir 12 W R Cr 17* followed EMPEROR v AMRIT LAL (1906) I. L. R 29 All. 25

———— ss 64 65 67—

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE
6 Mad. Ap 40
16 W R. Cr 42
5 Bom. Cr 61
I L R. 6 All. 61
I L R. 18 Bom. 400
I L R 18 Mad. 490
I L. R 10 Mad 165 166 note
I. L R. 22 Mad. 238

———— ss 65 67—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—BENGAL ACT III OF 1863 10 W R. Cr 30

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY
I. L. R 1 All 461

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 70—

See APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE. I L R 23 All 497

See FINE 5 Bom. Cr 63
I L R 20 Calc 478

———— s 71—

See SENTENCE—CUMULATIVE SENTENCES

———— *Criminal trespass—Intention in one same as common object in the other—Separate sentences if lawful—Criminal Procedure Code (Act V of 1898) s 35 illustration.* Where an accused person was found with several others to have entered upon another person s land with the common object of cutting crops standing on it and in prosecution of that common object hurt was caused —*Held* that the accused person could not be convicted and sentenced for criminal trespass under s. 447 of the Penal Code in addition to a conviction and sentence for rioting under s 147 of the Penal

Procedure Code referred to BHUP SINGH *v* EMPEROR (1904) 8 C W N 305

———— ss 71 147 342—*Rioting—Common object of unlawful assembly wrongful confinement—Wrongful confinement—Separate sentences for rioting and wrongful confinement if legal* Separate sentences for wrongful confinement and riot

———— ss 71 147 149 362—*Rioting and grievous hurt not committed individually by accused* *Held* that it is illegal to pass separate sentences for the offence of rioting and grievous hurt

I L R 10 Calc 41 followed SAHADEV AHIR *v* EMPEROR (1904) 8 C W N 344

———— s 72—

See SENTENCE—CUMULATIVE SENTENCES I L R 12 Mad. 36

See SENTENCE—GENERAL CASES 7 W R Cr 13

———— ss 73 74—

See SENTENCE—SOLITARY CONFINEMENT I L R 6 All 83
3 B L R A Cr 49

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 75—

See CHARGE—FORM OF CHARGE—GENERAL CASES I L R 9 Mad 284

See SENTENCE—CUMULATIVE SENTENCES I L R 11 All 393

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION

———— s 78—

See ARREST—CIVIL ARREST 3 W R Cr 53

———— s 79—

See TRESPASS—GENERAL CASES 23 W R Cr 4

See WRONGFUL CONFINEMENT I L R 30 Calc 95

See WRONGFUL RESTRAINT I L R 12 Bom 377
I L R 24 Calc 885

———— s 81 and s 323—*Act likely to cause harm done without a criminal intent and to prevent other harm—Causing hurt* The accused was a sepoy

with orders to keep clear a space in front of the burning house and not to allow any one not in uniform to intrude on that space The police under the city chief constable were also ... nd on ... they ... tween ... chief ... his he was charged before the Magistrate and fined for voluntarily causing hurt under s 323 of the Penal Code In evidence it appeared that the police attempted to force the military guard which had been posted as above stated and it was further proved that the chief constable was not in uniform and

for the purpose of preventing much greater harm under s 81 of the Indian Penal Code and as a means of acting up to the military order QUEEN EMPRESS *v* BOSTAN I L R 17 Bom. 626

———— s 83—

See STOLEN PROPERTY—OFFENCES RELATING TO I L R 6 Mad. 373

1. ———— Capacity for doing wrong—*Malice* In construing s 83 of the Penal Code the capacity of doing that which is wrong is not so much to be measured by years as by the strength of the offender s understanding and judgment. The circumstances of a case may

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 83—*conc'd*

disclose such a degree of malice as to justify the application of the maxim *malitia supplet ætatem* QUEEN v ADIONA 1 W R Cr 43

2 ——— *Capacity of under standing to commit offence.* An objection that the accused is of such an age as not to have attained

flow from a voluntary act QUEEN v LUKHIM AGRADANNIE 22 W R Cr 27

——— s 84—

See INSANITY I L R 10 Bom 512
I L R 12 Mad. 459
I L R 14 Bom 564
I L R 22 Calc 817
I L R 23 Calc 604
I L R 28 Calc 613
I L R 29 Calc 493

——— *Unsoundness of mind —Knowledge of the nature of the act* Where the accused cut his wife s throat without any ration al motive and was captured at once without any attempt on his part to escape or offer resistance and the evidence showed that before the commis sion of the offence he suffered from a failure of rea oning powers and also that he entertained delusions as to dangers which threatened his wife —*Held* that the facts proved un oundness of mind which prevented the accused from knowing the nature of his act and that s 84 of the Penal Code applied DIL GAZI v EMPEROR (1907)
I L R 34 Calc 686

——— ss 84 85—

See INSANITY I L R 29 Calc 493

s 88—

See CULPABLE HOMICIDE
I L R 14 Calc 566

——— s 94—

See ACCOMPLICE I L R 14 Bom. 115

See OFFENCE UNDER THREAT
10 W R Cr 48

——— s 95—

See CRIMINAL BREACH OF TRUST
I L R 29 Calc 489

See HURT—CAUSING HURT
24 W R Cr 67

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 95—*concld*

See OFFENCE RELATING TO DOCUMENTS
I L R 12 Mad. 148

See THEFT 5 Bom Cr 35

——— ss 96 97 99 100 304—*Private defence right of—Limits of the right* The de ceased *S* and three others who formed his party attacked with *lathies* the accused *B* and his party three in number as the result of a quarrel One of the party of the deceased struck a blow on the accused which felled him to the ground. The accused rose up and inflicted a blow on the head of *S* which fractured his skull causing death within a short time *Held* that under the circumstances of the case the accused did not exceed his right of private def nce by inflicting the blow on the head of the deceased as the circumstances were such as reasonably caused the apprehension that grievous hurt would but for his action have been the consequence of the attack that was being made upon him A man in the predicament of the accused could not be expected to judge too nicely BHUT NATH DOME v THE KING EMPEROR (1909) 13 C W N 1180

——— ss 96 104—

See PRIVATE DEFENCE RIGHT OF
20 W R Cr 36

——— ss 96 to 106—

See PRIVATE DEFENCE RIGHT OF

See RIOTING I L R 24 All 298

——— ss 97 99 147—

See PRIVATE DEFENCE RIGHT OF

See RIOTING I L R 24 Calc 686
I L R 33 Calc 295

——— s 99—

See ABSCONDING OFFENDER
I L R 29 Calc 417

See THUMB IMPRESSIONS
I L R 30 Calc 97

See WRONGFUL RESTRAINT
I L R 12 Bom 377

——— *Right of private de fence of body—Extent of right* The view that a person should not exercise his right of self-defence if by running away he can avoid injury from his assailant places a greater restriction on the right

——— ss 99 101, 104 147—

See RIOTING I L R 35 Calc 103

——— ss 99 147—*Private defence right of —Police officer executing illegal order of Magistrate — Attachment of crops—Criminal Procedure Code*

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s 99—*concld*

(*Act I of 1898*) s 14) Although an order to the Police purporting to be mad under s 145 of the Code of Criminal Procedure directing them to take charge of some crop in dispute may not be strictly legal yet when in execution of such order the police went to the spot where the crop was stored and after announcing the order simply proposed to guard it *Held* that the accused in seizing several men of the police party and carrying them off into confinement had exceeded their right of private defence *Bhai Lal Chowdhry* v *Emperor 6 C W N 680 sc I L R 29 Calc 417 Queen Empress* v *Jogendra Nath Mukerjee I L R 24 Calc 320 Adhar Midday* v *The Empress 5 C W N 391 Uma Charan Singh* v *The King Emperor 6 C W N 164* referred to BHOLA MAHTO v EMPEROR (1905)
9 C W N 125

——— ss 99 147 148 362—

See RIOTING I L R 36 Calc 296

——— ss 99 and 353—*Assaulting public servant in the execution of his duty—Vaccinator attempting to vaccinate a child forcibly—Right of private defence* A vaccinator attempted to vaccinate a child against the wishes of its father The father and some of his relations intervened and assaulted the vaccinator but did not do him any particular harm *Held* that the child s father and other relations were perfectly justified in inter[illegible]

I L R 26 All. 481

——— ss 103 (4), 141 (4) 147 323 324—

See RIOTING I L R 36 Calc 865

——— s 105—

See PRIVATE DEFENCE RIGHT OF
13 W R Cr 64
I L R 14 Bom. 441
I L R 16 Calc 206

See UNLAWFUL ASSEMBLY
12 W R Cr 43

——— ss 107 108 109—

See ABETMENT

See CONSPIRACY I. L. R 28 Calc 797

——— s 108A—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT
I. L. R. 24 Bom. 287

——— s 109—

See ABETMENT 7 C W N 556
I L R 24 Mad. 523

See BIGAMY 6 C W N 343

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s 109—*contd*

See CHARGE—FORM OF CHARGE—FORGERY I L R 30 Calc 822

See CRIMINAL PROCEEDING
I L R 28 Calc 104

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT
I L R 19 Bom 105

See KIDNAPPING I L R 8 Calc 969

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I L R 14 Mad 364

See SANCTION FOR PROSECUTION—NATURE FORM AND SUFFICIENCY OF SANCTION I L R 30 Calc 905

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
I L R. 20 Mad. 8

——— ss 109 114 124 (*a*)—

See CRIMINAL PROCEDURE CODE SS 196 200 225 287 537
I. L R 32 Mad. 3

——— ss 109, 183 352, 403 414 420 471—

See JOINT TRIAL, SANCTION
I. L R 31 Calc 664 1053

——— ss 109 and 366—*Kidnapping from lawful guardianship—Kidnapping not a continuing offence—Abetment* One Musammat Chunia by making certain false representations to the mother of [illegible]

Tika Thence Chunia and Tika took the girl about

[illegible]

The Queen v *Samia Kaundan* and agreeing with the view taken in *Queen Empress* v *Ram Sundar I L R 19 All 109* and *Rakhal Mitari* v *Queen Empress 2 C W N 81* that the offence of kidnapping being completed as soon as the minor was [illegible]

PENAL CODE (ACT XLV OF 1860)— *contd*

———— s 109—*concld*

place the conviction of Tika for abetment of kid napping was sustained EMPEROR v TIKA (1904)
I L R 26 All. 197

———— s 114—

See post s 304A **13 C W N 362**

See ABETMENT **4 Mad Ap 37**
7 W R Cr 49
8 Bom. Cr 164
10 Bom. 497
2 C W N 49
I L R 27 Calc 566
4 C W N 309

See BENGAL EXCISE ACT (VII OF 1878) s 53 **I L R 29 Calc 496**

See THEFT **8 W R Cr 59**

See UNLAWFUL ASSEMBLY
5 C W N 250

———— ss 114 119 193 210—

See PROSECUTION ORDER FOR
I L R 35 Calc 133

———— ss 114 149, 379—*Theft—Abettor present when act committed—Ingredient of offence—Theft committed in prosecution of common object of unlawful assembly—Separate sentences when legal* When an accused person is found to have been a member of an unlawful assembly the common object of which was to commit trespass and theft and it is found that theft was actually committed by certain members of the unlawful assembly and it is not found that that person himself committed any theft by removing any property or that he had made any preparation for committing any theft or aiding any one in the commission of theft —*Held* that the accused cannot be properly convicted of an offence under s 379 read with s 114 of the Penal Code *Abhi Misser v Lachmi Narain I L R 27 Calc 566 s c 4 C W N 546* referred to Separate sentences might have been passed however under ss 114 144 and 379 Full Bench decision in *Nilmoney Poddar v Queen Empress I L R 16 Calc 442* discussed and distinguished HANSA PATHAK v BANSI LAL DAS (1904)
8 C W N 519

———— ss 114 199 466—*False declaration —Registrar of Mahomedan marriages if bound or authori* [illegible]
—Abetm [illegible]
by perso [illegible]
of Mar [illegible]
divorce [illegible] and the appellant identified X as *P* before the Registrar —*Held* that the appellant was not guilty of an offence under s 199 of the Penal Code inasmuch as the Registrar was not bound or authorised by law to receive his statement in evidence But whether he was guilty of an offence under s 114/466 of the Penal Code would depend chiefly on whether he knew that X was not *P* or had no knowledge whether he was *P* or not *Held* that the Judge had fairly put the evidence on this point to the jury YASIN SHEIKH (AKONDA) v EMPEROR (1905) **9 C W N 69**

———— s 116—

See KIDNAPPING **I. L R 1 Mad 173**

See POLICE MAGISTRATE
1 B L R O Cr 39

See PUBLIC SERVANT **21 W R Cr 9**

———— s 118—

See INFORMATION OF COMMISSION OF OFFENCE **1 Agra Cr 37**

———— s 120—

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE **1 Ind. Jur O S 105**

———— s 121—

See FORFEITURE OF PROPERTY
8 B L R 83

See WAGING WAR AGAINST THE QUEEN
7 B L R 63

———— s 124A—

See SEDITION

1. ———— *Exciting disaffection towards Government—Disapprobation of doings of Government expression of* Disaffection and disapprobation explained and s 124A referred to and explained to the jury QUEEN EMPRESS v JOGENDRA CHUNDER BOSE **I. L R. 19 Calc 35**

2 ———— *Evidence—Writings showing intention or animus—Letters of contributors published in newspapers—Disaffection* The accused who was the editor proprietor and publisher of the Kesari newspaper was charged under s 124A of the Penal Code with exciting and attempting to excite feelings of disaffection to Government by the publication of certain articles etc in the Kesari in its issue of the 15th June 1897 In order to show the intention of such publications counsel for the prosecution tendered in evidence a certain letter signed Ganesh which appeared in the issue of the Kesari of May 4 1897 Objection was taken that it was not admissible inasmuch as letters to newspapers often express opinions which are not the opinions of the editor and publisher *Held* that the letter was admissible to show intention and animus S 124A of the Penal Code explained Meaning of the word disaffection QUEEN EMPRESS v BAL GANGADHAR TILAK
I. L. R 22 Bom. 112

3 ———— *Seditious publication—Disaffection* The word disaffection in s 124A of the Penal Code is used in a special sense as meaning political alienation or discontent a spirit of disloyalty to the Government or existing authority An attempt to excite feelings of disaffection to

PENAL CODE (ACT XLV OF 1860)—*contd.*

———— s. 124A—*contd*

the Government is equivalent to an attempt to produce political hatred of Government as established by law to excite political discontent and alienate the people from their allegiance This meaning of the word disaffection in the main portion of the section is not varied by the explanation *Per* PARSONS *J* —The word disaffection used in s 124A of the Indian Penal Code cannot be construed as meaning an absence of or the contrary of affection or love that is to say dislike or hatred but is used in its special sense as signifying political alienation or discontent that is to say a feeling of disloyalty to the existing Government which tends to a disposition not to obey but to resist and subvert the Government *Per* RANADE *J* — Disaffection is not a mere absence or negation of love or good will but a positive feeling of aversion which is akin to disloyalty a defiant insubordination of authority or when it is not defiant it secretly seeks to alienate the people and weaken the bond of allegiance and prepossesses the minds of the people with avowed or secret animosity to Government —a feeling which tends to bring the Government into hatred or contempt by imputing base and corrupt motives to it and makes them indisposed to obey or support the laws of the realm and which promotes discontent and public disorder QUEEN EMPRESS v RAMCHANDRA NARAYAN　　I. L R 22 Bom 152

4. ———— *Exciting disaffection—Meaning of the term disaffection explained* Any one who by any of the means referred to in s. 124A of the Penal Code excites or attempts to excite feelings of hatred dislike ill will enmity or hostility towards the Government established by law in British India excites or attempts to excite as the case may be feelings of disaffection as that term is used in s 124A Such feelings are necessarily inconsistent with and incompatible with a disposition to render obedience to the lawful authority of Government and to support that Government against unlawful attempts to subvert or resist it. The term disaffection may be taken as synonymous with disloyalty The ordinary meaning of the term disaffection as used in s. 124A is not varied by the explanation appended to that section When a person is charged with having committed the offence punishable under s 124A of the Penal Code his intention may be inferred from one particular speech article or letter or from that speech article or letter considered in conjunction with what such person has said written or published on another or other occasions. Where it is ascertained that the intention of such person was to excite feelings of disaffection to the Government established by law in British India it is immaterial whether or not the words spoken written or published could have the effect of exciting such feelings of disaffection and it is immaterial whether the words were true or were false and except on the question of punishment or in a case in which the speaker writer or publisher is charged with having excited such feelings of disaffection it is immaterial whether or not the words did in fact excite such feelings of disaffection *Queen Empress* v *Jogendra Chunder Bose I L R 19 Calc 35 In re the petition of Bal Gangadhar Tilak I L R 22 Bom 112* referred to QUEEN EMPRESS v AMBA PRASAD

I L R 20 All 55

5 ———— *Sedition— Swaraj incitement to secure* The incitement of the members of a public meeting to exert themselves to secure *swaraj* does not amount to the offence of sedition under s 124A of the Penal Code and is consequently not within the purview of s 108 of the Criminal Procedure Code BENI BHUSHAN ROY v EMPEROR (1907)　　I L R 34 Calc 991

6 ———— *Criminal Procedure Code ss 225 and 537—Actual words used need not be stated in charge or proved in prosecution under s 124A of the Indian Penal Code—Evidence Act ss 159 and 160—Relevancy of notes of speeches Held per* BENSON and WALLIS *JJ* —The gist of an offence under s 124A of the Indian Penal Code is the bringing or attempting to bring into hatred or contempt or the exciting or attempting to excite disaffection towards His Majesty etc If an offence under s 124A is committed by words spoken the requirements of the law are satisfied if the charge gives such a description of the words used as is reasonably sufficient to enable the accused to know the matter with which he is [illegible] set out in the charge Even if the words or the [illegible]

omission has misled the accused and occasioned a failure of justice *Chithambaram Pillai* v *Emperor I L R 32 Mad 37* referred to *Per* SANKARAN NAIR *J* —Where a person is charged under s 124A with exciting disaffection or bringing His Majesty into hatred or contempt the exciting of disaffection and not the utterance of seditious words is the gist of the offence and the charge need not set out the words nor need the words themselves be proved It is however quite different where the person is charged with *attempting* to excite disaffection. Attempt implies inten [illegible]

defect in the charge can be cured under s 225 or 537 of the Code of Criminal Procedure What ought to be contained in a charge is a different

PENAL CODE (ACT XLV OF 1860—*contd*

———— s 124A—*contd*

question from what ought to be proved to secure a conviction and although the omission to state the exact words may not vitiate the charge the words themselves must be proved to convict a per on for attempting to excite disaffection Where a per on records not the actual words u ed but imply notes of the impression made on his mind by a speech such notes are inadmi sible under s 160 of the Evidence Act to prove the actual words used MYLAPORE KRISHNASAMI v EMPEROR (1909)
I L R 32 Mad 384

7 ———— *Declaration under Act 25 of 1867 presumptive evidence of liability as printer and publisher—Criminal liability of proprietor of a newspaper—Authority of proprietor to publish proof of—S 14 of the Evidence Act* A person making a statutory declaration under Act XXV of 1867 that he is the printer and publisher of a newspaper is presumably liable as such printer or publisher but may rebut such presumption. *Ramasami* v *Loganatha I L R 9 Mad 387 390* The liability of a proprietor is not governed by the Act and depends upon different considerations The ground of liability in his case is that he auth ri ed the publication of the incriminating article The authority may be established by direct proof or as a reasonable inference from all the facts of the case Under s 14 of the Evidence Act, it is open to the Court to presume that the proprietor having the control of the paper authorises the publication of the matter [illegible]

remonstrance or interference from the proprietor when it has come to his knowledge Other issues of the same paper containing libellous matter are relevant as evidence to prove such authority Mere absence of the proprietor at the time of the publication of the libel will not rebut such presumption if during such absence he exercises complete control over the paper The English law on the subject discussed *Queen* v *Holbrook 4 Q B D 4*[illegible] referred to HARISARVOTHAMA RAO v KING EMPEROR (1909)
I L R 32 Mad. 338

8 ———— ss 124A 153A—*Sedition—Promoting enmity etc between classes—Publication what constitutes—Criminal Procedure Code (Act V of 1898) ss 2*[illegible] *233 234 235 236 and 37—Charges—Joinder of charges—Misjoinder of charges* The accused was charged at one trial with having committed offences punishable under ss 124A and 153A of the Indian Penal Code on two charges one with respect to each of the two articles he publi hed on different dates in his newspaper called the Hind Swarajya At the trial there was no other evidence of the publication of the newspaper in Bombay except the declaration made by the accused under the Press Act and the depositions of witnesses who received the newspaper in Bombay as Government servants in their capacity as such. The accused was convicted on both the charges and sentenced separately on each of them It was contended in appeal that there was no evidence of the publication of the newspaper in Bombay and that there was a misjoinder of charges vitiating the trial *Held* that the evidence on record was sufficient to prove the publication of the new paper in Bombay *Held* further that the trial was not bad as there had been no misjoinder of charges EMPEROR v TRIBHOVANDAS (1908)
I L R 33 Bom. 77

———— ss 124A 499 Excep 4—

See SEDITION I L R 35 Cal 141

———— s 141—

See BENGAL EXCISE ACT s 4
I L R 24 Calc 324

See RIOTING I L R 16 Cal 206

See UNLAWFUL ASSEMBLY

———— clause second—

See WARRANT OF ATTACHMENT
I L R 29 Calc 244

———— ss 141, 302 149—

See CHARGE I L R 36 Calc 281

———— s 143—

See post s 186 I L R 30 Calc 285

See ABSCONDING OFFENDER.
I L R 29 Calc 417

See SECURITY TO KEEP THE PEACE
I L R 35 Calc 316

See UNLAWFUL ASSEMBLY
I L R 9 Calc 639
7 N W 209
I L R. 14 Mad 129
5 C W N 368
I L R. 25 Mad. 624

———— *Order for security to keep the peace on conviction under s 143 379 Penal Code—Finding but not conviction of criminal intimidation—Legality of order* A conviction under s 143 or 379 of the Penal Code is not of itself sufficient to sustain an order under s 106 of the Criminal Procedure Code although such conviction coupled with findings bringing the ca e within the scope of s 106 may sustain an order thereunder But in such case these findings mu t be clear and explicit and moreover if the finding be that the

PENAL CODE (ACT XLV OF 1860)—contd

——— s 143—concld

accused was guilty of criminal intimidation the section expressly requires that the conviction must also be for that offence in order to sustain an order under the section KISHORE SIRCAR v KING EMPEROR (1904) 8 C W N 517

——— ss 143 144, 147 to 149—

See SENTENCE—CUMULATIVE SENTENCES

——— s 144—

See UNLAWFUL ASSEMBLY 5 C W N 250
I L R 24 Mad. 124

——— s 146—

See RIOTING I L R 13 Mad. 148

——— s 147—

See CRIMINAL PROCEDURE CODE s 437 5 C W N 72

See KIDNAPPING 6 C W N 208

See POLICE ACT (V OF 1861) ss 17 19 I L R 28 Calc 411

See PRIVATE DEFENCE RIGHT OF I L R 16 Calc 206
I L R 24 All 143

See RIOTING I L R 16 Calc 206
I L R 26 Calc 574
I L R 15 All 22
I L R 24 Calc 686
W R 1864 Cr 61
I L R 24 All 298

See WARRANT OF ATTACHMENT I L R 29 Calc 244

——— ss 147, 148 149—

See UNLAWFUL ASSEMBLY

——— ss 147 149 326—

See RIOTING I L R 36 Calc 827

——— ss 147 447—*Separate sentences if lawful* Illustration in s 35 of the Criminal Procedure Code referred to BHUP SINGH v EMPEROR (1904) 8 C W N 305

——— s 148—

See HURT—GRIEVOUS HURT 6 C W N 98

See UNLAWFUL ASSEMBLY 7 C W N 512

——— Lathi— *Deadly weapon* The question whether or not a lathi is a deadly weapon within the meaning of s 148 of the Penal Code is a question of fact to be determined on the special circumstances of each case as it arises QUEEN EMPRESS v NATHU I L R 15 All. 19

——— s 149—

See CHARGE TO JURY—MISDIRECTION I L R 29 Calc 379

See HURT—GRIEVOUS HURT 6 C W N 98

See POLICE ACT (V OF 1861) ss 17 19 I L R 28 Calc 411

See UNLAWFUL ASSEMBLY 7 C W N 512

——— s 150—

See UNLAWFUL ASSEMBLY I L R 29 Calc 214

——— s 151—

See UNLAWFUL ASSEMBLY I L R 7 Bom 42

——— s 152—

See SENTENCE—CUMULATIVE SENTENCE I L R. 19 Calc 105

——— *Assaulting or obstructing public servant in discharge of his duties—Charge form of—General charge* S 152 of the Penal Code contemplates an assault or obstruction to some particular public servant and where the charge against accused persons as framed was merely to the effect that they assaulted and obstructed members of the Police force in the discharge of their duties etc —*Held* that a conviction under that section could not be supported FERASAT v QUEEN EMPRESS I L R 19 Calc 105

——— s 153—

See RELIGION OFFENCES RELATING TO I L R 26 Mad. 554

1 ——— *Wantonly giving provocation with intent to cause riot—Abetment of riot by the public—Penal Code s 117* In August 1893 a riot took place in Bombay between Hindus and Musalmans The excitement caused by the riot *had not entirely subsided when the accused* composed and published a poem giving an account of the outbreak and incidentally extolling certain classes of the Hindu community namely the Ghatis and Kamatis for the brave resistance which they

Sooner or later but only once a man has to die The poem was written in Gujarati a language not ordinarily spoken by the Ghatis and Kamatis or even by the Mahomedans It did not appear that any copies of the work were distributed among the people who had taken part in the riot nor did any *fresh riot take place subsequently to the publication* of the work The accused were prosecuted and convicted under ss 117 and 153 of the Penal Code (XLV of 1860) on the ground that the lines quoted

PENAL CODE (ACT XLV OF 1860)—contd

——— s 153—concld

above specially the words Fight again were a direct instigation to the Ghatis and Kamatis to renew the disturbances *Held* that the meaning of the passages complained of was to be gathered from the whole poem The general spirit of the poem was clearly in favour of peace and reconciliation It consisted from beginning to end of a lamentation over the riots and the destruction and death they had caused and of repeated counsel to peace and harmony between Hindus and Mahomedans And there was nothing to indicate that the author s intention was to instigate the Hindus or provoke the Mahomedans to renew the disturbances The words Fight again were no doubt objectionable but it would not be a proper construction of the words to allow them to override the whole context of the work The composition could not be regarded as an illegal act and its publication was not malignant or wanton within the meaning of s 153 of the Penal Code QUEEN EMPRESS v KAHANJI **I L R 18 Bom 758**

2 ——— *Wantonly — Police Act (V of 1861) s 30—Disobedience to orders of police as to conduct of a procession* Where certain persons taking part in a religious procession gratuitously disobeyed the orders of the police concerning the manner in which such procession was to be conducted with the result that a riot was only averted by bringing armed police upon the scene it was *held* that the persons concerned acted —though not malignantly —yet wantonly within the meaning of s 153 of the Indian Penal Code and were properly convicted under that section *Held* also that a conviction under s 153 of the Indian Penal Code does not warrant the taking of action under s 106 of the Code of Criminal Procedure EMPEROR v HUSAIN BAKSH (1907) **I L R 29 All 569**

——— s 154—

See RIOTING **I L R 28 Calc 504**

——— ss 154 155—

See RIOTING **7 C W N 245**

See SESSIONS JUDGE JURISDICTION OF—ORDER FOR RE TRIAL ON APPEAL **7 C W N 301**

——— ss 154, 155 157—

See RIOTING **7 C L R 289**
4 C W N 691
I L R 12 All 550

——— s 155—*Rioting—Landholder s liability—Conviction of non resident co sharer—Active part in management* When there is no evidence to shew that an absentee co sharer in a zamindari takes an active part in the management and a resident co sharer has been sentenced to pay a fine under s 155 of the Penal Code *Radha Nath Chowdhury 7 C L R 289* and *Kazi Zeanuddin s*

PENAL CODE (ACT XLV OF 1860)—contd

——— s 155—contd

Case I L R 28 Calc 504 s c 5 C W N 771 referred to HARENDRA LAL ROY v EMPEROR (1904) **8 C W N 908**

——— s 156—

See RIOTING **I L R 13 Calc. 338**

——— s 157—

See UNLAWFUL ASSEMBLY **I L R 29 Calc 214**

——— ss 159 and 160—*Affray—Public place—Chabutra* *Held* that a *chabutra* which was neither a place to which the public had a right of access nor a place to which the public were ever permitted to have access was not though it adjoined a public road a public place within the meaning of s 159 of the Penal Code QUEEN EMPRESS v SRI LAL **I. L R 17 All. 166**

——— s 160—

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE **I L R 1 Mad 277**

——— s 161—

See ACCOMPLICE **I L R 27 Calc 144**
I. L R 26 Bom 193

See CHARGE—FORM OF CHARGE—GENERAL CASES **1 Ind. Jur N S 43**

1 ——— *Demand of dusturi by Civil Court peon* A demand of *dusturi* by a Civil Court peon from the plaintiff as a motive or reward for serving the summonses on his witnesses without an identifier amounts to an attempt to obtain an illegal gratification within s 161 of the Penal Code *Empress of India v Baldeo Sahai I L R 2 All 253* followed *Queen Empress v Ramakka I L R 8 Mad 5* distinguished PATAN MONI DEI v EMPEROR **I. L. R. 32 Calc 292**
s c. 9 C W N 547

2 ——— *Bribe— In the exercise of official functions —Motive or reward—Essentials of the offence* S 161 of the Indian Penal Code (Act XLV of 1860) requires proof that an official has obtained as a motive or reward for official conduct an illegal gratification for himself or

plated as the consideration for the bribe must be that of the official obtaining it This is clear from the phrase in the exercise of *his* official function To obtain a bribe as a motive or reward for another s conduct does not fall within the section though it may be an abetment of that offence or cheating The performance of the act which is consideration for the bribe is not essential But it is essential that the bribe should be obtained as a motive or reward That phrase evidently means on the understanding that the bribe is given in

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s 161—*concld*

con ideration of some official act or conduct Such an understan ling need not be proved by explicit evidence of any preci e agreement It may be in ferred from circumstances EMPEROR v BHAGWANDAS (1907) I L R 31 Bom 335

——— ss 161 expl. 163—

See KIDNAPPING 13 C W N 754

——— ss 161 162 165—

See ILLEGAL GRATIFICATION
I L R 2 All. 253
2 N W 148
3 W R Cr 10 19
I L R 21 Bom 517
9 C W N 292

See PUBLIC SERVANT 5 C W N 332

——— ss 161, 165 168—

See PUBLIC SERVANT
I L R 4 Calc 376
I L R 1 All 530
I L R 15 Mad 127

——— s 170—*Personating a public servant —Definition* *Held* that to constitute the offence provided for by s 1 0 of the Penal Code it is not

I L R 27 All. 294

1 ——— s 172—*Absconding to avoid service of summons—Evidence* In order to prove the commission of an offence under s 172 of the Penal Code the pro ecutor must show that a summons notice or order has been issued and that the ac cu ed knew or had reason to believe that it had been issued To abscond to avoid the service of proce s which ha not is ued is no offence under

after it has issued he absconds SRINIVASA AYYANGAR v QUEEN I L R 4 Mad 393

2 ——— *Warrant of arrest —Absconding offender* A warrant addressed to a police officer to apprehend an offender and bring him before the Magistrate is not a summons notice or order within the meaning of s 172 of the Penal Code and the offence of absconding by an offender against whom a warrant has been so issued is not punishable under that section QUEEN v WOMESH CHUNDER GHOSE 5 W R Cr 71

QUEEN v AMIR JAN 7 N W 302

QUEEN v HOSSEIN MANJEE 9 W R Cr 70

3 ——— *Warrant addressed to Nazir—Warrant of arrest in execution of decree*

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 172—*concld*

A warrant addressed to a Nazir by a Civil Court for

ALI KHAN 4 ...

1 ——— s 173—*Refusal to give receipt for summons* A refusal to give a receipt for a summons is not an offence under s 173 of the Penal Code *In re* BHOOBUNESWAR DUTT
I L R 3 Calc 621 2 C L R 60

REG v KALYA BIN FAKIR 5 Bom Cr 34

QUEEN EMPRESS v KRISHNA GOBINDA DAS
I L R 20 Calc 358

2 ——— *Refusal to receive summons* A refusal to receive a summons is not an offence under s 173 of the Penal Code QUEEN v PUNAMALAI I L R 5 Mad 199

QUEEN v ARUMUGA NADAN
I L R 5 Mad 200 note

3 ——— *United Provinces Land Revenue Act (Local III of 1901) ss 147 195 and 196—Citation to appear—Refusal to accept citation or to sign duplicate* *Held* that the refusal to accept a citation issued under s 147 of the Land Revenue Act or to sign the duplicate thereof is not an offence under s 173 of the Indian Penal Code *The Queen v Punamalai Nadan I L R 5 Mad 199 Reg v Kalyabin Fakir 5 Bom H C Rep Cr C 34 In the matter of Bhoobuneswar Dutt I L R 3 Calc 621 Queen Empress v Hira Lal All Weekly Notes (1883) 2?2* and *Queen Empress v Krishna Gobinda Das I L R 20 Calc 358* referred to EMPEROR v AHMAD HUSAIN KHAN (1909) I L R 31 All 608

——— s 174—

See COMMISSION—CIVIL CASES
6 C W N 927

See CONTEMPT OF COURT—PENAL CODE s 174

See HOLIDAY 8 B L P Ap 12

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
I L R 18 Bom 380

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—PENAL CODE
8 W R Cr 61

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
I L R 24 Calc 320

——— *Escaping from custody of peon* Complainant a batta peon arrested defendant on a warrant and asked him to follow him. Defendant promised to do so and went into his house on the pretext of getting a turban and absconded. *Held* that a conviction under s 174 of the Penal Code was illegal. ANONYMOUS
7 Mad Ap 44

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 153—*concld*

above specially the words Fight again were a direct instigation to the Ghatis and Kamatis to renew the disturbances *Held* that the meaning of the passages complained of was to be gathered from the whole poem The general spirit of the poem was clearly in favour of peace and reconciliation It consisted from beginning to end of a lamentation over the riots and the destruction and death they had caused and of repeated counsel to peace and harmony between Hindus and Mahomedans And there was nothing to indicate that the author s intention was to instigate the Hindus or provoke the Mahomedans to renew the disturbances The words Fight again were no doubt objectionable but it would not be a proper construction of the words to allow them to override the whole context of the work The composition could not be regarded as an illegal act and its publication was not malignant or wanton within the meaning of s 153 of the Penal Code QUEEN EMPRESS v KAHANJI **I L R 18 Bom 758**

2 ———— *Wantonly — Police Act (V of 1861) s 30—Disobedience to orders of police as to conduct of a procession* Where certain persons taking part in a religious procession gratuitously disobeyed the orders of the police concerning the manner in which such procession was to be conducted with the result that a riot was only averted by bringing armed police upon the scene it was *held* that the persons concerned acted —though not malignantly —yet wantonly within the meaning of s 153 of the Indian Penal Code and were properly convicted under that section *Held* also that a conviction under s 153

I L R 29 All 569

———— s 154—

See RIOTING **I L R 28 Calc 504**

———— ss 154 155—

See RIOTING **7 C W N 245**

See SESSIONS JUDGE JURISDICTION OF—ORDER FOR RE TRIAL ON APPEAL **7 C W N 301**

———— ss 154 155 157—

See RIOTING **7 C L R 289** **4 C W N 691** **I L R 12 All 550**

———— s 155—*Rioting—Landholder s liability—Conviction of non resident co sharer—Active part in management* When there is no evidence to shew that an absentee co sharer in a zamindari takes an active part in the management and a resident co sharer has been sentenced to pay a fine under s 155 of the Penal Code *Radha Nath Chowdhury 7 C L R 259* and *Kazi Zeanuddin s*

———— s 155—*contd*

Case I L R 28 Calc 504 s c 5 C W N 771 referred to HARENDRA LAL ROY v EMPEROR (1904) **8 C W N 908**

———— s 156—

See RIOTING **I L R 13 Calc 338**

———— s 157—

See UNLAWFUL ASSEMBLY **I L R 29 Calc 214**

———— ss 159 and 160—*Affray—Public place—Chabutra* *Held* that a *chabutra* which was neither a place to which the public had a right of access nor a place to which the public were ever permitted to have access was not though it adjoined a public road a public place within the meaning of s 159 of the Penal Code QUEEN EMPRESS v SRI LAL **I L R 17 All 166**

———— s 160—

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE **I L R 1 Mad 277**

———— s 161—

See ACCOMPLICE **I L R 27 Calc 144** **I L R 26 Bom 193**

See CHARGE—FORM OF CHARGE—GENERAL CASES **1 Ind. Jur N S 43**

8 Mad 5 distinguished RATAN MONI DEI v EMPEROR **I L R 32 Calc 292** **s c 9 C W N 547**

2 ———— *Bribe— In the exercise of official functions —Motive or reward—Essentials of the offence* S 161 of the Indian Penal Code (Act XLV of 1860) requires proof that an official has obtained as a motive or reward for official conduct an illegal gratification for himself or another That other may or may not be an official and therefore may be wholly unconnected with the official conduct The conduct which is contemplated as the consideration for the bribe must be that of the official obtaining it This is clear from the phrase in the exercise of *his* official function To obtain a bribe as a motive or reward for another s conduct does not fall within the section though it may be an abetment of that offence or cheating The performance of the act which is consideration for the bribe is not essential But it is essential that the bribe should be obtained as a motive or reward That phrase evidently means on the understanding that the bribe is given in

PENAL CODE (ACT XLV OF 1860)—contd

——— s 177—*concld.*

asked *B* his name he gave *A*'s name instead of his own *Held* not to be cheating by personation under s 416 Penal Code but giving false information under s 177 Reg v Paghoji bin Kanoji
3 Bom Cr 42

10 ——— *False information in a Road cess return—Road cess and Public Works Cess Act (IX B C of 1880) ss 14 94 95—Object of—Return submitted under s 14 of the latter Act—False information in return* The object of ss 94 and other sections of the Road cess and Public Works Cess Act (IX B C of 1880) was to secure that the person submitting a return should not submit one in which he under valued his property for the purpose of the Road cess and Public Works Cess Where the petitioner in a return submitted under the Road cess and Public Works Cess Act stated that certain lands of his were held by a tenant one *P* at a rental of Rs 2 but the Deputy Magistrate on evidence found that those lands were held by another tenant under him at a rental of as 8 and that the object of the petitioner in submitting the false return was to create evidence for his success in a civil suit instituted by him —*Held* [illegible]

[illegible]

——— ss 178 179—

See Misjoinder of Charges
I L R 35 Calc 161

1 ——— s 179—*Evidence—Witness—Evidence Act (I of 1872) s 165* Under s 165 of the Evidence Act (I of 1872) a Judge has the power of asking irrelevant quesions to a witness if he does so in order to obtain proof of relevant facts but if he asks questions with a view to criminal proceedings being taken against the witness the witness is not bound to answer them and cannot be punished for not answering them under s 179 of the Penal Code Empress v Hari Lakshman
I L R 10 Bom. 185

2 ——— ——— *Witness refusing to answer—Complainant—Criminal Procedure Code 1882 s 485 Semble* A complainant is not a witness punishable for refusal to answer under s 485 of the Code of Criminal Procedure or under s 179 of the Penal Code *In re* Ganesh Narayan Sathe
I L R 13 Bom. 600

3 ——— *Criminal Procedure Code 1898 s 161—Refusal to answer questions of police officer* A refusal to answer questions [illegible]

[illegible]

1 ——— s 180—*Refusal to sign statement made before Magistrate—Code of Criminal Procedure (X of 1872) ss 172 and 346* An accused person who refuses to sign a statement made at his trial in answer to questions put by the Court commits no offence punishable under s 180 of the Penal Code Empress v Sirsapa
I L R 4 Bom. 15

2 ——— *Criminal Procedure Code (Act X of 1882) ss 69 71—Criminal Procedure Code (Act X of 1872) s 154—Refusal to sign receipts for summons* A mere refusal to sign a receipt for a summons is not an offence under s 180 of the Penal Code Queen Empress v Krishna Gobinda Das I L R 20 Calc 358

——— s 181—

See False Evidence—General Cases
I L R 6 Mad 252
8 Bom Cr 21
4 Mad. Ap 18
I L R 5 All. 17

See Sentence—Imprisonment—Imprisonment generally 4 Mad. Ap 18

——— s 182—

See Appeal in Criminal Case—Criminal Procedure Code
I L R 25 All. 534

See Bengal Municipal Act 1884 s 133
I L R 22 Calc 131

See Criminal Procedure Code s 517
9 C W N 597

See False Charge 8 W R Cr 67
I L R 5 All. 36 387
I L R 7 Bom. 184
I L R 5 Calc 184
4 C L R 134
7 C L R 382
5 C W N 727
I L R 26 Mad. 640

See Malicious Prosecution
I L R 19 Bom 717

See Sanction for Prosecution—Nature Form and Sufficiency of Sanction I L R 20 Calc 474
9 C W N 180

See Sanction for Prosecution—

Power to grant Sanction
I L R 27 Bom. 130
I L R 27 Calc 452
4 C W N 366

Power to question Grant of Sanction I L R 4 Calc 869

Revocation of Sanction
I L R 27 Bom 130

Where Sanction is necessary or otherwise I L R 8 All. 382
13 W R Cr 67

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 182—*contd*

1. ———————— *False information to the police—Charge made against no specific person—Specific charge* S 182 of the Penal Code must be read as an entire section and when so read it applies to those cases in which the police are induced upon information supplied to them to do or omit to do something which might affect some

AHMED KAZI I L R 14 Calc [illegible]

2. ———————— *Giving false information to a public servant* Under s 182 of the Penal Code (Act XLV of 1860) the giving of false information to a public servant is penal when either of two consequences is intended to be caused or is known to be likely to be caused by the false information the first being the causing the public servant to use the lawful power of such public [illegible] on [illegible] to [illegible] vant [illegible] facts respecting which such information is given were known to him To constitute an offence under the latter part of the section it is not necessary to show that the act done would be to the injury or annoyance of any third person *A* personated *B* at an examination called the Vernacular Sixth Standard Examination *A* passed the examination and obtained a certificate from the educational authorities in *B* s name *B* thereupon applied to the Assistant Collector to have his name entered in the list of candidates for service in the Revenue Department He attached to this application the certificate issued in his name as it was a rule of Government that only those who had passed the Sixth Standard Exam[illegible] Reve[illegible] tion [illegible] entered on the list of candidates *Held* that *B* was guilty of the offence of giving false information to a public servant within the meaning of the latter part of s 182 of the Penal Code QUEEN EMPRESS *v* GANESH KHANDERAO I. L. R 13 Bom. 506

3 ———————— *Criminal Procedure Code ss 342 4[illegible]8 540—Examination on affirmation of one preferring a criminal appeal—Verification of petition of appeal* In a petition of appeal from a conviction the appellant falsely stated that the convicting Magistrate declined to summon his witn[illegible] The Magistrate to whom the appeal [illegible] committed an offence under s 181 or 182 of the Penal Code QUEEN EMPRESS *v* SUBBAYYA I L R 12 Mad. 451

4 ———————— *Giving false information to public servant—Definition of offence provided for in s 182 explained* In order to constitute the offence defined in s 182 of the Penal Code it is not necessary that the public servant to whom false [illegible] lic servant to whom false information is given [illegible]

QUEEN EMPRESS *v* BUDH SEN I. L R 13 All 351

5 ———————— *False information to a public servant—False complaints to police* Where as the result of a police investigation it appears that a complaint made to the police of the commission of an offence punishable under the Penal Code is false it is not necessary that the complainant should be given any further opportunity of establishing the truth of his allegation before his prosecution under s 128 of the Penal Code is ordered QUEEN EMPRESS *v* RAGHU TIWARI I. L R 15 All 336

6 ———— and s 189—*Right of person against whom information has been falsely given to institute criminal prosecution—Consent of public servant* A person against whom information has been falsely given with a view to his injury has a right to bring a civil action for damages with or without the consent of the public servant against whom the offence was committed but he cannot bring a criminal charge under s 189 or any other section of Ch X of the Penal Code without the permission of such public servant the law looking upon the conduct of the person who gives the false information as an offence not against the individual charged but against the public servant to whom the false information was given To constitute an offence under s 182 of the Penal Code the information given must be information which the informer knew or believed to be false and it must be proved that he gave it with such knowledge *In the matter of the petition of* ABDOOL LUTEEF 9 W R Cr 31

See QUEEN *v* RAM GOLAM SING 11 W R Cr 22

7 ———————— *Statements made by prisoner for his defence* Statements made by a prisoner for the purposes of his defence cannot be held to be information given to a public servant within the meaning of s 182 of the Penal Code QUEEN *v* DARIA KHAN 2 N W 128

8 ———————— *Giving false information to public servant* S 182 of the Penal Code does not apply where the public servant misinformed is only competent to pass and passes on the information and the power to be exercised by him cannot tend to any direct or immediate pr

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 182—*contd*

judice of the person again t whom the information is levelled QUEEN v PERIANNAN I L R 4 Mad 241

9 ——— *Furnishing false information—Cheating* A person attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be fal e to the District Superintendent of Police *Held* that such per on had not thereby committed an offence puni hable under s. 177 or s. 182 of the Penal Code or the offence of attempting to cheat within the meaning of s. 415 of that Code EMPRE S v DWARKA PRASAD I L R 6 All 97

10 ——— *Giving false information to a public servant* M falsely in formed the Collector of a district that certain zamindars had usurped pos ession of certain land belonging to Government with the intent to give trouble to such zamindars and waste the time of the public authorities. *Held* that inasmuch as such information was no more than an expression of a private person s belief that the Collector might if he chose sustain a civil suit with success against such zamindars and as had the Collector agreed with the informant the result would not have been that he would have used his lawful power as a Coll...

11 ——— *Public servant—Forest Act (VII of 18..)* ...

the informant or is given in answer to questions put to him by that officer QUEEN EMPRESS v RAMJI SAJABARAO I L R 10 Bom 124

12 ——— *Complaint of* ...

...HURREE RAM ... N W 194

13 ——— and s 211—*Prosecution under s 182—Complaint—Rejection with reference to police report* K made a report at a police station ...

Magistrate again accusing R of the offence The Magistrate rejected the complaint with reference to the police report. Subsequently R with the sanc tion of the police authoritie instituted criminal proceedings against K under s. 182 of the Penal

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 182—*concl'd*

Code in respect of the ...

no power to entertain a complaint under that sec tion at the instance of R the application of s 182 and the in titution of prosecutions under it being limited to the public ervant against whom the off ence has been committed or to his official superior as mentioned in s 467 of Act X of 1872 and it is not be... enforc... over... against R and not against the public servant to whom the complaint was made and fell within s 211 of the Penal Code EMPRESS v RADHA KISHAN I L R 5 All 36

14. ——— *Prosecution sanction to—Criminal Procedure Code s 195* A prosecution under s 182 of the Penal Code may be instituted by a private person provided that he first obtains the sanction of the public officer to whom the false information was given or of his official superior *Empress v Radha Kishan I L R 5 All 36* overruled QUEEN EMPRESS v JUGAL KISSORE I L R 8 All 382

15 ——— *False information to a public servant charge of—Criminal Procedure Code s 195—Sanction to prosecution—Separate convictions for one statement illegality of* An information was given to a police officer in the course of which two persons were named in who e houses stolen property belonging to a certain individual would be discovered on complaint the information was found to be false and the accused was convicted and punished for two offences under s 182 as affecting two different persons. *Held* that although the information related to two different person the accused could be charged with having made only one fal e statement and punished for one offence under s. 182 S 195 Criminal Procedure Code clearly shows that a complaint directly made by a public servant mentioned therein is quite as sufficient as his sanction *Empress v Radha Kishan I L R 5 All 36* dissented from POONIT SINGH v MADHO BHOT I L R 13 Calc 270

16 ——— *Criminal Procedure Code (Act V of 1898) s 154 162—False in...*

its being passed on to the Station house Officer who on receiving the information takes a com plaint in writing from such informant the com plaint is one taken under s 154 and not under s 162 of the Criminal Procedure Code *Queen v Perriannan* and *Queen v Narayna I L R 4 Mad 241* distinguished. EMPEROR v JONNALAGADDA VENKATRAYUDU (1905) I L R 28 Mad. 565

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 182 211—

1. ——— *False information—False charge—Distinction between the two offences* The accused sent a telegram to the Collector of Patnagiri in his capacity of the head of the Municipality at Vengurla to the effect that "Head Master English School (Vengurla) misappropriated P 168 of fees since October Please investigate yourself soon" For this the accused was convicted under s 182 of the Indian Penal Code (Act XLV of 1860) on the grounds that he had no probable cause for making the assertion contained in the telegram and that he probably knew that a peon had confessed that he was guilty of the misappropriation. *Held* that on these facts the charge under s 182 of the Code could not be legally sustained The offence made punishable by s 182 of the Indian Penal Code is a distinct offence from that described in s 211 of the Code which relates to an attempt to put the Criminal Courts in motion against another person The action which s 214 renders penal is action entailing very serious consequences and therefore the more serious consideration is required on the part of the individual who takes it It is sufficient in such cases for the prosecution to establish that there was no just or lawful ground for the action taken and that the accused knew this But something more is required in the case of action referred to in s 182 To bring a case within that section it is necessary for the prosecution to prove not merely absence of reasonable or probable cause for giving the information but a positive knowledge or belief of the falsity of the information given EMPEROR v RAMCHANDRA (1906) I L R 31 Bom. 204

2 ——— *Criminal Procedure Code (Act V of 1898) s 195—Information given to the police alleged to be false—Procedure—Notice* Where a District Magistrate upon a report made by the police that information given to them charging a person with a specific crime is false orders the person giving such information to be prosecuted under s 211 of the Penal Code such order is not an order to which s 195 (b) of the Code of Criminal Procedure applies neither is the order passed without jurisdiction if no previous notice to show cause is given to the accused. The more proper course however would be to let the informant bring his witnesses into Court hear them out and then if the case was considered to be a false case to pass an order that the informant should be tried under s 211 of the Penal Code *Queen Emp v Ganga Ram I L R 8 All 38 Emperor v Tula I L R 9 All 58* and *Haibat Khan v Emperor I L R 33 Calc 31* distinguished. EMPEROR v TABARAK ZAMAN KHAN (1907) I L R 30 All. 52

3 ——— *False information—Alleged occurrence found not to have taken place—Person mentioned as suspected* Where on an information lodged to the police by the petitioner alleging that there had been a burglary in his house and a sum of money and a mortgage bond had been stolen and that he suspected one A and his brother in law one *B* who he said would be benefited by the loss of the mortgage bond the Deputy Commissioner directed an enquiry by a Deputy Magistrate who on enquiry found the information to be false and submitted his report to the Deputy Commissioner and the Deputy Commissioner directed the prosecution of the petitioner under s 211 Indian Penal Code but this order having been set aside by the High Court the Deputy Commissioner returned the record of the case to the Deputy Magistrate who had held the enquiry and the Deputy Magistrate on the examination of two more witnesses tendered by the petitioner ordered his prosecution under ss. 182 and 211 Indian Penal Code —*Held* that the order for prosecution was not bad in law under s 476 Criminal Procedure Code *Begu Singh v Emperor 11 C W N 568 c I L R 34 Calc 551 Rahimudulla v The Emperor I L R 31 Mad 140* explained. Where in his information to the police the petitioner did not name any one as *the actual offender but what he did was to* report that a burglary or theft had taken place in his house and that he suspected that the opposite party had instigated it —*Held* that the order for prosecution of the petitioner under s 211 Indian Penal Code was justified as it was found by the Magistrate that as a matter of fact no burglary or theft had at all taken place as alleged by the petitioner BROJOBASHI PANDA v THE EMPEROR (1908) 13 C W N 398

——— s 183—

See ABSCONDING OFFENDER. I L R 29 Calc 417

See CRIMINAL PROCEDURE CODE s 476 7 C W N 423

See WARRANT OF EXECUTION 5 C W N 391

1. ——— *Resistance to taking of property by the authority of a public servant—Objection to attachment of property in execution of a decree* A mere oral statement by a person claiming to be the owner of certain articles attached by a bailiff in execution of a decree to the effect that he would not allow the bailiff to take away the articles unless he entered them as his property does not amount to an offence under s 183 of the Indian Penal Code QUEEN EMPRESS v HUSAIN I L R 15 Bom 564

2 ——— *Resistance to attachment—Lawful authority—Village Chaukidari Act (Bengal Act VI of 1870) ss 26 27 and 31* Where a village chaukidar without the preparation and publication of a list of defaulters and without any written authority as required by s. 26 and s 27 of the Village Chaukidari Act (Bengal Act VI of 1870) attached some property for levying the amount of arrears —*Held* that resistance to such attachment was not an offence under

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 183—*concld*

s 183 of the Penal Code DURGA CHARAN MALI *v* NOBIN CHANDRA SIL I L R. 25 Calc 274

3 ——— *Resistance to the taking of property—Attachment of goods not being property of judgment-debtor* A decree having been passed against the assets of a deceased debtor execution was taken out and the officer of Court proceeded to seize certain goods The accused successfully resisted the seizure asserting that the goods seized were his own He was thereupon charged with having committed an offence under the Penal Code s 183 but he was acquitted for want of proof by the prosecution that the goods were assets of the deceased *Held* that the acquittal was wrong and should be set aside QUEEN EMPRESS *v* TIRUCHITTAMBALA PATHAN I L. R. 21 Mad 78

4. ——— *Attachment—Warrant not in the possession of the amin at the time of making the attachment—Lawful authority* It is the intention of the law that when a public servant attaches property under a warrant in execution of a decree he must have the warrant with him otherwise the taking of the property is not lawful *Empress of India v Amar Nath I L R 5 All 311* referred to EMPEROR *v* GANESHI LAL (1905) I L R 27 All 258

——— s 184—*Agra Tenancy Act (II of 1901) s 134—Distraint—Sale adjourned owing to absence of bidders—Obstruction to sale on adjourned date* The law as laid down in Chapter IX of the Agra Tenancy Act 1901 does not authorise the adjournment of a sale of distrained property owing to the absence of bidder Hence where for this reason an amin adjourned a sale and fixed a fresh date and obstruction was offered to the sale so adjourned it was *held* that the persons so obstructing the sale could not be convicted under s 184 of the Penal Code EMPEROR *v* TARA SINGH (1905) I L R 27 All 480

——— s 185—

See CRIMINAL PROCEDURE CODE s 487 (1872 s 473) 7 N W 132

——— s 186—

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT I L R 20 Calc 481

See PUBLIC SERVANT I. L R 29 Calc 236

See WARRANT OF EXECUTION 5 C W N 391

1 ——— *Obstructing public servant in the execution of his duty—Escape from lawful custody* Escaping from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of s 186 of the Penal Code REG *v* POSHU BIN DHAMBAJI PATIL 2 Bom 134 2nd Ed. 128

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 186—*contd*

2 ——— *Refusal to accompany measuring clerk employed under Bom Act I of 1865* Conviction and sentence under s 186 of the Penal Code reversed as the conduct of the accused refusing to accompany a measuring clerk employed under Act I of 1865 (Bombay) to his (the accused s) house and permit it to be measured did not constitute the offence of obstructing a public servant in discharging his public functions REG *v* BHAGTIDAS BHAGVANDAS 5 Bom. Cr 51

3 ——— *Obstruction to officer unjustifiably searching without warrant though acting in good faith* An officer subordinate to the officer in charge of a police station who was deputed by the latter to make an enquiry under s 135 Criminal Procedure Code 1861 attempted without a search warrant to enter a house in search of property alleged to have been stolen *Held* that persons obstructing and resisting his so doing could not set up the illegality of the officer s proceeding as a justification of their obstruction unless it was shown the officer was acting otherwise than in good faith and without malice REG *v* VYANKATRAV SHRINIVAS 7 Bom. Cr 50

4 ——— and s 183—*Obstructing public servant—Bailiff breaking open doors unjustifiably* If a bailiff break the doors of a third person in order to execute a decree against a judgment debtor he is a trespasser if it turn out that the person or goods of the debtor are not in the house and under such circumstances the owner of the house does not by obstructing the bailiff render himself punishable under s 183 or s 186 of the Penal Code REG *v* GAZIKOM ABA DORE 7 Bom Cr 83

5 ——— *Refusal of cart owner to hire his cart to Government officer* The refusal of a cart owner to give his cart on hire to a Government officer does not constitute the offence of obstructing a public servant in the discharge of his public functions within the meaning of s 186 of the Penal Code REG *v* DHORI KULLAN 9 Bom 165

6 ——— *Mouzadar—Public servant* Conviction under s 186 of the Penal Code of obstructing a mouzadar in the discharge of his duty reversed there being nothing to show that the mouzadar was a public servant JOYNATH *v* SOORJARAM 8 W R Cr 66

7 ——— *Voluntarily obstructing a public servant in discharge of his duties—Mamlatdar s decree—Execution by a surveyor under Collector s orders—Public function—Right of private defence* In a suit filed in a Mamlatdar s Court under Bombay Act III of 1876 the plaintiff obtained a decree against the accused for possession of a certain piece of land When the Mamlatdar proceeded to execute the decree he found that there was no land corresponding to the boundaries set forth in the plaint and that the parties were

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 186—*contd*

joint owners and in joint occupation of the land in dispute Finding himself unable to execute the decree the Mamlatdar referred the matter to the Collector for advice The Collector on looking into the papers of the case ord red a surveyor to *execute the decree by dividing the land in dispute* and putting the decree holder in possession of his share The surveyor in attempting to execute the decree was obstructed by the accused who was thereupon tried and convicted of the offence of voluntarily obstructing a public servant in the d change of h s publ c functions under s 186 of the Penal Code (Act XLV of 1860) *Held* rever ing the conviction that as the Collector had no legal authority to i sue the order to the surveyor in execution of the Mamlatdar s decree the surveyor acting under that order was not di charging a public function and the act of the accused was not an offence against s 186 of the Penal Code *Held* further that the Collector s order was so entirely *ultra vires* as to leave no room for the operation of either the first or the second clause of s 99 of the Penal Code QUEEN EMPRESS v TULSIRAM I L R 13 Bom. 168

8 ———— *Public servant—Ameen appointed under Bengal Tenancy Act (VIII of 1885) s 69—Bengal Tenancy Act s 89* A person nominated by the Collector under s 69 of the Ben

9 ———— *Obstructing a public servant—Public vaccinator* To spread a false report and thereby prevent persons from bringing their children for vaccination to the public vac cinator is not an offence under Penal Code s 186 QUEEN EMPRESS v THIMMACHI I L R. 15 Mad. 93

10 ———— and s 183—*Obstructing public servant— Voluntarily* A District Judge order ed that the hou e of the defendant in a suit pend ing before him be searched and certain property brought to the Court and appointed a commis ioner to carry out this or ler The commissioner went to the house but the defendant shut the doors and would not a lmit him A crowd collected an l the commis ioner felt it would be unsafe to proceed to carry out the ord r by force and was unable to do o otherwise The defendant was pro secute l an l nt need un ler Penal Code s 186 *Held* that the facts di clo ed no offence under that section Th us of the word voluntarily in that secti n eem to cont mplate some overt act of *obstruction* an l not that mere passive conduct shoul l be penal QUEEN EMPRESS v SOMMANNA I L R 15 Mad 221

11 ———— *Voluntarily obstructing p l c rvant in di charge of his duties—Impeding railway servant—Railways Act (IX of 1890) ss 121 122* Before a person can be convicted of wilfully obstructing or impeding a railway servant in the discharge of his duties as provided in s 121 of the Railways Act (IX of 1890) or of voluntarily ob tructing a public servant in the discharge of his public functions as provided by s 186 of the Penal Code it must be shown that the obstruction or resistance was offered to the railway or public servant in the discharge of his duties or public functions as authorized by law The mere fact of a public servant or railway servant believing he was acting in the discharge of his duties or public functions is not sufficient to make re istance or obstruction to him amount to an offence *In the matter of the petition of* BARODA KANTO PRAMANICK 1 C W N 74

12 ———— *Obstructing public servant in discharge of his public functions—Ameen*

tions and were not intended to cover any act that a public functionary might choose to take upon him self to perform A butwarra Ameen in proceeding to measure certain lands in the cour e of proceed ings connected with the partition of an estate under Bengal Act VIII of 1876 was obstructed by certain persons who claimed the lands and objected to their being measured The lands were stated in the report of the Ameen to be the common land of estate No 546 and of certain other estates The per ons who obstructed him were not co sharers in that estate and contended that the land sought to be measured had been divided amongst the maliks of the different estates and different portions of it had been held separately by them The persons so obstructing the Ameen were charged with an offence under s. 186 of the Penal Code the Deputy Collector in charge of the butwarra proceedings being of opinion that s. 112 of the Act applied and that the Ameen was entitled to mea ure the land The accused were convicted *Held* that s. 112 is limited to ca es where the community of

... lence to show

that as the procedure laid down in that section had not been followed the Ameen had no power to mea sure the lands and could not be said to be a public servant acting in discharge of his public functions and that the conviction must consequently be set aside. LILLA SINGH v QUEEN EMPRESS I L R 22 Calc 286

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 186—*contd*

13 — — — — — *Obstructing public servant in discharge of his public functions—Public servant acting under warrant of arrest not in legal form—Criminal Procedure Code 1882 ss 75 and 80—Warrant of arrest without signature of Magistrate and notification of substance of warrant—Discharge of public functions* A public servant executing a warrant of arrest which is not signed by the Magistrate as required by s 75 of the Criminal Procedure Code but only bears his initial and the substance of which is not notified to the person to be arrested as required by s 80 of the Code cannot be said to be acting in the discharge of his public functions in a manner authorized by law A person obstructing him cannot be convicted under s. 186 of the Penal Code ABDUL GAFUR *v* QUEEN EMPRESS I L R 23 Calc 896

14 ———— and s 21—*Obstructing public servant in discharge of public functions—Court peon—Nazir s power of delegation of service of warrant to peon—Civil Procedure Code 1882 s 251—Court fees Act (VII of 1870) s 22—Service of warrant of attachment* The petitioner was convicted under s. 186 of the Penal Code of obstructing a Civil Court peon who was attaching his property in execution of a decree the warrant of attachment was addressed to the Nazir of the Court who delegated its execution to a peon by an endorsement of the peon s name *Held* that the Nazir ...

ants of arrest or of attachment or for distress and sale are to be executed by the proper officer in any manner different from the service of summonse The Court fees Act (VII of 1870) distinctly contemplates that the peons are to be employed not only for the service of summonses notices or orders but also for the execution of other processes such as warrants of arrest or of attachment and distress Though the authority may well be conferred in more clear and explicit terms than are expressed by a mere endorsement by the Nazir of the peon s name still it is impossible to say that that is not sufficient evidence of the delegation DHARAM CHAND LAL *v* QUEEN EMPRESS I L R 22 Calc 596

15 ———— and s 21—*Nazir s power of delegation—Public servant—Peon—Escape from arrest* A Nazir has authority to delegate the execution of warrants of arrest. *Dharam Chand Lal v Queen Empress I L R 22 Calc 596* followed. A peon acting under such delegation is a public servant within the meaning of the definition in s 21 cl 4 of the Penal Code *Quære* Whether the escape of a prisoner from arrest is an obstruction of a public servant within the meaning of s 186 of the Penal Code SHEO PROKASH TEWARI *v* BHOOP NARAIN PROSAD PATHAK I L R 22 Calc 759

16 ———— *Illegal issue of warrant of arrest—Code of Criminal Procedure 1882 ss 76 81 90 and 160—Penal Code (Act XLV of 1860) ss 143 and 174—Justifiable assault—Investigation by police—Power of Magistrate to issue warrant of arrest for production of witness* Where a District Magistrate issued a warrant for the ...

the fact that the attempt to arrest was made on the wrong person a District Magistrate has no authority to issue a warrant for the production of a witness at an investigation by a police officer but only before his own Court under ss 76 and 81 of the Code of Criminal Procedure *Held* also that as the investigation was held by a police officer under Ch XIV of the Criminal Procedure Code the proper course was for the Sub Inspector of Police to require the attendance of the witness under s 160 of the Code of Criminal Procedure and on failure by her to comply with such order prosecute her under s 174 of the Penal Code *Held* further that the accused ...

I L R 24 Calc 320
1 C W N 154

17 ———— and ss 99 and 353—*Madras Local Boards Act (Madras Act V of 1884) ss 77 78 81 91 163—Service of notice of demand of house tax—Omission to fill up the house register completely—Illegal distraint—Resistance to distraining officer* A notice of demand of a house tax under the Local Boards Act V of 1884 (Madras) was affixed to the house The owner who was a potter and cultivator by occupation was in the village at the time He did not pay the tax A warrant of distress was issued the house register not having been completely filled up and a bucket and spade belonging to the defaulter were attached The defaulter successfully resisted the distraint *Held* that the provisions of the Act had been sufficiently complied with as regards the preliminary steps for making the demand and the service of notice and the fact that the spade and the bucket were protected from attachment under s 94 did not justify the resistance and accordingly that the defaulter was guilty of offences under Penal Code ss. 186 and 353 QUEEN EMPRESS *v* POOMALAI UDAYAN I L R 21 Mad. 296

18 ———— *Survey Act (Ben Act V of 1875) s 45—Kanungo appointed by a Settlement officer whether a public servant—Penal Code (Act XLV of 1860) s 186—Obstructing a public officer in the discharge of his duties as such* Obstruc

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 186—*concld*

tion offered to a *Kanungo* appointed by a Settlement Officer for the purpose of demarcating the boundary line of certain *khas mahal* lands but who cannot be regarded as properly di charging any of the functions mentioned in s 45 of the Survey Act (Ben Act V of 1875) would not amount to an offence under s. 186 of the Penal Code MOULA BUX *v* KING EMPEROR (1901) 6 C W N 120

19 ——— *Public servant—Obstruction—Distraint—Crops—Sanction—Unlawful assembly—Bengal Tenancy Act (VIII of 1885) ss 123 and 126—Criminal Procedure Code (Act V of 1898) ss 4 and 195—Penal Code (Act XLV of 1860) ss 143 and 186* A peon was ordered by the Civil Court under the provi ions of the Bengal Tenancy Act to cut certain crops which had already been distrained. The peon with some labourer cut a portion of the crops when they were forcibly stopped by the petitioners and a mob of men The *peon* lodged information of the occurrence at the *thana* The petitioners were convicted under ss 143 and 186 of the Penal Code *Held* that as there was in this case no complaint as defined by s. 4 of the Criminal Procedure Code of the public servant concerned the conviction under s. 186 of the Penal Code should be set aside KAILAS KURMI *v* EMPEROR (1902)
I L R 30 Calc 285

20 ——— *Northern India Canal and Drainage Act VIII of 1873 ss 15 and 4 —Mode of collection of canal dues—Distraint*

from realizing canal dues from the per ons by whom the dues are actually payable *Queen Empress v Poomalai Udayan I L R 21 Mad 296* referred to EMPEROR *v* ABDULLAH (1905)
I L R 27 All. 496

——— s 187—

See FALSE EVIDENCE—GENERAL CASES
I. L R 23 Mad 544

See FOREST ACT s 78
I L R 22 Bom. 769

See PUBLIC SERVANT
I L. R. 26 Mad. 419

——— s 188—

See BOMBAY DISTRICT MUNICIPAL ACT s 73
I. L R 14 Bom. 180

See BREACH OF THE PEACE.
9 C W N 793

PENAL CODE (ACT XLV OF 1860,—*contd*

——— s 188—*contd*

See CRIMINAL PROCEDURE CODE S 144
9 C W N 392

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE 2 B L R A Cr 45
I L R 10 All. 115
I. L R 16 Calc 9
I L R 14 Bom 165
I L R 19 Mad. 464
I L R 20 All 501
2 C W N 70
5 C W N 329

See PUBLIC SERVANT
I L R 29 Calc 236

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
I L R. 24 Mad 70

See UNLAWFUL ASSEMBLY
I. L R 7 Bom 42

1 ——— *Criminal Procedure Code 1861 s 62* An order in writing under s 62 of the Code of Criminal Procedure is necessary to sustain a charge under s 188 of the Penal Code of di obeying an order under the former section *In the matter of* PITAMBUR DEY 17 W R Cr 57

2 ——— *Evidence of promulgation of lawful order* To support a conviction under s 188 of the Penal Code there must be evidence that the order has been promulgated by a public servant lawfully empowered to promulgate it QUEEN *v* SUBUN SINGH 23 W R Cr 57

3 ——— *Knowledge of promulgation of order* Before a conviction can be had under s 188 Penal Code it must be proved that the accused knew that an order had been promulgated by a public servant directing such accused person to abstain from a certain act QUEEN *v* PAMTONOO SINGH 12 W R Cr 49

ABELAKH SINGH *v* SIRNAM SINGH
15 W R. Cr 50

4 ——— *Injunction in civil suit—Disobedience of order* S 188 of the Penal Code applies to orders made by public functionaries for public purpo es and not to an order made in a civil suit between party and party The proper remedy for di obedience of an order of injunction pas ed by a Civil Court is committal for contempt *In the matter of the petition of* CHANDRAKANTA DE
I L R 6 Calc 445 7 C L R 350

5 ——— *Requisites for conviction under* A conviction under s 188 of the Penal Code of disobedience of an order duly promulgated by a public servant will not stand where the evidence fails to show that the di obedience caused or tended to cause obstruction annoyance or injury or risk of obstruction annoyance or injury to any person lawfully employed or that it caused or tended to cause danger to human life health or safety or caused or tended to cause a riot or affray ANONYMOUS 4 Mad Ap 6

PENAL CODE (ACT XLV OF 1860)— *contd*

———— s 188—*contd*

6 ———— *Criminal Procedure Code 1861 s 62—Order of Assistant Magistrate* S 62 (Criminal Procedure Code 1861) and 188 of the Penal Code should be read together GOVERNMENT *v* MAHOMED BUKSH

1 Agra Cr 23

7 ———— *Issue of summons and warrant* A Magistrate has no authority to issue simultaneously a summons and a warrant under s 188 of the Code of Criminal Procedure 1861 unless he has reason to believe that the witness will not attend in obedience to a summons QUEEN *v* CHUNDER SEEKUR ROY

12 W R Cr 18

8 ———— *Illegality of order—Order under consideration of Appellate Court* Where a Magistrate had made an improper order requiring the petitioner to pull down his house as an obstruction in fifteen days and the Sessions Judge on application of the petitioner called for the proceedings under s 434 of the Criminal Procedure Code 1861 the Magistrate wrote and questioned the Judge s authority to interfere and without waiting for a reply proceeded to try the petitioner for disobedience to an order duly promulgated by a public servant and sentenced him to twenty five days imprisonment under s 188 of the Penal Code *Held* (reversing the conviction) that the Magistrate ought at once to have complied with the precept of the Sessions Judge under s 434 and that he was not warranted in convicting and imprisoning the petitioner for disobeying an order the legality of which was then properly under the consideration of an Appellate Court REG *v* DALSUKRAM HARIBHAI 2 Bom. 407 2nd Ed. 384

9 ———— *Order of Magistrate under s 518 Criminal Procedure Code prohibiting payment of rents—Illegal order* In a case of a [illegible]

right and title of both parties should have been established by order of a competent Court and conviction under s 188 of the Penal Code for disobeying such an order cannot be sustained PROSONO COOMAR CHATTERJEE *v* EMPRESS

8 C L R 231

10 ———— *Order of Magistrate under s 133 Criminal Procedure Code Act X of 1882 made without jurisdiction* The accused was convicted under the Penal Code of disobedience to a general order of the Magistrate directing the public not to frequent the roads and public places at the village of *P* between certain hours *Held* that the conviction was bad *In the matter of* KOMUL KRISTO BONICK 12 C L R 231

11 ———— *Plying boat for hire near public ferry—Disobedience of order promulgated by public servant* If when directed by the order of a public servant duly promulgated to him to abstain from plying a boat for hire at or in the immediate vicinity of a public ferry a person disobeys such direction he renders himself liable to punishment under the Penal Code MUTHRA *v* JAWAHIR I L R 1 All 527

12 ———— *Code of Criminal Procedure 1861 s 62—Trespass by cattle* A Magistrate issued an order warning owners of cattle to take proper care of them and that in case of disobedience or neglect they would be punished according to law and did punish them for disobedience under s 188 of the Penal Code *Held* that the conviction under s 188 of the Penal Code was illegal *In the matter of* AMIRADDI

3 B L R A Cr 45

S C QUEEN *v* AMEERUDDEEN

12 W R Cr 36

13 ———— *Landholder duty of—Neglect to aid a public servant—Disobedience to order by public servant—Act X of 1882 (Criminal Procedure Code) ss 90 91* A Magistrate directed a landholder to find a clue in a case of theft within fifteen days and to assist the police *Held* that such order was not authorized by ss 90 and 91 of Act X of 1872 and the conviction of such landholder under ss 187 and 188 of the Penal Code for disobedience to such order was not maintainable EMPRESS OF INDIA *v* BAKHSHI RAM

I L R 3 All. 201

14 ———— *Act XXXI of 1860 s 26—Criminal Procedure Code (Act XXV of 1861) ss 250 251—Carrying fire arms without license—Disobedience of an order promulgated by a public servant* [illegible] that all per[illegible] take out a [illegible] s 26 of Act [illegible] were in consequence of his notification arrested and brought before him charged in a police report with carrying arms without license No summons or warrant had been applied for nor any complaint lodged before the Magistrate previous to the arrest of the prisoners No charge in writing was framed as required under ss 250 251 of the Criminal Procedure Code No evidence was taken but the prisoners admitted carrying the fire arms The Magistrate convicted them under s. 188 of the Penal Code of disobedience of an order duly promulgated by a public servant There was no evidence that the disobedience would cause or tend to cause annoyance obstruction or injury to human life health or safety *Held* the convictions must be quashed Necessity of observing the rules laid down in the Criminal Procedure Code remarked on. QUEEN *v* NANDKUMAR BOSE

3 B L R Ap 149

15 ———— *Order under s 530 Criminal Procedure Code 1872* In the absence of evidence that an order under s. 530 of the

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 188—*contd*

Criminal Procedure Code was in fact directed to the accu ed he cannot legally be convicted under s 188 of the Penal Court for di obeying such orde *In the matter of* NOBO KISHORE CHUCKERBUTTY

7 C L R 291

16 ——— *Order declaring land in dispute not to be public* An order which declares that as between the parties to a contention certain land in dispute does not belong to the public is not one the contravention of which can form the subject of an order under the Penal Code s 188 UNNODA PROSHAD DUTT v SHAMA SOONDUREE

24 W R Cr 20

17 ——— *Order on report of jury under Criminal Procedure Code 1872 ss 521 526—Disobedience of order* A jury having been applied for and duly appointed under s 521 of Act X of 1872 one of the jurors appointed by the Magistrate fell sick and the foreman of the jury unknown to the Court sub tituted another man in h s place The Magistrate accepted the report of the majority of the jury so constituted and made an order under s 526 The order having been di obeyed proceedings were taken under s 188 of the Penal Code against the person to whom it was directed and he was convicted and sentenced to impri onment *Held* that the report upon which action was taken not being the report of a regularly con tituted jury the order and the conviction and sentence pa ed on disobedi ence thereto were illegal EMPRE S v BHOIRUB CHUNDER DUTT

10 C L R 193

18 ——— *Disobedience to order of public servant—Enquiry as to pos ession—Parties to enquiry* In May 1883 the District Magistrate of Tipperah held an enquiry as to the po e ion of certain lands claimed by A and B and having found on the evidence taken by him that A was in po e ion he pa sed an order on the 21st of May 1883 *declaring that A was entitled to hold* po se ion of the di puted land until evicted in *due course of law and forbidding B and all others* to di turb A s po es ion until such disturbance should be effected in due course of law Previously to November 1883 B sold an 8 anna share of his in terest in the di puted land to C who at the time of his purchase had notice of the order of the 21 t of May 1883 In November 1883 B and others went to the di puted land and attempted to turn A out of po es ion by force and to compel the tenants of the land to pay rent and give kabuliats to B and C At the time that B and his com panions went to the di puted land the latter were aware of the order of the 21 t of May 1883 though none of them was a party to the enquiry then made by the Di trict Magistrate In December 1883 they were all tried and found guilty of disobedience to an ord r duly promul ated by a public servant *Held* that the conviction was right GOLUCK CHANDRA PAL v KALI CHARAN DE

I L R 13 Calc 175

PENAL CODE (ACT XLV OF 1860)—*contd*

——— 188—*contd*

19 ——— *Disobedience to order of public servant—Order of Magistrate under Criminal Procedure Code 1861 s 318* Where an order was made under s 318 of the Criminal Pro cedure Code 1861 between A on the one side and B and the three tenants of B on the other —*Held* that the order was only binding on the actual parties to the ca e and ub equent tenants of B could not be puni hed for di obeying the order *In the matter of* GOPAL BURNAWAR 3 B L R A Cr 13

20 ——— *Omission or neg lect of zamindar to obey call under s 21 Beng Reg XX of 1817* An omi sion or neglect by a zamindar when called upon under s 21 of Regulation XX of 1817 to nominate some one to fill the office of village watchman which had become vacant is not an offence under either s 187 or s 188 of the Penal Code *In the matter of* KALI PROSONO GHOSE

7 C L R 575

21. ——— *Chairman of Municipal Committee under Act XXVI of 1850—Public servant* The Chairman of the Municipal Committee appointed under Act XXVI of 1850 though a public ervant has *no power* to make an order for the attendance of any one before him and therefore there can be no conviction for dis obedience of it REG v PURSHOTAM VALJI

5 Bom Cr 33

22 ——— *Conviction for di obeying order made without jurisdiction.* Convic ti ns and sentences for disobeying an order pro mulgated by a public servant refer ed as the mamlatdar who stated that he proceeded under Bombay Act V of 1864 was not thereby empowered to make the order REG v BHAU BIN VITHU

3 Bom Cr 53

REG v KHANDOJI BIN TANAJI

5 Bom Cr 21

23 ——— *Order to abate nui ance—Criminal Procedure Code ss 133 134—Notice of order and subsequent disobedience* The terms of s 134 of the Criminal Procedure Code and the notification made by Government thereunde as to promulgation and issue of an order are direc tory but an omis ion to follow strictly such direc tion though it is an irregularity does not invalidate the order where therefore it is shown that the order has been brought to the actual knowledge of the

[illegible]

v QUEEN EMPRESS I L R 16 Calc [illegible]

24. ——— *Criminal Proce dure Code ss 133 134 135 136—Service of notice of order under s 134—Disobed ence of order where notice was affixed to house of accused* A Magistrate made an order under s 133 of the Code of Civil Procedure requiring N to f nce a certain well in a public street or to appear before him and move to

PENAL CODE (ACT XLV OF 1860)— *contd*

——— s 188—*contd*

have the order set aside a copy of this order was affixed to the house of N but he did not appear The Magistrate then adopted the procedure prescribed by ss. 136 140 and made an order requiring N to fence the well by a certain date N who was personally served with notice of the above order did not comply with it The Magistrate then sanctioned the prosecution of N under s. 188 of the Penal Code N appeared and produced evidence to prove that he was not liable to fence the well *Held* that

made QUEEN EMPRESS v NARAYANA
I L R 12 Mad 475

25 ——— *Disobedience to order duly promulgated by public servant—Criminal Procedure Code ss 133 140* A person against whom an order under s. 133 of the Code of Criminal Procedure is passed who neglects to take any steps whatever in respect of such order within the time therein specified either by way of compliance therewith or by way of objection thereto in the manner prescribed by law renders him elf liable to be proceeded against under s 188 of the Penal Code without its being necessary to wait until the order has been made absolute If such order is made

quently be questioned *Queen Empress* v *Narayana I L R 12 Mad 475* approved QUEEN EMPRESS v BISHAMBAR LALL
I L R 13 All. 577

26 ——— *Madras Local Boards Act (Madras Act V of 1884) ss 98 and 100—Disobedience to notice given by President of Local Board* The President of a Local Board acting under Madras Act V of 1884 issued a notice calling upon a person to remove certain encroachments on a public road within ten days *Held* that such a notice was not an order within the meaning of s 188 Penal Code and a person neglecting to obey it could not be convicted under that section QUEEN EMPRESS v SUBRAMANIAN
I L R 20 Mad 1

27 ——— *Criminal Procedure Code (Act V of 1898) s 144—Disobedience of an order lawfully passed and promulgated by a public servant—Elements necessary to constitute an offence under s 188—Evidence as to the likely result of such disobedience* To constitute an offence under s 188 of the Penal Code it is necessary to show first a lawful order promulgated by a public servant second a knowledge of the order and disobedience of it and thirdly the result that is likely to follow such disobedience A conviction under s 188

PENAL CODE (ACT XLV OF 1860)— *contd*

——— s 188—*concld*

Penal Code for the disobedience of an order under s 144 Criminal Procedure Code in the absence of evidence as to the likely result of the disobedience of such order is bad in law Although the establishment of a rival hat at a place near to an old hat and held on the same day may lead to a breach of the peace it would not be safe or proper that that should alone form a sufficient ground for a conviction under s 188 of the Penal Code BROJONATH GHOSE v EMPRESS **4 C W N 226**

28 ——— *Breach of the peace likelihood of necessary to support conviction* Disobedience to a Magistrate s order directing a party to hold his hat on certain specified days of the week cannot be punished under s 188 of the Penal Code To support a conviction under s 188 of the Penal Code some evidence that the disobedience is likely to cause a breach of the peace is necessary *Brojo Nath Ghose* v *Empress 4 C W N 226* followed SHAMANAND DAS PAHARAJ v EMPEROR (1904) **8 C W N 781**

29 ——— *Disobedience of order—Evidence—Criminal Procedure Code (Act V of 1898) s 144* To constitute an offence under s 188 of the Penal Code of disobedience to an order issued under s 144 of the Criminal Procedure Code there must be *definite* evidence on the record

——— s 189—*Threat of injury to public servant—Necessity of proving actual words used* In a prosecution for an offence under s 189 of the

sidered that the offence was clearly proved and convicted the prisoner The Sessions Judge on appeal affirmed the conviction observing that it was immaterial what the words used were and that the intention and effect of the words were plain *Held* that the Judge was mistaken in regarding it as immaterial what the words used actually were and that on the contrary it was most material that

I L R 6 All. 580

——— s 190—

See CRIMINAL INTIMIDATION
I L R 8 Mad. 140

——— s 191—

See BANKERS **I L R 16 All. 88**

See FALSE EVIDENCE

——— *False evidence—False evidence not necessary on a point material to the case Semble* That to constitute the offence

PENAL CODE (ACT XLV OF 1860)—contd

———— s 191—concld

el that the matter which he states is true *The Queen v Mahomed Hoosain 16 W R 37* and *The Queen v Shib Prosad Giri 13 W R 37* referred to *Emperor v Ganga Sahai All Weekly Notes (1903) 68* discussed But if the false evidence does not bear directly on a material issue in the case being relative to incidental or trivial matters only that would be a matter to be taken into consideration in fixing the sentence EMPEROR v BABU RAM (1904) I L R 26 All 509

———— ss 191 192—

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R 11 Bom 702

———— ss 191 193 cl (2)—*Proceeding under Land Registration Act (Bengal Act VII of 1876) ss 52 83 84 Witness if bound to state truth in such proceeding—Criminal Procedure Code (Act V of 1898) s 195—Sanction to prosecute* In a proceeding held by a Sub Deputy Collector under ss 52 and 84 of the Land Registration Act a witness is bound to state the truth within the meaning of s 191 of the Penal Code and a person who made a false statement before the Sub Deputy Collector, would be rightly convicted under the latter part of s 193 of the Penal Code even if the proceeding was not a judicial proceeding within the meaning of that section *Quære* Whether the Sub Deputy Collector was a Court within the meaning of s 195 of the Code of Criminal Procedure and the proceeding was a judicial proceeding within the meaning of s 193 of the Penal Code HIRANAND OJHA v EMPEROR (1905) 9 C W N 983

———— ss 191—199—

See FALSE EVIDENCE

———— s 192—

See FORGERY I L R 6 Calc 482
7 C L R 356

———— ———— ———— *Fabricating false evidence—Definition* One Cheda Lal whose brother Debi was an accused person applied to the Court on behalf of the accused asking that the witnesses for the prosecution might first of all be made to identify Debi The Court assenting to this request Cheda Lal produced before the Court ten or twelve men none of whom could be identified as Debi by any of the prosecution witnesses. Upon being asked by the Court where Debi was Cheda Lal pointed out a man who upon further investigation was discovered to be wearing a false moustache and to be not Debi at all but one Chimman *Held* upon these facts that Cheda was rightly convicted of fabricating false evidence having regard to the definition contained in s 192 of the Indian Penal Code EMPEROR v CHEDA LAL (1907) I L R 29 All 351

———— ss 192, 193—

See FABRICATING FALSE EVIDENCE

———— s 193—

See CHARGE—FORM OF CHARGE—FALSE EVIDENCE AND PERJURY I L R 28 Calc 434

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT I L R 22 Calc 586

See CRIMINAL PROCEDURE CODE ss 133 342 488 9 C W N 983

See CRIMINAL PROCEDURE CODE s 195 9 C W N 321

See CRIMINAL PROCEDURE CODE s 457 (1872 s 473) I L R 1 All 625

See CRIMINAL PROCEEDINGS I L R 24 Mad 675

See FALSE EVIDENCE

See MARRIAGE ACT s 18 I L R 16 All 212

See SANCTION FOR PROSECUTION I L R 36 Calc 808
13 C W N 422

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY 3 C L R 527

See STAMP ACT 1879 s 61 I L R 5 All 17

See STOLEN PROPERTY—OFFENCES RELATING TO I L R 1 All 379

[illegible]

could not be sustained. The deposition upon which the prosecution was based not being properly taken in accordance with law should not have been admitted in evidence KAMATCHI NATHAN CHETTY v EMPEROR (1905) I L R 28 Mad 308

2 ———— *Judicial proceedings —Oaths Act (X of 1873) ss 4 5—Criminal Procedure Code (Act V of 1898), s 164—Magis-*

PENAL CODE (ACT XLV OF 1860)— *contd*

——— s 193—*concld*

trate empowered to admini ter oath when taking statements under s 164 of the Criminal Procedure Code. A Magistrate taking statements under s. 164 of the Code of Criminal Procedure is acting in discharge of duties imposed on him by law and is empowered to admini ter an oath under ss. 4 and 5 of the Oaths Act. An inve tigation under Chapter XIV of the Code of Criminal Procedure is a stage of a judicial proceeding and a person making on oath a false statement in the course of such investigation commits an offence under s 193 of the Penal Code *Queen Empress v Alagu Kone I L R 16 Mad 421* followed. SUPPA TEVAN v EMPEROR (1905) I L R 29 Mad 89

3 ——— ss 193 and 203—*False evidence—Accused person giving or fabricating false evidence for the purpose of concealing his own guilt* *Held* that an accused person cannot be charged either with giving or fabricating false evidence with the sole object of diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged. EMPEROR v RAM KHILAWAN (1906) I L R. 28 All 705

4 ——— ss 193 210—*Criminal Procedure Code (Act V of 1898) ss 195 476—Sanction to prosecute—Refusal by Subordinate Judge—District Judge on appeal may institute proceedings under s 476—Court—Interpretation* An application was made to a Subordinate Judge for sanction to prosecute *L* for offences punishable under ss. 193 and 210 of the Penal Code (Act XLV of 1860) The Subordinate Judge refused to grant the sanction. On appeal the District Judge varied the order and directed the lower Court to prosecute *L* for an offence under s 210 of the Penal Code *Held* that the District Judge had jurisdiction to pass an order under s 476 of the Criminal Procedure Code (Act V of 1898) that it was not competent to him to direct the Subordinate Judge to prosecute *L* for an offence under s 210 of the Penal Code and that he should himself have proceeded *according to clause (b) of s. 195 read with s 476* of the Criminal Procedure Code *In re* LAKSHMIDAS LALJI (1907) I L R 32 Bom 184

——— s 194—

See CRIMINAL PROCEEDINGS
I L R 24 Mad 675

——— s 196—

See SESSIONS JUDGE JURISDICTION OF
I L R 16 Calc 766

——— s 199—

See BENGAL MUNICIPAL ACT 1884 s 133
I L R 22 Calc 131

——— s 201—

1 ——— and s 218—*Belief and intention of accused* Where a person is charged (s 218 Penal Code) with framing a report incorrectly or (s. 201 Penal Code) giving false information with intent to save offenders from punishment the issue to be tried is not whether such alleged offenders were in fact guilty or not but merely the belief and intention of the prisoner in respect to their guilt QUEEN v HURDUT SURMA
8 W R Cr 68

2. ——— *Abetment of offence by concealment* S 201 of the Penal Code refers to pri oners other than the actual criminals who by their causing evidence to di appear a si t the principals to escape the con equences of their offences But the person who commits an offence and afterwards conceals the evidence of it cannot be punished on both heads of the charge QUEEN v SHAM SOONDER SHOOTAR 7 W R Cr 52

3 ——— *Causing evidence of crime committed by oneself to disappear* *Semble*, A person cannot be convicted under s 201 of the Penal Code of cau ing evidence of the commi ion of an offence by himself to disappear nor can he be convicted of the abetment of such an act (*per* LLOYD and KEMBALL *JJ*) REG v KASHINATH DINKAR 8 Bom Cr 126

4. ——— *Causing disappearance of evidence of offence* *A* and *B* having caused the death of *J* in a field belonging to *B* removed *J* s dead body from that field to his own field with the intention of screening themselves from punishment *A* was convicted on these facts of an offence under s 201 of the Penal Code *Held* that that section referred to persons other than the actual offenders and *K* could not therefore properly be punished under that section for what he had done to screen himself from punishment Al o that as a matter of fact he did not by removing *J* s corpse from one field to another cause any evidence of *J* s murder which that corpse afforded to disappear and his act although his object may have been to divert suspicion from himself and *B* did not constitute the offence defined in that section. EMPRESS OF INDIA v KISHNA
I L R 2 All 713

5 ——— *False information—Exculpatory statements inculpating another* A woman who with her infant child eloped from her husband s house was afterwards arrested on a charge of murdering the child which was missing She made three different statements (i) that she had left it with her husband (ii) that she had been enticed away by one *R* who had taken the child

aside S 201 of the Penal Code does not apply to a case where the person who is the probable or possible offender makes statements exculpating himself by inculpating another *In the matter of the petition of* BEHALA BIBI. EMPRESS v BEHALA BIBI I L R 6 Calc 789 8 C L R 207

6 ——— *Concealing evidence of crime—Secondary offence conviction of* In

PENAL CODE (ACT XLV OF 1860 — *contd*

——— s 201—*contd*

a trial upon a charge under s 201 of the Penal Code the accused made a statement to the effect that he was present at the commission of a murder by two other persons that he himself took no part in the act that before the murder was committed one of the persons named pulled off a razai from the bed on which the deceased was sleeping and that in his presence the razai was sub equently concealed in a stack. It was proved that the razai belonged to the deceased that it was found con cealed in a stack and that it was pointed out by the accused to the police The accused was convicted of concealing evidence of the murder with the intention of screening the offender from legal punish ment under s 201 of the Penal Code *Held* that the conviction must be quashed inasmuch as if the razai had not been concealed or destroyed its presence or existence would have been no evidence of the murder A person who is concerned as a principal in the commission of a crime cannot be convicted of the secondary offence of concealing evidence of the crime QUEEN EMPRESS v LALLI I L R 7 All 749

7 ——— *Concealing evi dence of crime—False information* S 201 of the Penal Code does not apply to the ca e of a criminal causing disappearance of evidence of his own crime but only to the case of a person who screens the principal or actual offender *Queen* v *Ram Soonder Shootar 7 W R Cr 52 Reg* v *Kashinath Dinkar 8 Bom Cr 126 Empress* v *Kishna I L R 2 All 713 Empress* v *Behala Bibi I L R 6 Calc 789* and *Queen Empress* v *Lalli I L R 7 All 749* referred to QUEEN EMPRESS v DUNGAR I L R 8 All 252

8 ——— *Disappearance of evidence—Intention to screen offender* A person cannot be punished under s 201 of the Penal Code where the act which caused the disappearance of the evidence of the commission of an offence was not done with the intention of screening the offender from legal punishment It is not sufficient that the disappearance of evidence was likely to have the effect of screening the offender QUEEN v TOOLSHEE PAI 5 N W 186

9 ——— *Giving false information of offence* Prisoner was charged under s 201 of the Penal Code for that he knowing or having reason to believe that an offence punishable with death had been committed with the intention of screening the offender from legal punishment gave information respecting the offence which he knew or believed to be fal e *Held* that the proper order of proof on the part of the prosecution in the case was to prove (i) that *A V* was murdered (ii) that the prisoner gave information respecting the offence (iii) that such information was false and known by him to be so (iv) that he then knew of the commission of the murder and (v) that his intention was to screen the murderer *Held* also that it was essential to the completeness of the case for the prosecution to show not only

PENAL CODE (ACT XLV OF 1860)— *contd*

——— s 201—*contd*

that the information was given but also that it was false and known to be so by the prisoner Further enquiry directed under s 422 Criminal Procedure Code 1861 QUEEN v SUBBRAMANYA PILLAI 3 Mad. 251

10 ——— *Causing dis appearance of evidence of crime—Proof of commis sion of crime* A conviction on a charge of causing

11 ——— *Causing dis appearance of evidence of an offence* *Held* that it is necessary in order to justify a conviction under s 201 of the Penal Code that an offence for which some person has been convicted or is criminally responsible should have been com mitted EMPRESS OF INDIA v ABDUL KADIR I L R 3 All. 279

12 ——— *Causing dis appearance of evidence of an offence—Omitting to report a sudden unnatural or suspicious death* Before an accused can be convicted of an offence under s 201 of the Penal Code it must be proved that an offence the evidence of which he is charged with causing to disappear has actually been com mitted and also that the accused knew or had information sufficient to lead him to believe that the offence had been committed *Empress of India* v *Abdul Kadir I L R 3 All 279* followed MA TUKI MISSER v QUEEN EMPRESS I L R 11 Calc 619

13 ——— *Abetment of murder—Causing disappearance of evidence of offence* Prisoner was present at a murder without being aware that such an act was to be committed Through fear he not only did not interfere to pre vent the commission of the crime but joined the murderers in concealing the body *Held* that he was guilty not of abetment of murder but of causing the disappearance of evidence of a crime under s 201 of the Penal Code QUEEN v GOBURDHUN BERA 6 W R Cr 80

14 ——— *Causing dis appearance of evidence* The accused was attacked by a man whom he found by a hole cut in his house for the purpose of committing a burglary and struck out at the man a blow which caused his death *Held* that the accused simply exercised his right of private defence and was guilty of no offence Two other men who helped him to remove the dead body and were accused of causing the disappear ance of evidence knowing that an offence had been committed under s. 201 Penal Code were also acquitted for that section contemplates a belief that an offence has been committed and as the first prisoner was acquitted of all offence it may be presumed that the other prisoners did not

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s. 201—*concld*

believe that any offence had been committed QUEEN *v* PELKOO NUNDO 2 W R. Cr 42

15 ——— *Causing disappearance of evidence of supposed murder—Want of proof of commission of offence* S 201 of the Penal Code applies merely to the person who screens the principal or actual offender and not the principal or actual offender himself The accused were charged with murder and also with causing the disappearance of the corpse of the deceased with the intention of screening the murderer from punishment under s 201 of the Penal Code Evidence for the prosecution pointed conclusively to one or other of them being the actual murderer but it was impossible upon the evidence to say which of them caused the death They were acquitted on the charge of murder but convicted on the charge under s 201 *Held* that the conviction could not stand TORAP ALI *v* QUEEN EMPRESS I. L. R 22 Calc 638

——— s 203—

See INFORMATION OF COMMISSION OF OFFENCE 20 W R Cr 66

——— s 204—

See THEFT I L. R 3 Mad 261

——— s 205—

See FALSE PERSONATION
1 Ind. Jur O S 123
1 Mad. 450
4 Mad 18
8 W R Cr 80

——— s 206—

See EVIDENCE ACT ss 14 15
I L R 16 Bom 414

1. ——— *Absence of fraudulent intent* To bring a case under s. 206 of the Penal Code there must be a fraudulent removal sale or transfer of property or of some interest therein intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine *In the matter of the petition of* BALMOKOOND BROJOBASI 18 W R Cr 65

2 ——— *Fraudulent removal of property to prevent seizure in execution—Act X of 1859 s 145* Certain persons were convicted by the Deputy Magistrate under s 206 of the Penal Code of having fraudulently removed property to prevent its being taken in execution of a decree under Act X of 1859 The Judge was of opinion that the offence was one provided for by s 145 of Act X of 1859 and was not therefore triable by the Magistrate *Held* that the prisoner was rightly tried and convicted under s 206 GAUR CHANDRA CHUCKERBUTTY *v* KRISHNA MOHUN SINGH 2 B L R S N 4 10 W R. Cr 46

3 ——— *Attachment of crops in execution of certificate under Public Demands Recovery Act—Want of sanction not occasioning failure of justice—Code of Criminal Procedure (Act V of 1898) ss 195 438 and 537—Public Demands Recovery Act (Bengal Act I of 1895) ss 7 8 19 and 22* The cutting and carrying off crops which the accused knew to be under attachment in execution of a certificate under the Public Demand Recovery Act of 1895 is an offence under the latter part of s 206 of the Penal Code The amount due under the certificate cannot be regarded as a forfeiture or fine but is money due under a decree the certificate having the force and effect of a decree of a Civil Court Where such an offence was taken cognizance of by a Magistrate without sanction for the prosecution being given as should have been the case but there was nothing in the proceeding to show that the want of such sanction had in fact occasioned a failure of justice —*Held* that the conviction was not bad only on that account SUNDER DASADH *v* SITAL MAHTO (1900) I. L. R 28 Calc 217
s c 5 C W N 291

——— s 209—

See CRIMINAL PROCEDURE CODE s 476
13 C W N 1038

——— s 210—

See CIVIL PROCEDURE CODE s 258
I L R 9 Mad 101
I L R 10 Bom 288

See CRIMINAL PROCEDURE CODE s 487
I L R 16 Calc 121 766

See SANCTION FOR PROSECUTION
I L R 33 Calc 193

1 ——— *Satisfied —Decree not certified to Court* In s 210 of the Penal Code the word satisfied is to be understood in its ordinary meaning and not as referring to decrees the satisfaction of which has been certified to the Court QUEEN EMPRESS *v* BAPUJI DAYARAM I L. R 10 Bom 288

2 ——— and s 209—*Fraudulently applying for execution of decree* Where a person applies for the execution of a decree which has already been executed his offence falls not under s 209 but s 210 of the Penal Code S 209 relates to false and fraudulent claims in a Court of Justice and is confined to the Civil Court in which the original suit was brought QUEEN *v* BEEGUN MAHTOON 12 W R Cr 37

3 ——— *Civil Procedure Code (Act XII of 1882) s 258—Satisfaction of decree—Execution of decree—Fraudulently executing decree after it has been satisfied when satisfaction has not been certified to Court* A decree holder having proceeded to execute his decree
... cted
... isfied
... been
... the

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 210—*contd*

Code of Civil Procedure The judgment debtor being under the circumstances compelled to deposit the amount of the decree in Court applied for and obtained sanction to prosecute the decree holder for an offence under s 210 of the Penal Code It was contended that the case did not fall within that section as the satisfaction not having been certified to the Court could not be recognized by the Court executing the decree and that consequently no offence had been committed *Held* that the words after it has been satisfied used in s 210 of the Penal Code indicate only the fact of the satisfaction of the decree The fact that the satisfaction is of such a nature that the Court executing the decree could not recognize it does not prevent the decree holder from being properly convicted of an offence under that section MADHUB CHUNDER MOZUMDAR v NOVODEEP CHUNDER PUNDIT
I L R 16 Calc 126

Overruled by QUEEN EMPRESS v SARAT CHANDRA RAKHIT I L R 16 Calc 766

See QUEEN EMPRESS v BAPUJI DAYARAM
I L R 10 Bom 288

4 ———— *Sanction to prosecution—Code of Criminal Procedure 1882 s 195—Execution of decree which has been satisfied* A decree holder applied for execution of his decree against the judgment debtor The application was dismissed on the ground that the decree had

Penal Code had been committed SHAMA CHARAN DAS v KASI NAIK I L R 23 Calc 971

———— s 211—

See COMPLAINT I L R 33 Calc 1

See FALSE CHARGE

See MALICIOUS PROSECUTION
I L R 3 Mad 6
I L R 19 Bom. 717

See ss 182 211 13 C W N 398

1 ———— *Preferring a false charge— Charge made to Village Magistrate—Sustainability* An accusation of murder made to a Village Magistrate who under s 13 of Regulation XI of 1816 has authority to arrest any person whom he suspects of having committed the murder of a person whose body is found within his jurisdiction is a charge within the meaning of s. 211 of the Penal Code even though it does not amount to the institution of criminal proceedings and even though no criminal ... owing to ... gation. (...

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 211—*contd*

2 ———— *Preferring a false charge—Statement not reduced to writing by police officer* A person was convicted under s 211 of the Penal Code of having preferred a false ...

against those persons The statement had not been reduced to writing in accordance with the requirements of s 154 of the Code of Criminal Procedure On its being contended that there was no evidence of a false charge within the meaning of s 211 —*Held* (i) that the test is—did the person who makes the charge intend to set the criminal law in motion against the person against whom the charge is made (ii) that (it being clear from the evidence that the accused did so intend) the fact that the statement made by the accused to the police officer had not been reduced to writing in accordance with s 154 of the Code of Criminal Procedure did not prevent the statement made from being a false charge within the meaning of that section MALLAPPA PEDDI v EMPEROR (1904)
I L R 27 Mad. 127

3 ———— *False charge—Improper order for prosecution* It is not in every case which a Magistrate considers to be false that he should direct under s. 476 of the Criminal Procedure Code a prosecution under s 211 Penal Code Each case must be judged by its own facts Where therefore the Magistrate and the Judge came to different conclusions upon the evidence which was of a doubtful character and the complainant was a boy of 12 years of age it was *held* that the Magistrate should not have directed his prosecution and his order was accordingly set aside EMPEROR v GOPAL BARIK (1906)
I L R 34 Calc 42

4 ———— *False charge—Practice—Opportunity to be given to prove charge before prosecuting* Where it is intended to prosecute any person under s 211 of the Indian Penal Code ...

Empress v Ganga Ram I L R 8 All 33 and *Queen Empress v Raghu Tiwari I L R 15 All 336* followed. EMPEROR v TULA (1907)
I L R. 29 All. 587

5 ———— *False charge must be to one having authority to set criminal law in motion—Criminal Procedure Code (Act V of 1898) s 162—Statement made under cannot be the basis of prosecution for false charge* A statement made under s 162 of the Code of Criminal Procedure in answer to questions put by a police officer making an investigation under s 161 of the Code of Criminal Procedure cannot be made the basis of a prosecution under s. 211 of the Penal Code Information of an alleged dacoity was given to a village munsif who sent a report to the police The

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 211—*contd*

police thereupon investigated the case and rejected it as false The informant was prosecuted under s. 211 of the Penal Code *Held* that there was no institution of criminal proceedings by the informant as the village munsif had no power to investigate in case of dacoity The informant had made no false charge within the meaning of s 211 as it was not made to one having power to investigate and send up for trial The subsequent investigation was not the result of the information given but of the report sent by the village munsif *Karim Bux v Queen Empress I L R 17 Calc 574* followed CHINNA RAMANA GOWD v EMPEROR (1908) I L R 31 Mad. 506

6 ——— *Complaint to Village Magistrate is a charge and an institution of criminal proceedings within the meaning of s 211 Indian Penal Code if it is his duty to forward such complaint for action by the police—Criminal Procedure Code ss 45 154 161 and 162* On the question raised by a reference from the Sessions Judge whether a person giving false information about an alleged offence to a Village Magistrate can be prosecuted for an offence under s 211 of the Indian Penal Code —*Held per* BENSON and MUNRO *JJ* (SANKARAN NAIR *J* dissenting) that a false complaint to a Village Magistrate of an offence when the information is one which under s 45 of the Code of Criminal Procedure the Village Magistrate is bound to pass on to the higher constituted authorities will amount to an offence under s 211 of the Indian Penal Code The words false charge in s 211 must not be understood in a technical or restricted sense but in its ordinary meaning of a false accusation made to any authority bound by law to investigate it or to take any steps in regard to it such as giving information of it to superior authorities and institution of criminal proceedings includes the setting of the criminal law in motion The complaint to the Village Magistrate in such a case amounts to a charge and is also an institution of criminal proceedings within s 211 of the Code of Criminal Procedure It would be otherwise if the offence complained of is one in regard to which the information need not under s 45 of the Code of Criminal Procedure be passed to the higher authorities *Chinna Ramana Gowd v Emperor I L R 31 Mad 506* dissented from *Obiter* The taking of a complaint to any of the other persons who under s 45 of the Code of Criminal Procedure are bound to pass such information to higher authorities may also fall within s 211 Indian Penal Code *Per* SANKARAN NAIR *J* —Where information of an offence given to a Village Magistrate is forwarded by him to a police officer and the latter takes a written statement from the person giving such information such statement is not one taken under s 154 but under ss 161 and 162 of the Code of Criminal Procedure It is not a complaint but a statement by a witness in an investigation under s 157 and no charge under s 211 Indian Penal Code can be founded on such statement To constitute a false charge it must be made to a Court or officer who has powers to investigate and send up for trial S 45 of the Code of Criminal Procedure imposes the duty of forwarding information to superior authorities on a number of persons other than Village Magistrates and the Legislature could not have intended to constitute all such persons authorities before whom criminal proceedings may be instituted S 45 does not impose the duty of reporting in the case of bailable offences and if the duty to report is taken as the determining test it will follow that the information is to be considered as a proceeding in some cases and in others not SESSIONS JUDGE OF TINNEVELLY DIVISION v SIVAN CHETTI (1909) I L R 32 Mad 258

——— s 212—*Harbouring an offender* To justify a conviction under s 212 of the Penal Code it is necessary that there should be an offence committed and consequently an offender who has been harboured or concealed. *Empress v Abdul Kadir I L R 3 All 279* referred to QUEEN EMPRESS v FATEH SINGH I L R 12 All 432

——— s 213—

See COMPOUNDING OFFENCE.
6 C L R 392

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—PENAL CODE
6 W R. Cr 90

——— s 214—

See COMPOUNDING OFFENCE

——— *Screening an offender* S 213 of the Penal Code is applicable only when it is proved that the person screened [illegible] punishment [illegible] t when there [illegible] mitted some [illegible] a I L P [illegible] QUEEN EMPRESS I L R 23 Calc 420

1 ——— s 215—*Agreeing or consenting to* [illegible]

[illegible] gratification is to be given but also as to the shape or form the gratification is to take QUEEN EMPRESS v CHITTAR I L R 20 All 389

2 ——— *Theft—Receiving gratification to help the owner to recover stolen property —S 215 not intended to apply to the actual thief* S 215 of the Indian Penal Code was not intended to apply to the actual thief but to some one who being in league with the thief receives some gratification on account of helping the owner to recover the stolen property without at the same time using

PENAL CODE (ACT XLV OF 1860)— *contd*

——— s 215—*contd*

all the means in his power to cause the thief to be apprehended and convicted of the offence QUEEN EMPRESS v MUHAMMAD ALI (1900) I L R 23 All 81

——— s 216B—*Definition—Meaning of term harbouring* Held with regard to the definition contained in s 216B of the Indian Penal Code that the words "assisting a person in any way to evade apprehension" are meant to point out some method *ejusdem generis* with those specified in the earlier portion of the section They will not include the assisting of an accused person to escape by merely telling lies to the police as to his whereabouts EMPEROR v HUSAIN BAKHSH (1903) I L R 25 All 261

——— s 217—

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE I L R 2 Bom 142

1. ——— *Direction of law —Disobedience of public servant—Omission to give information of offence.* The direction of law mentioned in s 217 Penal Code means a positive direction of law such as those contained in ss 89 and 90 of the Criminal Procedure Code 1872 and cannot be made to extend to the more general obligation on every subject not to stifle a criminal charge *In the matter of* PAMANTHI NAYAR I L R 1 Mad. 266

2 ——— *Public servant disobeying direction of law with intent to save person from punishment—Evidence of such person's offence.* It is sufficient for the purpose of a conviction under s. 217 of the Penal Code that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant and that he has done this with the intention [illegible]

AMIRUDDIN I L R 3 Calc 412 1 C L R 483

3 ——— *Proof of offence under* It is only necessary for a conviction under s. 217 of the Penal Code to show that the prisoner knew that the person he released was in danger of punishment and that the prisoner released such person with the intention of saving him QUEEN v ABDOOL JALEEL W R 1864, Cr 5

——— s 218—

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE

See FORGERY I L R 5 All. 553
I L R 8 All. 653

See POLICE OFFICER 15 W R Cr 17

PENAL CODE (ACT XLV OF 1860)— *contd*

——— s 220—

See ARREST—CRIMINAL ARREST I L R 10 Bom. 508

See WRONGFUL CONFINEMENT 9 Bom. 346

——— s 221—*Village watchman—Chowkidar—Police officer—Criminal Procedure Code 1872 s 92—N W P Village and Road Police Act (XVI of 1873) s 8* A chowkidar or village watchman is not legally bound as a public servant to apprehend a person accused of committing murder outside the village of which he is chowkidar such person not being a proclaimed offender and not having been found by him in the act of committing such murder and consequently such chowkidar if he refuses to apprehend such person on such charge at the instance of a private person is not punishable under s. 221 of the Penal Code EMPRESS OF INDIA v KALLU I L R 3 All. 60

——— s 223—

See PUBLIC SERVANT 7 W R Cr 99

——— *Criminal Procedure Code s 54—Escape from lawful custody—Chaukidar* The police of an adjoining Native State arrested in British territory one Paran Singh suspected of having committed an offence in the Native State and made him over to one Debi a chaukidar from whose custody he escaped *Held* [illegible]

Kalu Chowkidar I L R 27 Calc. 366 and *King Emperor v Johri I L R 23 All 266* referred to EMPEROR v DEBI (1907) I L R 29 All 377

——— s 224—

See ESCAPE FROM CUSTODY

See SENTENCE—GENERAL CASES 8 W R Cr 65

See WARRANT OF ARREST—CRIMINAL CASES 5 C W N 447

——— ss 224, 225 226—

See ESCAPE FROM CUSTODY

See SENTENCE—CUMULATIVE SENTENCES 3 B L R A Cr 14 15 note

——— s 225—

See JOINDER OF CHARGES I L R 29 Calc 385

——— *Criminal Procedure Code ss 59 and 60—Rescue from lawful custody—Definition* A private person lawfully [illegible]

PENAL CODE (ACT XLV OF 1860)—contd

———— s 225—concld

re cuer were rightly convicted under 225 of the Indian Penal Code The arrest of the chief having been in the fir t in tance lawful the requirements of s 30 of the Code of Criminal Procedure were suffi

———— ss. 225 353 379—

See Rescue from Lawful Custody I. L. R. 35 Calc 361

———— s 225B—

See Warrant of Arrest—

Civil Cases 5 C W N 843
6 C W N 845

Criminal Cases. I L R 28 Calc 399

1. ———— *Offence under section committed when a prisoner escapes while the peon hai ing custody of him is a leep* A man legally arrested for an offence must submit to be tried and dealt with according to law A prisoner who escapes after he is arrested and before he is delivered by due course of law owing to the neglect or con sent of the person having him in custody is guilty of an offence under s. 225 B of the Penal Code *Queen Empress v Muppan I L R 18 Mad 401* followed. Public Prosecutor v Ramaswami Konan (1908) I L R 31 Mad 271

2 ———— ss 225B 353—*Rescue from law ful custody—Legality of warran —Civil Procedure Code ss 8? 174* An Assi tant Collector issued warrants for the arrest of certain witnesses for whose attendance summonses had been issued but who had not appeared in obedience thereto The serving officer had not been able to effect personal service of the summonses but had affixed copies to the houses of the persons to be served. The Court pre vious to is uing warrants did not comply with the provisions of s. 82 of the Code of Civil Procedure

and others and the man they had arrested was rescued. N was convicted under ss 225B and 353 of the Penal Code *Held* that even if s. 225B was not applicable the conviction under s 353 of the Code was perfectly ju tified Emperor v Narbadeshwar (1905) I L R 27 All 491

———— s 227—

See Jurisdiction of Criminal Court—Offences committed only partly in one District—Theft 9 Bom. 356

———— s 228—

See Appeal in Criminal Cases—Criminal Procedure Code 4 Mad. 146

PENAL CODE (ACT XLV OF 1860)—contd

———— s 228—concld

See Contempt of Court—Penal Code s 228

See Criminal Procedure Code ss 480 481 482 (1872 ss 435 436) 13 B L R Ap 40

See Magistrate Jurisdiction of—Powers of Magistrates I L R 15 Mad. 131

See Sentence—Imprisonment—Imprisonment generally 10 W R Cr 47

———— ss 230 231 239 241—

See Counterfeiting Coin

1 ———— ss 230 235 and 243—*Definition —Queen s coin—Murshidabad rupees—Practice—Duty of subordinate Courts to follow decisions of superior Courts—Maxim—Stare decisis* Murshida bad rupees stand on the same foot ...

Pre idency and issued as money under the author ity of the Government of India as were Farrukha bad rupees They are therefore Queen s coin within the meaning of the section *Emperor v Gopal All Weekly Notes (1903) 115* followed It is the duty of every subordinate Court where it finds a deci ion of the High Court to which it is subordinate applicable to a case before it to follow such decision without question Emperor v Devi (1905) I L R 28 All. 62

2 ———— ss 230 420— *Coin —Uttering false coin—Cheating* Where the offence

jahan cannot be deemed to be coin within the meaning of s 230 of the Indian Penal Code as it is not used for the time being as money *Regina v Bapu Yadav 11 Bom H C 172* followed *Queen v Kunj Beharee 5 N W P 187* distinguished Emperor v Khushali (1906) I L R 29 All 141

———— s 232—

See Counterfeiting Coin I L R 23 All. 420

———— ss 232 and 235 ...

of suspected
of to examin
that the pros
who were present at a search had formed ...

would be required to state in their depo itions was what they observed and not what they thought.

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 232—*concld*

The prosecution is in duty bound to call the persons who were present unless they were of opinion that those persons would misrepresent facts and would misstate what happened MUNTI SONAB v EMPEROR (1905) **9 C W N 438**

——— s 240—

See JOINT TRIAL. **I L R 31 Calc 1007**

——— ss 240 243—*Same transaction—Previous conviction—Counterfeit coin—Possession delivery of—Criminal Procedure Code (Act V of 1898) ss 235 239 403* C gave the appellant 50 counterfeit rupees to pass for him The rupees were stolen and the appellant on the discovery of the theft gave certain information to the police which led to the discovery of 64 of other counterfeit coins in C s house C was separately tried and convicted under s 243 of the Penal Code of being in possession of the latter coins. C and the appellant were also tried jointly and were convicted C under s 240 of the Penal Code with reference to the 50 counterfeit rupees he had made over to the appel- [illegible]

offence under s 240 after he had been previously convicted of the possession of base coin under s 243 of the Penal Code and further that the joint trial was bad in law *Held* that the joint trial was valid that the trial of C under s 240 of the Penal Code was legal it being for an offence distinct to that for which he had been previously convicted EMPEROR v PRASANNA KUMAR DAS (1904) **I L R 31 Calc 1007**

——— s 241—*Right of way interference with—Order to remove obstruction legality of—* [illegible]

by similar act of obstruction has no jurisdiction to order that the hut or other means of obstruction should be removed *Debendra Chandra Chowdhury v Mohini Mohan Chowdhry 5 C W N 432* overruled *Held* further by the Full Bench that whereas in this case criminal force has been used by the accused to the complainant when the latter objected to the obstruction which interfered with his right of way over a path and this constituted the offence of wrongful restraint of which offence the accused had been convicted an order for the removal of the obstruction could be passed under s 522 of the Criminal Procedure Code MOHINI MOHON CHOWDHRY v HARENDRA CHANDRA CHOWDHRY (1904) **I L R 31 Calc 691**

——— s 260—

See COUNTERFEITING GOVERNMENT STAMP **2 W R Cr 65**

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 264 266—

See WEIGHTS AND MEASURES FRAUDULENT USE OF **1 Bom. 181** **18 W R Cr 7**

——— s 268—

See GAMBLING **7 Bom Cr 74** **7 C W N 710**

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE

——— *Public nuisance* In order to constitute an offence under s. 268 of the Penal Code it is not necessary that the alleged nuisance should produce smells injurious to health it is sufficient if they be offensive to the senses. *Rex v Neil 2 C & P 485* approved of [illegible]

I L R. 34 Calc 73

——— s 269—

See CONTRACT ACT s 56 **I L R 14 Bom. 147**

See PUBLIC HEALTH OFFENCE AFFECTING **I L R 7 Mad. 276** **I L R 11 Bom 59** **I L R 24 Calc 494**

1 ——— s 273—*Sale of noxious food* Before a person can be convicted under s 273 of the Penal Code it must be shown that the article which he has sold or exposed for sale was to his knowledge or belief noxious as food or drink. EMPEROR v SHEO LAL (1904) **I L R. 26 All. 387**

2 ——— *Sale of noxious food—Definition—Sale of grain in bulk in a closed pit* Where as a matter of trade the owner of a grain pit sold the contents of the pit before it was opened at a certain sum per maund whether the grain was good or bad and on the pit being opened it was [illegible]

I L R 28 All. 312

1 ——— s 277—*Public spring—Reservoir—Strewing branches in river for fishing purposes* The words public spring or reservoir used in s 277 of the Penal Code do not include a public river The strewing of branches in a river for fishing purpose *Held* therefore to be no offence under that section. EMPRESS v HALODHUR POPOE **I L R 2 Calc. 383**

2 ——— *Continuous stream in river bed* The term public spring in s. 277

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 277—*concld*

of the Penal Code does not include a continuous stream of water running along the bed of a river QUEEN *v* TITTI CHOKKAN I L R 4 Mad 229

1 ——— s 279—*Rash driving or riding on public way* The actual driver and not the owner of a carriage is liable under s 279 of the Penal Code in case of a collision and injury to another arising out of rash driving LAPRIMORE *v* PERNENDOO DEO PAI 14 W R Cr 32

2 ——— *Rash riding on a public way* The accused was convicted of rash riding on a public way under s 279 of the Penal Code (Act XLV of 1860) He contended that his conviction was bad on the ground that there was no proof that any person was on the road in question at the time when he was alleged to have ridden in a rash or negligent manner *Held* that though there was no such proof it was competent to the Court to take into its consideration the probability of persons using the public way being placed in danger by the act of the accused The accused s act came within the mischief struck at by s 279 of the Penal Code and was included within its terms QUEEN EMPRESS *v* HORMUSJI NOWROJI LORD I L R 19 Bom 715

——— s 282—

See CHARGE—FORM OF CHARGE—SPECIAL CASES—PUBLIC SAFETY OFFENCE AFFECTING 1 Bom 137

——— s 283—

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I L R 14 Calc 656
I L R 20 Calc 665
I L R 20 Mad 433

1 ——— *Obstructing public way—Failure to prove injury* The accused were charged generally with obstruction in a public way no danger obstruction or injury being alleged to have been caused to any person and were summarily convicted *Held* that the conviction could not be sustained under s 283 of the Penal Code *In the matter of* EMPRESS *v* RAM SINGH 11 C L R 642

2 ——— *Obstructing public road—Spreading fishing nets by roadside* To spread fishing nets by the side of a thoroughfare in a town is not without proof of obstruction caused to any particular person or class of persons an offence under s 283 of the Penal Code QUEEN *v* KHADER MOIDIN I L R 4 Mad 235

3 ——— and ss 268 and 290—*Obstruction on tidal navigable river* Persons placing a bamboo stockade across a tidal navigable river for the purposes of fishing although leaving in such stockade a narrow opening for the passage of boats which passage was however kept closed except on the actual passage of a boat were charged at the instance of a sub divisional officer with causing an obstruction under s 283 of the Penal Code *Held* that although it was doubtful whether s 283 applied to the case they had committed an offence under s 268 of the Penal Code and were punishable under s 290 of that Code *In the matter of the petition of* UMESH CHANDRA KAR I L R 14 Calc 656

4 ——— *Obstruction in a public way* The accused was charged generally with

QUEEN EMPRESS *v* BENI MADHAB CHAKRAVARTI I L R 25 Calc 275

5 ——— *Obstruction causing in a public way—Erection of hut encroaching upon public thoroughfare—Exposing goods for sale by lessee thereof—Lessee if liable* Where obstruction was caused to a public way by the erection of a hut and not by the exposing of goods for sale in the said hut by the accused who had rented it from the person who had raised the hut —*Held* that the accused could not be convicted of an offence under s 283 of the Penal Code NARAIN ADHIKARI *v* EMPEROR (1904) 8 C W N 369

——— s 285—*Injury—Injury to property* The word injury (rashly caused by fire etc) in s 285 of the Penal Code includes any harm illegally caused to the property of any person and is not confined to injury to the person only REG *v* NATHA LALA 5 Bom Cr 67

——— ss 286 289—

See NEGLIGENCE 3 Mad Ap 33
19 W R Cr 1
I L R 8 Mad 421

——— ss 286 and 337—*Definition—Causing hurt by means of a gun—Evidence of negligence.* *Held* that the causing of hurt by negligence in the use of a gun would fall within the purview of s 337 rather than of s 286 of the Penal Code But where all the evidence against the

negligence to support a conviction under s 337 of the Code EMPEROR *v* ABDUS SATTAR (1906) I L R 28 All 464

——— s 289—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES 9 B L R Ap 36

——— ss 290 291—

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE. 5 Bom Cr 45
I L R 5 Mad 157

PENAL CODE (ACT XLV OF 1860)— *contd*

———— s 292—*Distributing obscene pamphlet—Definition—Intention.* The test of obscenity with reference to a charge of distributing obscene literature is whether the tendency of the matter is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this kind may fall. If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come it will be an obscene publication which it is the intention of the law to suppress *Empress v Inderman I L R 3 All 837 Queen Empress v Pareshram Yesvant I L R 20 Bom 193* and *The Queen v Hicklin L R 3 Q B 300* referred to The question whether a publication is or is not obscene is a question of fact If a publi[illegible]

[illegible] (1905) I L R [illegible]

———— ss 292 293—

See OBSCENE PUBLICATION
I L R 3 All 837
I L R 20 Bom 193

———— ss 292 294—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES I L R 1 Calc 356

s 294A—

See CONTRACT—WAGERING CONTRACTS
I L R 22 Mad. 212

See LOTTERY I L R 10 Bom 97

———— s 295—

See STATUTES CONSTRUCTION OF
I L R. 17 Calc 852

———— ss 295 296 297—

See RELIGION OFFENCES RELATING TO

———— s 296—

See RELIGION OFFENCES RELATING TO
I L R 26 Mad 554

———— s 297—

See TRESPASS—GENERAL CASES
I L R 3 Mad. 178

———— s 298—

See MISCHIEF I L R 24 All 155

———— s 299—

See CULPABLE HOMICIDE
11 W R Cr 3
I L R 2 All 522
I L R 3 All. 776

———— ss 299 300—

See ATTEMPT TO COMMIT OFFENCE.
4 Bom Cr 17

PENAL CODE (ACT XLV OF 1860)— *contd*

———— s 299—*concld*

See CULPABLE HOMICIDE
I L R 1 Bom 342

———— s 300—

See CHARGE TO JURY—SPECIAL CASES—CULPABLE HOMICIDE
9 W R. Cr 72

See CULPABLE HOMICIDE

See MURDER.

———— ss 300 302 304 304A—

See MURDER.

———— s 302—

See ATTEMPT TO COMMIT OFFENCE
I L R. 15 Bom 194

See INSANITY I L R 29 Calc 493

See MURDER.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT
I L R 19 Bom. 105

1 ———————— *Murder—Poisoning by dhatura—Intention—Knowledge* Dhatura was administered with the usual object of facilitating robbery but in such quantity that the person to whom it was given died in the course of a few hours. *Held* that the person so administering dhatura was rightly convicted under s 302 of the Indian Penal Code EMPEROR *v* GUTALI (1908) I L R 31 All 148

2 ———————— *Murder—Punishment—Motive—Unfounded suspicion as to wife's chastity—Grounds for not passing death sentence.* When an accused person was found to have murdered his wife under a mistaken impression that she was unchaste to him the High Court set aside the sentence of death passed upon him and sentenced him to transportation for life EMPEROR *v* DINA BANDHU MOITRA (1904)
8 C W N 218

3 ———— ss 302 411—*Murder—Receiving stolen property—Proof of murder—Evidence* The accused who was charged with the murder of a [illegible]

immediately before his death and declared that he had fallen from the roof and his respiration had stopped. He also admitted that he had subsequently thrown the body in a tank where it was afterwards found. It was further proved that the accused had produced the ornaments from a hole near the tank. But there was no evidence to prove that the accused had anything to do with the death of the boy and the medical evidence was to the effect that the boy might have been either intentionally or accidentally strangled. *Held* that there was not sufficient legal evidence that the accused had killed the boy and the accused could only be

PENAL CODE (ACT XVL OF 1860)—contd.

——— s 302—concld

found guilty of an offence under s. 411 of the Penal Code EMPEROR v PAJANI KANTO KOER (1904) 8 C W N 22

4. ——— ss 302 304 325 328 and 329 —*Administration of dhatura for the purpose of facilitating robbery—Death of person to whom dhatura is so administered—Offence not murder but causing grievous hurt.* Where for the purpose of facilitating robbery dhatura was administered by two persons to certain travellers in consequence of which one of the travellers died and others were made seriously ill it was *held* that in respect of the traveller who died the offence committed was that punishable under s. 325 of the Penal Code viz grievous hurt and in respect of the travellers who did not die the offence committed was that defined by s 328 of the Code *Queen Empress v Tulsha I L R 20 All 143* not followed EMPEROR v BHAGWAN DIN (1908) I L R. 30 All 568

——— s 304—

See CHARGE TO JURY—SPECIAL CASES—CULPABLE HOMICIDE. 6 B L R Ap 86 87 note

See CULPABLE HOMICIDE

See HURT—GRIEVOUS HURT 6 C W N 98

See JOINDER OF CHARGES I L R 2 All. 349

See MURDER.

See ss 96 TO 100 304. 13 C W N 1180

——— ss 304 304A

See HURT—GRIEVOUS HURT I L R 18 Calc 49

——— ss 304 325—*Assault by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt* Three persons attacked a fourth with lathis and one of the assailants struck a blow which fractured the skull of the person attacked and caused his death but the evidence left it in doubt as to which of the three assailants struck that blow *Held* that the offence of which the three assailants were guilty was grievous hurt rather than culpable homicide not amounting to murder *Queen Empress v Duma Baidya I L R 19 Mad 483* followed EMPEROR v BHOLA SINGH (1907) I L R 29 All 282

——— 304A

See CAUSING DEATH BY NEGLIGENCE I L R. 16 All 472

See CULPABLE HOMICIDE

See RAILWAY COLLISION 9 C W N 73

1 ——— *Rash and negligent act causing death—Railways Act (IX of 1890) s 101—Breach of general rules endangering safety of travellers—Line clear and caution message system—*

PENAL CODE (ACT XLV OF 1860)—contd

——— s 304A—concld

Conditional line clear certificate—Collision—Remote cause—Contributory negligence The Bengal Nagpur Railway is worked on the line clear and caution message system so that no train can be started from any station without a line clear certificate which in terms is a copy of a telegram to that effect from the next station *B* an assistant station master at a station G had in anticipation of receiving such a telegram and against rule (and in order as he explained to save time) written out in the prescribed form book a conditional line clear message (which further did not contain all the necessary particulars) to the effect that on the arrival at G of a down train then due from a station S the line would be clear for a certain up train at G to start for S The guard of the latter train thereafter without the knowledge of *B* and also against rules entered the station master s room in his absence tore this imperfect certificate from out of the book and without reading it as he ought to have done signed and passed it on to the driver and gave the signal for the train to start but without taking the permission of the station master as the rules required The driver also without examining the certificate started the train and a collision took place in which several persons including the driver were killed *B* and the guard were both convicted under s 304A of the Penal Code and s 101 of the Railways Act *Held* that *B* was not liable The consequences were too remote to have been caused by *B s* writing out the certificate in disobedience of the rule BAL KRISHNA v EMPEROR (1904) 8 C W N 645

2 ——— *Administering poison believing it to be a charm—Rash and negligent act—Liability* Where the accused received a powder from an enemy of her relative took no precaution to ascertain whether it was noxious and mixed it with his food believing that by doing so she would become rich *Held* that the conduct was wanting in that prudence and circumspection which every human being is supposed to exercise and as by her rash and thoughtless act she caused death she was guilty of an offence under s 303A Indian Penal Code *Emperor v Naganna 4 Bom L R 405* distinguished *Q E v Bhakhan P R (1887) Cr J 60* followed EMPEROR v JAMNA (1909) I L R 31 All 290

——— ss 304A 336—338—

See DEATH BY RASH OR NEGLIGENT ACT I L R 36 Calc 302

——— s 306—

See ABETMENT 3 N W 316
1 Agra Cr 21

——— s 307—

See ATTEMPT TO COMMIT OFFENCE

4 Bom Cr 17
I L R 15 Bom. 194
I L R. 14 All 38
I L R. 20 All. 143

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 307—*concld*

See SENTENCE—TRANSPORTATION 7 W R Cr 41

——— s 309—

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE 1 Bom 4

See SUICIDE I L R 8 Mad 5

——— s 312—

See MISCARRIAGE 15 W R Cr 4
19 W R Cr 32
I L R 9 Mad. 369

——— ss 314, 317—

See MURDER 10 W R Cr 52 59

——— s 317—

See ABANDONMENT OF CHILDREN
16 W R Cr 12
I L R 18 All 364
I L R 24 Mad 662

——— s 318—

See CONCEALMENT OF BIRTH
4 Mad Ap 63

——— ss 319 338—

See HURT

——— s 323—

See COMPOUNDING OFFENCE
10 Bom 68

See CRIMINAL PROCEDURE CODE s 437
5 C W N 72

See CULPABLE HOMICIDE
I L R 2 All 522 766
I L R 3 All 597

See RIOTING I L R 26 Calc 974

——— s 324—

See CHARGE—FORM OF CHARGE—SPECIAL CASES—HURT 4 Mad Ap 5

See SENTENCE—CUMULATIVE SENTENCES
7 W R Cr 60
I L R 6 Calc 718
I L R 11 Calc 349
I L R 12 Calc 495
I L R 16 Calc 442

See UNLAWFUL ASSEMBLY
7 C W N 512

——— s 325—

See JURY TRIAL BY
I L R 34 Calc 698

See WARRANT OF ATTACHMENT
I L R 29 Calc 244

——— ss 325 326—

See REVISION—CRIMINAL CASES—COMMITMENT I L R 16 Bom. 580

See RIOTING I L R 24 Calc 686

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 325—*concld*

See SENTENCE—CUMULATIVE SENTENCES
I L R 6 All. 121
I L R 7 All 29 414 757
I L R 9 All 645
I L R 16 Calc 725
I L R 17 Bom. 260

——— s 326—

See HURT—GRIEVOUS HURT
6 C W N 98

See ante s 149 13 C W N 827

——— s 328 and s 81—*Causing unwholesome thing to be taken with intent to injury* Held that a person who placed in his toddy pots juice of the milk bush knowing that if taken by a human being it would cause injury and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots and which toddy was drunk by and caused injury to certain soldiers who purchased it from an unknown vendor was rightly convicted under s 328 of the Penal Code of causing to be taken an unwholesome thing with intent to injure and that s 81 which says that if an act be done without any criminal intention to cause harm it is not an offence did not apply to the case REG v DHANIA DAJI 5 Bom Cr 59

——— s 330—

See ABETMENT I L R 20 Bom. 394

——— s 332 and ss 99 147 and 323—*Criminal Procedure Code 1882 ss 55 56 and 114—Public servant in the execution of his duty as such—Arrest without sufficient authority but in good faith—Assault on police making arrest—Right of private defence* A warrant was issued by a Magistrate for the arrest of one *D* under s 114 of the Code of Criminal Procedure The warrant was sent to a certain thana to be executed It was there [illegible]

[illegible]

rant had been made over had left the thana it was discovered that *D* was in a village other than that in which he had been supposed to be Thereupon the officer temporarily in charge of the thana made a copy from the book at the thana endorsed on the back the names of one *N* and some other constables [illegible] *N* and the

[illegible]

under that section but inasmuch as they were acting in good faith under the colour of their office s 99 of the Penal Code applied and *D* and his associates

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s. 332—*concld*

mi ht be properly convicted under ss 147 and 323 of the Code The words in the di charge of his duty as such public ervant in the earlier portion of s 332 of the Penal Code mean in the di charge of a duty impo ed by law on such public servant in the particular ca e and do not cover an act done by him in good faith under colour of hi office *Queen v Roxburgh 1. Cox C C* 8 referred to QUEEN EMPRESS v DALIP I L R 18 All. 246

——— ss 332 333—

See SENTENCE—CUMULATIVE SENTENCES I L R 19 Calc 105

——— s 336—

See CHARGE—FORM OF CHARGE—SPECIAL CASES—PUBLIC SAFETY OFFENCE AFFECTING 1 Bom 137

See RASH AND NEGLIGENT ACT 5 C W N 376

——— ss 336 337 338—

See CULPABLE HOMICIDE I. L R. 4 Calc 764

See ante s 304 A 13 C W N 362

——— ss 339 to 342—

See WRONGFUL RESTRAINT 10 W R Cr 20 35
24 W R Cr 51
I L R 12 Bom 377
I. L R 24 Calc 885
4 C W N 49

——— ss 339 340 342 346—

See WRONGFUL CONFINEMENT I L R 9 Calc 221
I L. R 13 Bom 376
I L R. 19 Bom. 72

——— s 342—

See CRIMINAL PROCEDURE CODE s 437 5 C W N 72

See WRONGFUL CONFINEMENT I L R 30 Calc 95
I L. R 30 Mad 179

——— s 344—

See SENTENCE—FINE 1 Bom 39

See UNLAWFUL COMPULSION I L R. 19 Calc 572

——— s 347—

See EXTORTION I L R 31 Calc 710

——— s 350—

See CRIMINAL PROCEDURE CODE s 529 5 C W N 250

See POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE I. L. R 25 All. 341

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 351—

See THUMB IMPRESSIONS I L R 30 Calc 97
I L R 32 Calc 550

——— s 352—

See ASSAULT ON PUBLIC SERVANT I L R 9 Bom. 558
6 C W N 202

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT I L.R 5 Mad 378

See HURT—CAUSING HURT 7 B L R Ap 25

See SENTENCE—CUMULATIVE SENTENCES I L R 12 Mad 36

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE 16 W R Cr 42

See UNLAWFUL COMPULSION I L R 19 Calc 572

——— s 353—

See ASSAULT ON PUBLIC SERVANT 13 W R Cr 49
I L R 9 Bom. 558
I L R 26 Calc 630
3 C W N 627
6 C W N 202

See BENGAL EXCISE ACT 1878 s 4 I L R 24 Calc 324

See POLICE ACT (V OF 1861) ss 17 19 I L R 28 Calc 411

See SENTENCE—CUMULATIVE SENTENCES 3 B L R A Cr 14 15 note
14 W R Cr 19
I L R 12 Calc 495
3 C W N 174

See SUMMARY TRIAL 23 W R. Cr 3

See THUMB IMPRESSIONS I L R. 30 Calc 97

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) ss 147 227 228 I L. R. 29 All 272

See UNLAWFUL ASSEMBLY 7 N W 209

See WARRANT OF ARREST—

CIVIL CASES 5 C W N 843

CRIMINAL CASES 5 C W N 447
I L. R 28 Calc 399

——— s 353—*Using Criminal force to deter a public servant—Entry by police on premises of suspected person at night—Assault on police* A police con table at midnight entered upon the premises of a person ...

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 307—*concld*

See SENTENCE—TRANSPORTATION 7 W R Cr 41

——— s 309—

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE 1 Bom 4

See SUICIDE I L R 8 Mad 5

——— s 312—

See MISCARRIAGE 15 W R Cr 4
19 W R Cr 32
I L R 9 Mad 369

——— ss 314, 317—

See MURDER 10 W R Cr 52 59

——— s 317—

See ABANDONMENT OF CHILDREN
16 W R Cr 12
I L R 18 All 364
I L R 24 Mad 662

——— s 318—

See CONCEALMENT OF BIRTH
4 Mad Ap 63

——— ss 319 338—

See HURT

——— s 323—

See COMPOUNDING OFFENCE
10 Bom 66

See CRIMINAL PROCEDURE CODE s 437
5 C W N 72

See CULPABLE HOMICIDE
I L R 2 All 522 766
I L R 3 All 597

See RIOTING I L R 26 Calc 974

——— s 324—

See CHARGE—FORM OF CHARGE—SPECIAL CASES—HURT 4 Mad Ap 5

See SENTENCE—CUMULATIVE SENTENCES
7 W R Cr 60
I L R 6 Calc 718
I L R 11 Calc 349
I L R 12 Calc 495
I L R 16 Calc 442

See UNLAWFUL ASSEMBLY
7 C W N 512

——— s 325—

See JURY TRIAL BY
I L R 34 Calc 698

See WARRANT OF ATTACHMENT
I L R 29 Calc 244

——— ss 325 326—

See REVISION—CRIMINAL CASES—COMMITMENT I L R 16 Bom. 580

See RIOTING I L R 24 Calc 686

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 325—*concld*

See SENTENCE—CUMULATIVE SENTENCES
I L R 6 All 121
I L R 7 All 29 414 757
I L R 9 All 645
I L R 16 Calc 725
I L R 17 Bom. 260

——— s 326—

See HURT—GRIEVOUS HURT
6 C W N 98

See ante s 149 13 C W N 827

——— s 328 and s 81—*Causing unwholesome thing to be taken with intent to injury* Held that a person who placed in his toddy pots juice of the milk bush knowing that if taken by a human being it would cause injury and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots and which toddy was drunk by and caused injury to certain soldiers who purchased it from an unknown vendor was rightly convicted under 328 of the Penal Code of causing to be taken an unwholesome thing with intent to injure and that s 81 which says that if an act be done without any criminal intention to cause harm it is not an offence did not apply to the case REG v DHANIA DAJI 5 Bom Cr 59

——— s 330—

See ABETMENT I L R 20 Bom. 394

——— s 332 and ss 99 147, and 323—*Criminal Procedure Code 1882 ss 56 and 114—Public servant in the execution of his duty as such—Arrest without sufficient authority but in good faith—Assault on police making arrest—Right of private defence* A warrant was issued by a Magistrate for the arrest of one D under s 114 of the Code of Criminal Procedure The warrant was sent to a certain thana to be executed It was there

which he had been supposed to be Thereupon the officer temporarily in charge of the thana made a copy from the book at the thana endorsed on the back the names of one N and some other constables

their duty within the meaning of s 332 of the Penal Code so as to render the accused liable to conviction

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s. 332—*concld*

might be properly convicted under ss 147 and 323 of the Code The words in the discharge of his duty as such public servant in the earlier portion of s. 332 of the Penal Code mean in the discharge of a duty imposed by law on such public servant in the particular case and do not cover an act done by him in good faith under colour of his office *Queen v Roxburgh 12 Cox C C 8* referred to QUEEN EMPRESS v DALIP I L R. 18 All. 246

——— ss 332 333—

See SENTENCE—CUMULATIVE SENTENCES I L R 19 Calc 105

——— s 336—

See CHARGE—FORM OF CHARGE—SPECIAL CASES—PUBLIC SAFETY OFFENCE AFFECTING 1 Bom 137

See PASH AND NEGLIGENT ACT 5 C W N 376

——— ss 336 337 338—

See CULPABLE HOMICIDE I. L. R 4 Calc 764

See ante s 304 A 13 C W N 362

——— ss 339 to 342—

See WRONGFUL RESTRAINT 10 W R Cr 20 35
24 W R Cr 51
I L R 12 Bom 377
I L R 24 Calc 885
4 C W N 49

——— ss 339 340 342 346—

See WRONGFUL CONFINEMENT I L R. 9 Calc 221
I L R 13 Bom 376
I L R. 19 Bom. 72

——— s 342—

See CRIMINAL PROCEDURE CODE s 437 5 C W N 72

See WRONGFUL CONFINEMENT I L R 30 Calc 95
I L R 30 Mad 179

——— s 344—

See SENTENCE—FINE 1 Bom 39

See UNLAWFUL COMPULSION I L R 19 Calc 572

——— s 347—

See EXTORTION I L R 31 Calc 710

——— s 350—

See CRIMINAL PROCEDURE CODE s 522 5 C W N 250

See POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE I. L. R 25 All. 341

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 351—

See THUMB IMPRESSIONS I L R 30 Calc 97
I L R 32 Calc 550

——— s 352—

See ASSAULT ON PUBLIC SERVANT I L R 9 Bom. 558
6 C W N 202

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT I L R 5 Mad 378

See HURT—CAUSING HURT 7 B L R Ap 25

See SENTENCE—CUMULATIVE SENTENCES I L R 12 Mad 36

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE 16 W R Cr 42

See UNLAWFUL COMPULSION I L R 19 Calc 572

——— s 353—

See ASSAULT ON PUBLIC SERVANT 13 W R Cr 49
I L R 9 Bom. 558
I L R 26 Calc 630
3 C W N 627
6 C W N 202

See BENGAL EXCISE ACT 1878 s 4 I L R 24 Calc 324

See POLICE ACT (V OF 1861) ss 17 19 I L R 28 Calc 411

See SENTENCE—CUMULATIVE SENTENCES 3 B L R A Cr 14 15 note
14 W R Cr 19
I L R 12 Calc 495
3 C W N 174

See SUMMARY TRIAL 23 W R. Cr 3

See THUMB IMPRESSIONS I L R 30 Calc 97

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) ss 147 227 228 I L R 29 All. 272

See UNLAWFUL ASSEMBLY 7 N W 209

See WARRANT OF ARREST—

CIVIL CASES 5 C W N 843

CRIMINAL CASES 5 C W N 447
I L R 28 Calc 399

——— s 353—*Using Criminal force to deter a public servant—Entry by police on premises of suspected person at night—Assault on police* A police constable at midnight entered upon the premises of a person who was regarded by the police as a suspicious character and knocked at his door to ascertain if he was there whereupon he came out and abused and pushed the constable and lifted a stick as if he were about to hit the constable

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 353—*concld*

with it On a complaint being preferred under s 353 of using criminal force to deter a public servant in the execution of his duty —*Held* that the offence had not been committed The constable was not engaged in the execution of his duty as a public servant and was technically guilty of house trespass and his action was calculated to cause annoyance to the inmates of the house and was insulting to the accused who was justified in causing the slight harm which he had inflicted on the constable The latter could not be regarded under s 99 as acting in good faith under colour of his office as his action was not authorised by any police circular or order DORASAMY PILLAI v EMPEROR (1904)
I L R 27 Mad. 52

——— s 354—

See RAPE I. L. R. 5 Bom. 403

——— ss 361 and 363—*Kidnapping—Motive—Punishment* For a conviction under 363 Indian Penal Code it was sufficient to prove that the minor was taken away from the custody of a lawful guardian without his consent Motive had nothing to say to the offence of kidnapping though it might have much to say to the punishment Consent given by the guardian after the commission of the offence would not cure it EMPEROR v GANESH (1909)
I L R 31 All. 448

——— ss 361 363, 366 368—

See KIDNAPPING

See KIDNAPPING FROM LAWFUL GUARDIANSHIP 9 C W N 444

——— ss 363 366 498—*Criminal Procedure Code (Act V of 1898) ss 227 228 199 238 537—Charge—Addition of a charge—Irregularity—Penal Code (Act XLV of 1860) ss 363 366 498* The accused was tried on charges under ss 363 (kidnapping from lawful guardianship) and 366 (kidnapping a woman) of the Indian Penal Code (Act XLV of 1860) At the conclusion of the evidence to establish those charges and after the evidence for the defence had been recorded the Court added a charge under 498 (enticing a married woman) of the Code notwithstanding the objection by the accused s counsel The trial ended [illegible]

[illegible] *Held* (i) that the procedure adopted in the case was not regular The additional charge framed at the stage it was framed notwithstanding the objection by the accused s counsel was prejudicial to the accused (ii) that the conviction under s 498 of the Indian Penal Code should be set aside and further investigation be made into the remaining charges EMPEROR v ISAP MAHOMED (1906) I. L. R 31 Bom. 218

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 365, 366—

See CHARGE TO JURY—SPECIAL CASES—KIDNAPPING I L R 14 All. 25

See CRIMINAL PROCEDURE CODE s 238
I L R 20 Calc 483
I. L R 22 Calc 1006

——— ss 366 368—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING
I L R 18 All 350

——— s 369

See SENTENCE—CUMULATIVE SENTENCES
7 Mad 375

——— s 370—

See SLAVERY—CRIMINAL CASES

——— s 372—

See JOINDER OF CHARGES
I L R 12 Mad. 273

1 ——— Selling or hiring minor for purpose of prostitution To constitute an offence under s 372 of the Penal Code it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor s person REG v ARUNACHELLAM
I L R 1 Mad. 164

2 ——— *Disposing of and receiving girls for purpose of prostitution* The prisoners were convicted the one of disposing of and the other of receiving two children females under the age of sixteen years with intent that such females should be used for the purposes of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing girls *Held* that offences under ss 372 and 373 of the Penal Code had been committed and that the prisoners were properly convicted *Ex parte* PADMAVATI 5 Mad. 415

3 ——— Dedication of minor girl to service of temple—*Disposal for purposes of prostitution* *Held* that the dedication of a minor girl under the age of sixteen years to the service of a Hindu temple by the performance of a religious ceremony where it was shown that it was almost invariably the case that girls so dedicated [illegible]

4. ——— *Illegal disposal of minor—Dedication of dancing-girl to temple* A dancing woman of a temple applied to the manager of the temple for the appointment of a minor girl whom she falsely described as her daughter to her kothu miras the manager ordered that the girl be placed on the pay abstract like other dancing girls

PENAL CODE (ACT XLV OF 1860)— *contd*

———— s 372—*contd*

and she was employed about the temple though the ceremony of tying the bottu (after which the girl could not be married) did not take place *Held* that the above facts constituted *prima facie* evidence that an offence under Penal Code s 372 had been committed by the dancing woman the manager abovenamed and the parents of the girl SRINIVASA *v* ANNASAMI I L R 15 Mad 41

5 ———————— *Disposal of a minor — Dedication of a girl in a temple* The accused dedicated his minor daughter as a Ba ivi by a form of marriage with an idol It appeared that a Ba ivi is incapable of contracting a lawful marriage and ordinarily practi es promiscuous intercourse with men [illegible]

[illegible]

6 ———————— *Illegal disposal of* [illegible]

[illegible]

at least by prostitution and there was evidence that the girl sang and danced in the temple received wages and wore a bottu (an emblem of marriage) The Magistrate upon these facts refused to frame a [illegible]

[illegible]

charge On a petition under the Criminal Procedure Code ss 435 439 preferred by the complainant who was a dismissed servant of the temple after the pro ecution had been pending for two year it appeared that the girl had suffered no harm *Held* that whether or not the Magistrate should have framed a charge the High Court was not bound to send the case for re trial SRINIVASA *v* ANNASAMI I L R 15 Mad 323

7 ———————— *Minor illegal disposal of—Dedication of a minor to the service of a* [illegible]

[illegible]

PENAL CODE (ACT XLV OF 1860 — *contd*

———— s 372—*contd*

8 ———— **and s 373—Obtaining possession of minor for purpose of prostitution** The prisoner was tried upon a charge of having obtained possession of Dowlat Bee a minor aged ten years with intent that she should be used for an [illegible]

Triplicane and promised to give her a pice if she would accompany him into an uninhabited house clo e by and allow him to have sexual intercourse [illegible]

[illegible]

9 ———————— *Obtaining a minor for prostitution—Dancing girl caste—Adoption* A woman being a member of the dancing girl caste obtained pos ession of a minor girl and employed her for the purpose of prostitution he sub equently obtained in adoption another minor girl from her parents who belonged to the same caste She and the parents of the second girl were charged together under ss 372 373 of the Penal Code The charges related to both girls *Held* that ss 372 373 of the Penal Code may be applic able in a ca e where the minor concerned is a mem ber of the dancing girl caste *Per* MUTTU AMI [illegible]

[illegible]

10 ———————— *Letting to hire a g rl under sixteen for immoral purpose for one occasion—Prostitution for a course of life—Criminal* [illegible]

[illegible]

criminate sexual intercourse *Dowlat Bee* v *Shaik*

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 372—*contd*

Ali 5 Mad 473 followed QUEEN EMPRESS v SUKEE RAUR I L R. 21 Calc 97

11. ———— *Obtaining possession and disposing of minor for purposes of prostitution* S a married Mahomedan girl under sixteen while living with A her grandmother and in the absence of her husband formed an adulterous intrigue with two Hindus with the knowledge of A S and A were then induced by the Hindus to remove to another village that S might take up the trade of a prostitute they there met J a public woman with whom they went to reside and who introduced visitors to S and received the money paid by them in exchange for the board and food supplied to S and A A was convicted under s 372 Penal Code of disposing of a minor for the purpose of prostitution and J was convicted under s 373 Penal Code of obtaining possession of a minor for the purpose of prostitution *Held per* JACKSON J that on the facts proved no offence was committed under the Penal Code *Per* GLOVER J—A and J were both guilty under ss 372 and 373 respectively and their appeals should be dismissed QUEEN v NOURJAN 6 B L R Ap 34 14 W R. Cr 39

11 ———— *Buying or selling minor for the purpose of prostitution etc* Certain persons falsely representing that a minor girl of a low caste was a member of a higher caste induced a member of such higher caste to take her in marriage and to pay money for her in the full belief that such representation was true *Held per* STUART C J that such persons could not be convicted on these facts of offences under ss 372 and 373 of the Penal Code *Per* OLDFIELD J and STRAIGHT J that if such girl was disposed of for the purpose of marriage it could not be said because the marriage might be invalid under Hindu law that such persons acted with the intention that she should be employed or used for the purposes of prostitution or for any unlawful and immoral purpose or that they knew it to be likely that she would be employed or used for such purpose and consequently they could not be convicted of an offence under those sections *Per* PARSONS J and SPANKIE J that such girl having been disposed of for the purpose of marriage although the marriage might be absent ... [illegible]

not be convicted of offences under the section EMPRESS OF INDIA v SRI LAL I. L. R. 2 All. 694

13 ———— Abetment—*Disposing of a minor for immoral purposes—Offence committed out for British India* A minor girl under the age of sixteen years was taken by accused No 1 under the direction of accused No 2 from Sholapur to Tuljapur (in the Nizam s territory) and there dedicated to the goddess Amba with intent or knowing it to be likely that the minor would be used for purposes of prostitution The District Magistrate of Sholapur convicted accused No 1 of an offence under s 372 and accused No 2 of abetment of the offence under ss 372 and 108A of the Indian Penal Code and sentenced them each to six months rigorous imprisonment *Held* that there was no offence committed in British India and therefore the accused No 2 was not guilty of abetment and s 108A of the Penal Code had no application to the present case Mere intention not followed by any act cannot constitute any offence and an indirect preparation which does not amount to an act which amounts to a commencement of the offence does not constitute either a principal offence or an attempt or abetment of the same The intention of either of the accused while they were staying at Sholapur did not constitute any offence and their removal with the girl to Tuljapur did not by itself constitute an abetment QUEEN EMPRESS v BAKU I. L. R. 24 Bom. 287

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 372—*concld*

———— s 373—

See CHEATING BY PERSONATION 7 W R Cr 55

See HINDU LAW—CUSTOM—ADOPTION I L R 19 Mad. 127 I L R. 21 Mad. 229

1. ———— *Obtaining minor for purpose of prostitution—Soliciting a girl to sexual intercourse* S 373 of the Penal Code is not applicable to a case where a man solicits a girl to have sexual intercourse with him and having no other intention or purpose in view QUEEN v BHUTIA 7 N W 295

2 ———— *Obtaining possession of minor for purposes of prostitution—Offence defined by above section explained* To constitute the offence provided for by s 373 of the Penal Code it is necessary first that a minor under sixteen years ... [illegible]

the age of sixteen years will be employed for the purposes of prostitution or with the knowledge that it is likely that the said minor while still under the age of sixteen years will be employed or used for an unlawful and immoral purpose The offence is complete so soon as the obtaining possession with the requisite intention or knowledge of the minor is accomplished though the minor may not enter upon prostitution until years after she has attained maturity or may never enter upon such a profession at all *Deputy Legal Remembrancer v Karuna Bai Iobi I L R 2? Calc 164* approved QUEEN EMPRESS v CHANDA I. L. R. 18 All 24

3 ———— and s 372—*Buying minor for purpose of prostitution—Intention proof of—Onus of proving guilty intention in case of sale of minor for purpose of prostitution—Evidence Act (I of 1872) s 106* In order to constitute an offence

PENAL CODE (ACT XLV OF 1860)—contd

——— s. 373—contd

under s 373 of the Penal Code it is not necessary that the intention or knowledge of likelihood as to the employment of the minor for purposes of prostitution should be with reference to employment either immediate or at some definite and not very remote future period but an offence under the section is complete as soon as a girl is purchased with the guilty intention or knowledge of likelihood that she will while still a minor under the age of sixteen years be employed for that purpose although the point of time for such employment may be remote by reason of her physical incapacity for the purpose *H* the father of two girl twins about a year old sold one of them to *K* a prostitute for R9 and within ten days of such sale also sold her the other for R14 *K* was shown to have previously purchased another child whom she had brought up from her infancy and who was then living with her and leading the life of a prostitute Both *H* and *K* made confessions as to the guilty knowledge and intention with which the sale of the two children was made *K's* confession was made within two hours after her arrest and immediately thereafter he was

and *K* were tried jointly *H* being charged with an offence under s 372 viz selling the girls for the purpose of prostitution and *K* with an offence under s 373 viz buying for the same purpose Neither was charged with abetting the other The two confessions were used as evidence and there was other evidence tending to prove the intention and guilty knowledge The Deputy Magistrate convicted each of the offence with which they were charged On appeal the Session Judge acquitted *K* on the ground that the offence under s 373 could not be committed unless the intention was that the minor was to be used for the purpose of prostitution at some definite future time and that it would be carrying the law too far to hold that the intention had reference to a period some twelve of fourteen years after the purchase when the minor became

confession of *K* was given and retracted it was open to suspicion and could not safely be acted upon and that the confession made by *H* was not legally admissible against her as they were not being tried jointly for the same offence *Held* also that having regard to the provisions of s 106 ill (a) of the Evidence Act and to the fact that there was evidence apart from the confessions which tended to show the knowledge and intention which the character and circumstance of the act suggested the onus lay on *K* to show that the intention was other than that which the act suggested or that the employment of the girls as prostitutes was not intended till after they had attained the age of sixteen years and that as he had failed to show this and the evidence all tended the other way the acquittal was erroneous and must be reversed DEPUTY LEGAL REMEMBRANCER v KARUNA BAISTOBI I L R 22 Calc 164

4 ——— *Obtaining a girl under the age of 16 for purposes of prostitution—Evidence of intent* In a charge against a dancing girl under s 373 of the Indian Penal Code for having

and that numerous other dancing girls residing in the neighbourhood were in the habit of obtaining girls and bringing them up as dancing girls or prostitutes and that there were no instances of girls brought up by dancing girls ever having been married On its being contended that there

conviction QUEEN EMPRESS v PAPA SANI I L R 23 Mad. 159

——— s 374—

See UNLAWFUL COMPULSION I L R 19 Calc 572

——— s 375—

See RAPE I L R 5 Bom 403

——— s 376—

See ADULTERY I L R 29 Calc 415

See SENTENCE—TRANSPORTATION 1 B L R A Cr 5

——— s 377—

See UNNATURAL OFFENCE I L R 6 All 204

——— s 378—

See PARTNERSHIP PROPERTY 13 B L R F B 307 308 note 310 note

See POST OFFICE ACT 1866 s 48 I L R 14 Mad 229

——— *Theft—Charge of stealing chanks—Shell fish taken from bed in sea—Ferae naturae—Possession of complainants—Subject of theft* Chanks (popularly included among shell

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 378—*concld*

been the monopoly of the rulers of the country both in India and Ceylon and that licenses to gather them had been granted by the sovereign and that chank royalty was one of the heads of revenue on which permanent assessment of an adjacent zamindari was fixed in 1802 Petitioner who had leased from the Rajah of Ramnad the chank beds five miles off the coast of his zamindari charged the counter petitioners with having committed the offence of theft of chanks from these beds On the defence being raised that chanks were fish and were *feræ naturæ* and that those in question had been taken from beds in the open sea and had therefore not been taken from the possession of the complainant and could not be the subject of theft —*Held* that the chanks in question were capable of being the subject of theft ANNAKUMARU PILLAI *v* MUTHUPAYAL (1904)
I L R 27 Mad. 551

——— ss 378 to 381—

See THEFT

——— s 379—

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE **I L R 17 Bom 369**
I. L. R 27 Calc 660 990

See THEFT

1 ——— *Theft—Dishonestly quarrying and removing stones from land in possession of another* Stones when quarried and carried away are things severed from the earth (within the meaning of s 378 explanation 1 of the Penal Code) and are moveable property (within the meaning of s 22) and as such are capable of being the subject of theft A person who quarries and carries away stones from land in the possession of another commits theft *Queen Empress v Kottayya I L R 10 Mad 55* dissented from VENKATAPPAYYA SASTRI *v* MADULA VENKANNA (1904) **I L R 27 Mad. 531**

2 ——— *Theft—Claim of title—Bonâ fides—Jurisdiction of Criminal Court—Servant act committed by at master s bidding—Guilty knowledge proof of—High Court—Jurisdiction in revision—Finding of fact of lower Court interference with* Although as a rule the findings of fact of the lower tribunal are accepted by the High Court in revision cases there are exceptions One must be careful to see that the criminal law is not put in motion with a view to assistance in the prosecution of a civil claim The Criminal Courts should not convict of theft any person who asserts a claim of right unless it is in a position to say that that claim is a mere pretence A servant should not be held guilty of the offence of theft when what he did was at his master s bidding unless it should have been shown that he participated in his master s knowledge of the dishonest nature of the acts There must be some evidence before the Court from which such knowledge on the part of the servant

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 379—*concld*

can be inferred HARI BHUIMALI *v* EMPEROR (1905) **9 C W N 974**

3 ——— *Theft—Dishonest taking—Bonâ fide claim of ownership by accused over property in possession of third party—Disputed ownership of land—Possession summarily taken by Revenue authorities—Province of Civil Courts to decide question of ownership between Government and private persons* The petitioner was convicted of theft of certain bamboos which he said he cut on his own patta land but which the prosecution alleged he cut on Government poramboke land adjacent to his own Prior to his conviction disputes had arisen between the Revenue authorities and the petitioner regarding the ownership of the land The petitioner contended that he *bonâ fide* believed the bamboos to be his property at the time he cut and removed them The Magistrate finding that the Revenue authorities had taken possession of the land at the time the bamboos were removed convicted the petitioner *Held* that the conviction was wrong The questions to be considered were (i) whether the bamboos did in fact belong to the petitioner or to Government (ii) whether if they did not belong to the petitioner he *bonâ fide* believed they did It is the province of the Civil Courts to decide questions of ownership of land between Government and private parties and if the Revenue authorities take summary possession of land as in the present case they become mere trespassers and there is nothing dishonest in the owner taking possession of his own property ALGAPASAWMI TEVAN *v* EMPEROR (1905)
I L R 28 Mad. 304

——— ss 379 380—

See SENTENCE—CUMULATIVE SENTENCES
3 W R Cr 19
1 Bom. 87
9 Bom 172
I L R 1 Bom. 214
I L R 10 All. 146

——— ss 379 405—

See THEFT **I L R 36 Calc 758**

——— ss 379 430—

See THEFT **I L R 35 Calc 437**

——— s 380—

See REVISION—CRIMINAL CASES—SENTENCES **B L R Sup Vol. 488**

See SENTENCE—FINE **16 W R Cr 17**

——— ss 383 to 387—

See EXTORTION

——— s 390—

See ROBBERY **5 C W N 372**

——— s 391—

See RIOTING **I L R 15 All. 23**

PENAL CODE (ACT XLV OF 1860)— *contd*

——— ss 392 411—*Criminal Procedure Code s 181—Jurisdiction—Robbery committed outside British India—Stolen property brought into British territory* Two persons Baldewa who was not a British subject and Radhua who was were committed to the Court of Session at Jhansi it being alleged against them that they had committed a robbery in an adjoining Native State and had brought the stolen property into British territory *Held* that though neither could be tried by the Sessions Judge of Jhansi for the robbery Baldewa because he was not a British subject and Radhua because the certificate required by s 188 of the Code of Criminal Procedure was wanting yet both might be tried for the offence of retaining stolen property under s 411 of the Penal Code *King Emperor* v *John* I L R 23 All 266 distinguished *Queen Empress* v *Abdul Latib* I L R 10 Bom 186 followed EMPEROR v BALDEWA (1906)
I L R 28 All 372

——— s 394—
See SENTENCE—TRANSPORTATION
7 W R Cr 41

——— ss 395 398—
See CHARGE—ALTERATION OR AMENDMENT OF CHARGE
I L R 17 Bom 369

See CHARGE TO JURY—SPECIAL CASES—DACOITY I L R 25 Calc 711
2 C W N 369

——— ss 395 to 397 402—
See DACOITY

——— s 397—*Dacoity with use of deadly weapons—Applicability of section* *Held* that s 397 of the Penal Code applies only to the actual person or persons who at the time of committing robbery or dacoity may use any deadly weapon or may cause grievous hurt to any person or may attempt to cause death or grievous hurt to any person *Queen Empress* v *Senta All Weekly Notes (1899) 186* followed *Queen Empress* v *Mahabir Tewari* I L R 21 All 263 referred to EMPEROR v NAGESHWAR (1906)
I L R 28 All 404

——— s 400—*Criminal Procedure Code (Act V of 1898) s 423 (2)—When verdict of jury can be interfered with—Evidence necessary to prove offence under s 400 Indian Penal Code—Evidence Act (I of 1872) s 54* The Court will not on appeal interfere with the verdict of a jury under s 423 (2) of the Criminal Procedure Code unless it is satisfied that the verdict is erroneous and that such error was caused by a misdirection by the Judge or misunderstanding on the part of the jury of the law as laid down by him In a case under s 400 Indian Penal Code the prosecution is bound to prove that the accused belonged to a gang which was consciously associated for the purpose of habitually committing dacoity The associating and the purpose of the association may be proved by direct evidence or by proof of facts from which they can be reasonably inferred Evidence of the commission of other offences than dacoity is only evidence of bad character and is inadmissible under s 54 of the Evidence Act Evidence that the accused or groups of them had been concerned in a large number of dacoities in a comparatively short space of time may be sufficient evidence of such association PUBLIC PROSECUTOR v BONIGIRI POTTIGADU (1908) I L R 32 Mad 179

——— s 401—
See CHARGE TO JURY—SPECIAL CASES—BELONGING TO GANG OF THIEVES
6 Mad 120
I L R 27 Calc 139

See THEFT I L R 27 Calc 139
4 C W N 97

——— s 403—
See CRIMINAL MISAPPROPRIATION
6 C W N 34

See POST OFFICE ACT s 48
I L R 14 Mad 229

See STOLEN PROPERTY—OFFENCES RELATING TO I L R 11 Mad 145

See THEFT
I L R 15 Calc 388 390 note 392 note
I L R 22 Mad 151
I L R 17 Calc 852

——— ss 403 to 409—
See CRIMINAL BREACH OF TRUST

See CRIMINAL MISAPPROPRIATION

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST I L R 13 Bom 147

——— ss 404 405 to 408—
See COMPOUNDING OFFENCE
7 Mad Ap 34
6 C L R 392
I L R 1 Mad 191

——— s 405—
See COURT OF WARDS 5 C W N 248

See CRIMINAL BREACH OF TRUST
6 C W N 203

See PARTNERSHIP PROPERTY
13 B L R 307 308 note 310 note

1 ——— *Criminal breach of trust—Definition* A clerk in a record room made over a document forming part of a record in his custody to a person who was entitled to the document but who would otherwise have had to present an application on stamped paper in order to secure its return in a legal manner *Held* that the clerk was under the above circumstances rightly convicted under s. 409 of the offence of criminal

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 405—*concld*

breach of trust by a public servant EMPEROR v GANGA PRASAD (1905) I L R 27 All 260

2. ——— *Criminal breach of trust— Property —Cancelled cheques* A cancelled cheque falls within the meaning of the term property as used in s 405 of the Penal Code even if it is worth no more than the value of the paper upon which it is written In the matter of a conviction for criminal breach of trust the question of the value of the property in respect of which the breach of trust is committed is except so far as s 95 of the Code is concerned quite immaterial EMPEROR v MAULA BAKHSH (1905) I L R 27 All 28

——— s 406—

See CRIMINAL BREACH OF TRUST I L R 28 Calc 362 I L R 35 Calc 1108

See JOINDER OF CHARGES I L R 24 All 254

——— s 408—

See CHARGE—FORM OF CHARGE—SPECIAL CASES—CRIMINAL BREACH OF TRUST I L R 24 Calc 193

See CRIMINAL BREACH OF TRUST 6 C W N 203 I L R 29 Calc 489

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST I L R 19 All 111

——— s 409—

See BANKERS I L R 16 All 88

See CHARGE—FORM OF CHARGE—SPECIAL CASES—CRIMINAL BREACH OF TRUST AND MISAPPROPRIATION I L R 17 All 153 I L R 18 All 116 I L R 24 Calc 193 2 C W N 341

See CRIMINAL PROCEDURE CODE I L R 27 All 69

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS I L R 19 Bom 749

——— ss. 409 to 414—

See STOLEN PROPERTY—OFFENCES RELATING TO

——— s 411—

See CHARGE—FORM OF CHARGE—SPECIAL CASES—STOLEN PROPERTY 1 Bom. 95

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 411—*concld*

See CHARGE TO JURY—SPECIAL CASES—STOLEN PROPERTY I L R 15 Bom. 369 I L R 26 Mad. 467

See CRIMINAL PROCEEDINGS I L R 28 Calc 104

See JOINDER OF CHARGES I L R 29 Calc 387

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT I L R 11 All 393

See STOLEN PROPERTY OFFENCES RELATING TO I L R 23 All 266

——— *Possession of stolen property—Joint Hindu family—Liability of head of the family or managing member* Stolen property consisting of a considerable quantity of cloth weighing about five maund was discovered on search by the police in a locked room in a house belonging to and inhabited by a joint Hindu family composed of a father son and grandson The son was found to be the managing member of the family and the key of the room in which the stolen property was found was produced by him The circumstances were such that it was very improbable that the cloth could possibly have been placed where it was found without the connivance of some or all of the members of the family *Held* that under the above circumstances the conviction of the managing member of the family under 411 of the Indian Penal Code was a proper conviction *Queen Empress v Sangam Lal I L R 15 All 129* referred to EMPEROR v BUDH LAL (1907) I L R 29 All 598

——— s. 411 414—

See SENTENCE—CUMULATIVE SENTENCES 4 Mad Ap 14 I L R 11 Mad. 393

——— s 414—

See CRIMINAL PROCEEDINGS. I L R 28 Calc 104

——— s 415—

See CHEATING 9 C W N 941 I L R 33 Calc 50

1. ——— *Deception—False representation—Conduct* To constitute the offence of cheating under s 415 of the Penal Code it is not necessary that the deception should be by express words but it may be by conduct or implied in the nature of the transaction itself *Queen v Sheodurshun Dass 3 All H C 17* referred to KHODA BUX v BAKEYA MUNDARY (1905) I L R 32 Calc 941 s.c 9 C W N 1006

2. ——— *Cheating—Definition—Sale of immoveable property without mentioning incumbrances* The vendor of immoveable property cannot be convicted of cheating because he omits to

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 415—*concld*

mention that there is an incumbrance on the property unless it is shown either that he was asked by the vendee whether the property was incumbered and said it was not or that he sold the property on the representation that it was unincumbered *Hor fall v Th ma* 1 *I L J Ex* 377 referred to EMPEROR *v* BISHAN DAS (1905)

I L R 27 All 561

——— ss 415 416 417 419—

See CHEATING BY PERSONATION

——— ss 415 417 419 420—

See CHEATING

——— ss 415 417 511—*Attempt to cheat—Coolie recruiting—Attempt under s 511* The accused a coolie recruiter induced the complainant to come to a coolie depot and promising him domestic service entered his name in the book of the depot and wrote a letter to a coolie contractor in Calcutta offering the complainant as a coolie on the same day the accused persuaded the complainant to go to the railway station to fetch a parcel and there the accused bought a railway ticket for Calcutta for the complainant and tried to get him to enter the train but the complainant refused to go The object of the accused was to get the complainant to go to Calcutta that he might be sent from there to Assam as a tea garden coolie *Held* that the acts of

——— ss 415 419—*Cheating by personation—Personation—Minors* On an application by the *Karta* of a joint Hindu family in his representative character to withdraw certain surplus sale proceeds standing to their credit in the Treasury the Collector directed him either to file a power of attorney or to cause all the other members to appear and admit his authority to sign on their behalf They all appeared in person before the sheristadar except two minors who were per

Held that upon the facts the offence of cheating was not made out *Reg v Longhurst* unreported *In re Lootly Beva* 11 W R *Cr* 24 referred to BABURAM LAL *v* EMPEROR (1905)

I L R 32 Calc 775
s c 9 C W N 807

——— ss 415 419 420—

See FORGERY I L R 19 Calc 380
I L R 13 Mad 27

——— ss 416 419—

See FALSE EVIDENCE—GENERAL CASES
1 Bom 89

——— s 417—

See BENGAL MUNICIPAL ACT 1884 s 133
I L R 22 Calc 131

See CHARGE—FORM OF CHARGE—FORGERY I L R 30 Calc 822

See CRIMINAL BREACH OF TRUST
4 Bom Cr 16

See CRIMINAL MISAPPROPRIATION
3 W R Cr 32

See FORGERY I L R 25 Mad 426

——— ss 417 420—*Cheating—Definition—Pre emption—Failure to disclose existence of mortgage subsequent to purchase* The vendee defendant in a suit for pre emption compromised the suit the plaintiff agreeing to pay a certain sum in cash and to discharge certain incumbrances on the property in suit It was subsequently discovered that the vendee had after his purchase but before suit mortgaged the property which was the subject of the suit for pre emption *Held* that the vendee could not on account merely of his omission to disclose the existence of this subsequent mortgage be held guilty of the offence of cheating GENDAN LAL *v* ABDUL AZIZ KHAN (1905)

I L R 27 All 382

——— s 419—

See FALSE PERSONATION

——— s 420—

See CHARGE ADDITION TO OR ALTERATION OF 9 C W N 22

See MISCHIEF I L R 24 All 155

——— *Addition to or alteration of subject matter of indictment—Cheating—Property—Money—Criminal Procedure Code (Act V of 1898) ss* ?? The Sessions Court is not a Court of original jurisdiction and though vested with large powers for amending and adding to charges can only do so with reference to the immediate subject of the prosecution and committal and not with regard to matter not covered by the indictment The accused was put upon his trial before the Sessions Court on charges under ss 471 and ??? of the Penal Code Upon motion to the High Court it was held that a previous acquittal covered the charge under s 471 and that the accused could be tried only under s ??? When the case came to trial the Sessions Judge amended the charge to one under s ??? —*Held* that the Judge had full power under the law to amend the charge and that the High Court did not intend to fetter his discretion The word property in s 420 of the Penal Code includes money BIRENDRA LAL BHADURI *v* EMPEROR (1904)

I L R 32 Calc 22
s c 8 C W N 784

PENAL CODE (ACT XLV OF 1860)—*contd*

1 ——— s 422—*Compromise of debt* Where *A* entered into an agreement with *B* not to compromise a case with *C* because he had assigned the benefit of the suit to *B* as a security for the due payment of some monthly instalment of money and *A* notwithstanding did afterwards compromise the suit with *C* it was *held* that *A* could not be convicted under s 422 of the Penal Code unless the compromise with *C* was made dishonestly or fraudulently towards *B* *In the matter of the petition of* NOBIN CHUNDER MUDDUCK 22 W R Cr 46

2 ——————— *Mortgage—Dis*

under the terms of the agreement certain persons were appointed managers of the estate under certain conditions in regard to payment of the money realised by them In execution of a decree obtained by the managers in a suit brought in the names of the petitioners a certain *patni talukh* was sold for R3 000 The debtor settled with the petitioners that on payment of R1 000 the sale was to be set aside The money was paid into Court and an application was made by the petitioners for the withdrawal of this money The Court however made no order on this application The petitioners were convicted of an attempt to commit an offence under s 422 of the Penal Code *Held* that having regard to the relation between the petitioners and their managers at whose instance the proceedings were taken it could not properly be said that an attempt to commit an offence under s 422 of the Penal Code was made *Also* that the interference

CHOWDHURANI *v* SAVI (1900)
I L R 28 Calc 314 s c 5 C W N 174

——— s 423—

See FALSE STATEMENT
I L R 25 All 31

——— s 424—

See CRIMINAL MISAPPROPRIATION
I L R 22 Mad 151

See PARTNERSHIP PROPERTY
13 B L R 307 308 note 310 note

See THEFT I L R 22 Mad 151

1 ——————— *Dishonest removal of property to avoid distraint—Distraint for arrears of rent under the Rent Recovery Act—Absence of presumption in favour of its legality—Onus of proof on prosecution to prove legality—Conviction in*

PENAL CODE (ACT XLV OF 1860)—*contd*

——————— s 424—*concld*

absence of such proof—Illegality Where a distraint

prove that it was a legal distraint In the absence of such proof persons who have resisted the distraint or have removed their property to avoid it cannot be convicted of an offence Inasmuch as they had a right of private defence of their property unless the distraint was legal KING EMPEROR *v* GOPALASAMY (1902) I L R 25 Mad 729

2 ——————— *Dishonest removal*

tecting them from injury or damage owing to delay or refusal on the part of the zamindar to perform his part in the harvesting or division such a removal would not be dishonest within the meaning of s 424 of the Indian Penal Code But where it is proved that the crops have been removed dishonestly or fraudulently an offence is committed under s 424 even though the zamindar under the terms of the tenancy acquires no property in the share due to him until the raiyats have delivered it to him SUBUDHI RANTHO *v* BALARAMA PUDI (1902) I L R 26 Mad 481

3 ——————— *Illegal attachment—Fraudulent concealment of property* The legality or formality of the mode of attachment allowed by a Civil Court is not a matter for a Deputy Magistrate s consideration Where a Deputy Magistrate considering that the attachment of a carriage in execution of a decree of a Civil Court was illegal because it was placed in the custody of the judgment debtor s husband and that the husband had acted fraudulently in removing and concealing the wheels and axles of the carriage on its subsequent distraint for arrears of municipal tax convicted him of an offence under s 424 of the Penal Code the conviction was set aside QUEEN *v* BROJO KISHORE DUTT
8 W R Cr 17

——— s 425—

See THEFT I L R 17 Calc 852

——— ss 425 426—*Mischief—(N W P and Oudh Municipalities Act (I of 1900) s 167* Certain cattle belonging to one *M H* upon various occasions when in charge of a servant of *M H* strayed or were driven into the Government gardens at Saharanpur and there caused damage *Held* that *M H* could not on these facts be convicted of the offence of mischief *Forbes v Grish Chunder Bhattacherjee 14 W R 31* and *Empress v Bai Baya I L R 7 Bom 126* followed *Held* also that s 167 of the Municipalities Act 1900 did not apply that section being one dealing with offences against the person *King*

PENAL CODE (ACT XLV OF 1860)— *contd*

———— s 425—*concld*

Emperor v *Patan Din All Weekly Notes (1905) 19* followed. EMPEROR v MEHDI HASAN (1907) I. L. R. 29 All 565

———— ss 425 to 430—

See MISCHIEF

———— *Mischief by injury to works of irrigation—Cutting up a dam put up across a river—Diminution of supply of water for agricultural purposes—Wrongful loss or damage—Intention—* [illegible]

[illegible] caused a diminution of the supply of water for [illegible]

CHANDRA PHATTACHARJEE v HELALUDDIN MONDOL (1904) 8 C W N 370

———— s 426—

See MISCHIEF

See OFFENCE RELATING TO DOCUMENTS I L R 12 Mad 54

See SENTENCE—CUMULATIVE SENTENCES I. L R 12 Mad. 36

See THEFT I L R 15 Calc 388 390 note 392 note, 402

———— *Mischief—Definition—Fishery—Draining off water from river to the* [illegible] land with a [illegible] and by so [illegible] did destroy [illegible] mature and [illegible]

[illegible] *Calc 388* distinguished EMPEROR v CHANDA (1905) I. L. R 28 All 204

———— s 429— *Bull and Cow Definitions of— Any other animal meaning of* The words bull and cow in 429 of the Penal Code include the young of those animals The section specifies the more valuable of the domestic animals without any regard to age but in respect of other kinds of animals not so specified the section would not apply unless the particular animal in question was shown to be of the value of fifty rupees or upward HARI MANDLE v JAFAR I L R. 22 Calc 457

PENAL CODE (ACT XLV OF 1860)— *contd*

———— s 434—

See LANDMARK I L R 30 Calc 1084

———— *Boundary marks fixed by authority of public servant—Definition—Criminal Procedure Code s 145* A Magistrate making an order under s 145 has no authority to cause the property which is the subject of a dispute likely to occasion a breach of the peace to be demarcated by boundary pillars and consequently if he does so a person destroying or removing such boundary pillars is not liable to conviction under s 434 of the Penal Code EMPEROR v PAMESHAR (1905) I L R 27 All. 300

1 ———— s 441—*Criminal trespass—Intent—Dispossession of tenant under a false pretext* When a zamindar under the pretext that one of his tenants had left the village and abandoned his holding took possession of the tenant s holding wrongfully it was *held* that in the absence of evidence of one of the objects specified in s 441 of the Penal Code the zamindar could not properly be convicted of criminal trespass his intention apparently being merely to get possession of the land *King Emperor* v *Nandon All Weekly Notes (1902) 49* distinguished EMPEROR v JANGI SINGH (1904) I L R 26 All. 194

2 ———— *Criminal trespass—Definition—Occupation by zamindars of house left by deceased tenant* A tenant of village *S* who owned a house there but was temporarily residing in a neighbouring village died and on his death the zamindars of *S* took possession of the house in *S* adversely to the tenant s widow alleging that they were entitled to it *Held* that the action of the zamindars could not be taken as amounting to cri[illegible] he [illegible] 29 [illegible]

I L R 27 All. 298

———— ss 441 448—

See CRIMINAL TRESPASS I L R 26 Bom 558

———— ss 441 442 443 447 448 451 456 457—

See CRIMINAL TRESPASS

———— s 442—

See PRISONS ACT s 45 I L R 2 All. 301

See THEFT 16 W R Cr 63

———— ss 442 452 456 457—

See TRESPASS—HOUSE TRESPASS 6 N W 301 307
I. L. R 2 All. 301
12 W R Cr 33
I. L. R. 2 Mad 30

PENAL CODE (ACT XLV OF 1860)— *contd*

——— s 447—

See CRIMINAL TRESPASS

See THEFT
I L R 15 Calc 388 390 note 392 note 402

——— s 451—

See CHARGE—FORM OF CHARGE—SPECIAL CASES—HOUSE TRESPASS
16 W R Cr 63

——— s 454—

See SENTENCE—CUMULATIVE SENTENCES
3 W R Cr 19
I L R 10 All 146

——— s 456—*Lurking house trespass by night—Intention—Burden of proof* The accused was found inside the house of the complainant at midnight and his presence was discovered by the wife of the complainant crying out that a thief was taking away her *hansli* The evidence of the complainant clearly showed that the accused was not there with the consent or at the invitation or for the pleasure of the complainant *Held* that the accused was properly convicted under s 456 of the Indian Penal Code it being for him to show that his intention was under the circumstances innocent *Brij Basi v The Queen Emperor I L R 19 All 4* distinguished *Balmakund Ram v Ghansamram I L R* [illegible] *Calc 391* followed. EMPEROR v ISHRI (1906) I L R 29 All 46

——— ss 456 457—

See REVISION—CRIMINAL CASES—SENTENCES B L R Sup Vol 468

——— s 457—

See BENCH OF MAGISTRATES
23 W R Cr 6

See CRIMINAL PROCEDURE CODES ss 436 438 (1872 s 296)
I L R 1 All 413
2 B L R S N 2
7 C L R 168

See CRIMINAL TRESPASS
I L R 23 All 82

See SENTENCE—CUMULATIVE SENTENCES
1 Bom 87
5 W R Cr 49
6 W R Cr 49 92
8 W R Cr 31
I L R 1 Bom 214
I L R 10 Bom 493
I L R 12 Mad 36

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION
I L R 3 All 773
I L R 17 All 120

PENAL CODE (ACT XLV OF 1860)— *contd*

——— ss 458 459—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—PENAL CODE
1 W R Cr 34
9 W R Cr 5

——— ss 459 460—

See HURT—GRIEVOUS HURT
I L R 8 All 649

——— ss 463 464 471

See FORGERY

1 ——— ss 464, 465 415 417 511—*Forgery—Intention to cause it to be believed that document was made at a time at which it was not made—Proof of* On 25th of Jaista a bill was presented to the accused in his shop by *B* a servant of *H* for payment of money due by the accused to *H* On the bill was printed a stipulation that any payment on account of the bill unless endorsed on its back would not be admitted The prosecution alleged that the accused took the bill from *B* and (in the presence of *B* and several other persons) wrote on its back the endorsement 17th Jaista through *B* R501 whereupon *B* snatched the bill away from the accused and asked for payment of the amount thus entered on the bill to which the accused answered [illegible]

accordingly been entered in the books of the accused (which were produced) on 17th Jaista but that the payment had not been endorsed on the bill on 17th Jaista as *B* had not brought the bill with him on that date that the bill was endorsed by the accused [illegible]

ence that the endorsement was made by the accused with the intention of causing it to be believed that it was made on the 17th and not on 25th of Jaista when in fact it was made *Held* as to the charge of attempting to cheat that the bill having been snatched away from the accused before he had given any indication of what he meant to do with it the acts of the accused did not constitute an attempt to cheat supposing that it was cheating that the accused intended and was prepared to commit *Railway v Cheeseman L & C 145* referred to *Quære* Whether the case was one which could be brought within the definition of cheating in s 415 Penal Code An attempt to deceive by a false representation of fact involves that the person charged should have taken some steps towards the communication of the representation to the person whom it was his intention to deceive EMPEROR v IMAM ALI SIRCAR (1904)
8 C W N 278

PENAL CODE (ACT XLV OF 1860)—*contd.*

2 ———— ss 464 and 467—*No false document where executant simply sets up a false claim but has no intention of causing belief that document was executed by another* A who was not the son natural or adopted of the deceased B executed a deed of mortgage of certain properties of B in favour of C In the body of the document A was described as the son of B though no such description appeared in the signature A was known to C for a long time and A had no intention of causing it to be believed that the document was executed by any other person than him elf *Held per* MUNRO and ABDUR RAHIM JJ that A wa not guilty of making a fal e document within the meaning of s. 464 Indian Penal Code The assertion of a fal e claim in a document will not constitute the document false when it is executed by the party who purports to execute it and there is no intention of cau ing a belief that it was executed by some other person real or fictitious *Per* PINHEY J —The document was a false document as it contained a false description. A wanted to cause it to be believed that such a person as the son of B existed and his intention was to defraud the real heir *i e* the widow of B A had thus committed the offence of forgery within section 467 Indian Penal Code ADAIKALAMMAL *v.* PAMAN (1908) I L R 32 Mad 90

———— s 465—*Forgery—Definition—Fraudulently* One Piari the wife of Amir left her husband s house Amir put in a petition at the police station asking that a search might be made for the missing woman and he also employed a pleader one Ali Zohad to assist him in discovering the whereabouts of Piari. Ali Hasan the son of Ali Zohad and a clerk employed in the office of the District Superintendent of Police forged two orders [illegible] hand her over to the petitioner (Amir) and the second directing the Sub Inspector of Kydganj to hand the woman over to the petitioner *Held* that in fabricating these two documents Ali Hasan had acted fraudulently and had committed the offence punishable under s 465 of the Penal Code *Queen Empress v Soshi Bhushan I L R 15 All 210 Queen Empress v Abbas Ali I L R 25 Calc 512* and *Kotamraju Venkatarayadu v Emperor I L R 28 Mad 90* referred to EMPEROR *v.* ALI HASHAN (1906) I L R 28 All. 358

———— ss 465 471—*Forgery and using as genuine a forged document* In ord r to obtain admission to the Matriculation Examination of the Madras University as a private candidate V was required to produce to the Registrar a certificate [illegible] signature to such a certificate and forwarded it to

PENAL CODE (ACT XLV OF 1860)—*contd.*

———— s 465—*concld*

the Registrar *Held* (SUBRAHMANIA AYYAR and DAVIES JJ dissenting) that V was guilty of forgery *Per* SIR ARNOLD WHITE C J —The offence of forgery is complete if a document false in fact is made with intent to commit a fraud although it may not have been made with any one of the other intents specified in s 463 It was not necessary having regard to the wording of s 24 that the accused should have intended to cause both wrongful gain to him elf and wrongful loss to the University Both intentions however were pre ent in this case Moreover the fal e document [illegible]

accused had a claim to be exempted from the production of an attendance certificate upon satisfying certain conditions precedent An intended deprivation of property is not an essential element of an intention to defraud *Per* BENSON J Those decisions which pro eed on the ground that an act is not fraudulent unless it causes or is intended to cause loss or injury to some one would seem to take too narrow a view of the meaning of the word fraudulently as used in the Code The act of the accused was fraudulent not merely by reason of the advantage which he intended to secure for himself by means of hi deceit but also by reason of the injury which must necessarily result to the University and through it to the public from such acts if unrepressed *Per* SUBRAHMANIA AYYAR.—The document was not made fraudulently within the meaning of ss 464 and 463 of the Code Deprivation of property actual or intended does not constitute an essential element in regard to offences falling under ss 465 and 471 of the Penal Code but the deception must involve some loss or ri k of loss to an individual or to the public It i not enough to show that the deception was intended to secure an advantage to the deceiver *Per* DAVIES J —It had not been shown that the accu ed in making the document had either the intention neces ary to constitute it a false document within the meaning of s 464 A mere intention to deceive does not necessarily [illegible]

PENAL CODE (ACT XLV OF 1860)— *contd*

———— ss 465 471 477A—

See FORGERY I L R 36 Calc 955

———— s 466—

See CHARGE—FORM OF CHARGE—FALSE EVIDENCE AND PERJURY

I L R 28 Calc 434

See FORGERY I L R 23 All 84

———— s 466—*Registration—Divorce—Mahomedan marriage—Evidence* Where one *X* by personating *P* before the Mahomedan Registrar of Marriages obtained the registration of *P's* divorce from his wife and the appellant identified *X* as *P* before the Registrar *Held* that the appellant was not guilty of an offence under s 199 of the Penal Code inasmuch as the Registrar was not bound or authorized by law to receive his statement in evidence but whether he was guilty of an offence under s 11 of the Penal Code would depend chiefly on whether he knew that *X* was not *P* or had no knowledge whether he was *P* or not *Held* that the Judge had fairly put the evidence on this point to the jury YASIN SHEIKH (AKONDA) *v* EMPEROR (1905) 9 C W N 69

———— ss 466 and 471—*Definition—Using as genuine a forged document—Copies of a forged original* Where a person knowing or having reason to believe that the entries in certain village khasras were forged took copies of those khasras and used them as evidence in his favour in a civil suit it was *held* that he might be properly convicted of fraudulently or dishonestly using as genuine the khasras which he knew or had reason to be forged and punished under s 471 read with s 466 of the Penal Code EMPEROR *v* MULAI SINGH (1906)

I L R 28 All 402

———— s 467—

See ATTEMPT TO COMMIT OFFENCE

I L R 16 All 409

See CHARGE—FORM OF CHARGE—FORGERY I L R 30 Calc 822

See FORGERY 5 C W N 897
6 C W N 382

See LETTERS PATENT HIGH COURT cl 26
3 Bom Cr 20

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE

I L R 14 Bom 36

———— s 468—

See FORGERY I L R 25 Mad 726

———— s 471—

See CHARGE—FORM OF CHARGE—FALSE EVIDENCE AND PERJURY

I L R 28 Calc 434

See FORGERY I L R 30 Calc 822
I L R 35 Calc 820
11 C W N 838

PENAL CODE (ACT XLV OF 1860)— *contd*

———— s 471—*concld*

See FORGERY 5 C W N 897
I L R 23 All 84

———— *Using as genuine a forged document* The offence imputed against an accused who in a civil suit is alleged to have used as genuine a document which he knew to be a forged document is one cognizable under s 471 of the Penal Code Such accused should therefore be charged under that section and not under s 196 of the Code EMPRESS *v* KHERODE CHUNDER MOZOOMDAR

I L R 5 Calc 717 6 C L R 116

———— s 473—

See FORGERY 2 W R Cr 5
13 W R Cr 16

———— s 474—

See FORGERY 6 C W N 382

———— *Possession of forged document—Intention* It is not sufficient for a conviction under s 474 of the Penal Code to say that the prisoner might possibly have used an altered document The guilty intent must be proved not inferred QUEEN *v* LOKENATH SHAHA W R 1864, Cr 12

———— ss 474 475—

See CHARGE TO JURY—SPECIAL CASES—POSSESSION OF FORGED DOCUMENT

I L R 16 Bom. 165

1 ———— s 475—*Possession of papers bearing counterfeit marks or devises—Charge under s 475 how to be framed—Misdirection—Evidence.* During the course of a police investigation into a complaint of theft the house of the accused was searched and a bundle of papers about 58 in number were found which were alleged to be forgeries or preparations for forgeries The accused was thereupon committed to the Court of Session on a charge under s 475 of the Penal Code A few days before the trial of the accused the police searched the house of one S who was a witness for [illegible]

s 475 of the Penal Code and sentenced to transportation for life *Held* reversing the conviction and sentence that the suspicious papers found in *S's* house were not admissible in evidence against the accused *Held* further that the Judge's direction to the jury regarding those papers that they established a connection between the accused and mar [illegible] to the same faction [illegible] the pra [illegible] and tha [illegible] question of guilty knowledge and intention was a misdirection which prejudiced the accused In the trial of an accused person on a charge under

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 475—*concld*

s 475 of the Penal Code the charge should be so framed as to specify distinctly that part of the section which is applicable to the ca e and should distinctly specify the particular papers bearing a counterfeit mark or device which the accused was alleged to have had in his possession with the ntent mentioned in the section QUEEN EMPRESS v ABAJI RAMCHANDRA I L R 15 Bom 189

2. ——— and s 467—*Counterfeiting device or mark* In order to a conviction under s 4"5 of the Penal Code the document which the accused has in his pos es ion must have some counterfeit device or mark upon it and it must be proved that the accused has the document in his posses sion with the intent of u ing such device or mark *for the purpose of giving the appearance of authen ticity* to the document The document must be of the nature mentioned in s 467 of the Penal Code QUEEN v RUGHOONUNDUN PUTTRONUVEES 15 W R Cr 19

——— ss 477 477A—

See OFFENCE RELATING TO DOCUMENTS

——— s 477A—

See CHARGE—FORM OF CHARGE—SPECIAL CASES—FALSIFICATION OF DOCUMENTS I L R 26 Calc 560

See FALSIFICATION OF ACCOUNTS I L R 35 Calc 450

——— ss 478 480—*Offence of using false trade mark—No acquisition of the trade mark in the sense used in the English Act necessary under s 4 8 of the Penal Code—Criminal Procedure Code (Act V of 1898) ss 2 233 34—Joinder of more than three offences in one trial illegal—Trial not valida ted by striking out charge to cure such defect after ca e closed though before judgment* A person selling soap not manufactured by *P* in a box which bears the name of *P* as a soap manufacturer uses a false trade mark and is guilty of an offence under s 480 of the Penal Code It is not necessary to constitute an offence under s 478 that a trade mark in the sense in which the word is used in the English Patents Designs and Trade Marks Acts should have been acquired and a mark is none the less a fal e mark becau e it appeared on the box and not on the goods Under ss 233 234 of the Code of Criminal Procedure a person cannot be charged with more than three offences at one trial and the defect cannot be cured after the accused had pleaded and the case had closed by amending the charges so as to reduce it to three offences Although the words in s 2 7 of the Code of Criminal Procedure are wide enough to warrant a Court in altering a charge by striking [illegible]

which the Legislature intended to guard against had been done *Subrahmania Ayyar v King Emperor I L R 25 Mad 61* referred to and explained MANAVALA CHETTY v EMPEROR (1906) I L R 29 Mad. 569

——— ss 478 482—

See TRADE MARK I L R 26 Bom. 289

——— s 482—

See MERCHANDISE MARKS ACT (IV OF 1889) I L R 31 Mad. 512

See TRADE MARK I L R 22 Mad 488

——— ss 482 486—

See TRADE MARK I L R 31 Calc 411
9 C W N 43 969
11 C W N 887

1 ——— *False trade mark using—Property in mark proof of—Bona fides—Onus* The complainants the Holland Bombay Trading Company used for years past to import [illegible]

Trading Company Limited and a buff heading The accused had in their possession for purposes of sale some packages of white shirtings bearing the mark *H P F C* 4000 a label with two lions and two snakes and an oval stamp containing written on it Sole Importers Holland Export Company and a buff heading The letters *H B T C* in the complainants and *H B F C* in the accused s marks were printed in similar types and were similar in size and colour The colour and size of the labels as also the colour size and type of the oval stamps in both were similar *Held* (where it was proved that complainants had a property in their mark) that the accused had used a false trade mark and were liable to conviction under ss 482 486 of the Penal Code Under s 486 of Penal Code the onus is not on the complainant to show that the accused acted dishonestly but on the accused to bring himself within the exception to that section HOLLAND BOMBAY TRADING COMPANY v BUKTEAR MULL (1904) 8 C W N 421

2 ——— *Selling goods marked with a counterfeit trade mark—Penal Code as amended by the Merchandise Marks Act (Act IV of 1889 as amended by Act IX of 1891) ss 6 and —Applying a false trade description to good* *Held* that a person may to some extent appropriate to his own use a name suggested by his trade with out infringing the law relating to trade marks or trade descriptions *Held* also that the appellants who sold fish hooks in boxes similar to the respond [illegible]

PENAL CODE (ACT XLV OF 1860)—*contd*

s 482—*contd*

has chosen a name for its own use such as mach marka (fish mark) that fact cannot be held to prevent other persons from applying a mark to fish hooks which may be generally known by the same term EMPEROR v BAKAULLAH MALLIK (1904) I L R 31 Calc 411

———— s 486—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—PENAL CODE s 486 I L R 25 Calc 639

See TRADE MARK

———— s 489C—

See JOINDER OF CHARGES I L R 29 Calc 387

———— s 490—

See CRIMINAL BREACH OF CONTRACT 6 W R Cr 60 9 W R Cr 12

———— Ch XX (ss 493 to 498)—

See ADULTERY 7 C W N 143

———— s. 494—

See ABETMENT I L R 4 Calc 10

See BIGAMY

———— ss 494 495—

See BIGAMY

———— s 496—*False marriage* Proof of dishonest or fraudulent intent is necessary for a conviction under s. 496 of the Penal Code of falsely going through the ceremony of marriage QUEEN v KUDUM W R. 1864 Cr 13

———— s 497—

See ADULTERY

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO I L R 17 Mad. 260

———— s 498—

See ADULTERY 7 C W N 143

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARY I. L. R. 25 All. 209

See CRIMINAL PROCEDURE CODES s 238 I L R. 20 Calc 483

1 ———— Enticing away married woman—*Enticing or taking away wife temporarily living alon* Enticing or taking away with a criminal intent a wife living in her husband's house or in a house hired by him for her occupation and at his expense during his temporary absence is punishable under s. 498 of the Penal Code provided the seducer knew or had reason to know that she was the wife of the man from

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 498—*contd*

whose house he took her MUTTY KHAN v MUNGLOO 5 W R Cr 50

2 ———— *Enticing away married woman—Presumption of marriage—Onus probandi* In a charge under s 498 of the Penal Code the proof that the woman and man other than the accused were living together is sufficient to throw the burthen of proof on the accused that they were not man and wife QUEEN v WAZIRA 8 B L R Ap 63 17 W R Cr 5

3 ———— *Enticing away wife—Proof of marriage* S and G having been convicted of enticing away the wife of the complainant the conviction was quashed on appeal on the ground that strict proof of marriage being necessary for a conviction under s 498 of the Penal Code the evidence adduced (*viz* of the complainant the woman and her mother who swore to the fact of the marriage) was not sufficient to enable the Court to form an opinion whether the marriage took place as a fact and if it did take place whether it was according to law The accused did not cross [illegible]

[illegible]

QUEEN EMPRESS v SUBBARAYAN I L R 9 Mad 9

4 ———— *Enticing away a married woman—Evidence of marriage—Mere statement of the complainant and the woman* Where a charge is made under s. 498 of the Penal Code of enticing away a married woman the Court should require some better evidence of the marriage than the mere statement of the complainant and the woman QUEEN EMPRESS v DAL SINGH I L R 20 All. 166

5 ———— *Enticing and taking away* Upon an indictment under s. 498 of the Penal Code charging that the prisoner took away one *A* who was then and whom he then knew to be the wife of one *M* with the intent that he might have illicit intercourse with the said *A* —*Held* that there was a taking within the meaning of the section although the advances and solicitation had proceeded from the woman and the prisoner had for some time refused to yield to her request QUEEN v KUMARASAMI 2 Mad. 331

6 ———— *Enticing away married woman—Finding in words of section.* A finding exactly in the words of s. 498 of the Penal Code that the prisoner took or enticed away a married woman from her husband or some person having the care of her on his behalf with intent that she should have illicit intercourse with some person or concealed or detained such woman with a like intent though not actually illegal when it is doubtful which of the several offences has been committed is a finding which ought not to be resorted to if it can be avoided

PENAL CODE (ACT XLV OF 1860)—contd

——— s 498—contd

and it can be dertermined under which part of the section the prisoner is guilty QUEEN v MOTHOOPA NATH ROY 22 W R Cr 72

7 ——— Alyasantana law—*Marriage —Custom* In the ab ence of very clear evidence of cu tom which if well founded must be a matter of general notoriety the cohabitation of a man and a woman under the Alyasantana system cannot be considered marriage o as to render puni hable under s 498 of the Penal Code a person who entices away the woman with the intents speci fied in that section. KORAGA v QUEEN I L R 6 Mad 374

8 ——— Detaining enticed woman A conviction cannot be had under the latter part of s 498 of the Penal Code for detaining an enticed woman until the enticing has been proved EMPRESS v TIKA SINGH I L R 3 All 251

9 ——— *Concealing or detaining* In a charge under s. 498 of the Penal Code the words of the section conceals or

action. Depriving the husband of proper control over his wife for the purpose of illicit intercourse is the gist of the offence and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments QUEEN v SUNDARA DASS TEVAN 4 Mad 20

10 ——— *Detaining with criminal intent married woman* The words such woman in s 498 of the Penal Code do not mean such a woman as has been so enticed as mentioned in that section but mean such woman whom the accused knows or has reason to believe to be the wife of any other man the detention of such a woman with the par ticular intent defined in the section is one of the offences made punishable under that section QUEEN EMPRESS v NIADAR I L R 10 All 580

11 ——— Charge of abetment against the woman enticed— *Enticing away a woman—Validity* Where a man has been convicted

——— ss 499 excep 3 6 9 500— *Defamation—Comment—Right of fair comment —Comment should be suggested by and confined to the work under review—Good faith tests of—Malice interpretation of the term* The word malice in the legal u e of that term is not limited to hostility of feeling but by

PENAL CODE (ACT XLV OF 1860)—contd

——— s 499—contd

virtue of its etymological origin extends to any state of the mind which is wrong or faulty (whether evidenced in action by excess or defect) such as

feeling should in all cases be established by evidence extrin ic to the comment which is the subject of the complaint For whether fair comment is to be regarded as falling under a branch of the law of privilege or not it cannot excuse an injury arising not from the mere act of criticism but from a state of mind in the critic which is in itself unjustifiable and the excu e may be so forfeited either by reason of an evil intent in him or by rea on of mere recklessness in making an unwarrantable assertion For then the comment would not be fair comment at all Apart from extrinsic evidence of malice protection must be withheld even from what purports to be criticism if it states as a fact to be inferred from the book criticised an imputation for which the book itself contains absolutely no foundation whatever The right of fair comment involves two essentials first that the imputation should be comment on the work criticised and second that it should be fair, —that is to say that if it professes to be an inference drawn from the contents of that work it must be an inference which it is possible to draw therefrom

Good faith requires not indeed logical infallibil ity but due care and attention But how far erroneous actions or statements are to be imputed to want of due care and caution must in each ca e be considered with reference to the general circum stances and the capacity and intelligence of the person who e conduct is in question It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of preci e reasoning At the same time it must be borne in mind that good faith in the formation or expression of an opinion can afford no protection to an imputa tion which does not purport to be ba ed on that which is the legitimate subject of public comment The object of exception 6 to 499 of the Indian Penal Code (Act XLV of 1860) is that the public hould be aided by comment in its judgment of the public performance submitted to its judgment

formance It follows that an imputation on an author made by a critic without refer nce express or implied to the work under criticism if in term so general as to be capable of conveying an unfavourable impres ion of him apart from what app ars in his work cannot be justified by the critic on the ground that his intention was to base his imputation solely on the work reviewed and that he had in his mind pas ages therein supporting the imputation The respon ibility of the critic is to

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 482—*concl*

has chosen a name for its own use such as 'mach marka' (fish mark) that fact cannot be held to prevent other persons from applying a mark to fish hooks which may be generally known by the same term EMPEROR v BAKAULLAH MALLIK (1904) I L R 31 Calc 411

———— s 486—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—PENAL CODE s 486 I L R 25 Calc 639

See TRADE MARK

———— s 489C—

See JOINDER OF CHARGES I L R 29 Calc 387

———— s 490—

See CRIMINAL BREACH OF CONTRACT 6 W R Cr 80 9 W R Cr 12

———— Ch XX (ss 493 to 498)—

See ADULTERY 7 C W N 143

———— s 494—

See ABETMENT I L R 4 Calc 10

See BIGAMY

———— ss 494 495—

See BIGAMY

———— s 496—*False marriage* Proof of dishonest or fraudulent intent is necessary for a conviction under s. 496 of the Penal Code of falsely going through the ceremony of marriage QUEEN v KUDUM W R. 1864 Cr 13

———— s 497—

See ADULTERY

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO I L R. 17 Mad. 260

———— s 498—

See ADULTERY 7 C W N 143

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARY I L R. 25 All 209

See CRIMINAL PROCEDURE CODES s. 238 I L R. 20 Calc 483

1 ———— Enticing away married woman—*Enticing or taking away wife temporarily living alone* Enticing or taking away with a criminal intent a wife living in her husband's house or in a house hired by him for her occupation and at his expense during his temporary absence is punishable under s 498 of the Penal Code provided the seducer knew or had reason to know that she was the wife of the man from whose house he took her MUTTY KHAN v MUNGLOO 5 W R Cr 50

PENAL CODE (ACT XLV OF 1860)—*contd*

———— s 498—*contd*

2 ———— *Enticing away married woman—Presumption of marriage—Onus probandi* In a charge under s 498 of the Penal Code the proof that the woman and man other than the accused were living together is sufficient to throw the burthen of proof on the accused that they were not man and wife QUEEN v WAZIRA 8 B L R Ap 63 17 W R Cr 5

3 ———— *Enticing away wife—Proof of marriage* *S* and *G* having been convicted of enticing away the wife of the complainant the conviction was quashed on appeal on the ground that strict proof of marriage being necessary for a conviction under s 498 of the Penal Code the evidence adduced (i.e. of the complainant the woman and her mother who swore to the fact of the marriage) was not sufficient to enable the Court to form an opinion whether the marriage took place as a fact and if it did take place whether it was according to law The accused did not cross examine the witnesses as to the fact or validity of the marriage or otherwise impugn it *Held* that the marriage was sufficiently proved *Empress v Pitambur Singh I L R 5 Calc 566* discussed QUEEN EMPRESS v SUBBARAYAN I L R 9 Mad. 9

4 ———— *Enticing away a married woman—Evidence of marriage—Mere statement of the complainant and the woman* Where a charge is made under s 498 of the Penal Code of enticing away a married woman the Court should require some better evidence of the marriage than the mere statement of the complainant and the woman QUEEN EMPRESS v DAL SINGH I L R 20 All. 166

5 ———— *Enticing and taking away* Upon an indictment under s. 498 of the Penal Code charging that the prisoner took away one *A* who was then and whom he then knew to be the wife of one *M* with the intent that he might have illicit intercourse with the said *A*—*Held* that there was a taking within the meaning of the section although the advances and solicitation had proceeded from the woman and the prisoner had for some time refused to yield to her request QUEEN v KUMARASAMI 2 Mad 331

6 ———— *Enticing away married woman—Finding in words of section.* A finding exactly in the words of s. 498 of the Penal Code, that the prisoner took or enticed away a married woman from her husband or some person having the care of her on his behalf with intent that she should have illicit intercourse with some person or concealed or detained such woman with a like intent though not actually illegal when it is doubtful which of the several offences has been committed is a finding which ought not to be resorted to if it can be avoided

PENAL CODE (ACT XLV OF 1860)— *contd*

———— s 498—*contd*

and it can be dertermined under which part of the section the prisoner is guilty QUEEN v. MOTHOORA NATH ROY **22 W R Cr 72**

7 ———— **Alyasantana law**—*Marriage—Custom* In the absence of very clear evidence of custom which if well founded must be a matter of general notoriety the cohabitation of a man and a woman under the Alyasantana system cannot be con idered marriage so as to render puni hable under s 498 of the Penal Code a person who entices away the woman with the intents speci fied in that section. KORAGA v QUEEN **I L R 6 Mad 374**

8 ———— **Detaining enticed woman** A conviction cannot be had under the latter part of s 498 of the Penal Code for detaining an enticed woman until the enticing has been proved EMPRESS v TIKA SINGH **I L R 3 All. 251**

9 ———— *Concealing or detaining* In a charge under s 498 of the Penal Code the words of the section conceals or

action. Depriving the husband of proper control over his wife for the purpose of illicit intercourse is the gist of the offence and a detention occa ioning such deprivation may be brought about simply by the influence of allurements and blandishments QUEEN v SUNDARA DASS TEVAN **4 Mad. 20**

10 ———— *Detaining with criminal intent married woman* The words such woman in s 498 of the Penal Code do not mean such a woman as has been so enticed as mentioned in that section but mean such woman whom the accused knows or has reason to believe to be the wife of any other man the detention of such a woman with the par ticular intent defined in the section is one of the offences made punishable under that section QUEEN EMPRESS v NIADAR **I L R 10 All 580**

11 ———— **Charge of abetment against the woman enticed**— *Enticing away a woman*—*Validity* Where a man has been convicted

———— **ss 499 excep 3 6 9 500**— *Defamation—Comment—Right of fair comment—Comment should be suggested by and confined to the work under review—Good faith tests of—Malice interpretation of the term* The word malice in the legal use of that term is not limited to hostility of feeling but by

PENAL CODE (ACT XLV OF 1860)— *contd*

———— s 499—*contd*

virtue of its etymological origin extends to any state of the mind which is wrong or faulty (whether evidenced in action by excess or defect) such as would be unjustifiable in the circumstances and in compatible with thoroughly innocent intentions It is not necessary that such impropriety of feeling should in all cases be established by eviden e extrinsic to the comment which is the subj ct of the complaint For whether fair comment is to be regarded as falling under a branch of the law of privilege or not it cannot excuse an injury arising not from the mere act of criticism but from a state of mind in the critic which is in it elf unjustifiable and the excuse may be so forfeited either by reason of an evil intent in him or by reason of mere recklessness in making an unwarrantable assertion For then the comment would not be fair comment at all Apart from extrinsic evidence of malice protection must be withheld even from what purports to be criticism if it states as a fact to be inferred from the book criticised an imputation for which the book itself contains absolutely no foundation whatever The right of fair comment involves two essentials first that the imputation should be comment on the work criticised and second that it should be fair,—that is to say that if it professes to be an inference drawn from the contents of that work it must be an inference which it is possible to draw therefrom

Good faith requires not indeed logical infallibil ity but due care and attention But how far erroneous actions or statements are to be imputed to want of due care and caution must in each ca e be considered with reference to the general circum stances and the capacity and intelligence of the person whose conduct is in question It is only to be expected that the honest conclu ions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of preci e reasoning At the same time it must be borne in mind that good faith in the formation or expression of an opinion can afford no protection to an imputa tion which does not purport to be based on that

on such evidence as is supplied by the public per formance It follows that an imputation on an author made by a critic without refer nce express or implied to the work under criticism if in terms so general as to be capable of conveying an

he had in his mind passages therein supporting the imputation The respon ibility of the critic is to

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 499 —*concld*

be gauged by the effect which his comment is calculated to produce and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him He is also bound in the words of the exceptions to express his opinion with due care and caution and to give the public no ground for supposing that he is speaking of anything but the performance submitted to its judgment EMPEROR v ABDOOL WADOOD (1907)

I L R 31 Bom 293

——— s 499 exc 9 ill (*a*)—

See DEFAMATION 9 C W N 195

——— s 499 expln I—

See DEFAMATION—IMPUTATION ON A WIFE
I L R 25 Bom 151

——— ss 499 500—

See DEFAMATION

1 ——— *Defamation—Statements made in an affidavit if privileged* A person would be rightly convicted under s 500 of the Penal Code for making a defamatory statement in an affidavit if the statement made was wholly irrelevant to the enquiry to which the affidavit related *Palu Gunesh Dutt Singh* v *Mugneeram Chowdhry 11 B L R 321* referred to GIRIBALA DASI v PRAN KRISTO GHOSE (1904)
8 C W N 292

2 ——— ——— *Statement made by a person in answer to a query of his pleader shortly after the disposal of the case whether amounts to an offence under—Legal adviser and client relationship of how long lasts* Where the accused shortly

ing that *B s* daughter in law had eloped and he was subsequently prosecuted for an offence under s 500 Indian Penal Code for making a statement defamation of *B* —*Held* that the statement of the accused did not constitute an offence of defamation under s 500 Indian Penal Code as it was not made with the intention of harming the reputation of anybody That the statement was made in answer to a natural question put to him by his legal adviser at a time when the relationship of legal adviser and client cannot be said to have ceased DEBENDRA NATH SAHA v BHAGIRATH SHAHA (1909)
13 C W N 1087

——— s 500—

See APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE.
I. L. R. 25 All. 534

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s. 500—*concld*

See DEFAMATION
I. L R 26 Mad. 43 464
I L R 32 Calc 756
11 C W N 380

See PRIVILEGED COMMUNICATION
7 C W N 246

——— *Defamatory statement in the course of a deposition when privileged—Evidence Act (I of 1872) s 132* The accused while deposing before a Magistrate was asked by the cross examining pleader whether Kanu had asked pardon of Haidar Ali in a *punchayet* and in the course of his answer he made the following statement which was false *viz* Haidar Ali admitted in the *punchayet* that Kanu beat with a wooden shoe *Held* that the statement of the accused was defamatory under s 500 Penal Code and was not privileged under s 132 Evidence Act as it was a

was actuated by malicious motives against Haidar Ali HAIDAR ALI v ABRU MIA (1905)
I L R 32 Calc 756
s c 9 C W N 971

——— ss 503 505 to 508—

See CRIMINAL INTIMIDATION

——— s 504—

See INSULT I L R 10 Mad. 353

——— s 505 (b)—*Penal Code Amendment Act (IV of 1898) s 6—Statements conducing to public mischief—Report alleging impending war and massacre—Fear or alarm inducing commission of offence against the State or the public tranquillity —Vague or remote possibility* The mere causing of fear or alarm to the public or to a section of the public does not constitute an offence under s 505 but it is necessary that the fear or alarm should be caused in such circumstances as to render it likely that a person may be induced to commit an offence against the State or against the public tranquillity Account cannot be taken in a case of this kind of a vague possibility that the state of mind which is caused by alarm may easily induce a person to

Nepal circulated a report among the garden coolies that a war was impending between the British Government and Nepal that Nepalese soldiers [illegible] and that the coolies

of MANBIR 8 C W N [illegible]

PENAL CODE (ACT [XLV OF 1860)— *concl'd*

——— s 508—

See DEFAMATION I L R 6 Mad. 381

——— s 509—

See CRIMINAL TRESPASS
I L R 22 Calc 391 994

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—PENAL CODE s 509
7 W R Cr 52

——— s 511—

See ATTEMPT TO COMMIT OFFENCE

PENAL CODE AMENDMENT ACT (VIII OF 1882)

— s 4—

See SENTENCE—CUMULATIVE SENTENCES
I L R 11 Calc 349
I L R 12 Calc 495
I L R 6 All. 121
I L R 7 All 29
I L R 9 All 645
I L R 16 Calc 442

PENAL CODE AMENDMENT ACT (IV OF 1898)

——— s 6—

See PENAL CODE s 505 3 C W N 1

PENAL SERVITUDE

See SENTENCE—GENERAL CASES
I L R 19 Mad. 483

PENALTY

See COMPOUND INTEREST—DECREE
I L R 34 Calc 150
L R 34 I A 9

See CONTRACT ACT
10 C W N 640 1010

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES

See STAMP ACT 1869 s 34

See STAMP ACT (II OF 1899) ss 5 AND 42 I L R 24 All 374

——— payment of—

See STAMP ACT s 39
I L R 17 Mad 473

——— relief against in execution proceedings—

See EXECUTION OF DECREE—EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES
I L R 24 Mad 265

——— tender of—

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW
7 W R 439
I L R 2 All 554
I L R 4 Calc 213
I L R 13 Bom 449 493

PENALTY—*concl'd*

1 ——— *Interest rate of—Exorbitant rate—Mortgage—Compound interest—Date of payment—Transfer of Property Act (IV of 1882) s 86—Contract Act (IX of 1872) s 74—Act* [illegible]

[illegible] *Chunder Giri v Hem Chunder Mookhopadhya I L R 29 Calc 823* distinguished The mortgagee is [illegible] realisation *Rameswar Koer v Mahomed Mehdi Hossein Khan I L R 26 Calc 39 L R 25 I A 179* and *Maharaja of Bharatpur v Rani Kanno Dei I L R 23 All 181 L R 28 I A 35* followed PRAYAG KAPRI v SHYAM LAL (1904)
I L R 31 Calc 138

2 ——— *Agreement to pay a sum certain breach of—Deposit forfeiture of—Forfeiture no relief against if amount reasonable—Contract Act (IX of 1872) s 74* Where there is a stipulation to deposit a sum specified as security for performance of an agreement the forfeiture of such deposit on breach of the agreement is not in the nature of a penalty if the sum deposited is reasonable in amount *Manian Patter v The Madras Railway Co I L R 29 Mad 118* referred to SINGER MANUFACTURING COMPANY v RAJA PROSAD (1909) I L R 36 Calc 960

PENDENTE LITE

See ADMINISTRATOR PENDENTE LITE

PENSION

See ACT XXI OF 1871 6
I L R 28 All 104

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION—POLITICAL PENSIONS

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER
I L R 19 Bom 232

See PENSIONS ACT

See TREATY CONSTRUCTION OF
I L R 17 Calc 234
L R 16 I A 175

1 ——— *Pensions Act (XXIII of 1871) ss 3 11 12—S 12 applies only to pensions as stated in s 11 and does not extend to grant* [illegible]

[illegible] infirmities or as a compassionate allowance Payments of money for purposes other than those stated may be grants of money or land revenue

PENSION—*concld*

within the meaning of s 3 but the provisions of s. 12 will not apply to them *The Secretary of State for India v Khemchand Jeychand I L R 4 Bom 432* followed SUBBAYA MUDALI v VELAYUDA CHETTY (1906) **I L R 30 Mad 153**

2 ———————— *Pensions Act (XXIII of 1871) s 4—Suit for maintenance under an agreement by which claim to pension and other properties is relinquished not a suit relating to pension and is cognisable by Civil Courts* Where a widow entitled to a portion of a pension and other properties relinquished such right in consideration of a maintenance allowance which is not made payable out of the pension and is not dependent on it a suit by her to recover such allowance is not a suit relating to pension within the meaning of s 4 of the Pensions Act and is cognisable by Civil Courts There is nothing in the Pensions Act which prohibits such relinquishment by the widow or the agreement to pay her maintenance RAJA VENKATANARASIMHA RAMACHANDRA ROW v RAJA LAKSHMINARASAMMA ROW (1906)
I L R 30 Mad. 266

PENSIONS ACT (VI OF 1849)

1 ——— **Arrears of pension succession to**—*Heirs—Succeeding grantee* Arrears of pension due to the deceased at the time of her death form part of her estate and the person who is legal heir to the deceased is entitled to recover them The grantee of the pension formerly enjoyed by the deceased has no right to such arrears which formed part of the deceased's estate NOUSHABAH SOOLTAN BEGUM v NUBEERAH SOOLTAN BEGUM **3 Agra 44**

2 ——— **Agreement to pay portion of pension.** A pension having been granted by Government to *B P* in lieu of a saranjam held by his grandfather a claim to share the same by *M P* and his brothers was compromised by *B P* agreeing to pay them a certain proportion thereof yearly The Agent for Sardars affirming the decree of the Assistant Agent found the agreement to be null and void as an assignment of a future interest in a pension *Held* that as the pension was not granted in consideration of past service and present infirmities or old age the case did not come within the terms of Act VI of 1849 and that the agreement was a valid one MADHAVRAV PANSE v BAPURAV PANSE
4 Bom. A C 62

3. ——— **Liability to attachment**—*Deshmukh allowance* As the holder for the time being of a deshmukhi watan (an hereditary office) has only a life interest in the allowances pertaining to that watan such allowances accruing due subsequently to his death cannot be attached as part of his estate HANMANTRAV KHANDERAV v BHAVANRAV BAJIRAV **10 Bom 299**

4 ———————— *Political pension.* An order made by District Judge rejecting an application to attach a pension on the ground that being a political pension it could not be attached under Act VI of 1849 was reversed on petition by the High Court which directed the pension to be attached. *In the matter of the petition of* HARBHAT BIN RAM CHANDRABHAT
4 Bom A C 67

5 ———————— *Requisite proof for exemption from attachment* On a petition praying that an attachment placed on a pension of which petitioner was the recipient might be removed under Act VI of 1849 the High Court declined to interfere as it had not been shown that the pension was one enjoyed in consideration of past services and present infirmities or old age *Ex parte* VITHALRAV ESHWANTRAV
4 Bom. A C 65

PENSIONS ACT (XXIII OF 1871)

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) s 44
I L R 30 Bom. 101

See HINDU LAW—ALIENATION—ALIENATION BY FATHER
I. L R 14 Bom 320

See PENSION

1 ——— **Operation of Act**—*Retrospective operation* The Pensions Act (XXIII of 1871) is not retrospective JAMNADAS v LALITARAM
I L R 2 Bom 294

2 ——— **Construction of Act**—*Grant by Government—Ownership in the soil* Though as stated in *Krishnarav v Rangrai 4 Bom A C 1* sanadi grants in inam saranjam etc are generally speaking more properly described as alienations of the royal share in the produce of the land (i e. of land revenue) than grants of land although in popular parlance occasionally so called yet such is not invariably the case If words are employed in a grant which expressly or by necessary implication indicate that Government intends that so far as it may have any ownership in the soil that ownership shall pass to the grantee neither Government nor any person subsequently to the date of the grant deriving under Government can be permitted to say that the ownership did not so pass unless there are in the grant such detailed provisions as show that such words are limited in their operation An [illegible] Act XXIII [illegible] and the [illegible] er than [illegible] RAJVI

I. L. R 1 Bom. 523

3 ———————— *Suit for declaration of right to officiate as patil of village—Jurisdiction of Civil Court* A suit for a declaration of the plaintiff's eligibility to officiate as patil of a village is not prohibited by Act XXIII of 1871 That Act should receive a strict construction as being in derogation of the right of the subject to resort to the ordinary Civil Courts. *Babaji v Pajaram I L R 1 Bom 75* distinguished

PENSIONS ACT (XXIII OF 1871)—*contd*

GURUSHIDGAVDA BIN RUDRAGAVDA v RUDRAGAVDATI KOM DYAMANGAVDA I L R 1 Bom 531

4. ———— *Political pension in lieu of grant of land resumed—Impartible property* A saranjam is ordinarily impartible and *semble* that a political pension granted in substitution of a resumed saranjam is so likewise The Pensions Act (XXIII of 1871) prevents a Civil Court from declaring such a pension to be partible unless the Collector should authorize it to do so and the fact that the Collector authorizes a suit for maintenance out of such a pension affords no ground for presuming that he authorizes a suit for the partition of the pension RAMCHANDRA SAKHARAM v SAKHARAM GOPAL I L R. 2 Bom 346

1 ———— s 3— *Grant of money or land revenue —Grant of proprietorship of soil* The meaning of the expression grant of money or land revenue extended by s 3 of Act XXIII of 1871 to include anything payable on the part of Government in respect of any right privilege perquisite or office is not of so wide a range as to include a grant of the proprietorship of the soil or any suit involving the rights of a proprietor of the soil *Krishnarav v Rangrav 4 Bom A C 1 Vaman Janardhan v Collector of Thana 6 Bom A C 191* and *Ruttonji Edulji v Collector of Thana 11 Moo I A 295* distinguished RAJVI NARAYAN MANDLIK v DADAJI BAPUJI I L R. 1 Bom 523

2 ———— and s 6— *Right meaning of—Toda garas haks—Mortgage of hak* Toda garas haks are within the scope of the Pensions Act (XXIII of 1871) and a suit in respect of them cannot be instituted without the certificate required by s 6 of the Act Where a mortgagee of such haks had before the date on which the Act came into operation obtained a decree for the recovery of his mortgage debt from the mortgaged haks and from the mortgagor personally and a fresh suit was necessary to enforce execution of that decree against these haks —*Held* that the Act did not apply to such fresh suit *Semble* That the word right in s 3 of Act XXIII of 1871 is equivalent to the word hak in its restricted sense of allowance or fee PARBHUDAS RAYAJI v MOTIRAM KALYANDAS I L R 1 Bom. 203

3 ———— ss 3 and 11—*Civil Procedure Code s 266—Pension—Zamindari granted as a reward for services rendered to Government* *Held* that a zamindari granted—not revenue free—by Government as a reward for services rendered is not a pension and its alienation by the grantee is not prohibited either by Act XXIII of 1871 or by s 266 of the Code of Civil Procedure *Secretary of State for India v Khemchand Jeychand I L R 4 Bom 432 Bal Krishna Bhao v Govind Rao All Weekly Notes (1902) 161* and *Bishambhar Nath v Nawab Imdad Ali Khan*

PENSIONS ACT (XXIII OF 1871)—*contd*

———— s 3—*concld*

L R 17 I A 181 referred to LACHMI NARAIN v MAKUND SINGH (1904) I L R 26 All 617

———— ss 3 11 12—

See PENSION I L R 30 Mad 153

1 ———— s 4—*Toda garas hak suit for money in lieu of—Jurisdiction of Civil Courts* Act XXIII of 1871 s 4 prohibits the Civil Courts from entertaining a suit against Government upon an alleged agreement by it to pay moneys from its treasury in lieu of toda garas haks MANSANG v GOVERNMENT OF BOMBAY I L R 4 Bom 443

2 ———— *Toda garas hak suit for money in lieu of* In part of Western India annual payments known as toda garas hak made by village communities and commuted by them into liabilities to garasias have been recognized as a species of property however unlawful their origin In 1862 a resolution of the Government of Bombay described the position of the garasias at that time and gave them the option of resuming the collection of the toda garas hak formerly levied resorting only to legal proceedings to enforce their claims or of receiving from the Government allowances of an equivalent amount the collections in the latter case being discontinued on all hands The ancestors of the adoptive father of the plaintiff formerly levied toda garas hak and after 186_ the Government in respect thereof made payments under the resolution to three brothers of whom one was the plaintiff s father the latter receiving a one third share which on his death in 1865 was no longer paid *Held* that a suit against the Government for payment of this third share with arrears fell under the Pensions Act (XXIII of 1871) s 4 which prohibits cognizance save as in the Act provided of any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government whatever may have been the consideration for such pension or grant or whatever may have been the nature of the payment claim or right for which such pension or grant may have been substituted *Held* that there was no reason either in the language of the Act itself or in any antecedent legislation for construing these words as applicable only to rights in the nature of pensions MAHARAVAL MOHANSINGHJI JEYSINGHJI v GOVERNMENT OF BOMBAY I L R 5 Bom 408 L R 8 I A. 77

Affirming the judgment of the High Court in the same case I L R 4 Bom. 437

3 ———— *Jurisdiction of Civil Court—Deshmukh* A suit in a Civil Court by a hereditary deshmukh relating to a grant of land revenue is prohibited by the Pensions Act (XXIII of 1871) NARO DAMODAR GHUGRI v COLLECTOR OF POONA I L R 6 Bom 209

PENSIONS ACT (XXIII OF 1871)—*contd*

——— s 4—*contd*

4 ——— *Jurisdiction of Civil Court—Suit relating to grant of money or land revenue* A plaintiff alleging that as the hereditary de hmukh of certain mehals he was entitled to be paid directly by the raiyats of these mehals a percentage on the revenue thereon as e ed sued to recover a portion of such percent age which had been collected along with the revenue and retained by the Government *Held* that the claim was a suit relating to a grant of money or land revenue and as such excluded from the jurisdiction of the Civil Courts by s. 4 of the Pen ions Act (XXIII of 1871) VASUDEB SADASHIV MODAK v COLLECTOR OF RATNAGIRI I L. R. 2 Bom 99 L. R. 4 I. A 119

5 ——— *Rent free grant of land from Government* S 4 of the Pen ions Act (XXIII of 1871) debars the Civil Court from taking cognizance of any suit whether the Govern ment is a party to it or not which relates to any pen ion or grant of money or land revenue con ferred or made by the Briti h or any former Government without a certificate from the Collector or other authorized officer S 5 prescribes a remedy for the claimant of such pension or grant and s. 6 enables the Revenue officer to refer the parties to the Civil Court for the determination of their respective interests i i the income or other benefit which the executive will however still as against either or both of the litigants be at liberty to allow or withhold. Lands held free of a sessment under a grant from Government which bestows on the grantee the lands themselves and not merely the Government revenue arising from them do not fall within the provi ion of the Pen ions Act BABAJI HARI v RAJARAM BALLAL I L. R. 1 Bom. 75

6 ——— *Grant of land reve nue—Former suit for money* The plaintiffs formerly sued for a sum of money and obtaining a decree attached in 1861 two villages the land revenue of which had been granted in inam. The attach ment continued down to 1875 when the last holder of the villages died and the Government having resumed the villages the attachment was raised. The plaintiffs now sued to have their right declared to sati fy their decree from the revenues of the villa e *Held* that the former suit was not a suit in re pect of a pen ion or grant of money of land revenue and that an attachment placed in pursuance of an ordinary money-decree before the date of the Pen ions Act (XXIII of 1871) could not be treated as a suit in re pect of a pen i n grant of money or land revenue in tituted before such date so as to exclude the operation of the Act und r s 1 SECRETARY OF STATE FOR INDIA v JAMNADAS I L. R. 6 Bom. 737

7 ——— *Inam—Grant of land free of reven e—Specific Rel ef Act s 1* A grant of lands free of revenue does not come within the purview of the Pensions Act 1871 PANCHA NADAYYAN v NILAKANDAYYAN I L. R. 7 Mad 191

8 ——— *Gratuitous pension —Suit for share of annual grant made by Government* One *S* a servant of the Delhi Emperor having been killed in Burdwan while fighting for his master the Emperor built a tomb over his remains and made a grant of land (five mouzahs) to his family for the purpo e of maintaining it in the manner usual amongst Mahomedans. The grant was sub equently confirmed to a descendant of *S* and his heirs. Some years later the land came into the pos ession of the Raja of Burdwan who paid to the grantees a certain sum of money annually When the perpetual ettlement was made the British Government continued the pay ment on account of the Raja in who e zamindari four of the five mouzahs were incorporated Owing to disputes in the family a reference was made to Government who reduced the money payment and appointed a mutwalli for the tomb

the money payment by the zamindar of Burdwan was rent justly due to them for the u e and occupation of their land and that the fact of the payment being continued by Government did not alter its nature Accordingly the suit was not barred by Regulation XXIV of 1793 or Act XXIII of 1871 HAZARA BEGUM v COLLECTOR OF BURDWAN 23 W R 378

9 ——— *Grant by Nawab of Carnatic resumption of—Substitution of money payment—Suit to recover share of money* A jaghir having been granted by the Nawab of the Carnatic for the upport of the grantee and his relatives was resumed by Government and a money pay ment equivalent to the rent substituted *Held* that a uit by a relative of the original grantee to recover as arrears of his share money received by the representative of the grantee was barred by s. 4 of the Pen ions Act 1871 MAHOMMED ISAACK MUSHTACK v AZEEZOON NISSA BEGUM I. L. R 4 Mad. 341

10 ——— *Suit to recover malam service inam lands granted for support of tem ple* A suit by a lessee of the holders of a *malam* service inam (religious endowment for the support of the family of the grantees and of a temple) to recover the inam lands from strangers is not barred by the provisions of the Pensions Act 1871 KOLANDAI MUDALI v SANKARA BHARADHI I. L. R. 5 Mad. 303

11 ——— *Religious endow ment—Personal grant* When the object of the en dowment was to provide for certain religious and pious purposes —*Held* that the provi ions of the Pen ions Act were not applicable t it. Pension and grants in that Act meant personal grants

PENSIONS ACT (XXIII OF 1871)— *contd*

——— s 4—*contd*

and not grants to endowments. SECRETARY OF STATE FOR INDIA v ABDUL HAKEIM KHAN I L R 2 Mad. 294

12. ——— *Taumia granted to mosque—Jurisdiction of Civil Court* S 4 of the Pensions Act, 1871 provides that no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government whatever may have been the consideration for any such pension or grant and whatever may have been the nature of the payment claim or right for which such pension or grant may have been substituted. *Held* that a *ya mia* allowance granted to a religious institution did not fall within the purview of the Pensions Act ATHAVUALLA v GOUSE I L R 11 Mad 283

13 ——— *Grant of villages enjoying grar*
to recover a
jaghir *Held*
of the free hc
suit was barred by s 4 of the Pensions Act 1871 PAMA v SUBBA I L R 12 Mad 98

14. ——— *Jurisdiction of Civil Court—Suit against Government for inam lands and mokasa amals—Bom Reg XXIX of 1827 s 6—Bombay Revenue Jurisdiction Act (X of 1876) s 4—Mokasa amals meaning of* In 1826 *A* obtained a decree on a mortgage awarding him possession and enjoyment of certain inam property consisting of lands and of cash allowances annually paid from the Government treasury called *mokasa amals* *A* and his successors continued in possession down to 18.. when the inam was attached on behalf of Government pending an inquiry under Bombay Act XI of 1852 into the title of the holder of the inam The attachment remained in force till 18.. when Government finally decided that the inam property with the exception of a certain portion should be restored to those from whose possession it had been taken in 1852 Thereupon *D* the successor in interest of *A* applied to the Collector to be restored to possession. The Collector refused *D* therefore sued him for arrears of the *mokasa amals* and obtained a decree in 1868 Thereafter *D* did not receive any payment from the Government treasury In 1883 *D* filed the present suit against Government to recover possession of the inam lands together with arrears of the *amals* *Held* that the suit against Government was not cognizable by the Civil Courts both under the Pensions Act (XXIII of 1871) s 4 and under the Bombay Revenue Jurisdiction Act (X of 1876) s 4 Both these Acts though not retrospective in their operation still do not create rights to relief against the Government where none subsisted before Accordingly the suit being barred under Bombay Regulation XXIX of 1827 was equally barred under the later Acts XXIII of 1871 and X

PENSIONS ACT (XXIII OF 1871) *contd*

——— s 4—*contd*

of 1876 SIVRAM DINKAR GHARPURAY v SECRETARY OF STATE FOR INDIA I L R 11 Bom 222

15 ——— *Jurisdiction of Civil Court—Abkari revenue—Inamdar right of to abkari revenue under grant from Peshwa* The Peshwa's Government granted in inam to the plaintiff's ancestor by sanad the villages of Golap and Randpar The sanad granted water trees grass wood quarries mines buried treasure present and future cesses and taxes and assessments The plaintiff brought the present suit to recover from the defendant a part of the abkari revenue for 1884 85 and 1885 86 He contended that the revenue derived by the Government for tapping trees in the villages aforesaid was a tax within the contemplation of the grant *Held* that the Court had no jurisdiction to entertain the suit under the Pensions Act (XXIII of 1871) The tax in question was a money tax and as soon as it was imposed the grant if it entitled the inamdar to the tax operated as a grant of the money to be derived from the tax and was therefore within the spirit if not the letter of the Pensions Act the object of which was to reserve to the Government the deter

I L R 14 Bom 573

16 ——— *Civil Court —Claim to percentage of forest income—Forest Settlement officer* A Forest Settlement officer has no jurisdiction to entertain a suit in which a claim to a percentage of forest income is made and such a suit brought by discharged forest karnams is barred by s 4 of the Pensions Act A Forest Settlement officer is a Civil Court for the purposes of the Pensions Act SECRETARY OF STATE FOR INDIA v VYDIA PILLAI I L R 17 Mad 193

17 ——— *Kulkarni vatan—Suit for partition and declaration of right to a specific share in the vatan and to officiate—Money grant—Vatan consisting exclusively of cash allowance* A suit for a declaration that the plaintiffs are vatandars of a share of a moiety of a kulkarni vatan consisting exclusively of a cash allowance from Government is not a suit relating to a money grant within the contemplation of s 4 of the Pensions Act (XXIII of 1871) GOVIND SITARAM v BAPUJI MAHADEO I L R 18 Bom 516

18 ——— and s 6—*Suit for malikana without certificate of Collector* In a suit

Held that the suit was not maintainable ANDI ACHEN v KOMBI ACHEN I L R 18 Mad. 187

PENSIONS ACT (XXIII OF 1871)—*contd*

——— s 4—*contd*

19 ——— and s 3—*Jurisdiction of Civil Court—Certificate of Collector to precede suit for malikana payable by Government* A village part of an estate had been made over to the Government by parties who in consideration received a malikana in perpetuity or in other words a grant of a portion of the revenue in lieu of their proprietary right *Held* that the right to the malikana was on the construction of s 3 and 4 of the Pensions Act (XXIII of 1871) in the absence of a certificate obtained under that Act excluded from judicial cognizance in this suit *Vasudev Sada Shiv Modak v Collector of Ratnagiri I L R 2 Bom 99 L R 4 I A 119* and *Naharaval Mohan Singji Joysingji v Government of Bombay I L R 5 Bom 408 L R 8 I A 77* referred to and approved DEO KUAR v MAN KUAR

I L R 17 All 1
L R 21 I A 148

20 ——— *Meaning of the word pension —Suit for a cash allowance payable by an inamdar—Necessity of Collector s certificate* Plaintiff sued as the trustee of a devasthan to recover the amount of a cash allowance attached to the worship of certain idols in the village of Ankli The plaintiff alleged that the defendant who was the inamdar of the village received its revenues subject to the payment of the allowance in question and that he had wrongfully appropriated the latter for the three years preceding suit *Held* that the allowance in question was a grant of money within the meaning of s 4 of the Pensions Act (XXIII of 1871) and that the suit would not lie in the absence of the Collector s certificate though Government was not a party to the suit VYANKAJI v SARJARAO APAJIRAO

I L R 16 Bom 537

21. ——— *Suit relating to right of management of saranjam lands* Where a suit was brought in relation to the management of saranjam lands —*Held* that the suit was *prima facie* one not included in the Pensions Act KESHAVRAV v GANPATRAO NILKANTH NAGARKAR

I L R 16 Bom 596

22 ——— *Collector s certificate—Execution of decree— Suit —Desaigiri hak sale of* The word suit in s 4 of the Pensions Act (XXIII of 1871) does not include execution proceedings The Collector s certificate is not necessary to validate the sale of a desaigiri hak in execution of a decree VAJIRAM BHAGVAN v JANCHORDJI GOPALJI I L R 16 Bom 731

23 ——— *Cash allowance allowed to worship of idol—Personal grant* A plaintiff claimed to be a co-trustee of certain dargas and entitled to a share in the management and in the profits thereof which consisted of a certain cash allowance from Government He sued the defendants for an account and for the recovery of his share *Held* that the suit so far as it related to the cash allowance from Government required a certificate under s 4 of the Pensions Act (XXIII of 1871) A cash allowance attached to the worship of an idol is a grant of money within the meaning of s 4 of the Pensions Act 1871 The Pensions Act applies to religious endowments as well as to personal grants *Vyankaji v Sarjarao Apajirao I L R 16 Bom 537* concurred in MIYA VALI ULLA v BAVA SAHEB SANTI MIYA I L R 22 Bom 496

24. ——— *Suit relating to inam land granted before the time of the British Government—Confirmation of inam* Early in the [illegible]

ants Nos 1 to 23 The property was long managed by the representative for the time being of the senior line In 1844 one of the junior members instituted a suit for partition which terminated in a decree declaring the corpus of the property to be indivisible and the annual produce to be divisible in certain shares Subsequently in 18[illegible]7 a compromise was entered into by which the parties agreed to vary the distribution of the sharers but they agreed that the management of the estate indivisible and inalienable should continue to be vested in the eldest line subject to certain supervision on [illegible]

of the elder son then entered on the management and being gosha delegated it to a stranger The plaintiffs representing a junior line now sued for the removal of these persons from management and [illegible]

It appeared that the plaintiffs had not received their proper share of the produce and the defendants in management denied in the pleadings their right thereto The plaintiffs had not obtained a certificate [illegible] Pensions Act [illegible] e grant of [illegible] im by the [illegible] did not fall within the provisions of Pensions Act s 4 and a certificate of the Collector was accordingly unnecessary TIRUMALAI NAIK v BANGARU TIRUMALAI SAURI NAIK I L R 21 Mad. 310

25 ——— and s 6—*Jurisdiction of Civil Court—Omission to obtain previous to suit certificate enabling Court to entertain suit—Effect of certificate granted after the hearing* Part of the property in suit consisted of land which was assumed in the Courts below to be held on terms bringing it within the Pensions Act 1871 After the judgment which disposed of the principal questions in the case had been given final judg

PENSIONS ACT (XXIII OF 1871)— *contd*

——— s 4—*contd*

ment was su pended upon an objection that no certificate had been obtained under the Act The certificate having been then obtained and delivered to the Court —*Held* that the original defect did not prevent the uit proceeding MAHAMMAD AZMAT ALI KHAN v LALLA BEGUM I L R 8 Calc 422 L R 9 I A. 8

26 ——— *Collector s certificate—Certificate not obtained when suit filed—Certificate not produced at hearing—Adjournment asked for and refused—Certificate accepted in appeal and placed on record—Practice* A suit under the Pensions Act (XXIII of 1871) is not bad *ab initio* by reason of its being filed without a Collector s certificate Where at the hearing of such a suit the necessary certificate wa not produced —*Held* that the Judge ought to have granted the plaint

27 ——— and s 9—*Grant of land revenue —Suit by assignees amindars for arrears—Right of plaintiffs admitted by Government—Want of Collector s certificate effect of* The sections of the Pensions Act (XXIII of 1871) restricting the jurisdiction of the Civil Courts to entertain suits relating to pensions of grants of money or land revenue must be construed strictly *Held* that a suit by the assignees from Government of land revenue whose rights were admitted by Government to recover arrears from persons admittedly liable to pay revenue to somebody but who disputed plaintiff s right thereto came within s 9 of the Pensions Act (XXIII of 1871) and was not barred by ss 4 and 6 by reason of no certificate having been obtained as therein provided NAGAR MAL v ALI AHMAD I L R 10 All 396

28 ——— *Suit in Court of*

29 ——— *Relating to construction of—Grant—Civil Courts—Jurisdiction* S 4 of the Pen ions Act (XXIII of 1871) con strued strictly as it must be is entirely silent as to suits to recover pos ession of land the revenue of which has been remitted The words no Civil

land The phrase relating to as occurring in

PENSIONS ACT (XXIII OF 1871)— *contd*

——— s 4—*contd*

30 ——— *Suit —Execution proceedings—Payment of annuity charged on*

18 9) s 44—Decree A conciliation agreement was filed in Court on the 16th June 1882 under s 44 of the Dekkhan Agriculturists Relief Act (XVII of 1879) It effected partition of family property between the brothers *A* and *N* Under the agreement *A* undertook to pay to *N* R456 0 6 every year and for the convenience of the parties this was to come out of the Saranjam lands which had fallen to the share of *A* The payment was regularly made during the lifetime of *A* and after his death *T* the son of *A* continued to make the payment till 1899 when he stopped making any more payments *B* the son of *N* who had died then filed a *darkhast* to enforce the payment of 1889 1900 *T* objected to this *darkhast* on two grounds (i) that a certificate under the Pensions Act (XXIII of 1871) was necessary and (ii) that *A s* interest having terminated with his death the Saranjam must be con idered as a fresh grant to the son who was not liable to continue the payment *Held* (i) that a certificate under the Pensions Act (XXIII of 1871) was not necessary for the word suit in s 4 of the Act does not include execution preceedings *Lajiram* v *Ranchordji I L R 16 Bom 31* followed (ii) that *A* was a trustee in respect of the R456 0 6 for Narayan the obligation to pay which would attach to the succeeding holders of the Saranjam and it followed that *N* and his descendants would have the right to call upon *A* and his descendants to account for their management of the Saranjam and pay to them R456 0 6 per annum A con ent *decree can only be set aside upon the same grounds* as an agreement can be set aside *e g* fraud or mistake or mi repre entation *Per* BATTY *J* — A Court executing a decree cannot question the juris diction of the Court which passed it The pre sent application in no way affects property falling within the purview of the Pensions Act but seeks enforcement against the general assets of the judgment debtor who e liability under the decree is not made a charge on the Saranjam or cash allowance at all That liability appears to have been imposed and accepted not as effecting any partition of the Saranjam property but for the purpose of effecting equality in the partition of non aranjam property the Saranjam property being merely indicated as a fund availab e to the defendant for the purpose of discharging that liability TRIMBAKRAO v BALVANTRAO (1905) I L R 30 Bom. 101

PENSIONS ACT (XXIII OF 1871)—*contd*

——— s 4—*concld*

31 ——— *Cash allowance from Government—Suit to recover a sum of money from the cash allowance—Suit based upon an agreement* The plaintiff sued to recover a sum of money as the amount of her maintenance She claimed under an agreement whereby the defendants agreed to pay her R52 every year for her maintenance out of a cash allowance which was received by the latter from Government It was objected to the suit that it was bad in ab ence of a certificate from the Collector under s 4 of the Pensions Act 1871 *Held* that the suit could not be taken cognizance of without a certificate under s 4 of the Pensions Act (XXIII of 1871) The words of the section were wide enough to include any suit to enforce such a claim provided it related to a pension or grant of money or of land revenue it was immaterial whether the claim was based on an agreement between the parties or aro e out of any other legal right or liability and whether it was a claim for a share by way of partition or maintenance or otherwise DAMODAR v SATYA BHAMA BAI (1907) I L R 31 Bom. 512

32 ——— *Act does not apply to endowment for pious or religious purposes* Endowments for religious or pious purposes do not fall within the purview of s 4 of the Pensions Act and Civil Courts have jurisdiction to entertain suits in respect of such grants made by Government *Subrahmania v Secretary of State for India I L R 6 Mad 361* referred to *Atharulla v Gouse I L R 11 Mad 283* referred to *Miya Vali Ulla v Sayad Bava Santi Miya I L R 22 Bom 496* dissented from VENKATESWARA AIYAR v SECRETARY OF STATE FOR INDIA (1907)

I L R 31 Mad. 12

33 ——— ss 4 and 6—*Pension—Right to receive land revenue granted by Government as a reward—Mortgage of right—Suit for foreclosure—Certificate of Collector not forthcoming—Procedure* S 4 of the Pen ions Act 1871 applies to a heritable right to receive land revenue granted by the Government as a reward for services rendered Where therefore such a right to receive land revenue was included along with other property in a mortgage upon which a suit for foreclosure was brought it was *held* that as regards the right to receive land revenue the suit would not lie in the absence of the certificate required by s 6 of the Pensions Act and time having been granted for the production of the necessary certificate which was not produced the dismissal of the suit *quoad hoc* was sustained. *Jivaji Pratabji Raje v Balkrishna Mahadeo I L R 1[?] Bom 169* followed IHTISHAM ALI v SHAM SUNDAR (1902)

I. L. R. 25 All. 73

——— ss 4 11—

See ATTACHMENT 8 C W N 665

1 ——— s 6—*Suit for a declaration of title to stanom of fifth Raja of Palghat* Suit to declare plaintiff s title to the stanom of fifth Raja of

PENSIONS ACT (XXIII OF 1871)—*contd*

——— s 6—*concld*

Palghat the first Raja (defendant No 1) received a malikhana allowance from Government payable to the various stanomdars but had refused to pay to plaintiff the fifth Raja s share *Held* that the suit was not one relating to any pen ion or grant of money or land revenue conferred by Government but was merely a suit for a declaration as to the plaintiff s status and the Pensions Act s 6 was therefore not applicable to the case KOMBI v AUNDI I L R 13 Mad. 75

2. ——— *Mortgage of desai giri hak—Suit by mortgagee without certificate of Collector—Sale in execution of decree passed in such suit—Title of purchaser—Jurisdiction—Res judicata—Estoppel* Where the mortgagee of a desaigiri hak without obtaining the Collector s certificate under s 6 of Act XXIII of 1871 sued the representative of the mortgagor to enforce the mortgage debt by a sale of the hak and obtained a decree

v LALLU AKHU I L R 9 Bom 285

3 ——— *Collector—Certificate—Civil Court—Suit to recover share of allowance for particular years—Certificate referring only to some y*

under

the pl

for the

of this certificate the plaintiff brought a suit to recover his share of the allowance for the years covered by the certificate and also for the year 1897 98 The lower Appellate Court disallowed plaintiff s claim so far as it related to the year 1897 98 on the ground that that year was not mentioned in the certificate *Held* that the certificate given by the Collector might refer only to the plaintiff s share in the allowance for particular years but if the Collector permitted the plaintiff to establish his right to a share in a Civil Court the plaintiff was not bound under the Pensions Act to get a certificate for each year s allowance before suing for it The general right being allowed and established the right to each year s share follows as consequent upon it. KRISHNAJI SAKHARAM v ANANT (1904)

I. L. R. 28 Bom. 241

4 ——— *Pension—Definition—Grant of village upon payment of a quit rent—Construction of document* The common ancestor of the parties to a suit for partition of immoveable property had obtained one of the villages which were the subject of the suit by grant from the Maharaja Scindhia in 1866. In 1861 this grant had been confirmed by the British Government by means of a *sanad* which contained the following material provision.

PENSIONS ACT (XXIII OF 1871)— *contd*

——— s 6—*concld*

There was a declaration that the village in question shall be continued by the British Government to the grantee and his heirs inclusive of all lands allowances and rights belonging to others so long as he and his heirs shall continue loyal to the British Government and shall pay R800 to Government as quit rent The *sanad* further contained a guarantee against any further payment by the holder on account of Imperial Land Revenue beyond the amount specified and a declaration that the village and its holder shall be liable for any local taxation which may be imposed in the district generally *Held* that these provisions did not amount to a grant of land revenue and the grant did not therefore fall within the purview of the Pensions Act 1871 *Parji Narayan Mandlik v Dadaji Bapuji Desai I L R 1 Bom 523* referred to GANPAT RAO v ANAND RAO (1905) **I L R 28 All 104**

——— s 7—

See MAHOMEDAN LAW—GIFT—VALIDITY **I L R 9 All 213**

1 ——— s 11—*Toda garas hak—Liability to attachment—Attachment* A toda garas hak is not exempted from attachment under a decree of a Civil Court by s 11 of the Pensions Act of 1871 The word pension in s 11 of the Pensions Act is used in its ordinary and well known sense i.e. that of a periodical allowance or stipend granted not in respect of any right privilege perquisite or office but on account of past service or particular merits or as compensation to dethroned princes their families and dependants A toda garas hak does not come within the meaning of the word pension which denotes something different from a grant of money or revenue as defined in s 3 of the Act SECRETARY OF STATE FOR INDIA v KHEMCHAND JEYCHAND **I L R 4 Bom 432**

2 ——— *Attachment of bonus —Liability to attachment* A bonus granted by Government in addition to a pension to an officer compulsorily retired on account of reductions in the public service is not a pension within the meaning of the Pensions Act 1871 s 11 and was liable to attachment in execution proceedings begun prior to June 1 1882 KHASIM v CARLIER **I L R 5 Mad 272**

3 ——— *Civil Procedure Code (Act XIV of 1882) s 266 (g)—Attachment of pensions payable to descendants of reigning family in Ceylon—Pensions payable in British India—Validity of attachment* Certain descendants of the family which formerly reigned in Ceylon resided in British India where the Collector of the district on behalf of the Government of India paid them pensions. Apparently though this was not proved the cost of these pensions was [illegible]

PENSIONS ACT (XXIII OF 1871)— *contd*

——— s 11—*concld*

that the pensions were exempt from attachment as being political pensions within the meaning of s. 266 (*g*) *Per* SIR ARNOLD WHITE *C J*—If the Government of India were to be regarded as merely the agent of the Ceylon Government for the purpose of paying the pensions the Courts of British India would have no jurisdiction to proceed by way of attachment since the rights of the pensioners (assuming them to be enforceable at law) would only be enforceable in Ceylon *Ghansham Lal v Bhansali I L R 5 Bom 249* and *Bishambhar Nath v Imdad Ali Khan I L R 18 Calc 216* referred to MUTHUSAMI NAIDU v ALAGIA MANAVALA SIMMALA RAJA (1902) **I L R 26 Mad 423**

4 ——— *Immoveable property granted in lieu of pension—Not a pension—Liable to attachment—Civil Procedure Code 1882 s 266 (g)* Where certain immoveable property was granted in lieu of a pension and the sanad [illegible]

simply to the payment of Government revenue *held* that the zamindari so granted was not a pension within the meaning of s 11 of the Pensions Act and was liable to attachment and sale in execution *Lachmi Narain v Makund Singh I L R 26 All 617* and *Secretary of State for India v Khemchand Jaychand I L R 4 Bom 432* followed. AMNA BIBI v NAJUMUNNISSA (1909) **I L R 31 All 382**

1 ——— s 12—*Assignment of pension before passing of Act* On the 12th February 1865 *A* who was in receipt of a zilakhi pension from Government assigned by deed a portion thereof to his wife in lieu of her dower After his death disputes arose between the wife and the heirs of *A* in regard to a portion of the amount thus settled on her and she instituted a suit on a certificate granted by the Collector under s 6 of the Pensions Act (XXIII of 1871) in which she prayed for a declaration of her proprietary right in respect of the said money and of her power to transfer the same *Held* that the assignment of the 12th February 1865 having been made before the passing of the Pensions Act was not invalidated by s. 12 of that Act which had no retrospective operation. IMTIAZ BEGAM v LIAKAT UN NISSA BEGAM **I L R 7 All 886**

Reversing on a re hearing of the case (the first hearing having been *ex parte*) IMTIAZ BEGAM v LIAKAT UN NISSA BEGAM **I L R 6 All 630**

2 ——— *Political pension of Zamorin of Calicut—Payable—Power of disposition by will* The Z[illegible] ... hether ... ntitled ... The ... aintiff

PENSIONS ACT (XXIII OF 1871)—*concld*

——— s 12—*concld*

the malikana due to him from the Government which might be in arrears at the time of his death The malikana was a political pension of R6 000 a month payable quarterly The Zamorin died on the 6th of August 1892 The plaintiff having obtained a certificate under Pensions Act s 6 now sued the new Zamorin to recover the proportionate amount of the pension for the current quarter up to the time of the Zamorin's death *Held* that the plaintiff was not entitled to recover the amount sued for SRIDEVI v KRISHNAN
I L R 21 Mad. 105

——— s 14—*Rule (C) framed under the Act—Suit for recovery of varshasan allowance—Collector's certificate—Cancellation of certificate by Revenue Commissioner* When a certificate is granted by the Collector under s. 6 of the Pensions Act (XXIII of 1871) the presumption is until the contrary is shown that the order for granting the certificate was made as is contemplated by the 6th rule framed under the Act with the previous sanction of the Revenue Commissioner by the Collector himself but the Revenue Commissioner has no power vested in him to cancel a certificate granted by the Collector and there is no rule which provides for the revision by the Revenue Commissioner of the Collector's action in granting certificates or for the cancellation by him of the certificates granted by the latter BHIMBHAT GOTKHANDI v BHIKAMBHAT I L R. 23 Bom 676

PEON

See ARREST—CRIMINAL ARREST
I L R. 27 Calc 457

See PENAL CODE s 186
I L R 22 Calc 596 759

See PUBLIC SERVANTS
I L R. 28 Calc 344

1 ———Appointment of—*Nazir power of—Beng Act V of 1863 ss 3 12* By Bengal Act V of 1863 the appointment of peons was vested in the Nazir subject to the approval of the Judge by whatever title designated (ss 3 and 12) and no superior authority was competent to control such appointment or to restrict the choice of the Nazir *In the matter of the petition of* COOROO DYAL SINGH 9 W R 333

2 ———*Officers of Munsif's Court—Power of Judge* All officers of a Munsif's Court are appointed by him subject to the approval of the Judge who should hear what any person aggrieved has to say and determine whether the Munsif has rightly exercised his authority *In the matter of* GOOROODASS BHUTTACHARJEE
11 W R. 158

3 ———*Appointment of officers in Munsif's Court—Power of Judge—Beng Act V of 1863* A Judge is not warranted in interfering with the appointment of peons made in a Munsif's Court under Bengal Act V of 1863 and approved by the Munsif *In the matter of* SOMEROODDEEN
11 W R 159

PERIM ISLAND OF

——— law in force in—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTY IN ONE DISTRICT—MURDER
I L R 10 Bom. 258 263

PERJURY

See APPEAL IN CRIMINAL CASES—PROCEDURE B L R. Sup Vol. 426

See CRIMINAL PROCEDURE CODE ss 133 342 488 9 C W N 983

See CRIMINAL PROCEEDINGS
I L R 16 Bom 729
I. L. R. 18 Bom 581

See FALSE EVIDENCE

See SANCTION FOR PROSECUTION—WHEN SANCTION MAY BE GRANTED
3 B L R A. Cr 10
13 C W N 422

——— assignment of—

See SANCTION FOR PROSECUTION
I L R 36 Calc 808

——— *Charges relating to several false statements in the same deposition—Misjoinder—Reading deposition to witness in the presence of a pleader for one of several accused—Interpreter omission to administer oath to—Admissibility of deposition and proof of statement of the witness on a subsequent trial for perjury* The making of any number of false statement in the same deposition is one aggregate case of giving false evidence and such charges cannot be multiplied according to the number of false statements contained in a deposition *Mad H C Pro 1st May 1871 6 Mad H C XXVII* followed. S 361 (1) is sufficiently complied with if the deposition of a witness

[illegible]

[illegible] distinguished. The omission to administer an oath to an interpreter under s. 5 (d) of the Oaths Act (X of 1873) does not by reason of s 13 render the evidence of a witness whose evidence was interpreted by him inadmissible against the latter on his subsequent trial for giving false evidence The only effect of the omission is to make it incumbent on the prosecution to prove the accuracy of the translation *Queen v Ram sodoy Chuckerbutty 20 W R Cr 19* approved RAKHAL CHUNDER LAHA v EMPEROR (1909)
I L R 36 Calc 808

PERMANENT RESIDENCE

See DIVORCE I. L R 36 Calc 964

PERMANENT SETTLEMENT

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT AND PRESUMPTION

PERMANENT SETTLEMENT—*contd*

See EVIDENCE—CIVIL CASES—MAPS
I L R 30 Calc 291
7 C W N 849

See REVENUE SALE LAW s 37
10 C W N 503

——— districts to which it has not been extended—

See BENGAL RENT ACT 1869 ss 16 AND 17
8 B L R 280

——— grant of incorporeal right at the time of—

See BETTIAH RAJ 13 C W N 454

1. ——— Date of settlement The date of the permanent settlement was March 22nd 1793 RAJESSUREE DEBIA v SHIBNATH CHATTERJEE
4 W R Act X, 42

DHUNPUT SINGH v GOOMAN SINGH
W R 1864 Act X 61

PORAN BEBEE v ALLY KHAN
W R 1864 Act X, 61

2 ——— *District of Jessore.* The date of the permanent settlement for the district of Jessore was April 11th 1790 HURO NATH ROY v AMEER BISWAS 1 W R 231

3 ——— Permanent settlement reference to in Act X of 1859—*Subsequent settlements* The words Permanent Settlement

4. ——— Adverse possession by Government of permanently settled estate —*Limitation—Adverse possession—Limitation Act of 1859 (XIV of 1859) s 1 cl 6—Award of Revenue Courts—Judicial award—Permanent settlement Regulations effect of—Reg I of 1793—Thak or survey binding effect of* There is nothing in the Regulations to which the permanently settled es

did not go they do not constitute a contractual relationship between the Government and the owners of permanently settled estates or any such relationship as would debar Government

not contend after the expiration of his tenancy

PERMANENT SETTLEMENT—*concld*

that the latter (*i e* the person alleging himself to be the owner) cannot acquire an adverse title against him as well as others by efflux of time *Kally Churn Sahoo v Secretary of State I L R 6 Calc 725* referred to KRISTO MONI GUPTA v SECRETARY OF STATE FOR INDIA 3 C W N 99

PERMANENT TENANCY

See BENGAL TENANCY ACT (VIII OF 1885) ss 50 106 I L R 36 Calc 287

See BHAGDARI AND NARWADARI ACT
I L R 31 Bom. 183

See LANDLORD AND TENANT—NATURE OF TENANCY—PERMANENT TENANCY

——— presumption as to—

See LANDLORD AND TENANT
I L R 34 Calc 902

——— *Permanent tenure proof of—Origin of grant not known—Grant for residential purposes—Substantial structures* Where the original nature of the grant was unknown and it was found that the predecessor in interest of the defendants who were purchasers in execution of a decree

were justified in drawing the inference that the holding was permanent GRANT v ROBINSON (1906) 11 C W N 242

PERMIT

——— failure to obtain—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT 1888 s 412
I L R 20 Calc 605

PERPETUAL INJUNCTION

See CIVIL PROCEDURE CODE s 260
10 C W N 297

See INJUNCTION
I L R 31 Calc 944

See SPECIFIC RELIEF ACT s 55
I L R 31 Calc 944

PERPETUITIES

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES TRUSTS ETC

See JURISDICTION
I L R 33 Calc 1065

See LIFE ESTATE 5 C W N 569

See MAHOMEDAN LAW—ENDOWMENT
I L R 30 Calc 666

See PARSIS I L R 6 Bom. 151
I L R 22 Bom. 355

See WILL—CONSTRUCTION
I L R 11 Bom 441
I L R 15 Mad 424 448
I L R 25 Calc 113

PLAINT—contd

——— filing of—

See LIMITATION ACT 1877 ART 178.
I L R 3 Calc 312

——— form and contents of boundaries—

See BENGAL TENANCY ACT s 148 CL (b)
5 C W N 121

——— insufficiency of—

See ADMINISTRATION 5 C W N 162

——— in suit by Corporation—

See CIVIL PROCEDURE CODE s 435
9 C W N 608

——— prayer for such other relief as the Court might think fit —

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO LIGHTS OF PROPERTY I L R 26 Bom 136

——— presentation of—

See LIMITATION ACT 1877 s 4

See PAUPER SUIT—SUITS
I L R 1 All 230
Marsh 174 W R F B 53
1 Ind. Jur O S 66
6 N W 225
I L R 20 Bom 508
I L R 17 All 526
I L R 18 All 206
I L R 19 Mad 197

——— rejection of—

See APPEAL—ORDERS—ORDER REJECTING A PLAINT

See CIVIL PROCEDURE CODE 1882 s 424
I L R 25 All 187

See COURT FEE INSUFFICIENCY OF
I L R 29 All 749

See MAMLATDARS COURTS ACT (BOM ACT III OF 1876) s 13
I L R 25 Bom 82

——— rejection of—Court fee—

See CIVIL PROCEDURE CODE 1882 s 54
9 C W N 844

——— return of—

See APPEAL—ORDERS
I L R 1 All 620
I L R 2 All 357
I L R 3 All 456 855
I L R 4 All 478
I L R 21 Mad 234
I L R 26 Calc 275
I L R 25 All 174

See APPEALLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—PLAINT
I L R 9 All 191 L R 13 I A 134
I L R 11 Mad 482

PLAINT—contd

——— return of—concl'd

See LIMITATION ACT 1877 s 4

See PUTNI SALE 11 C W N 765

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—TITLE QUESTION OF
6 C W N 687
13 C W N 403

——— signature of—

See CIVIL PROCEDURE CODE, 1882 s 422
I L R 25 All 635

——— verification of—

See CIVIL PROCEDURE CODE 1882 s 432
I L R 10 Calc 136
I L R 19 All 510

See FALSE EVIDENCE—GENERAL CASES
2 B L R A Cr 1

See WRITTEN STATEMENT
I L R 22 Calc 268

1 GENERAL CONSTRUCTION OF PLEADINGS

1 ——— Pleadings in Courts in India. Pleadings in Indian Courts should not be construed with the same strictness as they are in the English Courts NAWAB NAZIM OF BENGAL v AMRAO BEGUM 21 W R 59

See GIRDHAREE SINGH v KOOLAHUL SINGH
6 W R P C 1 2 Moo I A 344

MOKUDDIMS OF MOUZAH KUNKUNWADY v ENAMDAR BRAHMINS OF MOUZAH SOORPAL.
7 W R P C 8 3 Moo I A 383

MOHESH CHUNDER MOOKERJEE v RAMDHUN PAL.
13 W R 248

2 ——— *Primary and secondary relief* *Z* and his three minor sons were joint owners of a village which *Z* hypothecated by deed of simple mortgage to *J* Subsequently *Z* executed another deed of mortgage to *J* part of the consideration whereof was the cancellation of the former bond which was paid off and extinguished accordingly *J* however fraudulently caused it to appear from the novating document that the former mortgage was still alive and after the death of *Z* put the bond in suit again t *Z* s widow who being ignorant of the fraud confessed judgment as guardian of her minor sons and the entire right and interest of *Z* s heirs were sold in execution of the decree obtained by *J* Subsequently the fraud was discovered and *Z* s sons brought a suit to set aside the execution sale and to recover possession of the property first mortgaged In regard to three fourths of this property they prayed that pos[illegible] establishment

to *Z* by cancelment of the execution sale and of the fraudulent decree *Held* that pleadings in the

PLAINT—*contd*

1 GENERAL CONSTRUCTION OF PLEADINGS—*concld*

Indian Courts must be not construed with the same strictness as in English Courts that although in an informal and loose way what the plaint substantially set out as the primary relief sought was the entire avoidance of the decree and the proceedings resulting therefrom as vitiated by fraud and as secondary relief to be granted if the Court should not see its way to setting aside those proceedings a declaration that they took effect only as regards one fourth of the property *Nawab Nazim* v *Amrao Begum* 21 W R 59 referred to NATHU SINGH v JODHA SINGH I L R 6 All. 406

3 ———————— *Pleadings—Reliefs of a nature different from the case made out in the plaint* No declaration ought to be granted

CHAUDHURI v AMRITA LAL BAGCHI (1900) 5 C W N 20

2 ADMISSION OF PLAINT

———— Holiday—*Stamp duty* The reception of a plaint for arrears of rent by the Collector on Good Friday although by the Circular Order of the Board of Revenue such day is an authorized holiday is not illegal There is no illegality in the reception of a plaint engrossed on insufficient stamp paper if the full amount of the stamp duty has been paid at the time GOBIND KUMAR CHOWDHRY v HARGOPAL NAG 3 B L R Ap 72 11 W R 537

3 FORM AND CONTENTS OF PLAINT

(*a*) CAUSE OF ACTION

1. ———— Limitation—*Civil Procedure Code 1859 s 26* In a suit to recover possession plaintiff is bound under s 26 Act VIII of 1859 to give the date on which he was dispossessed as accurately as possible especially where one of the issue is whether he has been in occupation of the land within twelve years of suit BOYDONATH SURMA v OJAN BIBEE 11 W R 238

2 ———————— *Plaint not showing when cause of action arose* A plaintiff is bound by the Civil Procedure Code to show on the face of

3 ———————— *Objection to cause of action being barred* S 32 of Act VIII of 1859 imposes upon the Court of first instance the duty of taking any legal objection apparent on the face of the plaint; see *Balava kom Basangouda* v *Shigouda valad Kadapa* 7 *Bom A C* 99 and

PLAINT—*contd*

3 FORM AND CONTENTS OF PLAINT—*contd*

(*a*) CAUSE OF ACTION—*concld*

the fact that a portion of the claim is evidently

subsequent stage of the suit SALUJI KESRAJI v RAJSANGJI JALMSANGJI 2 Bom 169 2nd Ed 162

4 ———————— *Taking plaint off the file—Indefiniteness—Omission to show suit not barred* A plaint which merely stated that the cause of action arose previous to 21st August 1869 and which did not show that the suit was not barred by limitation was ordered to be taken off the file SONAMULL v SUNARAM ROTTI 8 B L R Ap 23

5 ———————— *Plaint not showing when cause of action arose* The fact of *A*'s plaint not showing when the cause of action arose is ground for rejecting the plaint but no ground for finding on the trial that the suit is barred upon an issue raised as to limitation KALLYNAUTH SHAW v RAJEEBLOCHUN MOZOOMDAR 2 Ind Jur N S 343

6 ———————— *Omission to state when cause of action arose in plaint—Amendment of plaint*

erroneous date has been assigned in the plaint as the cause of action The plaint should be amended SHEORAJ SINGH v NUR KHAN 7 N W 354

7 ———— Multifariousness A plaintiff's cause of action is every fact which a plaintiff must prove to support his case A cause of action arises when a legal right is infringed and the date and place of its accrual must be inserted in the plaint Where the plaintiff claimed the ownership of the properties in suit through her late husband and

plaintiff *Held* that there were separate causes of action against separate sets of persons and the trial could not proceed as upon a single cause of action RAM PROSAD v SACHI DASSI (1902) 6 C W N 585

(*b*) FRAME OF SUITS GENERALLY

8 ———— Paper referred to in plaint A paper referred to in a plaint is not a part of the plaint TOULTON v GWYTHER Bourke O C 273

9 ———— Schedule to plaint—*Statement of cause of action* The schedule appended to a plaint cannot disclose a cause of action not revealed in the plaint MUZHUR HOSSAIN v DINOBUNDO SEN Bourke O C 8 Cor 94

PLAINT—*contd*

3 FORM AND CONTENTS OF PLAINT—*contd*

(*b*) FRAME OF SUITS GENERALLY—*contd*

LUCKEY MONEY DOSSEE *v* KHETTER COOMARY DOSSEE 2 Ind. Jur N S 117

10 ———— Defects in plaint—*Plaint showing good cause of action—Ground for dismissal of suit* A suit should not be dismissed for mere defects in the plaint if the evidence shows there is a good cause of action GOLAM ALI CHOWDHRY *v* IUTTICK CHUNDER 10 W R. 460

11 ———— *Plaint showing good cause of action—Ground for dismissal of suit* If a plaint discloses a cause of action a Judge on [illegible] on the ground [illegible] in the plaint [illegible] 1 Hay 467

12 ———— *Inaccuracy of language—Ground for dismissal of suit—Construction of plaint* A plaintiff s suit should not be dismissed because in describing his cause of action strictly accurate language has not been used A plaint should not be construed literally but according to the plaintiff s real meaning unless such meaning is inconsistent with the words used in the plaint so as to deceive the defendant and prejudice his defence INGLIS *v* RAM SINGH W R F B 159

PITAMBUR MOOKERJEE *v* HUREE NARAIN THAKOOR W R 1864 50

13 ———— *Want of distinctness in plaint—Ground for dismissal of appeal* A suit should not be dismissed at the last stage of the proceedings in regular appeal for want of sufficient distinctness in the plaint but such defect may be cured by examining the plaintiff or his pleader on that point JUGMOHUN TEWAREE *v* BULDEO NAIK 3 Agra 162

ABDOOLLAH *v* SHAHA MUJEESOODDEEN 15 W R 286

14 ———— *Indistinctness and obscurity of plaint—Ground for refusal to give decree* A Court is justified in refusing to give a decree upon a plaint which it deems to be intentionally indistinct and obscure MAHOMED HOSSEIN *v* KRISHNO CHURN MISSER 20 W R 147

See RAM DAYAL DUTT *v* RAM DOOLAL DEB 11 W R 273

15 ———— *Charges of fraud—Pleading* A plaint charging fraud must set forth particulars general allegations however strong the words not even amounting to an averment of fraud of which a Court can take notice GUNGA NARAIN GUPTA *v* TILUCKRAM CHOWDRY I L R 15 Calc 533 L. R 15 I A 119

16 ———— Mistake in plaint—*Ground for dismissal of suit* A suit should not be dismissed for what is obviously a mere mistake in the plaint as the erroneous statement of the date of a mortgage made many years before the plaintiff acquired an interest in the property where all the parties to it were dead and the deed itself lost LALLA DABEE PERSHAD *v* BEHAREE LALL 3 Agra 33

MOHUN LALL *v* NOOR KHAN 3 Agra 218

17 ———— *Return and amendment of plaint—Ground for dismissal of suit* A suit cannot be dismissed merely on the ground that the plaint did not contain a specification of the land in the defendant s possession and that there was an error in the plaint in the description of the defendant s residence REZA ALI *v* PURNANAND CHUCKERBUTTY 6 B L R Ap 84 14 W R 474

18 ———— Suit for account—*Principal and agent* Discussion as to form of plaint in suits for an account GOBIND MOHUN CHUCKERBUTTY *v* SHERIFF I L R 7 Calc 169 8 C L R. 357

SHOOSHI BHOOSUN PAL *v* GURU CHURUN MOOKHOPADHYA I L R. 7 Calc 89 8 C L R 285

19 ———— Money suits for—*Suit for sums due on taking accounts—Civil Procedure Code s 50* Under s 50 of the Code of Civil Procedure (Act XIV of 1882) if a plaintiff seeks the recovery of money the plaintiff must state the precise amount so far as the case admits while in a suit for the amount which will be found due on taking unsettled acc[illegible] [illegible] matter of the suit for purposes of jurisdiction KHUSHALCHAND MULCHAND *v* NAGINDAS MOTICHAND I L R 12 Bom 675

20 ———— Partnership suit—*Civil Procedure Code 18[illegible] Sch IV form 113* The plaint in a partnership suit ought to be framed on the lines of form 113 in Sch IV of the Code and the accounts should be taken as prayed in that form RAM CHUNDER SHAHA *v* MANICK CHUNDER MANIKYA I L R. 7 Calc 428 9 C L R. 157

21 ———— *Suit by sole surviving partner to recover partnership debt* In a suit brought by a sole surviving partner to recover a partnership debt the plaint if properly framed ought to allege that the debt of which recovery is prayed was a partnership debt that the deceased partner had died before the suit and that the suit was brought by the plaintiff as surviving partner for his own benefit and that of the estate but the suit should not be dismissed merely because the plaint did not contain these averments *Jell v Douglas 4 B & Ald 347* GOBIND PRASAD *v* CHANDAR SEKHAR I L R 9 All. 486

PLAINT—contd

3 FORM AND CONTENTS OF PLAINT—contd

(b) FRAME OF SUITS GENERALLY—contd

22 ———— Suit to remove bunds on river—*Interruption to flow of water* How a plaint should be framed in a suit for removal of certain bunds which interrupted the plaintiff s right to a flow of water from a river considered COURT OF WARDS v LILANUND SINGH

4 B L R Ap 30 13 W R 48

23 ———— Suit for fishing in tank without permission—*Suit for damages and tres*

24. ———— Suit to set aside deed of sale —*Civil Procedure Code s 50—Inconsistent causes of action—Inconsistency in pleading the suit* In a suit for cancellation of a sale deed by the person whose name appeared on it was executant it was alleged in the plaint that it was a forgery and that

she had never executed a sale deed in his favour and that the document set up by him was a forgery It was not competent to the plaintiff to combine with this charge as an alternative the wholly inconsistent charge that if she did execute the document no consideration was received by her or that fraud had been practised upon her *Mahomed Bukh Khan v Hosseini Bibi I L R 15 Calc 684 L R 15 I A 81* followed IYYAPPA v RAMALAKSHMAMMA I L R 13 Mad 549

25 ———— Suit for reliefs inconsistent

sal of the suit *Iyyappa v Ramalakshmamma I L R 13 Mad 549* dissented from *Mahomed Buksh Khan v Husseini Bibi I L R 15 Calc 684 L R 15 I A 81* referred to JINO v MANON

I L R 18 All 125

26 ———— Cause of action—*Limitation Act (XV of 1877) Sch II Art 116— Contract in writing registered signed by one party thereto— Sufficient disclosure of cause of action* During the course of certain litigation in which *B* was suing *A* on a promissory note a compromise was arrived at under which *A* undertook to execute a mortgage in favour of *B* and in consideration thereof *B* undertook to withdraw an appeal which was pending at the time The mortgage was executed and the undertaking to withdraw the appeal was embodied in the mortgage deed which was registered but signed only by *A* *B* in breach of his undertaking permitted the appeal to proceed and obtained a decree on 20th November 1891 which he subsequently executed against *A* recovering the value of the promissory note upon which he had originally sued He also retained the mortgage which had been executed in the compromise *A* now sued to recover from *B* the amount which *B* had collected under the decree stating the cause of action as having arisen on the date of that collection namely 29th October 1893 when it was contended that the suit was not maintainable inasmuch as the decree had not been set aside and that even if treated as

and this suit had not been brought within three years from that date the plaint having been filed on 14th September 1896 *Held* that inasmuch as all necessary allegations were made in the plaint the contract and its breach being alleged and as the defendant understood what the claim against him was the plaint sufficiently disclosed a cause of action for damages for the breach of contract *Held* also that the undertaking in the mortgage

signed by *B* did not take the case out of the operation of that article KOTAPPA v VALLUR ZAMINDAR (1901) I L R 25 Mad 50

(c) PLAINTIFFS

27 ———— Suit by a firm *Per* PEACOCK *C J*—A suit by a firm should not be brought in the name of the firm but in the names of the members who constitute the firm PULIN BEHARI SEN v WATSON B L R Sup Vol. 904

s c POOLIN BEHAREE SEN v WATSON

9 W R 190

GOSSAIN GUNGA DUTT BHARUTEE v DABEE DASS BABOO 25 W R 118

28 ———— Suit by Club—*Goods supplied to a member—Parties* An action to recover the ... f a non pro ... cannot be ... of the club ... Mad 362

29 ———— Suit by Company—*Corporation Suit by—Plaintiff Misdescription of—Civil Procedure Code (Act XIV of 1882) s 435—Companies Act (VI of 1882) s 41* A plaint was filed in which the plaintiff was described as *J* manager of the *X* Company Limited, and in the body of the plaint several allusions were made to the plaintiff company and the claim made in the plaint was a claim made on behalf of the company It was not suggested that the *X* Company was a company authorized to sue or be sued in the name of an offi

PLAINT—*contd*

3 FORM AND CONTENTS OF PLAINT—*contd*

(c) PLAINTIFFS—*contd*

cer or trustee nor was it shown that it was registered as a corporation under s. 41 of the Indian Companies Act *Held* that the suit was badly framed and that it should be dismissed CAMPBELL v JACKSON I. L R 12 Calc 41

30 ———— *Form of plaint in suit by company in liquidation—Companies Act (VI of 1882) s 141* *Held* that a plaint in a suit by a bank in liquidation in which the plaintiff was described as The Official Liquidator Himalaya Bank Limited in liquidation and which was also subscribed and verified in the same terms was not a valid plaint having regard to the terms of s 141 of the Indian Companies Act 1882 and that the defect could not be cured by amendment *In re Winterbottom L R 18 Q B D 446* referred to GHULAM MUHAMMAD v HIMALAYA BANK I L R 17 All 292

31 ———— *Suit by Official Liquidator—Description of plaintiff—Companies Act (VI of 1882) s 141—Civil Procedure Code s 53—Amendment of plaint—Limitation Act (XV of 1877) s 22* In a suit to recover a debt to a company which had gone into liquidation the plaintiff was described in the plaint as The Official Liquidator Himalaya Bank Limited in liquidation and the plaint as signed and verified in the same terms On objection taken by the defendant the plaint was allowed to be amended but after the period of limitation prescribed for the suit had expired so as to read The Himalaya Bank Limited in liquidation plaintiff *Held* by the Full Bench that the plaint as originally filed was in substantial compliance with the provisions of Act VI of 1882 and that even if it might be considered that the amendment made was necessary such amendment did not introduce a new plaintiff into the suit so as to let in the operation of s. 22 of Act XV of 1877 *Ghulam Muhammad v Himalaya Bank I L R 17 All 292* overruled *In re Winterbottom L R 18 Q B D 464* distinguished MUHAMMAD YUSUF v HIMALAYA BANK I L R 18 All 198

32 ———— *Civil Procedure Code 1882 s 435—Company—Corporation—Unincorporated society* The corporation contemplated by the Code of Civil Procedure is a corpora

[illegible]

of the company must be disclosed If this is not done and if the society is neither a corporation nor a company authorized to sue or be sued in the name of an officer or of a trustee so as to make the provisions of the Code of Civil Procedure s 435 applicable the plaint is a bad plaint *Kylash Chandra Roy v Ellis 8 W R 45* *Muhammadan Association of Meerut v Bukhshi Ram I L R 6 All 284* and

PLAINT—*contd*

3 FORM AND CONTENTS OF PLAINT—*contd*

(c) PLAINTIFFS—*contd*

Yusuf Beg v The Board of Foreign Missions of the Presbyterian Church of New York I L R 10 All. 490 referred to PANCHAITI AKHARA KALAN UDASI v GAURI KUAR I L R. 20 All 187

33 — **Suit on behalf of minor—** *Suit by mother as guardian—Description of plaintiff* It is not absolutely necessary for the mother to describe herself as guardian in the plaint when the suit is evidently brought by her as mother of her minor son COONO MONEE DEBIA v RAM KUMOL SANDLE 17 W R 144

34. ———— *Description of plaintiff—Objection to frame of suit* In a suit brought on behalf of a minor by his next friend it is not necessary for the next friend to have a certificate under Act XL of 1858 provided he has in fact permission of the Court to sue Where a suit was brought in the name of A for self and as guardian of her daughter B a minor and it was objected that it should have been brought in the names of A and of B a minor by her next friend and guardian *Held* that as no one was misled or injured by the improper form of the plaint the objection ought not to be held fatal but the decree must be taken to be in favour of A and of B suing by A as if the suit had been properly framed ALIM BUKSH FAKIR v JHALO BIBI I. L. R 12 Calc 48

35 ———— *Suit by manager of minor's property—Beng Act IV of 1870* A suit brought by minors through the manager of their property as next friend must follow the form prescribed by Bengal Act IV of 1870 JOYRAM LALL MAHTOON v STEWART 20 W R. 453

36 **Suit against administrator of minor for an account—** *Minors Act (Bombay) XX of 1864—Misconduct* A plaint under Act XX of 1864 by a relative of a minor against his administrator must specify one or more facts of misconduct or assign some satisfactory reason for apprehending an injury to the estate of the minor by the administrator otherwise it will be held to contain no cause of action. DAMODARDAS MANIKLAL v UTAMARAM MANIKLAL 10 Bom. 414

37 ———— *Suit brought in*

[illegible]

NATHJI MAHARAJ v SHAH LAL CHAND I L R 19 All 330

38 ———— **Misdescription of plaintiff** —*Suit for rent* Plaintiff sued for rent describing herself as holding a dar mirasi jote and the lower Appellate Court treated that description of her jote as misdescriptive because the jamma wasil baki

[illegible]

PLAINT—*contd*

3 FORM AND CONTENTS OF PLAINT—*contd*

(*c*) PLAINTIFFS—*concld*

out plaintiff s claim. BHOOBUN MOYEE DASSEE *v* RUTTICK MUNDLE 17 W R. 17

39 ——————— *Residence—Civil Procedure Code 1877 ss 50 52—Description of defendant* To describe the plaintiff as residing in Chitpore Road in the town of Calcutta is not a sufficient description under s. 50 of the Civil Procedure Code of his place of abode nor is it sufficient under that section to describe the defendant as formerly of Calcutta without alleging that the plaintiff has been unable to ascertain his place of residence more definitely SOLOMON *v* ABDOOL AZIZ

4. C L R 366

(*d*) DEFENDANTS

40 ——— Description of defendant—*Act VIII of 1859 s 26—Titles of honour* Where the Government has recognized a person as having right to bear particular titles a plaint in a suit against such person does not contain the description of the defendant in accordance with s 26 of Act VIII of 1859 if such titles are omitted In such a case the plaintiff should on the objection being taken by the defendant be ordered to amend the plaint and if such order is not complied with the plaint should be rejected MAHARAJA OF VIZIANAGRAM *v* LAKSHMI CHALLAYA

12 B L. R P C 443 18 W R 301

Reversing decision of High Court in SETA RAMA KRISHNA PAYUDAPPA RANGA RAO *v* VIJAYA RAMA GAJAPATY 3 Mad 31

41 ——————— *Act VIII of 1859 s 26—Title of honour* The object of s 26 Act VIII of 1859 is to identify the parties to the suit and where it was clear on the defendant s own admission that the right party was sued an objection by the defendant that the plaint was bad as it omitted to style him Roy Bahadoor was overruled KISHEN CHAND GOLACHA *v* MEGRAJ KUTURIA ROY

12 B L. R 445 note 12 W R 450

42 ——— Suit against firm—*Partners* In an action against a firm the names of the partners should be specified in the plaint and a summons served on one or more of its members if resident within the jurisdiction YEKNATH BABAJI *v* CHAND KAHANJI 1 Bom 85

43 ——— Suit against a corporation or company—*Act VIII of 1859 s 26* A plaint described the defendants as *C S* Deputy Agent of the East Indian Railway Company and *W B L* District Engineer of Rajmehal and Beerbhoom who were made joint defendants. The real defendants were the East Indian Railway Company *Held* that the plaint did not contain the description of the defendants under s. 26 Act VIII of 1859 The Company should be sued in its corporate name RAMDAS SEN *v* COLLECTOR OF MOORSHEDABAD

2 B L R S N 6

PLAINT—*contd*

3 FORM AND CONTENTS OF PLAINT—*contd*

(*d*) DEFENDANTS—*contd*

s c RAM DOSS SEN *v* STEPHENSON

10 W R 366

NUBEEN CHUNDER PAUL *v* STEPHENSON

15 W R 534

44. ——————— *Bom Act III of 1867 s 11—Cantonment Committee—Contracts entered into a corporate character—Liability to be sued on such contracts as a corporation* The plaintiffs sued the Poona Cantonment Committee to recover damages for breach of a conservancy contract The Committee was created by rules made by the Local Government under s 11 of Bombay Act III of 1867 The Committee ordinarily consist [illegible]

ants contended that the suit was not properly framed and that all the members of the Committee should be made parties *Held* that the suit was properly constituted The rules by which the Committee was created did by implication though not by express words create the committee a corporation for the purposes of the conservancy of the cantonment It could therefore sue and be sued in its own name on contracts entered into in its corporate character CANTONMENT COMMITTEE POONA *v* BARJORJI BAMANJI I L R 14 Bom. 286

45 ——— Suit against company—*Ignorance of names of persons forming company* In the case of an unincorporated or unregistered company the plaintiff if he does not know of what persons the company is composed may sue the company by the name under which they are carrying on business stating in his plaint his inability to describe them better KOYLASH CHUNDER ROY *v* ELLIS 8 W R 45

46 ——— Suit by Bank for money against executrix—*Description of parties—Order returning plaint for amendment* A suit was brought by the manager of M Bank against the executrix of *B* to recover a sum of money as due upon a bond executed by *B* in favour of the Bank The plaint described the defendant as Mrs. Sarah G Barlow of Mussoorie and stated that she was executrix of the deceased *B* The Court of first instance returned the plaint for amendment under s 53 of the Civil Procedure Code because the defendant was not properly described. *Held* that this ground failed because it was clear that the defendant was stated to be the executrix of the deceased, and the suit was brought against her in that capacity MUSSOORIE BANK *v* BARLOW

I. L. R 9 All. 188

47 ——— Liability of the Secretary of a club in respect of a contract entered into for the benefit of the members of the club *Held* that the secretary of a club could not

PLAINT—*contd*

3 FORM AND CONTENTS OF PLAINT—*contd*

(*d*) DEFENDANTS—*concld*

unless he specially accepted a personal liability be sued personally on a contract entered into on behalf of the members of the club by his predecessor in office nor could the members of a club collectively be sued through their secretary as their representative NORTH WESTERN PROVINCES CLUB v SADULLAH I L R 20 All. 497

48 ———— Suit against unregistered company—*Form of suit—Parties* When a company is not registered under Act VI of 1882 a plaintiff bringing a suit against such company must make each individual member of the company a defendant to the suit and he cannot escape from this obligation by stating in his plaint that he has been unable to discover who the individual members of the company are *Koylash Chunder Roy* v *Ellis* 8 *W R 45* considered *North Western Provinces Club* v *Sadullah I L R 20 All 497* followed GANESHA SINGH v MUNDI FOREST Co I. L. R 21 All. 346

(*e*) BOUNDARIES

49 ———— Omission to specify boundaries—*Suit for land* A suit to recover land without defining boundaries cannot be maintained because if decreed the decree could not be executed MAHOMED ISMAIL v LALLA DHUNDUR KISHORE NARAIN 25 W R 39

50 ———— *Effect of omission on execution of decree* The mere omission from the schedule annexed to a plaint of the boundaries of other specifications of land will not exclude from the operation of the decree matters which are by name strictly claimed in the plaint and referred to as such in the decree and which do not need any further specification SHIB NARAIN BANERJEE v RAM NARAIN LUSHKUR 20 W R 142

51 ———— *Want of identification of the land in dispute—Civil Procedure Code (Act XIV of 1882) ss 53 54* and *566* There is no provision in the Civil Procedure Code authorizing the dismissal of a suit on the ground that the land in dispute as described in the plaint cannot be identified and that therefore the decree will be incapable of execution KAZEM SHEIK v DANESH SHEIK 1 C W N 574

See RAJNARAIN DAS v SHAMA NANDO DAS CHOWDHRY I L R. 26 Calc 845

52 ———— Specification of boundaries—*Suit to prevent infringement of rights over land* Where the object of a suit is to prevent the plaintiff s rights over certain lands from being infringed upon the boundaries of the lands should be given in the plaint AJOODHIA LALL v GUMANI LAL 2 C L R 134

53 ———— Description of immoveable property—*Civil Procedure Code 1859 s 26 cl 5—Suit for land* Under Act VIII of 1859 s 26 cl 5 all that it is necessary for plaintiff to do is to describe the property in such a manner as may suffice for identification it is not absolutely necessary to set forth the boundaries AFTABOODDEEN v SHUMSOODDEEN MULLICK 18 W R 461

54 ———— Description of estate—*Civil Procedure Code 1859 s 26 cls (4) and (5)—Boundaries specification of* From cls. (4) and (5) of s. 26 of Act VIII of 1859 it would appear that where a whole estate bearing a name is sued for the boundaries need not be given. RAMDOYAL KHAN v AJOODHIA RAM KHAN I L R 2 Calc 1 25 W R 425

55 ———— Description of property—*Indistinctness of boundaries—Civil Procedure Code 1859 s 26* The indistinctness of boundaries is under Act VIII of 1859 not a cause of nonsuit JANOKEE CHOWDHRANEE v DWARKANAUTH CHOWDHRY 1 Hay 555

56 ———— Effect of misdescription—*Misdescription of area and boundaries—Suit for enhancement* As to the effect of misdescription of area and boundaries in a suit for enhancement of rent TARINEE CHURN SANNYAL v MOHIMA CHUNDER SHAHA 22 W R. 426

57 ———— Procedure on omission to specify boundaries—*Amending plaint* In a suit in which the plaintiff claimed several plots of land but did not specify the boundaries in respect of one of them it was held that the proper course was for the Court to call upon the plaintiff to amend his plaint. JONAB ALI MOLLAH v GOLAM ASSAD CHOWDHRY 21 W R 187

58 ———— Procedure in case of irregularity in form of plaint—*Civil Procedure Code 1859 s 26 cl 5—Amendment of plaint* If a plaint be drawn not in accordance with the provisions of cl 5 s 26 Act VIII of 1859 the plaintiff ought to be allowed to amend the plaint without the suit being at once dismissed BISSUNDEN NARAIN SHAHEE v GUNGERKISSEN SHAHEE 2 Hay 351

59 ———— Contents of plaint—*Civil Procedure Code 1859 ss 26 2* Under s 26 Act VIII of 1859 the plaint is intended to be a statement of facts and not merely a prayer for relief The words cause of action in that section as distinguished from the relief sought for and the subject of the claim mean the grounds entitling the plaintiff to the remedy he seeks HURCHURN Doss v HAZAREEMULL 1 Ind Jur O S 12

60 ———— Suit for breach of contract—*Sale and delivery of goods—Omission to allege readiness and willingness to pay on delivery* In a suit by the plaintiffs to recover damages from the defendant a surety upon a contract to deliver coffee to the plaintiffs the plaint did not allege the willingness of the plaintiff to pay on delivery *Held* on special appeal that such allegation was not neces

PLAINT—contd

3 FORM AND CONTENTS OF PLAINT—contd

(e) Boundaries—concld

sary its absence not having prejudiced the defendant. Pierce v Opendra Shetti Ganapathi
7 Mad 364

61. ———— Suit for contribution—*Requisites of claim* A claim for contribution should distinctly set forth the amounts due by each party sued failing which the plaint should be rejected Bholanath Chatterjee v Inder Chand Doogur
14 W R 373

(f) Special Cases

62 ———— Suit for damages for tort—*Rule of English law* Plaints must state the relief sought for the subject of the claim the cause of action and when it accrued and in suits for damages for injury done the nature of the injury ought to be set out The strict rules of English law do not necessarily apply to plaints in this country Mohesh Chunder Mookerjee v Ramdhun Pal
13 W R 248

In every such plaint plaintiff should name the amount of damages which he seeks to recover as compensation for the injury of which he complains Girdharlal Dayaldas v Jagannath Girdharbhai
10 Bom 182

63 ———— Suit for declaration of title and to have sale set aside—*Amendment of plaint* Where a person by right of inheritance sued for a declaration of his title to a share in a certain sum of money to which the defendants laid claim and the defendants met that allegation by setting up a sale which the plaintiff admitted —*Held* that the plaintiff was bound to mention in his plaint the fact that he had parted with his title and to allege the particular circumstances—misrepresentation undervalue or fraud—on which he relies to have the sale set aside also that the cause of action arose at some time within the period of limitation applicable to the case If sufficient cause exists the Court may require the plaintiff to amend the plaint Azimudin Khan v Zia ul Nissa
I L R 6 Bom. 309

64. ———— Suit for possession and mesne profits—*Question raised in plaint* In a suit to recover with mesne profits and other inci

ant the question as to the validity of the permanent kuttubandi tenure claimed by the defendant was properly open for determination in the present suit Vairicharla Surya Narayana v Nadiminti Bhagavat Patanjali Shastri
3 Mad. 120

65 ———— Suit for redemption of mortgage—*Title —Existence and proof of—Limitation* In a suit for possession of land by redemption of a mortgage the very nature of which presupposes that the possession of the defendant or his predecessor was lawful the plaintiff must in his plaint show the title upon which he relies and therefore a title subsisting at the date of suit Unless he gives *primâ facie* evidence to show that his suit is within time he fails to prove his title or subsisting right to the property *Phillipps* v *Phillipps L R 4 Q B D 12 Dawkins* v *Lord Penrhyn L R 4 Ap Cas 51 Padha Gobind Roy Sahab* v *Inglis 7 C L R 364 Rao Karan Singh* v *Bakar Ali Khan L R 9 I A 99 Rajah Kishen Dutt Panday* v *Narendar Bahadur Singh L R 3 I A 85 Ram Chandra Apaji* v *Balaji Bhaurao I L R 9 Bom 137* and other cases referred to Parmanund Misr v Sahib Ali
I L R 11 All. 438

4 VERIFICATION AND SIGNATURE

1 ———— Inability to verify—*Civil Procedure Code 1859 s 28* Generally plaints should be verified by the plaintiff The exception under s 28 Act VIII of 1859 in favour of persons unable to verify should be separately pleaded and considered in each case *In the matter of the petition of* Muhessur Bukhsh Singh
5 W R Mis 33

2 ———— Ground for not verifying personally—*Duty of Court on presentation of*

by reason of absence or other good cause when they may be allowed to be subscribed and verified by competent persons only Keenoo Singh Roy v Eshan Chunder Roy
6 W R 213

3 ———— *Duty of Court on presentation of plaint* A Court ought never to allow a person other than the plaintiff to verify the plaint save strictly under the exception which the law permits namely where the plaintiff by reason of absence or other good cause is unable to subscribe it (see Act VIII of 1859 s 28) Whenever the plaint is not presented by the plaintiff in person the Court should satisfy itself that the verification is actually signed by the plaintiff Nursing Deb v Ram Mohun Mookerjee Marsh 176

Ram Mohun Mookerjee v Nursingh Deb
W R F B 54 1 Ind Jur O S 63
1 Hay 379

4. ———— *Discretion of Court—Civil Procedure Code 1859 s 28* When an application is made to a Court to permit a plaint

PLAINT—*contd*

4 VERIFICATION AND SIGNATURE—*contd*

to be subscribed and verified on behalf of the plaintiff by a person other than the plaintiff the Court must exercise the power vested in it by s 28 Act VIII of 1859 and must decide whether or not the plaintiff by reason of absence or other good cause is unable to subscribe and verify the plaint himself MOHESSUR BUKSH SINGH v SHEO NARAIN SINGH
6 W R Mis 59

5 ———— *Absence on other good ground* Plaintiff may be excused from verifying his plaint not only by reason of his absence but also for any other good cause to the satisfaction of the Court *In the matter of the petition of* LEFLANUND SINGH 7 W R 168

6 ———— Verification by person other than plaintiff—*Notice* When a plaint is subscribed and verified by a person other than the plaintiff notice should be given to the defendant nothing more formal need be done by way of notice to support an application for the admission of the plaint if the person verifying is qualified in other respects according to the provisions of the Code of Civil Procedure PUDDOMOKEY DOSSEE v SHAMA CHURN CHUCKERBUTTY 1 Ind Jur N S 226

7 ———— Improper verification—*Plaint alleging matter not personally known* Where the plaint alleges matter which cannot be personally known to the person making the verification and which is not stated to be on information and belief a verification which does not distinguish how much is true to the knowledge of the person making it and what is alleged to be true on information and belief does not fulfil the requirements of s 52 Act X of 1887 SOLOMON v ABDOOL AZIZ
4 C L R 366

8 ———— Personal knowledge of facts —*Information and belief—Personal knowledge—Civil Procedure Code (Act X of 187) ss 50 51—Act XII of 18 9 s 11* In all cases whether a plaint is verified by the plaintiff or by some other person the party verifying should state shortly what paragraphs he verifies of his own knowledge and what paragraphs he believes to be true from the information of others *In the matter of* UPENDRO LALL BOSE I L R 6 Calc 675 7 C L R 413

9 ———— *Civil Procedure Code s 52—Form of verification of plaint* In order ... belief as to others to state to which he speaks from his knowledge and to which from his information and belief A verification in the form— To the limit (or extent) of my knowledge the purport of this is true is not such a verification as satisfies the requirements of 52 of the Code *In the matter of Upendro Lal Bose* I L R 6 Calc 675 referred to GIRDHARI v KANHAIYA LAL
I L R 15 All 59

10 ———— *Allegation of fraud—Practice.* In a case where the plaintiffs set up gross fraud and where the case depends mainly upon the personal knowledge of the plaintiffs it is imperative on the plaintiff or one of them to verify the plaint. PROTAP CHUNDER BANERJEE v KRISHTO KISHORE SHAHA I L R 8 Calc 885

See JARDINE SKINNER & Co v SHURNOMOYEE. 24 W R. 215

11 ———— *Allegation of fraud* Where a plaint contained numerous allegations of fraud some of which must have been true or false to the plaintiff s own knowledge and was signed and verified on the plaintiff s behalf by his general attorney —*Held* that the defendants must reasonably require the plaintiff to subscribe and verify the plaint himself and that he should so subscribe and verify RAJAH OF TOMKUHI v BRAIDWOOD I L R 9 All. 505

12. ———— Effect of non verification by real plaintiff—*Benami mortgage* In a suit for possession after foreclosure defendants urged that *C* (and not *A* and *B* the plaintiffs) was the actual mortgagee This was denied by *A* and *B* who obtained a decree In a subsequent suit brought by the representatives of *A* and *B* for mesne profits they in conjunction with *C* urged that *C* was the real mortgagee and *C* was made a co plaintiff but he did not verify the plaint. A decree was given for mesne profits in favour of *C* the plaintiff *Held* that the fact that *C* had not verified the plaint was no sufficient ground for dismissing the suit. ROY MOHANLAL MITTRA v BISHNU CHUNDRA CHATTERJEE 1 B L R A C 100

s c ROY MOHUN LAL MITTER v BUROO SOONDUREE DEBIA 10 W R 145

13 ———— Partners—*Suit by firm* Where the plaintiffs described themselves as lately carrying on business under the name of *C* & *Co* —*Held* that there was no irregularity in the plaint being signed by *C* & *Co* and verified only by *A B* one of the partners LACHMAN v ABDULLA
5 B L R Ap 89

14. ———— *Signature by one partner of the firm—Act VIII of 1859 s 2 —Practice* By the practice of the Court in a suit brought by a firm one partner can without having obtained special leave verify the plaint on his own behalf and also on behalf of his co partners *Quære* Whether such a practice is correct or ought to be allowed to continue RAMCHUNDER v CHOONEE LALL 12 B L R 35

15 ———— False verification—*Verification by mooktear—Civil Procedure Code 1859 s 21* The verification of a plaint signed with the name of the plaintiff by her mooktear and which does not aver what is false but attempts to do what the law estops her from doing is not a false verification

PLAINT—*contd*

4 VERIFICATION AND SIGNATURE—*contd*

within the meaning of s 24 Act VIII of 1859 POSHUN JEHAN v ENAYET HOSSEIN
W R F B 41 Marsh 127
1 Ind Jur O S 44

16 ———— Subscription by agent—*Civil Procedure Code 1877 s 51* Under s 51 of the Code of Civil Procedure (Act X of 1877) the Court may in its discretion admit a plaint which has been subscribed by an authorized agent of the plaintiff SURNOMOYEE v POOLIN BEHARY MUNDUL
3 C L R 15

17 ———— Civil Procedure [illegible]

KHAWAS
3 C L R 579

18 ———— Signature and verification by agent—*Civil Procedure Code (X of 1877 as amended by Act XII of 1879) ss 51 and 52* A plaint signed by a person holding a general power of attorney to sue on behalf of the plaintiff is properly signed within the meaning of the provision in s 51 of the amended Civil Procedure Code The Court must be satisfied under s 52 that a person other than the plaintiff verifying the plaint is acquainted with the facts of the case but in the case of a person holding a general power of attorney or of any other recognized agent the Court will not insist on any extreme stringency of proof S 52 does not require the verification of a plaint to be made in the presence of an officer of the Court but having regard to the necessity of satisfying the Court that the person other than the plaintiff who verifies the plaint is acquainted with the facts of the case it is desirable that a verification by such a person should be made in the presence of the Court unless the Court be satisfied that there is sufficient ground for dispensing with his attendance KASTALINO v PUSTOMJI DADABHOY
I L R 4 Bom 468

19 ———— *Plaint signed and verified by the pleader of the guardian—Right of the minor to sue for possession in Mamlatdar's Court* A minor may sue or be sued in a Mamlatdar's Court he being represented by a properly appointed guardian A guardian mother having on behalf of her minor son brought a possessory suit in a Mamlatdar's Court *Held* that the pleader appointed by her could sign and verify the plaint SAIFULLA v HAJI MIYA I L R 24 Bom 238

20 ———— Verification by unauthorized person—*Removal from file—Practice.* When a plaint has been verified by a person who has not shown to the Court that he is a person competent to verify it the Court will order the plaint to be removed from the file OVEREND GURNEY & Co v STEELE 1 Ind Jur N S 39

PLAINT—*contd*

4 VERIFICATION AND SIGNATURE—*contd*

21 ———— Irregular verification—*Dismissal on ground of improper verification after admission of plaint* The Judge on appeal dismissed a suit on the ground that the plaint was verified by an agent when it might and ought to have been verified by the plaintiff himself *Held* that the plaint having been admitted the suit ought not to be dismissed for this defect but the Judge might properly have required the verification of the plaint to be supplied GOKUL CHUNDER v BURREE BEGUM Marsh 344 2 Hay 325

22 ———— False verification—*Waiver of objection* A case having come on for hearing the verification of the plaint was found to be false Upon this plaintiff applied to withdraw the suit with permission to bring a fresh suit The Munsif rejected the application and dismissed the suit with cost *Held* that as the defendant had filed a written statement and had not objected to the verification it was the duty of the Munsif to dispose of the case on its merit dealing afterwards as he thought fit with the party making the false verification SHAMA SOONDUREE DEBIA v ROHIMOODDEEN SIRDAR 24 W R 71

23 ———— Objection to verification—*Verification of plaint by agent* It is not competent to a Judge of a Small Cause Court to raise any objection to the verification of a plaint by an agent after such verification has been expressly sanctioned by him at the commencement of the suit SUTTOCHURN GHOSSAL v SUROOP CHUNDER DOSS
12 W R 465

24 ———— Signature of plaint by one of several co plaintiffs—*Parties named as co plaintiffs—Civil Procedure Code (XIV of 1882) s 30 and 34—Limitation* It is not necessary that all the persons named in the plaint as co plaintiffs should sign and verify the plaint there being no rule that a person named as a co plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint Three suits for money were filed by one of three joint creditors the others being named as co plaintiffs with him in the plaint which he alone signed and verified An order was made by [illegible]

as if he had not been on the record already *Held* that all the [illegible] the plaints being inopera[illegible] were not de[illegible] MOHUN DAS [illegible]
I L R 17 Calc 580

25 ———— Sufficiency of verification [illegible]

began thus George Henry Webb Manager of the abovenamed plaintiff's business states as

PLAINT—*contd*

4 VERIFICATION AND SIGNATURE—*contd*

follows and proceeded to state that the deceased was at the time of his death indebted to the plaintiff and to set forth the cause of action in detail It was signed and verified thus For the M Bank Limited G H. Webb manager The Court of first instance returned the plaint for amendment under s 53 of the Civil Procedure Code because the plaint was set out as made by George Henry Webb as manager and not as on the part of the Bank. *Held* that this ground did not come within s 53 of the Code as it was clear that the circumstances set out in the plaint applied to the case of the plaintiff Bank and the plaint sufficiently fulfilled the requirements of the Code that the facts which the plaintiff considers essential should be concisely and clearly set out and that the verification should be made by some one acquainted with these facts MUSSOORIE BANK v BARLOW
I L R. 9 All. 188

26 ———— Verification of plaint by acting manager—*Civil Procedure Code 1882 ss 51 and 435—Principal officer of a Corporation or Company* The Manager at Lucknow of the local branch of the Delhi and London Bank was authorized by a power of attorney under seal of the company in London to sue for debts due to the Bank and to substitute any person for himself besides doing other acts of management A power-of attorney executed by him as manager appointing the accountant of the Bank to be its attorney in Lucknow did not contain express authority to the person so empowered to sue for debts due to the Bank. The accountant conducted under this power the chief business of the branch and while he was so conducting it this suit was instituted against defendants of whom some objected that he was not authorized to sign and verify the plaint. *Held* that s. 51 Civil Procedure Code regulating proceedings by or on behalf of ordinary plaintiffs did not apply but that s 435 was applicable the acting manager appointed as abovementioned being a principal officer of the Bank Corporation within the meaning of that section DELHI AND LONDON BANK v OLDHAM I. L. R. 21 Calc 60
L. R 20 I A. 139

27 ————Suit by agent of an unincorporated society—*Civil Procedure Code 1882 s 435—Corporation* A suit in ejectment as against a trespasser was brought by a person signing the plaint as for and as Superintendent and Principal Officer of the Estate of the Board of Foreign Missions of the Presbyterian Church of New York The pla[illegible]
Board
own [illegible]
Mission
was not a corporation or company authorized to sue and be sued in the name of an officer or trustee within the meaning of s 435 of the Code of Civil procedure and also as the person signing the plaint in the manner above described did not profess to be suing on his own possessory title to the land in respect of which ejectment was claimed the suit must be dismissed *Jaigopal v Kauleshar Roy All Weekly Notes (1887) 137 Muhammad Yusuf v Sukhnath All Weekly Notes (1884) 55* and *Asher v Whitlock L R 1 Q B 1* distinguished. YUSUF BEG v BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH OF NEW YORK IN AMERICA
I. L R 16 All. 420

28 ———— Result of defective verification—*Amendment—Procedure—Civil Procedure Code 1882 ss 52 53 and 578—Irregularity not affecting merits* If the verification of a plaint is discovered to be defective at any time whilst the suit is before the Court of first instance the plaint may be amended by the Court. If such defect be not discovered until the suit comes on appeal before an Appellate Court such Court may if it thinks fit return the plaint to the Court of first instance to be amended by it But where the defect is such that it is covered by the provisions of s. 578 of the Code of Civil Procedure there is no necessity for the Appellate Court to take any steps to procure the amendment of the plaint. In any event a defect in the verification of a plaint will not of necessity result in the dismissal of the suit. *Bilgobind Das v Ganno Bibi All. Weekly Notes (1896) 75* referred to A plaint filed by three joint plaintiffs was verified by each in the form The contents of the petition of plaint are true to the best of my knowledge and belief *Held* that this form of verification though not free from ambiguity was in substantial compliance with the provisions of s 52 of the Code of Civil Procedure PAJIT RAM v KATESAR NATH
I. L R 18 All. 396

29 — — — Plaint verified when in an incomplete state—*Amendment of plaint to correct defective verification* The substantial portion of a plaint consisting of the statement of the claim of the plaintiffs and the prayer was written upon two sheets of plain paper and verified by the plaintiffs Subsequently to the affixing of the plaintiff s signatures a front sheet consisting of a piece of stamped paper with the name of the Court and the names and addresses of the parties was added and the plaint thus composed filed in Court *Held* that the verification was defective but that the suit ought to have been dismissed The plaintiff ought to have been allowed an opportunity of amending the plaint by making a proper verification. FATEH CHAND v MANSAB RAI
I. L. R. 20 All. 442

GANGA SAHAI v MUHAMMAD ALI JAN KHAN
I L R 20 All. 444 note

FAKIR CHAND v MUHESH DAS
I L. R 20 All. 445 note

30 ————Plaint not signed by plaintiff or his authorized agent—*Effect of such want of signature—Civil Procedure Code 1882 ss 51 578* The mere fact that the plaint in a suit has not been signed by the plaintiff named therein or by any person duly authorized by him in that

PLAINT—*contd*

4. VERIFICATION AND SIGNATURE—*concld*

behalf as required by s. 51 of the Code of Civil Procedure will not necessarily make the plaint absolutely void. A defect in the signature of the plaint or the absence of signature where it appears that the suit was in fact filed with the knowledge and by the authority of the plaintiff named therein may be waived by the defendant or if necessary cured by amendment at any stage of the suit and having regard to s. 578 of the Code of Civil Procedure is not a ground for interference in appeal *Pajit Pam* v *Kateswar Nath I L R 18 All 396* and *Mohini Mohun Das* v *Bangsi Buddan Shaha Das I L R 17 Calc 580* referred to *Marghub Ahmad* v *Nihal Ahmad All Weekly Notes (1899) 65* overruled *Maharaj Prashad* v *Wahid Alam All Weekly Notes (1891) 15* distinguished. *Kalesar Nath* v *Aggyan All Weekly Notes (1894) 95* and *Badri Prasad* v *Bhagwati Dhar I L R 16 All 240* discussed
BALDEO v. SMIDT I. L. R 22 All. 55

31. ———— Verification—*Civil Procedure Code (Act XIV of 1882) s 435—Verification on behalf of Corporation—Defective verification of plaint effect of on appeal* Where a petition by the Bank

Held that the petition was properly verified under s 435 Civil Procedure Code Defective verification if there is no reason to suppose that anyone is

I L P 18 All 396 and *Basdeo* v *John Smidt I L R 22 All 55* followed PAM KOMAL SAHA v BANK OF BENGAL OF AKYAB (1900)
5 C W N 91

32 ———— *Foreign Corporation suit by—Foreign Company not registered under the Indian Companies Act 1882—Plaint verification of by the Manager of an unregistered Company —Civil Procedure Code (Act XIV of 1882) ss 430 435—Indian Companies Act (VI of 1882) ss 6 41 224* A Foreign Corporation is entitled to sue in its corporate character in this country without being registered under the Indian Companies Act 1882 or an Act of Parliament and a plaint in

Calc. 41 and *Yusuf Beg* v *The Board of Foreign Missions of the Presbyterian Church of New York I L R 16 All 490* distinguished SINGER MANUFACTURING Co v BAIJNATH (1902)
I L R 30 Calc 103

PLAINT—*contd*

5 AMENDMENT OF PLAINT

1 ———— Power to amend—*Appellate Court* A plaint cannot be amended in an Appellate Court ABDUL GUFFOOR v NUR BANU
1 B L R A C 78 10 W R 111

2 ———— *Appellate Court —Objection to plaint* An Appellate Court is competent at any stage to allow objections to be taken to an apparent defect in the plaint COLVIN COWIE v ELIAS 2 B L R A C 212 11 W R 40

3 ———— *Act VIII of 1859* The Court has power to amend a plaint after it has been filed
do so is given
VIII of 1859
amendments
the issues as may be necessary in order to bring about a fair and proper trial of the matter which the plaintiff comes into Court to have tried. GABIND CHANDRA DUTT v GANGA DHYE NALIT MOHUN DAS v GANGA DHYE 7 B L R 333

SAHIJI KESRAJI v PAJSANGJI JALMSANGJI
2 Bom 169 2nd Ed 162

4 ———— *Civil Procedure Code (Act XIV of 1882) ss 42 45 and 53* On the question of amending a plaint s 53 of the Civil Procedure Code should be read with ss 42 and 45 that it is the intention of the Legislature that all matters in dispute should be disposed of in the same suit The proviso to s 53 is not intended to interfere with this SARAL CHAND MITTER v MOHUN BIBI I L R 25 Calc 371
2 C W N 18 201

5 ———— *Discretion of Judge—Code of Civil Procedure 1882 s 53* The amendment of a plaint under s 53 of the Code of Civil Procedure (Act XIV of 1882) is in the discretion of the Judge and is not the right of the suitor in all circumstance It is not enough for a plaintiff to show that the amendment does not alter the character of the suit. TAPIRAM v SADU
I. L. R. 21 Bom. 570

6 ———— *Civil Procedure Code s 53—Limitation—Area of property claimed*

that the property in suit had been described by mistake as being of a slightly less area than it was in reality *Held* that the Court had power and ought to have allowed the plaint to be amended and that the amendment was not precluded by the fact that at the time when the application for amendment was made

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

the property sold. BARKAT UN NISSA *v* MUHAMMAD ASAD ALI I L R 17 All. 288

7 ———— **Right to amend**—*Altering case in appeal* A plaintiff was not allowed to alter his case on second appeal DASSORATHY HURI CHUNDER MAHAPATTRA *v* RAMKRISHNA JANA I L R 9 Calc 526 13 C L R 114

8 ———— *Ground for amendment at final hearing Semble* A defect which appears on the face of the plaint which would have rendered it inadmissible is not a matter for amendment at the final hearing of the suit RAMASAMI AYYAN *v* RAMU MUPAN 3 Mad. 372

9 ———— *Application to amend with reference to objection taken at filing of plaint* A plaint may be amended upon subsequent application with reference to an objection taken when it was filed. TOULTON *v* GWYTHER Bourke O C 273

10 ———— **Time for amendment**—*Amendment after settlement of issues* Amendment of a plaint is not allowable after issues are fixed AMUR NARAIN *alias* NERPUT SUHAYE *v* PUGHOO BUNSEE KOONWUR 5 W R 234

11 ———— *Civil Procedure Code 1877 s 53—Amendment subsequently to first hearing* The words in paragraph 1 of s 53 of the Code of Civil Procedure (Act X of 1877) at or before the first hearing are merely directory and not mandatory and therefore a plaintiff may subsequently to the first hearing amend his plaint provided such amendment does not alter the original character of his suit The plaintiffs (mortgagors in a suit against their mortgagees) sought only for production of the mortgage deed or for an account although the averments in the plaint warranted a prayer for redemption Subsequently to the first hearing of the suit they applied to be allowed to amend the plaint by adding a prayer for redemption *Held* that the provisions of s 53 of the Civil Procedure Code (Act X of 1877) did not preclude the Court from permitting the amendment to be made MODHE *v* DONGRE I L R 5 Bom 609

12 ———— *Amendment after return for amendment in fixed time—Civil Procedure Code 1877 s 53 Semble* That where at the first hearing of a suit the plaint is returned for amendment within a fixed time under the provisions of s 53 of Act X of 1877 and it is amended accordingly it cannot afterwards be again returned for amendment BADR UN NISSA *v* MUHAMMAD JAN I L R 2 All. 671

13 ———— *Civil Procedure Code 1882 s 53—Practice—Amendment of plaint at a date subsequent to first hearing Held* (OLDFIELD J dissenting) that under s 53 of the Civil Procedure Code a plaint can be rejected returned for amendment or amended by the Court of first instance only at or before the first hearing of the suit and not after the first hearing thereof *Modhe v Dongre I L R 5 Bom 609* dissented from *Soorjmukhi Koer v Cas I L R 2 Calc 272 Burjore v Bhagana I L R 10 Calc 557 L R 11 I A 7* and *Fazl ul un nissa Begam v Mulo I L R 6 All 250* distinguished by MAHMOOD J *Per* MAHMOOD J—The plaint may for causes other than those mentioned in s 53 be amended by the Court after the first hearing DAMODAR DAS *v* GOKAL CHAND I L R 7 All. 79

14 ———— *Civil Procedure Code (XIV of 1882) s 54—Leave obtained to amend plaint within a certain time—Failure to amend within time allowed—Application for extension of time originally allowed* On the 6th April 1891 the plaintiffs obtained an order giving them leave to amend the plaint and proceedings in the suit By the order this amendment was to be made on or before the 30th April 1891 On the 18th August 1891 the plaintiffs obtained a summons calling on the defendants to show cause why [illegible]

fixed for amendment had expired the Judge had a discretion to extend the time and that under the circumstances the plaintiffs were entitled to the order asked for BHAGWANDAS BAGLA *v* ABU AHMED I L R 16 Bom 263

15 **Mode of amendment**—*Alteration of plaintiff s case* The Court is not to make a case for a plaintiff which he has not made for himself PROSUNNO CHUNDER BANERJEE *v* GOOREE DASS BHATTACHARJEE 7 W R 478

16 ———— *Alteration of plaintiff s case—Variance between pleading and proof Semble*—The Court will not add an issue or amend the plaint so as to raise a wholly different question to that upon which the parties have come into Court BIZJIE BIBEE *v* MONOHUR DOSS 2 Ind Jur N S 118

See NEHORA ROY *v* RADHA PERSHAD SINGH I L R 5 Calc 64 4 C L R. 353

17 ———— *Allowing new cause of action—Civil Procedure Code 1859 ss 29 and 31* Ss 29 and 31 of the Civil Procedure Code empower the Court to permit such amendment in the plaint as may enable the Court to give relief in respect of the wrong originally complained of but not to allow totally new causes of action to be added by a supplemental plaint RAILOO MULL *v* NANUK 1 N W 171 Ed. 1873 250

18 ———— **Ground for amendment**—*Insufficient disclosure of cause of action* Where the plaint does not sufficiently disclose the cause of action and a cause of action exists the plaintiff should have been allowed to amend it under s 32 Code of Civil Procedure 1859 not being so allowed

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

he is at liberty to prove any cause of action which is not inconsistent with the plaint LUCKHEE PREA DEBIA v BRINDABUN DEY 12 W R 313

19 ——— *Misstatement*

f ndant dating his cause of action from his failure in the Criminal Court In the Court of first instance he obtained a decree for possession The Judge on appeal dismissed the plaintiff s suit on the ground that he had no power to set aside a Magistrate s order under the law cited *Held* that if the Judge was of opinion that the plaintiff had misstated his cause of action he ought to have directed him to amend his plaint DABOO JHA v LUWA JHA 11 W R 223

20 ——— *Rejection of plaint for prolixity—Civil Procedure Code 1859 s 29* If a plaint not only asks for relief which a Court can afford but seeks to open up matters already adjudicated upon in another suit the Judge (instead of rejecting the plaint for prolixity under s 29 should entertain the suit and adjudicate upon the matters not adjudicated upon in the former suit amending the plaint by striking out the issues relating to the matters adjudicated upon POSUN JEHAN v ENAYUT HOSSEIN

W R F B 41 Marsh 127
1 Ind. Jur O S 44 1 Hay 269

21 ——— *Civil Procedure Code s 53—Alteration of the relief prayed for* The restriction as to amendment of a plaint is only as to the nature of the suit the law prohibits any such amendment as would change the fundamental character of a suit but an alteration in the relief does not change the character of a suit Where a purchaser of a mortgage bond at a sale in execution of decree sued to enforce the bond but did not pray for sale of the mortgaged property *Held* that he might properly have been allowed to amend his plaint and add a prayer for that relief KASINATH DAS v SADASIV PATNAIK

I L R 20 Calc 805

22 ——— *Amendment transforming claim—Suit for rent converted into suit for ejectment—Variance between pleading and proof—Civil Procedure Code ss 53 and 56* An amendment of a plaint which materially ...

before judgment and not after The larger powers conferred on Appellate Courts by s 562 do not authorize such a material transformation of a suit in appeal. BAI SHRI MAJIRAJBA v MAGANLAL BHAISHANKAR I L R 19 Bom 303

23 ——— Altering character of suit—*Civil Procedure Code 1877 s 53—Adding prayer for possession to suit for declaration of title.* S 53 of the Civil Procedure Code which provides that a plaint cannot be amended so as to convert a suit of one character into a suit of another and inconsistent character does not prevent a plaintiff

24 ——— *Suit for possession and mesne profits—Resumption* Where in the plaint the relief sought for was possession and mesne profits and the plaint was in the course of the suit amended and an additional stamp paid so that the suit became one for resumption —*Held* that the amendment was improperly made and the suit must proceed as a suit for possession and mesne profits GOBINDO MAHAPATRO v GOPEE NATH PUNDIT

B L R Sup Vol. 581 6 W R 211

25 ——— *Suit by manager to set aside deeds—Suit for redemption by minors* Where the plaint on the face of it is one in which a manager suing on behalf of minors is himself plaintiff and which seeks to set aside deeds constituting a mortgage transaction the Court cannot by amending the plaint turn the suit into a redemption suit on the part of the minors JOYRAM LALL MAHTOON v STEWART 20 W R 453

26 ——— *Suit on mortgage payable on demand—Amendment of suit for interest by making it one for account* Where a mortgage debt is payable on demand the suit ought to be brought not for interest only but for an

27 ——— *Civil Proce*

ants were wrongfully filling up to its original condition was altered into one for the protection of the plaintiffs from any infringement of or for a declaration of their right to a share in the produce and the use of the water by way of easement *Held* that the alteration in the plaint was a material one FARZAND ALI v YUSUF ALI

I L R. 2 All. 669

28 ——— Plaintiff asking for relief he is not entitled to—*Suit for enhancement* Where a suit for a kabuliat at an enhanced rate of rent was dismissed on the ground that it was not for enhancement of plaintiff s share of the rent but for a kabuliat at an enhanced rate for the rent of a specific portion of land although plaintiff s agent in his examination deposed that the suit had reference not to a specific portion of land but to a certain jumma —*Held* that the Court below might permit plaintiff to amend or explain his plaint or

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

if he had asked too much might give him what he was entitled to under the law POORNO CHUNDER ROY v STALKARTT 10 W R 362

29 ———— **Giving plaintiff more relief than he prays for**—*Suit for redemption* The Court should not give the plaintiff more than he claims in his plaint therefore where a mortgagor brings a suit to redeem mortgaged land on payment of such sum as shall be found due to the mortgagee the Court is not justified in decreeing possession without payment in favour of the mortgagor merely because the mortgagee denies the existence of the mortgage DADA VALAD VALLI v BAVASHA VALAD KASAM 6 Bom A C 9

30 ———— **Amendment by Appellate Court**—*Omission of lower Court to return plaint for misjoinder* When a plea of misjoinder has been allowed and the suit decided and an appeal brought the Court of Appeal should dispose of the suit in the mode in which the lower Court ought to have disposed of it by returning the plaint for amendment *Farzand Ali v Yusuf Ali I L R 2 All 669* dissented from LINGAMMAL v CHINNA VENKATAMMAL I L R 6 Mad 239

31 ———— **Amendment of plaint—Multifarious suit**—*Civil Procedure Code 1882 s 5 —Malabar law—Stanom* A suit was brought by the junior members of a tarwad which consisted of three stanoms and three tavaries against the karnavan and others including certain persons to whom he had alienated some tarwad property The plaint as originally framed prayed (i) for the removal of the karnavan (ii) for a declaration that defendants Nos 2 to 8 the senior anandravans had forfeited their right of succession to him (iii) for the appointment of the plaintiff in his place (iv) for a declaration that these alienations were invalid as against the tarwad and (v) for possession of the property alienated Subsequently the plaint was amended by the order of the Court by striking out items (ii) and (v) of the prayer and finally the plaintiffs further amended the plaint and sued only for a declaration that the alienations in question were invalid The lower Court passed the declaratory decree prayed for *Held* that the lower Court was wrong in allowing the plaint to be amended after the first hearing because the case on which the decree was passed was essentially different from that disclosed in the plaint and that the appeal must be allowed accordingly MAHOMED v KRISHNAN I L R 11 Mad 106

32 ———— **Suit on promissory notes**—*Variance between pleading and proof—Addition of issue as to items of account* Where a suit was instituted under Act V of 1866 for the sum due on [illegible] account were not properly in issue The Court allowed the plaint to be amended and an issue to be framed as to the amount due in respect of the consideration for the note JOSEPH v SOLANO 9 B L R 441 18 W R 424

33 ———— **Suit for breach of contract**—*Variance between pleading and proof* The plaintiff alleged a contract to deliver on the 2nd March and the evidence showed an extension of time to the 31st March but the pleading alleged that the breach was on 2nd March *Held* that an amendment might be allowed as the defendant would not be prejudiced thereby he having been perfectly aware of the case he had to meet on this point PIERCE v OPENDRA SHETTI GANAPATHY 7 Mad 364

34 ———— **Relief in respect of tort**—*Variance between pleading and proof* The plaintiff sued the defendant overseer of or for the municipal office for the recovery of money due on a contract under which the plaintiff had done certain work the defendant contracting for the municipality and for the performance of work known by the plaintiff to be municipal work The municipality ignored the contract and the Court held the defendant could not be made personally liable *Held* that the plaintiff could not be allowed to amend his plaint so as to make the defendant liable in tort for misrepresentation of his authority MODHOOSOODUN DEY v MOHENDRONATH MOOKERJEE 9 W R 206

35 ———— **Plaint disclosing no cause of action**—*Contract Act s 23—Wagering contract—Suit to recover deposit paid on such contract—Bom Act III of 1865 s 1—Deceit—Unilateral mistake* On the 21st of January 1883 the plaintiff contracted to purchase from the defendant the right to receive dividend on 50 shares of the Empress [illegible] purchase money Subsequently it was ascertained that the dividend had been already declared on 17th January 1883 (i e four days before the contract) at R25 The plaintiff thereupon sued the defendant to have the contract declared cancelled and sought to recover the deposit of R100 with interest The Judge of the Court of Small Causes at Broach being of opinion that the contract was in its nature a sutta or wagering contract rejected the plaintiff's claim The plaintiff applied to the High Court under its extraordinary jurisdiction to set aside the lower Court's decision *Held* that in the first instance the plaint as framed not disclosing any [illegible] returned for

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

not under s 22 of the Contract Act (IX of 1872) have made the contract voidable The High Court reversed the lower Court s decision in order that the plaintiff might be given an opportunity to amend his plaint so as to show that his action was one for deceit DAYABHAI TRIBHOVANDAS v LAKHMICHAND PANACHAND I L R 9 Bom. 358

36 ——— **Suit for pre emption**—*Right to relief on different ground from that relied on—Raising new issue—Pre emption* Where a plaintiff claimed in his plaint a right of pre emption as co partner of the vendor —*Held* that he could not be entitled to a decree on the ground of vicinage KUNJABEHARI LAL v GIRIDHARI LAL 1 B L R S N 12 10 W R 189

SHIU SUHAI MULLICK v LALA HARI SUHAI SINGH 3 B L R Ap 142

37 ——— *Conditional de*

38 ——— *Alteration of*

was tried and determined in the lower Court as so founded. *Held* that the plaintiff could not on appeal set up a claim to enforce such right founded on custom CHADAMI LAL v MUHAMMAD BAKSH I L R 1 All 563

39 ——— *Alteration of claim on appeal—Right founded on agreement—Custom* Where the existence in a certain village of

special agreement does not exclude a claim to such right founded on Mahomedan law MARATIB ALI v ABDUL HAKIM I L R 1 All. 567

40 ——— **Suit for property misappropriated**—*Omission of allegation of demand and refusal* In 1874 plaintiff sued to recover certain property or its value dishonestly misappropriated on the 21st January 1872 by first defendant assisted by the other defendants. The lower

by the insertion of such an allegation after answer filed and that therefore the suit could not be maintained *Held* reversing the decree that even if the present case were one in which the provision as to demand could have any application at all still the suit ought not to have been dismissed on that technical ground when the defendant by his answer traversed the whole of the allegations in the plaint and pleaded the statute of limitation MANIKYA ROW LAKSHMAYYAH v MANIKYA ROW GOPAL ROW 7 Mad. 400

41 ——— **Suit to set aside sale for arrears of revenue and for possession**—*Purchase by fraud—Forfeiture of tenancy—Trustee of owner in equity* The plaintiff sued to recover possession of certain land and prayed to set aside the sale of it by the revenue authorities for arrears of assessment due on the land He alleged that he had let the land to the defendant on condition of the latter paying the Government assessment and

sale The Subordinate Judge rejected the plaintiff s claim holding that he failed to prove either the defendant s liability to pay the assessment or any

not to have contained any prayer for setting aside the sale but that as it contained a prayer for possession it might be read as praying (or at least that the plaintiff might have been permitted to amend it so that it might simply pray) that the defendant should under the circumstances alleged by the plaintiff be declared a trustee of the land for the plaintiff *Held* also that if the plaintiff s allegations were true the plaintiff would be entitled to such a declaration and the defendant would be discharged of his sub tenancy in consequence of his conduct which worked a forfeiture of any right to be continued as tenant BALKRISHNA VASUDEV v MADHAVRAV NARAYAN I. L. R. 5 Bom. 73

42. ——— **Suit for possession on ground of exclusive right**—*Appellate Court Power of—Variance between pleading and proof* When a plaintiff sues to recover possession of property on the allegation that he had purchased it with his own money and the suit is dismissed in the Court of first instance the Court of Appeal is not

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

justified in giving the plaintiff a decree for a portion of the property on the ground that the whole was the property of a joint Hindu family in which the plaintiff was a co sharer MUKHODA SOONDURY DASI v PAM CHURN KARMOKAR
I L R 8 Calc 871 11 C L R 194

43 ——— Suit for possession of share of joint Hindu family before partition—*Suit for partition* A one of three members of an un divided Hindu family mortgaged his share in the immoveable family property to *B* The mortgage recited that the money was raised in order to en able *A* to sue his co parceners for partition of the family property and possession of his share therein *A* subsequently did bring a suit with that object against his co parceners but allowed it to be dis missed against him for default *B* now brought a suit against *A* and his co parceners for possession of *A* s share in such family property *Held* that *B* s suit being a suit for posse ion was wrongly framed and was not maintainable there never having been any partition of the joint family property Leave however was given to *B* on certain terms to amend his plaint so as to make his suit a suit for partition. KRISHNAJI LAKSHMAN RAJVADE v SITARAM MUR ARRAV JAKHI I L R 5 Bom. 496

44 ——— Suit for money received for plaintiff—*Addition of prayer for account—Amendment of plaint on appeal—Civil Procedure Code 1882 s 54* Plaint allowed by the High Court on a regular appeal to be amended by in sertion of a prayer for an account BAI ANOPE v MULCHAND GIRDHAR I L R 9 Bom. 355

45 ——— Alternative case —*Omission to put case in alternative* Where the plaintiff has not put forward an alternative case as he might have done he may have leave to amend his plaint and to state his case correctly therein if the Court thinks that he has rested his claim upon wrong grounds from misinformation ignorance of law or fact mistake or misconstruction of documents LAKSHMIBAI v HARI BIN RAVJI 9 Bom 1

46 ——— *Omission to put case in alternative—Civil Procedure Code 1882 s 53* Where a plaintiff's claim as originally stated in his plaint was based on the allegation of the invalidity of a will an application at the hear ing of the case to amend the plaint by inserting a clause submiting that even if the will were valid it did di pose of the whole of the testator s property was refused —the Court holding under s 53 of the Civil Procedure Code (XIV of 1882) that the case made by the proposed amendment would be inconsistent with the case made in the plaint as originally framed DAMODAR MADHOWJI v PURMANANDAS JEEWANDAS
I L R 7 Bom. 155

47 ——— *Omission to ask for alternative relief—Frame of suit—Account and discovery* After parties have come to trial to determine which of two stories is true the plaintiff *cannot be allowed to amend his plaint by aban* doning his own story and adopting that of the defendant and asking relief on that footing for the question whether on that footing the plaintiff is entitled to relief is one to which the defendant s attention has not been called and which he has had no opportunity of answering In a suit to recover a specified sum for the hire of cargo boats and not asking for any other relief the defendant alleged and proved that he was merely the agent of the plaintiff to find hirers for the boats and that he was not liable for the hire of the boats *Held* that although *primâ facie* a principal is entitled to an account and discovery from his agent the plaintiff could not obtain such relief in the suit as framed and that he could not [illegible]

5

48 ——— Withdrawal of part of claim —*Suit brought for amount in excess of jurisdiction of Munsif—Suit to declare land liable to be sold in execution of decree—Civil Procedure Code ss 50 and 373* In a suit brought in a District Munsif's Court to declare certain land liable to be sold in execution of a decree for more than R2 500 the defendants pleaded that the Court had no juris diction The Munsif allowed the plaintiff to amend the plaint by stating that he abandoned his claim to execute the decree against the land for more than R2 500 On appeal the District Judge held that the plaint could not be amended after the first hearing *Held* on appeal to the High Court that the claim was not one which could be amended so as to bring the suit within the pecuniary jurisdiction of the District Munsif ANNAJI v LAMA KURUP I L R 10 Mad 152

49 ——— Allegation of fraud—*Altera tion of nature of fraud charged* Where in a suit for repayment of a certain sum which had after a compromise made by the Official Assignee been paid to a person who had assisted in taking the ac counts such payment being unauthorized by the Court the plaint as presented alleged the fraud ulent concealment of the payment from the assignee and afterwards when all the evidence had been taken and it had been established that the assignee knew of the payment this was amend ed to the statement that if he did know of it he had no power to consent to it and that his consent would not be binding the payment being a fraud upon the Court —*Held* that the amendment at the stage when it was made was not permis ible ABDUL HOSSEIN ZENAIL v TURNER
I L R 11 Bom. 620
L R 14 I A 111

50 ——— Charges of fraud—*General allegations of fraud—Amendment of plaint on appeal—Objection taken for first time on appeal* Where a plaintiff seeks relief on the ground of

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

fraud and the plaint contains general allegations but no specific instances of the alleged fraud it ought to be immediately on presentation rejected or returned for amendment as it does not disclose a cause of action The plaintiff sued to recover damages caused by the defendant s fraud during his management of the plaintiff s estate from 1870 to 1884 The plaint disclosed no specific instances of the fraud imputed to the defendant The Court of first instance without going into evidence rejected the plaintiff s claim on the preliminary ground that the plaintiff had no right to sue during the lifetime of his adoptive mother In second appeal the respondent objected that the plaint was defective The plaintiff s pleader asked for leave to amend it by specifying certain instances of the alleged fraud *Held* that the amendment could not then be allowed and the suit must fail KRISHNAJI *v* WAMNAJI
I L R 18 Bom 144

51. ———— **Suit by Bank for money against executrix**—*Civil Procedure Code s 53—Order returning plaint for amendment—Form of suit* A suit was brought by the manager of the M Bank against the executrix of *B* to recover a sum of money as due upon a bond executed by *B* in favour of the Bank The plaint described the defendant as Mrs Sarah G Barlow of Mussoorie and stated that she was executrix of the deceased *B* It began thus George Henry Webb Manager of the abovenamed plaintiff s business states as follows and proceeded to state that the deceased was at the time of his death indebted to the plaintiff and to set forth the cause of action in detail It was signed and verified thus For the *B* Bank Limited G H Webb Manager The Court of first instance returned the plaint for amendment under s 53 of the Civil Procedure Code because the suit should not have been brought in the form in which it was brought but in the form referred to in s 213 and No 105 of Sch IV of the Code *Held* with reference to this ground that the plaintiff was at liberty to bring a suit for money against any person administering to or representing the estate and if such suit should be found with reference to the facts in evidence not maintainable it should be dismissed but there was no authority for returning a plaint for amendment when it was found that the suit was not maintainable in the form in which it was brought in order to amend it so as to convert the suit into one of a different character MUSSOORIE BANK *v* BARLOW
I L R 9 All 188

52. ———— **Suit to restrain interference with private right**—*Civil Procedure Code ss 31 53* *A* sued for an injunction to restrain interference with his right to graze cattle on the bed of a certain tank The other raiyats of the village in whom the same right vested were originally joined as plaintiffs but the plaint was amended

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

under s 53 of the Code of Civil Procedure and [illegible]

other raiyats and the amendment of the plaint was not contrary to the provisions of s 31 or 53 of the Code of Civil Procedure VENKATACHALA *v* KUPPUSAMI
I L R 11 Mad 42

53 ———— **Change in form of suit the cause of action being unchanged**—*Civil Procedure Code 1882 s 53* The plaintiffs alleged that the defendants had encroached on the bed of a tank raised embankments and cultivated crops which interfered with the plaintiffs supply of water and they prayed for a decree ejecting the defendants from the land encroached on and restraining them from interfering with it *Held* that the Court was not precluded by s 53 of the Code of Civil Procedure from passing a decree declaring the plaintiff right to the water of the tank directing the defendants embankments etc to be removed and regulating the cultivation of their lands but that the defendant s liberty of cultivation should not be restricted more than was necessary to secure the plaintiffs supply of water PULAMADA *v* PAVUTHU
I L R 11 Mad 94

54 ———— **Joint family**—*Mortgage by a father—Decree against father on mortgage giving possession with interest and costs—Son s liability to satisfy the decree as to interest and costs* The plaintiff father mortgaged certain ancestral property for a limited term A suit was brought on the mortgage against the father and a decree was passed directing the mortgaged property to be handed over to the mortgagee for a certain time and awarding payment of interest and costs by the father In execution of this decree the mortgagee sought to recover the costs by sale of the property in question Thereupon the plaintiffs sued for a declaration that the property was not liable to be sold in execution of the decree against the father on the ground that the debts contracted by [illegible]
fathe [illegible]
fore [illegible]
at al [illegible]
debts [illegible]
po e [illegible]
the appeal to the High Court [illegible]
the plaintiffs had separated [illegible]
before the mortgage [illegible]
him and an application [illegible]
behalf that the plaint [illegible]
amended by inserting [illegible]
Held that the amend[illegible]
Such an amendment [illegible]
of contention between [illegible]
form adopted by [illegible]
intended to take [illegible]

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

advantage than they would have obtained if they had sued merely as separated sons They sought to liberate the property altogether from liability on the ground that the debt was immoral and that the estate could not therefore be bound by the decree at all That being so and the plaintiffs having omitted to allege partition they could not now ask the Court to put their suit on a new footing NARAYANRAV DAMODAR v JAVERVAHU

I L R 12 Bom. 431

55 ———— **Suit to declare alienation by Hindu widow invalid**—*Specific Relief Act s 42—Civil Procedure Code s 53—Amendment of plaint—Death of widow pending appeal by plaintiff—Right of appellant to proceed with appeal—Plaint not to be amended by claim for possession* The proviso to s 42 of the Specific Relief Act that no Court shall pass a declaratory decree where the plaintiff being able to seek further relief than a mere declaration of title omits to do so refers to the position of the plaintiff at the date of suit where a suit was brought for a declaration that certain alienations of land made by a Hindu widow to the defendants were not binding on the plaintiff her reversionary heir and pending appeal by the plaintiff the widow died —*Held* (i) that the plaintiff was entitled to proceed with his appeal (ii) that the plaintiff could not be permitted to amend his plaint and claim possession GOVINDA v PERUMDEVI

I. L. R 12 Mad 136

56 ———— **Suit in Civil Court to enforce exchange of pottah and muchalka**—*Civil Procedure Code s 53—Madras Rent Recovery Act (Madras Act VIII of 1865)—Declaratory decree* A suit in the Court of a District Munsif to enforce acceptance of a pottah and execution of a muchalka by defendant in respect of a holding in a village to which the plaintiff claimed title was dismissed as not being maintainable *Held* that the suit should not have been dismissed but the plaint should have been amended by the addition of a prayer for declaration of the plaintiff s title and that the Court then would have had jurisdiction to grant by way of consequential relief the relief originally sought NARASIMMA v SURYANARAYANA

I L R 12 Mad. 481

57 ———— **Plaint for declaratory decree without consequential relief**—*Objection to plaint not taken—Ground for dismissal of suit* A suit should not be dismissed by an Appellate Court on the ground of its being one asking merely for a declaratory decree and no consequential relief where that objection has never been taken by the defendants to the suit The plaintiffs should in such a case be allowed an opportunity of amending their plaint LIMBA BIN KRISHNA v RAMA BIN PIMPLU

I L R 13 Mad 548

58 ———— **Suit for rent decree for use and occupation in**—*Civil Procedure Code 1882 s 53—Variance between pleading and proof*

A suit was brought for rent of a hat on the basis of a verbal settlement for three years at an annual jama of R370 The defendants denied the settlement The first Court found for the plaintiff but on appeal an objection having been raised by the defendants that the verbal lease was illegal under the Transfer of Property Act the suit was dismissed The plaintiffs contended on appeal that the suit should not have been dismissed but that they [illegible]

raising issues of an entirely different character from those on which the trial was held in the Courts below as a suit for rent and necessitating a trial upon fresh evidence Such amendment could not be allowed under s 53 of the Civil Procedure Code *Lukhee Kanto Dass Chowdhury* v *Sumeer uddin Lusker 13 B L R 243 21 W R 208 Eshan Chunder Singh* v *Shama Churn Bhutto 11 Moo I A 20 Naraince Dossee* v *Nurrohurry Mohanto Marsh 70* referred to SURENDRA NARAIN SINGH v BHAI LAL THAKUR

I L R 22 Calc 752

59 ———— **Amendment in respect of parties**—*Striking names out of plaint—Amending issues* Four plaintiffs sued as partners but it was found during the trial that they were not all partners at the time the cause of action accrued and the Judge thereupon amended the issue which had been raised on that point and raised the question whether the plaintiffs were or were not partners and it being decided in the negative the Judge ordered two of the plaintiffs names to be struck out of the plaint and gave a decree in favour of the other plaintiffs *Held* that the Judge acted rightly in amending the issue but that he should have done so without striking the names of the plaintiffs out of the plaint EAST INDIAN RAILWAY COMPANY v JORDAN

4 B L R O C 97 14 W R O C 11

60 ———— *Hindu widow—Joinder of plaintiffs one of whom has no right to sue for pre emption* The plaintiffs in a suit to enforce a right of pre emption based on the wajib ulurz of a village which gave the right to co sharers [illegible]

held she could not claim pre emption *Held* with reference to the manner in which the plaint was framed that the other plaintiff could not claim pre emption entirely on his own account without amending the plaint but that it was too late for him to take such a course *Damodar Das* v *Gokal Chand I L R 7 All 79* referred to KARAN SINGH v MUHAMMED ISMAIL KHAN

I L R 7 All. 860

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

61 ———————— *Joinder of causes of action—Same parties suing in different capacities—Civil Procedure Code 18 7 ss 26 and 31* By the Memorandum and Articles of Association of the New Dhurumsey Poonjabhoy Spinning and Weaving Company the plaintiffs firm of *M F & Co* were appointed agents of the company for twenty five years and it was provided that they should have the general control and management of the company Cl 98 of the articles provided that the said firm as such agent should have full power and authority (*inter alia*) to appoint and employ in or for the purposes of the transaction and management of the affairs and business of the company such solicitors as they should think proper An agreement dated 26th August 1874 was also entered into between the company and the partners in the firm of *M F & Co* their executors administrators and assigns for the time being constituting the partnership firm of *M F & Co* whereby it was agreed that the said firm should be agents to the company for twenty five years to buy and sell etc and particularly to exercise all the powers contained in cl 98 of the Articles of Association *Messrs C & B* were duly appointed solicitors to the company and acted as such for a considerable time *M* one of the members of the said firm of *M F & Co* died in the middle of March 1876 The plaintiffs complained that *G* one of the shareholders in the company became desirous of ousting the plaintiffs from the position of agents of the company and of becoming the managing director of the company that in July 1881 he procured his own election and that of certain nominees of his as directors of the company and on the 8th August 1881 procured the passing of a resolution at a Board meeting to the effect that as *Messrs C & B* the company s solicitors were also the solicitors of the agents it was desirable for the interests of the company that a change should be made and that *Messrs H C & L* be appointed solicitors of the company The plaintiffs alleged

that *Messrs* solicitors of esigns upon and they

contended that the resolution was a breach of the contract between the company and the plaintiffs and a violation of the Articles of Association of the company The plaintiffs sued *G* and two other directors of the company and the company itself and prayed for an injunction against the defend

appointing *Messrs H C & L* as solicitors for the company and to restrain them from doing any thing inconsistent with the Memorandum and Articles of Association The defendants contended that the contract of the 26th August 1874 had been determined by the death of *M* and that the powers conferred on the agents by cl 98 of the Articles were subject to the general powers

company was contrary to the Memorandum of Association and therefore *ultra vires* and in order that this point might be pressed against the defendants it was proposed that the plaint should be amended by alleging a cause of action in two of the plaintiffs as shareholders as well as a cause of action in all the plaintiffs as parties contracting with the company *Held* that under the provisions of ss 26 and 31 of the Civil Procedure Code (Act X of 1877) the amendment could not be allowed The plaintiffs as shareholders and contractors had not the same cause of action by which words were meant not only the act complained of but also the right violated by that act The rights of the plaintiffs as contractors alleged to be violated by the resolution were rights given to them by their agreement but the rights of the plaintiffs as shareholders were rights secured to them by the Articles of Association NUSSERWANJI *v* GORDON

I L R 6 Bom 266

62 ———————— *Amendment of plaint on appeal—Adding parties* In a suit for arrears of rent of the plaintiff s share of a talukh it appeared that in the year 1279 a partition was effected of the zamindari in which the defendant s talukh was situated and that the talukh ceased to be held exclusively by the plaintiff but was divided between him and certain other persons who were not made parties to the suit *Held* that the plaint could not be amended by making the co sharers parties at the hearing of the appeal OBHOY GOBIND CHOWDHRY *v* HURYCHURN CHOWDHRY

I L R 8 Calc 277

63 ———————— *Suit by one member of an undivided Hindu family—Non joinder of other persons interested in a family business* In 1887 the plaintiff appointed the defendants to serve for three years as manager of a business in Moulmein which was the business of the undivided Hindu family to which the plaintiff belonged In 1893 the plaintiff without joining the other members of his family sued the defendant for damages for breach of the contract of

deprive the defendants of the defence of limitation and of the other circumstances in the case the plaintiff should not be allowed on appeal to amend

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

the plaint by bringing his partners on to the record. ALAGAPPA CHETTI *v* VELLIAN CHETTI
I L R. 18 Mad. 33

64 ———————— *Civil Procedure Cod 1882 ss 27 and 53—Amendment of plaint by bringing on a n w plaintiff on second appeal* Plaintiffs sued in 1894 to recover property belonging to the estate of a testator claiming to be his executors under a will The property wa alleged to have been entru ted by the te tator in 1893 to the defendant The will contained no express appointment of executors but it provided that the plaintiffs should take care of the estate during the minority of a son who was to be adopted by the testator and imposed upon them the duty of providing for the maintenance of persons therein named The adoption having taken place after the institution of the suit —*Held* that under the circumstances of the case the plaint should be amended on second appeal by substituting the adopted son as plaintiff with one of the present plaintiffs as his next friend SESHAMMA *v* CHENNAPPA I L R. 20 Mad. 467

65 ———————— *Suit brought in the name of the idol of a temple—Amendment allowed to name of manager of temple—Practice* A suit relating to property alleged to belong to a temple cannot be brought in the name of the idol of the temple Where such a suit was so brought the Court in second appeal allowed the plaint to be

person s *locus standi* in the suit THAKUR RAGHUNATHJI MAHARAJ *v* SHAH LAL CHAND
I L R 19 All. 330

66 ———————— *Addition of*

I L R 12 Bom. 158

67 ———————— *Addition of parties—Suit originally against owner—Ship added as party defendant* In a suit for collision originally filed again t the owners of a ship —*Held* that the plaintiffs might amend the plaint by adding the ship as a party defendant BOMBAY AND PERSIA STEAM NAVIGATION COMPANY *v* SHEPHERD
I L R 12 Bom 237

68 ———————— *Suit by parties*

by converting that suit into one for a dissolution of partnership and an account and remanded the case with a direction to the lower Court to make he other partners parties to it and to take an account KARIMBHAI *v* CONSERVATOR OF FORESTS
I. L. R. 4 Bom. 222

69 ———————— *Amendment on appeal* Under the circumstance the plaintiff was allowed to amend his plaint on appeal so as to make it a plaint against one debtor alone he having sued others who as he framed his cause of action were not liable while he would be prejudiced by the dismissal of the suit as against them. MAHOMED ZAHOOR ALI KHAN *v* RUTTA KOER.
11 Moo I. A. 468 9 W R P C 9

See PROBY *v* BELL 20 W R 6

70 ———————— *Civil Procedure Code (Act X of 1877) s 416—Procedure—Substitution of parties—Criminal Procedure Code (Act X of 1872) s 521—Order by Magistrate for removal of obstruction from a public thoroughfare. Suit against Magistrate to establi h right.* Under s 521 of the Criminal Procedure Code (Act X of 1872) a first class Magistrate in charge of a talukh made an order declaring certain land to be part of a public thoroughfare and directing the plaintiff to remove the obstruction caused by him to it The plaintiff sued the Magistrate to establish his right to the land alleging that it was his private property and that the Magistrate s order was wrong The As istant Judge who tried the suit dismissed it holding that it did not lie against the Magistrate On appeal to the High Court —*Held* that the Assistant Judge might have properly permitted the [illegible] the name [illegible] substi[illegible] ate for [illegible] rdingly [illegible] e and remanded the suit for re trial on the merits after making the amendment directed NILKANTHAPA *v* MAGISTRATE OF SHOLAPUR
I L R 6 Bom 670

71 ———————— On the 11th August 1879 the defendant as a Magistrate in charge of a talukh made an order under ss 523 and 526 of the Criminal Procedure Code (Act X of 1872) [illegible] ota on [illegible] public [illegible] ed the [illegible] and site belonged to him and prayed for a reversal of the [illegible] versed the decree of the Assistant Judge and remanded the case in order that the plaintiff might [illegible]

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

and due service of process. BALARAM CHATRUKLAL v MAGISTRATE OF IGATPUR I L R 6 Bom 672

72. ———— *Allowing substitution of parties and new cause of action* The plaintiff brought a suit against the Secretary of State which the Judge dismissed on the petition of the plaintiff he allowed the plaint in the suit so disposed of to be amended and the name of a new defendant to be substituted and different cause of action to be stated *Held* that the Judge acted illegally and that the plaintiff should have been referred to a new suit SETH DHUNRAJ v SECRETARY OF STATE FOR INDIA

1 N W 118 Ed. 1873 204

73 ———— *Civil Procedure Code (Act XIV of 1882) s 53—Amendment of plaint on appeal—Substitution of legal representative for deceased defendant—Limitation Act s 22* A suit was brought to recover arrears of rent The person whose names were entered on the record as defendants were in fact dead when the suit was instituted The suit was dismissed The plaintiffs

that the amendment should not be allowed MALLIKARJUNA v PULLAYYA

I L R 16 Mad 319

74 ———— *Substitution of parties as defendants* In an application to amend a plaint by substitution of the name of a firm for

75 ———— *Amendment by striking out name of defendant—Suit for damages for wrongful acts of Government servant—Distinct averments against each party* The plaintiff had purchased at a Government auction a license to vend spirituous liquors paid the first instalment of the purchase money and demanded a license but did not receive it until six days later Meantime he opened a shop and sold tari for three days when the sale was stopped by the Extra Assistant Commissioner notwithstanding the plaintiff represented that he was a licence holder The present suit was brought against the Government represented by the Deputy Commissioner for damages on account of wrongful acts of the Extra Assistant Commissioner who was made second defendant The Judge holding that where a servant does a wrongful act maliciously he is personally liable and the master is free left it to the plaintiff to say against whom he would proceed The plaintiff elected to proceed against Government

PLAINT—*contd*

5 AMENDMENT OF PLAINT—*contd*

tent with each other *Held* by the High Court that the view of the Recorder was correct Nevertheless the plaintiff ought not to have been put to the option of abandoning his suit against one or other defendant but the suit should have been tried out *Held* also that the allegations against the two defendants were distinct but not inconsistent and that the Judicial Commissioner had taken too strict a view of the plaint VYTHEELINGUM v GOVERNMENT 21 W R 199

76 ———— Suit brought under wrong Act—*Suit erroneously brought under Rent Act* Where a suit had been erroneously brought under Bengal Act VIII of 1869 s 30 and the plaintiff

cost *In the matter of the petition of* GOBIND CHUNDER GHOSE. GOBIND CHUNDER GHOSE v BYKUNT NATH GHOSE 19 W R. 61

77 ———— Relinquishment of claim for sale—*Civil Procedure Code s 53—Suit on a mortgage for sale or any other relief to which the plaintiff might be entitled —Subsequent prayer for money decree relinquishing claim for sale* The plaintiff a mortgagee came into Court asking for a decree for a sale on his mortgage or any other relief to which the plaintiff might be entitled The mortgage sued upon contained the usual covenant for payment in addition to the further covenant that in default of payment proceedings might be taken against the mortgaged property *Held* that there was nothing to prevent such plaintiff in the course of the suit relinquishing his claim for sale of the mortgaged property and asking merely for a simple money decree Such an amendment of the pleadings did not amount to a conversion of the suit into a suit of another and inconsistent character SUKHDEO PRASAD v LACHMAN SINGH (1902) I L R 24 All. 456

78 ———— Mistake—*Limitation—Power of Receiver to sue—Limitation Act (XV of 1877) s 19—Acknowledgment of liability* By an order of the Court the plaintiff was appointed Receiver in a certain suit with authority to sue for and recover an attached debt Through some mistake in the office of the attorneys of the plaintiff in that suit the money sought to be attached was wrongly described in the Tabular Statement as money due

PLAINT—contd.

5 AMENDMENT OF PLAINT—contd

under the agreement of the 25th October 1895 whereas it should have been the agreement of the 26th August 1895 and the Court acting on this representation made the order which applied to the alleged agreement of the 26th October 1895 On application to amend the order and the plaint or in the alternative to read the existing order as if it were in reality applicable to the right agreement —*Held* that no order for amending the plaint or the order could be made the amendment of the order would operate only as a new order taking effect from the date on which it is made and could not therefore operate as the basis or authority for the present suit The plaintiff s authority to maintain this suit depends solely upon the order appointing him Receiver if it has been made under any mistake it cannot by any course of construction be regarded as applying to any thing other than the subject matter specified by the order itself the intention of the parties being immaterial *Way* v *Hearn 13 C B (N S) 292 304* distinguished In order to satisfy the requirements of s 19 of the Limitation Act though a promise to pay need not be made out it is necessary when the right claimed is a debt that an unequivocal and unqualified admission of the debt or a part of it or of the subsisting relationship of debtor and creditor should be established There is a distinction in this respect between the law of limitation applicable in England and that in force in this country *Fink* v *Buldeo Dass I L R 26 Calc 715* distinguished *Venkata* v *Partha saradhi I L R 16 Mad 220* approved of *Quære* —Whether having regard to the terms of s 50 of the Code of Civil Procedure a plaintiff can be allowed to take advantage of any ground of exemption from the ordinary law of limitation which has not been pleaded in the plaint BENODE BEHARI MOOKERJEE v RAJ NARAIN MITTER (1903)
I L R 30 Calc 699 s c 7 C W N 651

79 ———— Limitation—*Civil Procedure Code s 54* When a Court fixes a time under cl (*a*) or (*b*) of s 54 of the Code of Civil Procedure it must be a time within limitation and s 54 does not give a Court any power to extend the ordinarily prescribed period of limitation for suits. *Jainti Prasad* v *Bachu Singh I L R 15 All 65* followed *Moti Sahu* v *Chhatri Das I L R 19 Calc 780* referred to DURGA SINGH v BISHESHAR DAYAL (1898) I L R 24 All. 218

80 ———— Rejection of plaint—*Civil Procedure Code (Act XIV of 1882) s 54 cl (c)—Plaint when may be rejected* Where the plaintiff sued to establish a *mul raiyati* right which by a Government order was not granted and also sought for the position of a *mustagir* and to set aside the executive orders of the Commissioner and the Deputy Commissioner and the lower Courts rejected the plaint under s 54 of the Civil Procedure Code —*Held* that upon the allegations made in the plaint the suit ought to have been tried and the plaint could not be rejected

PLAINT—contd.

5 AMENDMENT OF PLAINT—concld

on the ground of the suit being barred by any positive rule of law NAWAB SINGH v CHARAN RANA (1901) 6 C W N 411

81 ———— Court fee—(*Act VII of 1870) (Court fees Act) ss 7 cls 5 and 6 (c) 28—Suit undervalued—Power to extend time for payment of deficiency in Court fee—Civil Procedure Code s 54—Limitation* A suit for pre emption of *zamindari* property was filed one day before the expiry of the prescribed period of limitation The plaint stated the profits of the property to be R8 4 0 and should therefore have borne Court fee stamps to the amount of the proper Court fee on R123 12 0 but the valuation given in the plaint was only R108 12-0 and the plaint was stamped accordingly The plaint was reported by the officer of the Court to be *properly stamped on the valuation* but when the case came on for hearing the defendant objected that the relief had been undervalued. On this objection the Court found that R8 4 0 was the correct amount of profits disallowing the plaintiff s application to be allowed to reduce the amount of profits stated in the plaint to R6 14 10 and rejected the plaint under s. 54 of the Code of Civil Procedure. *Held* that this was not a case falling within s 28 of the Court fees Act 1870 but one to which s 54 of the Code of Civil Procedure applied The Court had no power to extend the time for making up the deficiency in the Court fee beyond the expiry of the prescribed period of limitation and the plaint was rightly rejected. MUHAMMAD AHMAD v MUHAMMAD SIRAJUDDIN (1901)
I. L R 23 All 423

82 ———— Consequential relief—*Amendment of plaint—Specific Relief Act (I of 1877) s 42—Suit for declaration—Construction of documents—Bombay Revenue Jurisdiction Act (X of 1876) s 4* The plaintiffs filed a suit against the Secretary of State for India in Council for a declaration that they were entitled to hold certain lands free from assessment The defendant objected that the suit was barred under s 42 of the Specific Relief Act (I of 1877) After the settlement of the issues in the case the plaintiffs applied for leave to amend the plaint by adding thereto a prayer for injunction by way of consequential relief The lower Court refused to grant the prayer *Held* that the lower Court should have exercised its discretion in plaintiff s favour although the prayer for amendment was made very late as it was a mere matter of form which could not affect the merits of the claim or transform the nature of the suit KALABHAI v SECRETARY OF STATE FOR INDIA (1905) I L R 29 Bom. 19

6 RETURN OF PLAINT

1. ———— Form of order of return—*Civil Procedure Code 1859 s 29* Where a plaint [illegible]

PLAINT—*contd*

6 RETURN OF PLAINT—*contd*

2. ———— Time for return—*Presentation of plaint—Civil Procedure Code 1877 s 57* Although s. 57 of Act X of 1877 contemplate the return of the plaint should error be patent when

3 ———— Grounds for return—*Irregular plaint—Plaint in language not that of the Court* A plaint drawn up in what is practically Persian ought not to be admitted on the file but should be rejected or returned for amendment and presentation in Urdu the ordinary language of intercourse and business in use in the district (Patna) AMEER KOOLEE KHAN v RUSSICK LALL SINGH 8 W R 495

4 ———— *Schedule to plaint—Irregular plaint—Filing fresh plaint—Costs* A plaint which in the first count did not sufficiently disclose the subject of claim without reading the schedule annexed as part of the plaint or when the action accrued and in the second count did not show any right to sue in the plaintiff was rejected by the Court as irregular but with liberty to the

5 ———— *Prolixity—Argument—Irrelevancy* A plaint which is unnecessarily prolix or argumentative or which contains irrelevant matter ought to be rejected by the Court to which it is presented, or ought to be returned to the plaintiff for amendment A plaint which con

6 ———— *Civil Procedure Code s 57—Plaint presented in a wrong Court*

7 ———— *Want of jurisdiction* Where there is want of jurisdiction in the Court in which a plaint is presented to try the cause of action mentioned in it the plaint should be returned to the plaintiff KHANDU MORESHVAR v SHIVJI BIN GORKOJI 5 Bom A C 212

KHOOSHAL CHUND v PALMER 1 Agra 280
SURNOMOYEE v DOORGA MONEE DOSSEE 10 W R 335

8 ———— *Civil Procedure Code s 5—Return of plaint when Court has no jurisdiction.* An Appellate Court is not bound to return the plaint under all circumstances where defect of jurisdiction appears YACOOB v MOHAN SINGH I L R 11 Mad 482

9 ———— *Amendment of plaint by Subordinate Judge and return for presentation in Small Cause Court—Jurisdiction of Subordinate Judge* A plaint praying for a declaration that a certain tax was illegal and also for damages for illegal entry into the plaintiff s house was presented to the Court of the first class Subordinate Judge of Surat The Judge amended the plaint by striking out the portion regarding the reliefs other than the relief for damages and then holding that the claim for damages would lie only in the Small Cause Court returned the plaint for presentation in that Court *Held* that the Subordinate Judge was not justified in returning the plaint at that stage of the proceedings The shape in which the suit was originally instituted is the test of jurisdiction MOTABHAI MOTILAL v SURAT CITY MUNICIPALITY I L R 20 Bom 675

10 ———— *Want of jurisdiction* If a party bring a suit in a Court which on his own showing has no jurisdiction to try it he cannot after failing in that Court have the plaint returned to him in order that he may file it in proper Court *In re* TUFANI SINGH 6 B L R Ap 141

11 ———— *Court having no*

that it may be presented to the proper Court BAI MAKHOR v BULAKHI CHAKU I L R 1 Bom. 538

DHERAJ MAHTAB CHUND v DAMOODER SINGH. W R 1864 65

SHURUT SOONDUREE DEBIA v KREMUNKUREE DEBIA 5 W R Act X, 87

12 ———— *Case found to be entertained without jurisdiction—Act XXIII of 1861 s 3* Where a Subordinate Judge after registering a plaint and allowing the parties to go to issue on the question of jurisdiction found that he had no jurisdiction it was held that he did wrong under Act XXIII of 1861 s. 3 in dismissing the suit He ought to have returned the plaint to the plaintiff KARTICK NATH PANDAY v ROY NUNDEPUT MAHATAB 23 W R 263

13

which plaint an officer of Government is added

PLAINT—*contd*

6 RETURN OF PLAINT—*contd*

so to return the plaint to the plaintiff for presentation to the Court of the lowest grade competent to try it. Where the District Judge did not adopt this course but proceeded to try the cause the High Court annulled his decree and (the plaintiff consenting to amend his plaint) returned it to him for amendment and presentation to the proper Court SHRIDHAR HARI v CHIMA VALAD LADU
10 Bom. 17

14. ———————— *Suit or appeal filed in a wrong Court—Return of plaint or memorandum of appeal for presentation in proper Court—Practice of the High Court—Civil Procedure Code (Act XIV of 1882) s 373—Cancellation of court fee stamps* The Code of Civil Procedure (Act XIV of 1882) does not allow of a plaint or memorandum of appeal ...

decision There is no provision in the Court for the ...

cancelled the plaint could not be again legally presented in any Court without new stamps being affixed to it The executive Government alone have power to remit court fees and no Court or Judge has legal authority to admit a plaint which bears only cancelled stamps or to direct a subordinate Court to admit such a document JAGJIVAN JAVHERDAS SETH v MAGDUM ALI
I L R 7 Bom 487

15 ———————— *Return of plaint for presentation to proper Court—Jurisdiction—Construction—Civil Procedure Code (Act VIII of 1859) ss 30 and 32—Civil Procedure Code (Act XIV of 1882) ss 53 and 57* Where after a trial has begun or even after it has concluded it appears that the Court has not jurisdiction to hear the case the plaint should be returned in order that it may be presented to the proper Court and no additional court fees are payable *Jagjivandas Javerdas Seth v Magdum Ali I L R 7 Bom 487* over ruled. PRABHAKARBHAT v VISHWAMBHAR.
I L R 8 Bom. 313

16 ———————— *Civil Procedure Code s 57—Decree passed on plaints* The ruling in the case of *Pravakarbhat v Vishambhar I L R 8 Bom 313* which approves of the practice of returning the plaint for presentation to the proper Court when the trying Court has no jurisdiction prevailing in the mofussil Courts and on the Appellate Side of the High Court of Bombay does not govern and is distinguishable from cases in which there have been decrees passed on the plaint *Per* BAYLEY J —The practice in the Original Side of the High Court of Bombay has always been to retain a plaint unless it has been returned on presentation. *In the matter of the application of* BAI AMRIT
I L R 8 Bom 380

PLAINT—*contd*

6 RETURN OF PLAINT—*contd*

17 ———————— *Return of plaint on second appeal* The plaintiff sued three defendants on a bond alleged to have been executed by them to the plaintiff Two of the defendants did not appear or make any defence to the suit. The second defendant ...

Court on second appeal ordered the plaint to be returned in order that it might be presented to the proper Court BABAJI v LAKSHMIBAI
I L R. 9 Bom. 266

18 ———————— *Return on second appeal—Suit in wrong Court* Where a suit cognizable by a Small Cause Court was brought in the ordinary Civil Court and tried there on second appeal the High Court declared the proceedings in the lower Courts null and void and directed the plaint to be returned for presentation in the proper Court KALIAN DAYAL v KALIAN NARER
I L R 9 Bom. 259

19 ———————— *Civil Procedure Code 1882 s 57—Want of jurisdiction* The defendant ... Bombay ... sale purc... where the ... out of the agency transactions the plaintiff joined ...

ship transaction and dismissed the suit *Held* that the plaint ought to have been returned to the plaintiff with the proper endorsement as required by s 57 of the Code of Civil Procedure 1882 KHIMJI JIVRAJU SHETTU v PURUSHOTAM JUTANI
I L R. 7 Mad. 171

20 ———————— *Civil Procedure Code (Act XIV of 1882) s 57—Court—Jurisdiction—...—Suit* ...

Relief Act a suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants reside and not elsewhere Where a suit was brought in ... alleging that ... the ... and ... nts ... hat

the proper procedure to be adopted in such a case

PLAINT—*contd*

6. RETURN OF PLAINT—*contd*

was not to dismiss the suit but to return the plaint for presentation to the proper Court LAD HAJI NATHAJI v HARI I L R 23 Bom 679

21 ———— *Civil Procedure Code (Act XIV of 1882) s 57—Suit found to*

obtained through their personal obedience —*Held* that in such a case the Judge ought not to dismiss the suit but return the plaint to be presented to the proper Court under s 57 of the Civil Procedure Code ISAK v KHATIJA I L R 23 Bom. 756

22 ———— *Return of plaint to be presented to the proper Court—Civil Procedure Code 1877 s 57—Rejection of plaint—Cause of action—N W P Rent Act (XVIII of 1873)*

cancelled and (iii) arrears of rent for such land. The Court held as regards claim (i) that the plaint did not disclose a cause of action as it was not alleged that the defendant had disputed the plaintiff's right as regards claim (ii) that with reference to the term of s 29 of Act XVIII of 1873 the plaintiff's cause of action had not yet arisen and as regards claim (iii) that it was cognizable in a Court of revenue —and it directed that under s 57 of Act X of 1877 the plaint should be returned to the plaintiff to be presented to the Revenue Court *Held* that under the circumstances the plaint should have been rejected and not returned NAGAR MAL v MACPHERSON I L R 3 All. 766

23 ———— *Return for undervaluation* Where it appears that the relief sought in a suit has been undervalued and that the Court is not competent by reason of the real value of the relief sought to try the suit the plaint must be returned to the plaintiff under s 57 of the Civil Procedure Code although the defendant may have been called upon to enter upon his defence and has filed his written statement. An order dismis

KHOGENDRO NARAIN CHOWDHARY v GOURI KANT NATH 11 C L R. 300

PLAINT—*contd*

6 RETURN OF PLAINT—*concld*

24. ———— *Civil Procedure Code s 57—Suit filed in wrong Court* In a suit filed in a District Munsif's Court to recover certain land the defendants alleged that the value of the land was understated by the plaintiff and exceeded by far the pecuniary limit of the Court's jurisdic

that the procedure adopted by the Munsif was correct. KANDU v KONDA I L R 8 Mad 62

25 ———— *Suit for ejectment—Mortgage exceeding pecuniary limit of jurisdiction* If in a suit for ejectment in which the defendant shows he is a mortgagee the defendant consents to a decree for redemption and the amount secured by the mortgage exceeds the limit of the pecuniary jurisdiction of the Court the Court should not proceed further but return the plaint to be presented in a superior Court CHANDU v KOMBI I L R 9 Mad. 208

26 ———— *Undervaluation of suit—Civil Procedure Code 1877 s 57—Dismissal of suit* A Munsif after hearing the evidence on both sides found that the suit had been undervalued but instead of returning the plaint under s 57 of Act X of 1877 he dismissed the suit *Held* that the provisions of s 57 were imperative and might be put into force at any stage of the hearing and that such dismissal of the suit was a matter which affected the merits of the case and formed a proper subject for an appeal BHADESHWAR CHOWDHRY v GOURIKANT NATH I L R. 8 Calc 834

27 ———— *Undervaluation of suit—Civil Procedure Code 1859 ss 30 31 32—Dismissal of suit* If at the hearing of a suit it proves to be undervalued and if the Court would not have jurisdiction to entertain it if properly valued the suit ought to be dismissed MUZHUR ALI v BASOO 8 W R 47

KOYLASHNAUTH ROY v BODUN MONEE DABEA 2 Hay 386

It is only at the time of presentation of the plaint that the plaint in a suit which has been brought in a Court in which with reference to its proper valuation it should not have been brought can claim the benefit of ss. 30 31 and 32 of the Code of Civil Procedure 1859 MUZHUR ALI v BASOO 8 W R. 47

But *see* (*contra*) JADU v HIFAZAT HOSSEIN 5 B L R Ap 15

S C EDOO v HEFAZUT HOSEIN 13 W R. 358

PLAINT—*contd*

7 REJECTION OF PLAINT

1. ———————— *Civil Procedure Code s 54* S 54 of the Civil Procedure Code may be applied at any stage of a suit KISHORE SINGH v SABDAL SINGH I L R 12 All 553
KARAMAN SINGH v COCKELL 1 C W N 670

2 ———— **Duty of Court**—*Allowing additional stamp—Undervaluation of suit* Where the Court is of opinion that the suit is undervalued it is the duty of the Court in which such suit was preferred to give the suitor the option of supplying such additional stamp as is thought necessary before rejecting the plaint THAKOOR PATUCK v RAMSOOMRUN LALL 1 N W 17 Ed 1873 16

3 ———— **Ground for rejection**—*Undervaluation of suit—Civil Procedure Code 1859 s 31* In a suit in a Munsif s Court it was found after issues had been fixed and some evidence recorded that the claim had been undervalued and that the proper valuation would carry it beyond the jurisdiction of the Munsif The plaint was accordingly returned and additional stamps having been filed the case was tried by the Principal Sudder Ameen The Judge on appeal held that the plaint had been illegally returned by the Munsif and that the act of the Principal Sudder Ameen in proceeding to try the ca [illegible] the suit [illegible] 31 Act V [illegible] but reject [illegible] ame plaint was filed with the proper amount of stamp duty in the Court of the Principal Sudder Ameen that Court had jurisdiction to try the case RAM GUTTY v GOONOMONEE DABEE. 11 W R 177

4 ———————— *Undervaluation of suit—Allowing additional stamp—Civil Procedure Code (Act XIV of 1882) s [illegible] —Court fees Act (VII of 1870) s 12* The decision of the Court of first instance that a plaint is undervalued is binding upon the Court of appeal reference or revision but the Court of first instance is not justified in rejecting the plaint without giving to the plaintiff an opportunity of affixing the proper stamp BAI ANOPE v MULCHAND GIRDHAR
I L R 9 Bom. 355

5 ———————— *Undervaluation of suit—Civil Procedure Code 1859 s 31* Where [illegible]

per joinder of causes of action the order of the lower Court was reversed and the Civil Judge directed to deal with the case in accordance with s 31 Act VIII of 1859 KRISTNA AIYANGAR v PERUMAL NADAN 2 Mad. 436

6 ———————— *Subordinate Judge s power to make valuation—Court fees Act (VII of 1870) s 7 cl iv (f)—Civil Procedure Code (Act XIV of 1882) s 54 cls (a) and (b)* The plaintiffs brought a suit for an account and approximately valued their claim at R16 15 0 The Subordinate Judge was of opinion that the claim was for recovery of money and should have been valued at R1 000 He therefore called on the plaintiffs to make up the stamp to that required on this valuation and the plaintiffs refusing he dismissed their suit under s 54 (b) of the Civil Procedure Code (Act XIV of 1882) *Held* that in any case the Subordinate Judge was wrong If the suit was really one for an account the plaintiffs were entitled to value the relief they sought approximately as they had done if it were not one for an account but for recovery of money still the Subordinate Judge had no power himself to value the [illegible]

v BHIMASHANKAR [illegible]

7 ———————— *Civil Procedure Code 1859 s 32—Ground for rejecting plaint* A plaint will not be rejected under s 32 of Act VIII of 1859 if the subject matter alleged raises a fair question of claim or right for trial and determination between the parties. The mere unlikelihood of the plaintiff s success is not enough to justify the rejection of his plaint LAKSHMI AMMAL v TIKARAM TOVAJI 1 Mad. 240

8 ———————— *Civil Procedure Code 1859 s 39—Document sued on not produced with plaint* *Held* that the Court to which a plaint is presented has no authority to reject it merely because the document upon which the plaintiff sues is not produced with the plaint as directed by s 39 of Act VIII of 1859 and that the High Court has power to set aside an order of rejection as well as the decision of the District Court confirming it on appeal and to direct that the plaint be received *Ex parte* RAYCHAND AMICHAND
2 Bom. 391 2nd Ed 369

See GOPAL GUNDAPA NAIK v VISHNU KRISHNA NAIK I. L R 22 Bom 971

9 ———————— *Reference to document not in plaint—Claim for damages for malicious prosecution* A Judge in considering under s 32 of the Civil Procedure Code whether he should admit or reject a plaint is wrong in referring to documents and facts not stated in or annexed to the plaint nor ascertained by him by interrogation of the plaintiff although such documents and facts may have been on record in other proceedings in the Judge s Court *In* a plaint claiming damage for an unsuccessful criminal prose[illegible] defendant and [illegible]

the Magistrate before whom it was brought [illegible] that there was no cause whatever for the charge) did not allege in the plaint that the first defendant

PLAINT—*contd*

7 REJECTION OF PLAINT—*contd*

prosecuted him (plaintiff) maliciously and without any reasonable or probable cause or that the prosecution was sanctioned by the second defendant without reasonable or probable cause *Held* that the plaint was properly rejected and that there was no good ground for allowing the plaint to be amended the plaintiff having delayed the filing of it until the last day but one allowed by the law of limitation. GIRDHARLAL DAYALDAS v JAGANATH GIRDHARBHAI 10 Bom 182

10 ———— *Civil Procedure Code 1859 s 3?—Omission of specific statement of time cause of action arose* Where the plaint in a suit to establish a right to landed property and to recover arrears of rent alleged no specific acts of ownership since 1845 but contained a statement

ground that it appeared to the Court that the right of action was barred by lapse of time UDAYA VARMA v NAYAR CHAMBITHU 1 Mad 322

11 ———— *Plea of misjoinder when sustainable—Suit against the several persons claiming under different titles effect of —Civil Procedure Code ss 31 and 53* A as auction purchaser at a revenue sale brought a suit against a number of persons for possession of some chur land. The defendants claimed portions of the land under different titles and pleaded misjoinder The Courts upon the Amin s report gave A the option to amend the plaint by withdrawing the suit against any particular sets of defendants *A* elected to go to trial on the suit as brought and it was dismissed. *Held* that having regard to the provisions of ss 31 and 53 of the Civil Procedure Code the proper order of the Court should have been to reject the plaint and not dismiss the suit on the ground of misjoinder SUDHENDU MOHUN ROY v DURGA DAI I L R 14 Calc 435

12 ———— *Suit brought different from suit sanctioned—Religious Endowments Act (XX of 1863) s 18* A and *B* being

damages in their plaint *Held* that as the suit instituted differed from the one for which sanction was given the plaint was properly rejected SRINIVASA v VENKATA I L R 11 Mad. 148

13 ———— *Civil Procedure Code 1882 ss 50 and 53 sub s (d)—Amendment of plaint—Rejection of plaint* After an examination of the plaintiff s pleader by the Court to discover whether there were grounds which did not appear for an amendment a suit was dismissed on the defects of the plaint which charging fraud did not set forth a good cause of action in regard to the above *Held* that dismissal was not the proper

PLAINT—*contd*

7 REJECTION OF PLAINT—*contd*

mode of disposal of the suit but the plaint should have been rejected a course which would have enabled the plaintiff if he found himself at a future time in a position to make averments giving relevancy to an action to present a fresh plaint GUNGA NARAIN GUPTA v TILUCKRAM CHOWDHRY I L R 15 Calc 533
L R 15 I A. 119

14. ———— Time for rejection—*Civil Procedure Code 1877 s 54* A plaint can only be rejected under s 54 of Act X of 1877 before it is registered HUBIBUL HOSSEIN v MAHOMED REZA I L R 8 Calc 192 10 C L R 385

15 ———— *Rejection of plaint after registration* Though a plaint has been registered the Court may reject it under Act VIII of 1859 s 32 as barred by the Act of Limitation CHETTI GAUNDAN v SUNDARAM PILLAI 2 Mad 51

16 ———— *Civil Procedure Code 1882 s 54—Rejection of plaint already registered* Certain traders having failed in business and being indebted to the defendant under a decree of the District Court of Trichinopoly entered into a composition with their creditors and a deed was executed to which the defendant became a party in respect of his judgment debt The defendant subsequently applied for execution of this decree The trustees to whom the debtor s assets were made over under the deed together with the debtors now brought a suit in the same Court for an injunction restraining the defendant from executing or proceeding to execute his decree The plaint was rejected by the District Judge after it had been registered and numbered and a written statement had been filed *Held* that the Court had jurisdiction to reject the plaint under the Civil Procedure Code s 54 at that stage of the suit VENKATESA TAWKER v RAMASAMI CHETTIAR I L R 18 Mad. 338

17 ———— Effect of rejection—*Right to sue on same cause of action—Limitation.* Where a plaint is rejected under s 32 Act VIII of 1859 the plaintiff can bring a suit on the same subject matter provided he is not barred by lapse of time KADUMBINEE DOSSIA v UNNOOPORNA DAYE 14 W R. 289

18 ———— Plaint not to be rejected in part—*Civil Procedure Code s 54—Procedure* *Held* that under s 54 of the Code of Civil Procedure a Court cannot reject a plaint in part RAGHUBANS PURI v JYOTI SWARUPA (1907) I L R 29 All 325

19 ———— Deficient Court fee—*Civil Pro*

competent to a Court to reject a plaint under s. 54 cl. (b) of the Civil Procedure Code after the plaint has been admitted and duly registered *Per*

PLEADER—*contd*

——— authority of—*concld*

See LUNATIC I L R 19 Bom 135

See OATHS ACT s 9 I L R 14 Bom 455

——— fees payable to—

See LAND ACQUISITION ACT (I OF 1894) s 27 I L R 31 Mad 328

See PRACTICE I L R 33 Bom. 256

——— inquiry into professional conduct of—

See REFERENCE TO HIGH COURT—CIVIL CASES I L L 12 Bom 78

——— liablity of in conduct of case—

See FORGERY I. L. R 22 Bom. 317

——— misconduct of—

See LEGAL PRACTITIONERS ACT (XVIII OF 1879) ss 13 AND 14 5 C W N 45 48 I L R 24 Mad 17

——— negligence of—

See COSTS—SPECIAL CASES—PLAINTIFFS I L R 18 Mad 128

——— privilege of—

See DEFAMATION 2 N W 473 I L R 19 Bom 340

——— renewal of certificate of—

See LEGAL PRACTITIONERS ACT s 7 13 C W N 415

——— right of to be heard—

See APPEAL ADMISSION OF I L R 36 Calc 385

——— suit against representative of deceased—

See LIMITATION ACT 1877 SCH. II ART 120 I L R 25 All. 55

——— suspension of—

See PRIVY COUNCIL PRACTICE OF—SPECIAL LEAVE TO APPEAL. I L R 2 All 511 L R 7 I A 6

——— withdrawal of license to practise as—

See RECORDER S ACT 6 B L R 180

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15—CIVIL CASES 6 B L R 180

1 APPOINTMENT AND APPEARANCE

1. ——— Appointment—*Power of others than mukhtars to appoint* Not merely authorized mukhtars but other persons generally are at liberty

PLEADER—*contd*

1 APPOINTMENT AND APPEARANCE—*contd*

to appoint pleaders by vakalatnamas *In the matter of* NUBEE BUKSH 7 W R 481

2 ——— *Vakalatnama nature of* The acceptance of a vakalatnama by a pleader of the High Court should in all cases be unconditional *In the matter of* GOPEENATH MUDDUCK 14 W R 7

3 ——— *Civil Procedure Code 1882 ss 36 and 37—Ben Reg XXVII of 1814 s 1 and 3?1—Civil Procedure Code (Act VIII of 1859) ss 16 17 and 18—Pleaders and Mookhtars Act (XX of 1865)—Civil Procedure Code (Act X of 1877) s 39—Vakalatnama—Vakalatnama authorising pleader to present an appeal signed by person having only a verbal authority from the appellant to do so* Under the provisions of the Civil Procedure Code (Act XIV of 1882) the appointment of a pleader to make or do any appearance application or act in or to a Civil Court must be in writing and that writing must be executed by the party or by a person acting on his behalf and acting under the authority of a general power of attorney or mukhtarnama unless the person making the appointment is the recognized agent of the party within the definition of s 37 of the Code BADRI PRASAD v BHAGWATI DHAR I L R 16 All. 240

4 ——— *Civil Procedure Code 1882 s 39—Civil Procedure Code Amendment Act (VI of 1892) s 4—Application for execution of decree—Proceedings in the suit—Vakalatnama* Applications for execution of the decree are

5 ——— *Civil Procedure Code 1882 s 39—Delegation of authority by duly appointed pleader—Ex parte decree—Application*

duct the case for both defendants ... decree was passed against both the defendants The applicant subsequently applied to the Full Court under s 37 of the Presidency Small Cause Courts Act (XV of 1882) for a new trial on the ground that he had not been represented at the

PLEADER—*contd*

1 APPOINTMENT AND APPEARANCE—*contd*

decree again t the applicant was an *ex parte* decree *K* who was the applicant duly appointed pleader could not delegate his authority to *H* and a the applicant was not himself present the decree was *ex parte*. *H* was not the duly appointed pleader of the applicant and could not therefore represent him at the hearing see s 39 of the Civil Procedure Code (Act XIV of 1882) The High Court sent back the ca e to the Small Cau es Court to deal with the application for a new trial on its merits SHIVDAYAL PANCHARAN v KHETU GANOU

I L R 20 Bom. 293

6 ———— *Appointment by pleader of another without client s authority—Bom Reg II of 18 s 54—Civil Procedure Code (Act XIV of 1882) ss 36 39 and 65 —Charter Act (24 & 25 Vict c 104) s 15—Bombay High Court s Civil Circular Orders cl 18 (i)—Proviso as to the appointment of another pleader* The provi o to sub cl (i) of cl 18 of the Civil Circular Orders of the High Court namely that a pleader may appoint another pleader on his behalf and that in uch ca e the hearing will proceed unle s the Court see reason to the contrary is not *ultra vires* *In re* SHIDAPA I L R 22 Bom 654

7 ———— *Rule of Court of 22nd May 1883—Practice—Vakalatnama—Pleader handing over his brief to another—Civil Procedure Code ss 36 37 39 635* The Rule of Court dated the 22nd May 1883 and authorising legal

[illegible]

I L R 9 All. 613

8 ———— *Pleaders and their clients their rights and obligations inter se —Bom Reg II of 1827—Confidential communications made in the course of professional employment* The [illegible] ghts [illegible] their [illegible] ders [illegible] rom [illegible] to a [illegible] onal [illegible] a istance as he thinks will best suit him (ii) A pleader is free to place his services at the dispo al of any such party upon uch terms as he may think most advantageous to him elf con i ten ly with the honour of his profe ion and the due administration of ju tice (iii) A pleader who receives any confidential information from his client in the cour e of his professional employment is not at liberty to carry that information into the service of his antagoni t or any one who in that very litigation o in any ubsequent litigation may be opposed to the cli nt furni hing the information (iv) Under Regulation II of 1827 pleaders receive certain fees in return for which they are not at liberty to act against those r taining them whether they are retained by one client singly or by two or more clients jointly A pleader who has acted for several persons will not be re

[illegible]

require a very strong case to be made out before it will interfere by way of injunction restraining a pleader from appearing for a cli nt and there must be clear affidavits made to show that special know ledge was acquired by the pleader during his employment by the former client In case of his possessing such knowledge he will not be allowed to throw up the conduct of the case and transfer his s rvices He will never be allowed to discharge himself from the conduct of the ca e if the case rai es even a probability of prejudice to his former employers *K* a pleader was at first retained by *P* and *N* jointly to defend a suit on their behalf At a later stage of the case *P* and *N* quarrelled Thereupon *K* applied to the Court fo leave to withdraw from the conduct of the case on the

[illegible]

the case on behalf of *N* alone *P* objected to this but the Court disallowed thi objection Thereupon *P* made an application to the High Court for an injunction restraining *K* from acting on behalf of *N* alone *Held* that as it was not mad out that *K* was in possession of any confidential information either from *P* or from *P* and *N* togeth r such a would give him an unfair advantage when acting on behalf on *N* the Court would not interf re or restrain *K* from erv ing *N* alone *Held* further that a plea ler in such circumstance should take the direction of the Court as to which of two or more clients he is to serve and as to the dispo al of the f es he has received from them jointly PALLONJI MERWANJI v KALLABHAI LALLUBHAI I L R 12 Bom. 85

REG v BEZONJI NOWROJI

I L R 12 Bom. 91 note

9 ———— *Pleader s absence from Court owing to his temporary appointment as a Subordinate Judge— Necessary cause —Bom Reg II of 1827 s 54* On the day fixed for the hearing of a suit neither the plaintiff nor his pleader was present the defendant not having been served was also ab ent. Plaintiff's pleader however ent intimation to the Court in writing that he had been appointed to act as a Subordinate Judge and as he was going that day to join his appoint ment he was unable to attend the Court He

[illegible]

PLEADER—*contd*

1 APPOINTMENT AND APPEARANCE—*contd*

pleader having been temporarily appointed to act as a Subordinate Judge was unable to attend the Court in consequence of a necessary cause within the meaning of s 54 of Regulation II of 1827 and as he had sent the necessary notification in writing to the Court the suit should not be dismissed but adjourned for a reasonable time *In re* NARAYAN SADASHIV KALE

I L R 23 Bom. 657

9A ———————— *Vakalatnama acceptance of in writing by pleader not necessary* *Per* BANERJEE J —The appointment of a pleader must be in writing and filed in Court but his acceptance of the vakalatnama need not be in writing SHAMA PROSAD GHOSE *v* TAKI MULLIK (1901)

5 C W N 816

10 ———— Appearance—*Filing vakalatnama—Criminal Procedure Code 1872 s 186* An authorized pleader appearing in defence of an accused person under s 186 Criminal Procedure Code should not be required to file a vakalatnama ANONYMOUS 7 Mad Ap 41

11 ———————— *Civil Procedure Code 1859 s 18—Right of pleader to appear in Appellate Court and subsequent stages of suit* When a pleader appears in a regular appeal before the High Court he is competent under that vakalat

[illegible]

Original Courts MUKHUN LALL *v* SREEKISHEN SINGH 8 W R 92

12 ———————— *Vakil—Claim under s 246 Act VIII of 1859—Fresh vakalatnama* The vakil retained by the plaintiff in a suit in which a decree has been given for the plaintiff is competent to plead for his client in answer to a claim advanced (under the first portion of s 246 of the Civil Procedure Code) to property attached in execution of such decree without the production of a fresh vakalatnama GOPAL JAYACHAND *v* HARGOVIND KHUSHAL 5 Bom A C 83

13 ———————— *Fresh vakalatnama—Application for new trial* A fresh vakalatnama is not necessary to enable a pleader to appear in an application for a new trial before a Small Cause Court when the pleader presenting the application is one who was employed in the original suit SUTTO CHURN GHOSSAL *v* SUROOP CHUNDER DOSS 12 W R 465

14 ———————— *Civil Procedure Code s 9—Pleader retained by a Collector as agent of Court of Wards—Validity of vakalatnama after the Collector's death* The Collector of a [illegible]

[illegible] The Collector died before the suit was determined *Held* that it was not necessary for a new vakalatnama to be executed to enable the pleader to proceed with the conduct of the suit KRISHNA VIJAYA PUCHAYA NAICKER *v* MARUDANAYAGAM PILLAI I L R 15 Mad. 135

15 ———————— *Application for restoration of an appeal dismissed for default—Vakalatnama* Where a vakil had been duly em[illegible] the customary [illegible] High Court [illegible] default — *Held* that such vakil was competent without filing a fresh vakalatnama to present an application for the restoration of the said appeal to the list of pending appeals RAGHUNATH SINGH *v* RAGHUBIR SAHAI I L R 15 All. 55

16 ———————— *Vakalatnama executed in favour of two vakils accepted by only one—Presentation of appeal under such vakalatnama—Principal and agent—Civil Procedure Code s 541* An intending appellant executed in favour of two vakils a vakalatnama it was accepted only by one of the vakils and he presented the appeal The appeal was placed on the file by the District Judge but on its coming on for disposal before the Subordinate Judge he held that it had not been duly presented and made an order rejecting it *Held* that the appeal had been duly presented AYYANNA *v* NAGABHOOSHANAM

I L R 16 Mad 285

17 ———————— *Legal Practitioners Act (XVIII of 1879) Sch II Pt I cl (d)—Pleader holding certificate on R 5 stamp—Right*

[illegible]

1 C W N 118

18 ———————— *Remand of case—Vakil changing sides on remand—Mad Reg XIV of 1816 s 22* When a suit is remitted by order of [illegible]

[illegible]

4 Mad Ap 43

19 ———————— *Act XX of 1865* There is nothing in the provisions of Act XX [illegible]

[illegible]

20 ———————— *Act XX of 1865 s 20—Appearance of party by pleader* *Held* in a case under Act X of 1859 in which the plaintiff had appeared at the preliminary hearing when the issues were framed and where he was not required to appear in person on the day of the trial that the presence of the plaintiff's pleader and revenue agent

PLEADER—*contd*

1 APPOINTMENT AND APPEARANCE—*contd*

was an appearence within the meaning of the law having reference to s 20 Act XX of 1865 SONATUN DOSS v KALEE PERSHAD DOSS 13 W R 146

21 ———————— *Vakil of High Court—Right to plead in Small Cause Court* A vakil of the High Court in Calcutta is entitled to practise as a pleader in the Calcutta Court of Small Causes *In re* TOOLSEE DOSS SEAL
2 Ind Jur N S 133 7 W R 228

22 ———————— *Act XX of 186 s 1—Small Cause Court Calcutta* A pleader holding a certificate under s 12 of Act XX of 1865 is not thereby entitled to be admitted to practise in the Court of Small Causes at Calcutta *In re* SHASHI BHUSHAN BHADURI
1 B L R A C 45 10 W R 82

23 ———————— *Barristers—Attorneys—Civil Procedure Code (Act XIV of 1882) ss 2 and 36—Presidency Small Cause Court Act (XV of 1882) s 38 and 76—Right to practise—Rules—Power to make rules* Per BAYLEY WEST and LATHAM JJ —None but barristers and attorneys have a legal right to practise in the Bombay Court of Small Causes. Neither ss 2 and 36 of the Code of Civil Procedure (Act XIV of 1882) nor ss 38 and 76 of the Presidency Small Cause Court Act [illegible]

Civil Procedure 188 does not give every pleader a title to appear and plead it only enacts that pleader means every person entitled to appear and plead for another in Court and includes an advocate a vakil and an attorney of a High Court Consequently if pleaders or vakils who are the same class of practitioners are not entitled by law to appear or plead for another in Court the definition of pleader gives them no new right or status The words in s 36 of the Code of Civil Procedure (Act XIV of 188) by a pleader duly appointed to act on his behalf do not simply mean a person duly appointed by the party in the suit but a pleader duly appointed according to the law regarding pleaders in force in particular Court *Per* PINHEY SCOTT and LATHAM JJ (WEST J *dissentiente*)—The High Court has the power of making rules for the admission of pleader to practise in the Bombay Court of Small Cause and the Bombay Court of Small Cause under 9 of the Presidency Small Cause Court Act (XV of 1882) also has power of making similar rules with the sanction of the High Court *In re* PLEADERS OF THE HIGH COURT BOMBAY
I L R 8 Bom 105

24 ———————— *Practice of Privy Council—Admission to practise in the Privy Council—Rules of 31st March 1871—Vakil of High Court* The words of ss 2 and 3 of the Rules of 31st March 1871 are such that classes of persons to be admitted to practise in the Privy Council must be either solicitors or other practising in London or solicitors admitted by the High Court in India or in the Colonies respectively and have not left an undefined class admissible at the discretion of the Judicial Committee *In the matter of the petition of* TWIDALE I L R 16 Calc 636
L R 16 I A 163

25 ———————— *Practice—Second Appeal—Vakil right of to be heard without certified grounds of appeal or without any order admitting the appeal—Rules and Orders of Court (Appellate Side) 86 and 162* A vakil will not be heard on behalf of an appellant on second appeal when neither duly certified ground or grounds of appeal have been filed nor the appeal been admitted by order of Court under Rules 86 and 162 of Court *Kishen Chunder Roy* v *Hurrish Chunder Bose* 3 B L R 216 followed OLIULLAH v BACHU LAL KHOTTA I L R 15 Calc 706

26 ———————— *Prosecution—Right to appear in Criminal Courts* A counsel or pleader is entitled to appear and act on behalf of the prosecution in the Criminal Courts CHANDI CHARAN CHATTERJEE v CHANDRA KUMAR GHOSE
5 B L R Ap 70 14 W R Cr 23

27 ———————— *Admitting vakils to defend in Criminal Courts* The practice of ad[illegible] Criminal [illegible] with the [illegible] 186 of [illegible]
[illegible] Mad Ap 37

28 ———————— *Right of pleader to appear—Inquiry under Criminal Procedure Code s 180* At an inquiry held by a Magistrate under s 180 of the Criminal Procedure Code 1861 a complainant has no right to be represented by a pleader BINDACHARI v DRACUP
8 Bom A C 202

29 ———————— *Private prosecutor—Criminal reference to High Court—Criminal Procedure Code (Act XXV of 1861) s 434* Private prosecutor not allowed to appear by pleader on a reference to the High Court under s. 434 of the Criminal Procedure Code 1861 QUEEN v RAMJAI MAZUMDAR 6 B L R Ap 46

S C SUDDURUDDEEN SIRCAR v RAM JOY MOZOOMDAR 14 W R Cr 51

Quære Whether they could appear at all in such cases. LALOO v ADAM SIRCAR. GOVERNMENT v SURJAKANT ACHARJIA 17 W R Cr 37

30 ———————— *Criminal Procedure Code 188 s 340— Accused meaning of—* [illegible]

ordered to give security for good behaviour under s. 118 of the Criminal Procedure Code The word

PLEADER—*contd*

1 APPOINTMENT AND APPEARANCE—*contd*

accused means a person over whom the Magistrate or other Court is exercising jurisdiction *Queen Empress v Mona Puna I L R 16 Bom 661* followed JHOJA SINGH v QUEEN EMPRESS
I L R 23 Calc 493

QUEEN EMPRESS v MUTASADDI LAL.
I L R 21 All 109

QUEEN EMPRESS v MONA PUNA
I L R 16 Bom 661

31 ———— *Criminal Procedure Code 1898 s 123 Reference to Sessions Judge under* A Sessions Judge is bound to hear pleader who may appear on behalf of a person in a case referred to him under s 123 cl 2 of Civil Procedure Code *Jhoja Singh v Queen Empress I L R 23 Calc 493* referred to ABINASH MALAKAR v EMPRESS 4 C W N 797

32 ———— *Act XX of 1865 s 5— Act —Acting as private agent* The word act in s 5 of the Pleaders and Mookteears Act (XX of 1865) means the doing something as the agent of the principal party which shall be recognized or taken notice of by the Court as the act of that principal There is nothing in the words of the Act or in its spirit to prevent a person as private agent from going between the prisoner and the duly authorized vakil upon whom the real responsibility of the defence rests *In the matter of the petition of* FUZZLE ALI 19 W R Cr 8

33 ———— *Inability to go ...* When ... of the ... ty to go ... to send for any other pleader for the appellant and ask him if he is ready to proceed with the case but may at once dismiss the appeal BROJO SOONDUREE DOSSIA v GILMORE 7 W R 336

34 ———— **Non appearance**—*Neglect of pleader—Absence for reasonable cause—Discretion of Court* Neglect on the part of a pleader should not be visited on an innocent client when it is within the power of the Court to mitigate the result by the exercise of a little indulgence A case having been fixed for hearing at a particular time the pleader for the defendant was unable to attend ...

... ercise a proper judicial discretion ACHUMBIT JHA v JEWUN 11 C L R 11

35 ———— **Control of case**—*Senior pleader—Arguments* The senior pleader who is present has the entire control of a case in the High Court and it is not open to the junior pleader to take any ground of appeal which his senior ... when ... f the ... ENEE ... 375

PLEADER—*contd*

1 APPOINTMENT AND APPEARANCE—*concld*

36 ———— **Adjournment**—*Senior Pleader* Where of two pleaders engaged by a respondent the leader fell ill and transferred his brief to a senior pleader but the Judge refused to hear the latter on the ground that his name did not appear on the vakalatnama and the junior asked for one day s adjournment to prepare himself for conducting the case —*Held* that the Judge was wrong in refusing an adjournment He should either have heard the pleader who offered to argue the case or granted the adjournment prayed for HARE KRISHNA MAHANTI v BHUSAN CHUNDER MAHANTI (1908) 12 C W N 888

2 AUTHORITY OF TO BIND CLIENT

1 ———— **Statement by pleader**—*Admissions made in ...* When a pleader ...

2 ———— *Admission by pleader in conduct of case* A party is bound by the admission of his duly constituted vakil when the admission is one of a fact which but for such admission the opposite party would have had an opportunity of proving NARAIN ROY v SREENATH MITTER 9 W R 485

3 ————*Admission of vakil in criminal case* Admissions of a vakil cannot bind his client in a criminal case QUEEN v KAZIM MUNDLE 17 W R Cr 49

4 ———— *Mofussil Courts —Questions of law and fact admissions in respect of Per* JACKSON *J* —A vakil in the Courts of the mofussil is not empowered to make admissions on points of law on behalf of his client although he may make admissions on points of fact JUSODA KOONWAR v GOUREE BYJNATH PERSHAD
1 Ind. Jur N S 365

ABDOOL GUNNEE v GOUR MONEE DEBIA.
9 W R 375

5 ———— *Opinion expressed by vakil in argument* The opinion expressed ...

GOPALA AYYANGAR I L R 10 Mad ...

6 ———— *Admission by pleader erroneous in law* An admission by a pleader if it is erroneous in law is not binding on his client KRISHNAJI NARAYAN PARKHI v RAJMAL MANIKCHAND MAMADI I. L. R 24 Bom 360

7 ———— *Erroneous consent of* ... taken view of he ... tions ... RAM ... Doss

PLEADER—*contd*

2. AUTHORITY OF TO BIND CLIENT—*contd*

8 ———— *Statements by vakil out of ordinary scope of his authority* Create t caution should be exerci ed by the Courts before acting upon tatements out of the ordinary scope of the vakil s authority in the particular matter for which he was employed VANKATA RAMANNA v CHAYELA ATCHIYAMMA 6 Mad 127

9 ———— *Verbal admission made by pleader* In a suit to set aside a ale in execution on the ground of fraud —*Held* in reference to the term of certain statements made by the

the pleader of a party to a uit must be received with caution mu t be taken as a whole and must not be unduly pre ed NATHA SINGH v JODHA SINGH I L R 6 All 406

10 ———— *Power to make admissions or statements to bind client—Relinquishment of part of defence* In a suit to recover pos se ion where defendant pleader stated before the Mun if that if the thak map (which was not at the time in Court) could how that the lands in di pute had been surveyed as part and parcel of the plaintiff taluk his client would give up his claim —*Held* that the statement was not on which was ... to make CHUNDER

... R 436

11 ———— *Consent of pleader —Effect of admission* The admission of a

estate founded on the amount for which security had been taken a the rental of a zamindari when posse sion was given up and that amount was admitted and assented to by the vakil in Court and the order made accordingly —*Held* by the Judi ial Committee affirming the judgment of the Court below that such con ent was binding on the client and precluded him from afterwards opening the account RAJUNDER NARAIN RAO v BIJAI GOVIND SINGH 2 Moo I A 253

12 ———— *Consent—Dekkan Agriculturists Relief Act s 3 cl 3—Consent to proceeding under Act withdrawal of* If a party or his pleader gives consent under cl 3 of s 3 of the Dekkan Agriculturists Relief Act

13 ———— *Admission of liability by vakil* A di tinct admission of liability made by a vakil who represented the defendant and who e authority was not questioned was *held* to be sufficient to warrant a decree in favour of the plaintiff DOSSEE v PITAMBUR PUNDAH 21 W R 332

14 ———— *Admission by vakil—Evidence of receipt of money* The admis sion of a defendant s vakil in Court was *held* to be legal evidence of the receipt of money and to do away with the nece sity for other proof KALEEKA NUND BHUTTACHARJEE v GIREEBALA DEBIA 10 W R 322

15 ———— Power of pleader—*Power to compromise cas* Ordinarily a vakil who is employ ed to conduct the case on behalf of his client has no implied authority to compromi e it In the ab ence of any expre provi ion in the vakalatnama he can make no compromi e which will be binding upon his client except with his con ent PREM SOOK v PIR THEE RAM 2 Agra 222

16 ———— *Power to compromise suit* Pleaders unless specially empowered so to do have no authority to compromi e cases con ducted by them SIRDAR BEGUM v IZZUT OOL NISSA 2 N W 149

JAGAPATI MUDALIAR v EKAMBARA MUDALIAR I L R 21 Mad 374

17 ———— *Consent to matter beyond scope of suit* A consent by the vakil of a party to a decree being made binding on property other than what the parties to the suit may have an interest in is a consent to what is beyond the scope of the suit and can neither be binding on the party nor acted upon by the Court AVUL KHADAR v ANDHU SET 2 Mad 423

18 ———— *Relinquishment of defence* Where a pleader authorized only to con duct the defen e in the u ual way pledged his client to relinqui h hi defence if the plaintiff would a ert on oath that the defendant was not the owner of the property in di pute it was *held* that he had exceeded his power and that his client was not bound by his act HAKEEMOONNISSA v BULDEO 3 Agra 309

19 ———— *Unauthorized relinquishment by pleader* It is not within the ordi nary scope of a pleader s duties to relinqui h any portion of hi client ca e without express authority from the client who is not bound by such relinqui h ment unle s it was authorized by him elf GOUR PERSHAD DOSS v SOOKDEB RAM DEB 12 W R 279

20 ———— *Relinquishment of part of claim* A vakil has no authority under an ordinary vakalatnama to give up a portion of the claim already decreed, and any such abandonment

PLEADER—*contd*

2 AUTHORITY OF TO BIND CLIENT—*contd*

the plaintiff from any portion thereof by reason of a relinquishment made by the vakil ABDUL SABHAN CHOWDHRY *v* SHIBKISTO DAW **3 B L R Ap 15**

21 ———————— *Authority of counsel vakils or other agents—Abandonment of issue—Scope of authority in conduct of litigation—Compromise—Civil Procedure Code 1882 s 462* A vakil appointed to conduct a case on behalf of a client has power to ask for an issue to be framed or to abandon one that has been framed and in the absence of fraud or misconduct or of express instructions prohibiting the adoption of such a course his action will be binding on his client There is no distinction in this respect between the acts of counsel vakils and other agents The abandonment of an issue does not amount to a compromise and if the suit is being conducted by a guardian on behalf of the minor leave of the Court is not necessary under s 462 of the Code of Civil Procedure for such abandonment VENKATA NARASIMHA NAIDU *v* BHASHYAKARLU NAIDU **I L R 22 Mad 538**

22 ———————— *Withdrawal from suit—Vakalatnama* A vakalatnama given by a plaintiff and couched in general terms suffices *primâ facie* to authorize the vakil to apply on behalf of the plaintiff for leave to withdraw from the suit and in the absence of anything to show that the vakil acted contrary to his instructions or otherwise was guilty of misconduct in making the application the client is bound by the act of his vakil RAM COOMAR ROY *v* COLLECTOR OF BEERBHOOM **5 W R 80**

23 ———————— *Power of vakil to transfer decree* A vakil by his ordinary employment as vakil enjoys no authority authorizing him to transfer a decree NOHUR *v* JAFFER HOSSEIN **2 N W 195**

24 ———————— *Powers of vakil—Abandonment of issue as to impartibility—Practice—Issue as to limitation* A vakil s general powers in the conduct of a suit include the abandonment of an issue which in his discretion he thinks it inadvisable to press So *held* where the issue abandoned was as to the impartibility by family custom of the zamindari in suit Where an issue of limitation is not raised either by the pleadings or the evidence it is not obligatory on the Judge to direct it though he may have a discretion so to do BOMMADEVERA VENKATA NARASIMHA NAIDU *v* BOMMADEVERA BHASHYAKARLU NAIDU (1902) **I L R 25 Mad. 367** **L R 29 I A 76** **s c 6 C W N 641**

25 ———————— *Oral admission* Where the muhktear of one of the parties in a proceeding under s 145 Code of Criminal Procedure orally denied their claim to the disputed land though no such denial had been made in their written statements —*Held* that admission by the legal practitioner conducting the case was sufficient in a quasi civil proceeding of this nature and the Magistrate was justified in passing an order in favour of the other party the fact that such admission was not recorded did not invalidate the order HARO MOHAN SARDAR *v* GOBIND SAHU (1902) **7 C W N 351**

PLEADER—*contd*

2 AUTHORITY OF TO BIND CLIENT—*concld*

3 REMUNERATION

1 ———— **Amount of remuneration—** *Vakil* Although a vakil is entitled to whatever charge his client agrees to yet if he acts under an engagement constituting him his client s mooktear and legal adviser he is bound by the same rules as an attorney and is therefore entitled only to such reasonable remuneration as the law allows USMUT KOOWAR *v* TAYLER **2 W R 307**

2 ———————— *Suit for fees—Costs between party and party* In a suit by a pleader for the balance of vakil s fees where it was found that there was no contract —*Held* that in considering the proper fee to be allowed the lower Appellate Court had nothing else to guide it but what according to the practice of the Court was allowed as costs between party and party JUDOO NATH DUTT *v* RUSHAD ALI **19 W R 105**

3 ———————— *Suit by vakil for fees—Act I of 1846 s 7—Beng Reg XXVII of 1814 s 25—Costs* In a suit brought by a vakil [illegible] and in [illegible] but be[illegible] of 1865) came into operation —*Held* that where the services in respect of which the fees were claimed consisted of the conduct of a suit which was dismissed for a deficient plaint under s 29 of Act VIII of 1859 the vakil is not entitled to the full amount of costs under Act I of 1846 s 7 or the scale fixed by Regulation XXVII of 1814 s 25 but in the absence of an express agreement he is only entitled to a reasonable sum as remuneration for his work and labour as a pleader So much of Regulation XXVII of 1814 as was before January 1866 unrepealed and the whole of Act I of 1864 are repealed by Act XX of 1865 which came into operation on January 1st 1866 AMEERUNNISSA *v* CHAPMAN **1 Ind Jur N S 334** **6 W R 108**

4 ———————— *Costs as between pleader and client—Bom Reg II of 1827 s 52—Act I of 1846 ss 6 and 7* The provisions of Regulation II of 1827 s 52 cls 1 and 2 and of Act I of 1846 s 7 regarding the award of pleaders costs by way of a percentage relate only to costs as between party and party and (inasmuch as s 52 of Regulation II of 1827 is by s 6 of Act I of 1846 expressly rendered inoperative for any purpose except for the purposes of s 7 of the latter Act) there is not any statutable provision for costs as between pleader and client so that in the absence of an agreement between them the pleader is left

PLEADER—*contd*

3 REMUNERATION—*contd*

to his remedy on a *quantum meruit* GANGJI VITHAL *v* SITARAM SHRIDHAR 9 Bom 33

5 ———— *Costs between pleader and client—Act I of 1846 s 7—Quantum meruit* In a suit brought by *R in forma pauperis* against the defendant he had engaged the services of the plaintiff as his pleader but no express agreement for the remuneration of the plaintiff was made The suit was numbered and after the evidence on either side had been gone into the trying Court made an order dispaupering *R* On an application by *P* who offered to pay the Court fees the High Court under its extraordinary jurisdiction made an order directing the lower Court to receive the fees and to proceed with the suit *P* paid the fees but the suit was compromised The plaintiff did not attend to the suit after remand The plaintiff

[illegible]

the circumstances of the case there being no express agreement in the case KESHAV GOVIND JOSHI *v* JAMSETJI CURSETJI

I L R 12 Bom 557

6 ———— Right of suit for fees—*Cause of action—Uncompleted case* Where a vakil has undertaken the conduct of a suit he is bound to proceed with it and cannot sue for his fee in the absence of a special agreement until the suit is completed unless where the client has dispensed with his services BUCKAPATNAM THATHACHARLU *v* KAJAMIYA 6 Mad 265

7 ———— Right to additional fee—*Fee of vakil for applications in suit when he is bound to carry suit to its conclusion* Where under the practice existing in the Court a vakil receiving a fee for prosecuting or defending a suit is bound to carry the suit to an end and to make all necessary applications in the execution department without further fee no second fee is allowable to a vakil for [illegible] n department [illegible] of the vakil [illegible] ible TAKED [illegible]

1 N W 69 Ed 1873 123

8 ———— Agreement for further remuneration in successful case—*Inam patras —Act I of 1846 s* Inam patras or agreements oral or written made contemporaneously with the vakalatnamas by clients with their pleaders for the payment of reward in addition to the regulation fees provided their cases are decided in their favour are not *nudum pactum* and having regard to s 7 of Act I of 1846 cannot be considered as illegal PARASHRAM *v* HIRAMAN I L R 8 Bom 413

9 ———— *Suit by pleader for fees* An application was made for leave to sue defendant *in forma pauperis* and he agreed with certain vakils to give them full fees according to the valuation of the claim in case they should succeed in having the application rejected *Held* that this was a valid agreement and that the vakils having performed their part were entitled to recover upon it RAM KANT NANDI *v* SHIB NANDA RAI 2 C L R 166

10 ———— Right to recover fee—*Legal Practitioners Act ss 2 28 30—Suit by pleader to recover fee from client—Contract Act s 70—Civil Procedure Code s* [illegible] The Legal Practitioners Act does not debar a pleader from recovering a fee from his client when no contract in writing is made RAMA *v* KUNJI I L R 9 Mad 375

11 ———— Promissory note made by a party in favour of his pleader in respect of the fee agreed upon—*Legal Practitioners Act (XVIII of 1879) ss 28 29—Agreement not filed in Court* A party to a suit made and delivered to his pleader in respect of the fee agreed upon a promissory note which was not filed in Court in that suit In a suit by the pleader upon his promissory note —*Held* that the promissory note was invalid and that the plaintiff was entitled to recover only the amount to which he was found to be entitled for his labour KRISHNASAMI *v* KESAVA

I L R 14 Mad 63

12 ———— Suit by pleader to recover fee from client—*Legal Practitioners Act (XVIII of 1879) ss 28 29 30—Agreement for fee—Agreement not in writing and filed in Court* Ss 27 28 and 29 of the Legal Practitioners Act (XVIII of 1879) do not relate to any arrangements or agreement made between a litigant and his own pleader as to the receipt of his fees which are actually allowed upon taxation They do not provide as to matters which relate to the opposite party or the fees that he has to pay to the legal practitioner of the opposite party but provide what as between the pleader and his client shall be the method in which certain special arrangements are to be entered into They make provision for arrangements between pleaders and their clients which relate to the payment of remuneration in excess of and apart from the amount allowed in the taxation and were framed upon the principle which regards with jealous scrutiny contracts brought about by persons holding positions of active confidence towards others such as a pleader necessarily occupies in reference to his client They were intended to protect necessitous improvident or careless litigants from being taken advantage of by unscrupulous legal advisers *Rama v Kunji I L R 9 Mad 375* approved and followed FAZI UD DIN *v* KARIM BAKHSH I L R 12 All 169

13 ———— Agreement between pleader and person retaining him—*Legal Practitioners Act (XVIII of 1879) s 28—Promissory note suit on—Quantum meruit* The defendants brother engaged a vakil (since deceased) to defend certain suits on their behalf and made and delivered

PLEADER—*contd*

3 REMUNERATION—*contd*

to him a promissory note for an agreed sum in respect of his fee The note was not filed in Court and it exceeded in amount the vakil s regulation fee The defendants subsequently made a promissory note in substitution for the above and the vakil s representatives now brought a suit upon the last mentioned note *Held* (i) that the agreement with the defendants brother was invalid by reason of the Legal Practitioners Act s 28 and the plaintiffs were not entitled to recover the amount of the [illegible]

Naiia [illegible] 3

14 ——— **Suit on promissory note given for past professional services rendered under oral agreements**—*Legal Practitioners Act (XVIII of 1879) ss 28 and 29*—*Guardian and ward*—*Services necessary or beneficial to minor* A guardian executed a promissory note in favour of a vakil (the plaintiff) as remuneration for his past professional service rendered under oral agreements with him *Held* that a suit upon the note was barred by ss 28 and 29 of Act XVIII of 1879 and that as there was no such necessity for the proceeding in question as to render the contract binding on the minors no suit would lie against them SUNDARARAJA AYYANGAR v PATTANATHUSAMI TEVAR I L R 17 Mad 306

15 ——— **Oral agreement for pleader s remuneration**—*Legal Practitioners Act (XVIII of 1879) s 28*—*Criminal proceedings*—*Quantum meruit* A pleader was retained by an accused person to conduct his defence The accused did not pay the agreed fee and the plaintiff thereupon declined to conduct his defence The defendant who was one of the accused then undertook orally to pay the fee but failed to do so after the plaintiff had conducted the defence of both accused persons The plaintiff now sued the defendant to recover the agreed amount *Held* that under Legal Practitioners Act s 28 the plaintiff was not entitled to recover on the contract but that he was entitled to recover reasonable remuneration for the services rendered by him NARASIMMA CHARIAR v SINNAYAN I L R 20 Mad 365

16 ——— **Suit by a pleader to recover fee from his client**—*Legal Practitioners Act (XVIII of 1879) s 28*—*Contract Act s 70* The Legal Practitioners Act (XVIII af 1879) s 28 debars a pleader from recovering a fee from his client when no contract in writing is made *Rama v Kunji I L R 9 Mad 375* and *Krishnasami v Kesava I L R 14 Mad 73* dissented from SARAT CHANDRA ROY CHOUDHRY v CHUNDRA KANTA ROY I L R 25 Calc 805

17 ——— **Division of fee where more than one pleader**—*Mad Reg XIV of 1816 s 30*—*Fee division of where two vakils appointed* The rule under Reg XIV of 1816 s 30 that each of two vakils appointed by a party to a suit shall be entitled to a moiety of the fees payable applies only to cases where they are appointed by the same vakalatnama KISARA RUKKAMMA RAU v CRIPATA VIYYANNA DIKSHATULU 1 Mad. 369

18 ——— **Fee allowed for registration petition**—*Act I of 1846 s 7* The fee to be allowed to a pleader upon a petition to the Court to establish the right to have a document registered under Act XX of 1866 s 84 was one fourth of the fee allowable in a regular suit as was provided by Act I of 1846 s 7 COLLECTOR OF THANA v GANA PAMJI PATIL 7 Bom A C 132

19 ——— **Fees in suit under Registration Act 1864 s 15**—*Regular suit* A suit under s 15 Act XVI of 1864 was not a summary but a regular suit and full fees were awarded for pleaders MOWLA BUKSH v ALI KHAN 9 W R 101

20 ——— **Fees in suit for judicial separation**—*Divorce Act (IV of 1869)*—*Estimation of fee* In a suit for a judicial separation and alimony decided under the Indian Divorce Act (IV of 1869) the only basis for the estimation of pleader s fees is ten times the amount of alimony for one year SCOTT v SCOTT 7 Mad. 394

21 ——— **Fees in partition suit**—*Hearing fee* The ordinary rule for assessing the hearing fee according to the market value of the property in suit is not applicable to a suit for partition and the Court in each such case ought to fix the amount of the fee KIRTEE CHUNDER MITTER v ANATH NATH DEB 13 C L R 253

22 ——— **Fees in suit for pre emption**—*Act XV of 1865 s 37*—*Pleader s fees on what valuation of property calculated* *Held* in a suit for pre emption where it was found by the Court that the actual price of the property was less than the price stated in the deed of sale and the Court gave the plaintiff a decree with costs that the amount payable by the defendant in respect of the fees of the plaintiff s pleader ought to be calculated not on a valuation of the property which was found to be false nor on the amount on which the Court fee on the plaint was paid but on the real value of the property as found by the Court DEBI SINGH v BHUP SINGH I L R 1 All 709

23 ——— **Suit by mortgagee instituted before payment into Court**—*Transfer of Property Act ss 67 83*—*Right of mortgagee to a decree and to full costs* In a suit to recover money due on a mortgage defendant paid the money into Court and a notice was issued to the mortgagee under s 83 of the Transfer of Property Act The mortgagee filed his suit before notice was served on him and it was not proved that the mortgagee was aware of the fact of the payment into Court [illegible]

PLEADER—*contd*

3 REMUNERATION—*contd*

sed as in a contested suit and not as in a case where there is a confession of judgment SITARAMAYYA v VENKATRAMANNA I L R 11 Mad 371

24. ——— **Fee of pleader how calculated**—*Claim for maintenance by defendants in suit for partition—Fee of pleader of such defendants—Bom. Reg II of 1827 s 52 App L—Act I of 1846 s 7—Costs* The plaintiff sued for partition and made two widows who were entitled to maintenance out of the estate co defendants in the suit The plaintiff and the male defendants compromised the suit and a decree was passed in terms of the compromise By the compromise the costs of the widows were to be paid by the estate and in estimating the cost the lower Court allowed each widow a separate set of costs and calculated the amount to be paid to each as pleader s fees on the value placed on his claim by the plaintiff On appeal to the High Court —*Held* that the pleaders of the widows were not employed in prosecuting or ... only on the amount claimed by them for maintenance Case remanded for the amount of the pleader s fees to be correctly calculated When a case is decided on the merits the full percentage is to be paid in other cases one fourth only should be paid under s 7 of Act I of 1846 RAMCHANDRA PARSHARAM v BHAGUBAI I L R 21 Bom 42

25 ——— **Costs allowable as pleader s fees in a proceeding for revocation of probate**—*Application for revocation of probate—Probate and Administration Act (V of 1881) s 55 83—Code of Civil Procedure (Act XIV of 1882) ss 2 0 58 —General Rules and Circular Orders of High Court p 91 para 8—Power of High Court to make order for costs of lower Court* S 83 of the Probate and Administration Act does not apply to an application for revocation of probate the section applicable is s 50 A proceeding instituted for ... proceeding as a suit or had given R1 254 for pleader s fees —*Held* that the costs in a proceeding like this cannot be assessed at more than R80 the maximum pleader s fee allowed by the rules of the Court PROTAP CHANDRA SHAHA v KALI BHANJAN SHAHA 4 C W N 600

GARABINI DASSI v PRATAP CHANDRA SHAHA 4 C W N 602

26 ——— **Suit by pleader for fees where no agreement.**—*Legal Practitioners Act (XVIII of 1879) s 28 rules of the High Court made under—S 28—Division of fees amongst several pleaders engaged in the case* S 28 of the Legal Practitioners Act has no application where a pleader sues his client for his fees on account of work done by him as his pleader although there may not be any agreement between the parties as to the fees that should be paid Where more than one pleader is employed the fees allowable under the rules framed by the High Court under s 27 of the Act are to be equally divided amongst the several pleaders engaged in the case SARAT CHANDRA ROY CHOWDHURY v CHANDI CHARAN MITRA (1902) 7 C W N 300

27 ——— **Vakil s fee in suit for declaration**—*Civil Rules of Practice—Rule 282—Rules framed under Legal Practitioners Act (XVIII of 1879)—Rule 35* A suit for a declaration of right in respect of immoveable property is not a suit in which the subject matter of the claim does not admit of valuation within the meaning of Rule 35 of the Rules framed under the Legal Practitioners Act Such a suit falls within Rule 31 and the fee to be allowed to a *vakil* engaged ...

28 ——— **Set off**—*Legal Practitioners Act (XVIII of 1879) s 28—Pleader—Agreement to allow legal fees to be set off against money advanced to a pleader by a client* A client advanced certain money to a pleader who subsequently appeared for the lender in various cases On suit by the lender to recover his loan the pleader set up an agreement entitling him to set off against the money borrowed his fees for professional services *Held* that the pleader was entitled to a set off in the shape of reasonable remuneration for services actually rendered although there was no such agreement as required by the Legal Practitioners Act s 28 *Raghunath Saran Singh v Sri Ram I L R 28 All 764* and *Rais ud-din v Karim Bakhsh I L R 1 All 169* referred to CHHANNU LAL v ASHARFI LAL (1907) I L R 29 All. 649

4 PRIVILEGES OF PLEADERS

——— **Pleader s taids**—*Mooktear—Legal Practitioners Act (XVIII of 1879)—Ministerial duties of pleader delegation of to their bona fide clerk* A Judge has a right to control his Court premises in such way as is most convenient to the public and to persons working there but does not act rightly in passing any general order by which he excludes as a general body from his Court any portion of the community acting in an orderly manner The pleaders of this country are a body of men who from the earliest times have combined in their own persons the duties performed in England by barristers and attorneys and in acting

PLEADER—*contd*

4 PRIVILEGES OF PLEADERS—*concld*

in this second and ministerial capacity are on their own responsibility entitled to work through any number of clerks or *taids* properly selected and paid

taids or clerks nor does the Legal Practitioners Act of 1879 control in any way the privileges which have always existed in them or restrict their powers the Act being one passed to bring mooktears under the control of the Court *In the matter of the petition of* KHODA BUX KHAN

I L R 15 Calc 638

5 REMOVAL SUSPENSION AND DISMISSAL

1 ———— Removal—*Power to remove vakil —District Judge* A District Judge has no power to remove a vakil against his will from a Court to which he has once been allotted except for a criminal offence misbehaviour or neglect of duty *In the matter of* VAMANJI KONERA 1 Bom 136

2 ———— *Removal of pleader from one Court to another* A Zillah Judge has no authority to oblige a pleader to leave a Court in which he has been practising and to proceed to another *In the matter of the petition of* MAHOMED MANAFF 10 W R 332

3 ———— Suspension—*Act XX of 1865—Power to suspend pleader* A Zillah Judge has no power under Act XX of 1865 to suspend a pleader of the High Court from practising in the Courts of his district on the ground of incompetency His proper course is to make a representation to the High Court *In the matter of* KISHOREE LALL SIRCAR 14 W R 217

4 ———— *Act XX of 1865 —Improper conduct* The omission of a pleader to examine the record of the case before making an

their statements (one of them being a mooktear) was considered at the most to amount to carelessness but not grossly improper conduct whilst his omission to obtain the authority or concurrence of the senior pleader in the case could not be said to be improper conduct within the meaning of Act XX of 1865—certainly not such grossly improper conduct as to call for the punishment of suspension for six months *In the matter of the petition of* SREENATH ROY 17 W R 405

5 ———— *Unprofessional conduct—Commission to mooktears—Act XX of 1865—Criminal offence* A a pleader was engaged by B who was acting

PLEADER—*contd*

5 REMOVAL SUSPENSION AND DISMISSAL —*contd*

that if all the accused were acquitted his fee was to be R500 if the two who were the relatives of C were acquitted then he was to receive R250 but in the event of none of the accused being acquitted he was to receive only R40 Before the trial B paid A R4

he te

and A

R250

A alleged that out of R225 which remained with him he paid R140 to B as commission and that R25 were paid to his mohurir *Held* that A was guilty of fraudulent and grossly improper conduct He was suspended from practising for the period of one year *Per* PONTIFEX J —If a mooktear paid for his services by his employer were to receive in addition without the knowledge of his employer a percentage or commission from the pleader he would be answerable not only in the Civil Court but also in the Criminal Court to a charge of obtaining money improperly from his employer *In the matter of* PEARY MOHUN COOHO

11 B L R 312

6 ———— *Power of interim suspension—Legal Practitioners Act (XVIII of 1879) s 14 cl 5 and s 40* The power of interim suspension given under s 14 (cl 5) of Act XVIII of 1879 when read with s 40 of the same Act can only be exercised after the pleader has been heard in his defence and pending the investigation and orders of the High Court *In the matter of the petition of* KRISTO LALL NAG

I L R 10 Calc 256

7 ———— *Legal Practitioners Act (XVIII of 1879) s 13—Grounds for suspension* A pleader s professional misconduct having amounted to reasonable cause within the meaning of s 13 of the Legal Practitioners Act (XVIII of 1879) for suspending him from practice their Lordships declined to interfere with the decision of the High Court as to the punishment it not being clearly shown that the *quantum* awarded was unreasonable and excessive *In the matter of* QUARRY I L R 13 All 93

L R 17 I A 199

8 ———— *Letters Patent High Court N W P cl 8— Reasonable cause —Offer to give a gratification contrary to s 36 of the Legal Practitioners Act (XVIII of 1879)—Abetment—Penal Code (Act XLV of 1860) ss 41 and 116* A vakil of the High Court signed and sent a letter to another vakil of that Court who practised in District Courts subordinate thereto The purport of this which was one of several printed forms prepared for circulation to vakils practising in districts was to the effect that the vakil to whom it was addressed could easily send his clients cases both civil and criminal to the writer who would conduct them in that Court And as a remuneration the fees paid by the clients would be shared between the writer and the vakil who had sent the

PLEADER—*contd*

5 REMOVAL SUSPENSION AND DISMISSAL *contd*

cases. The Judicial Committee concurred sub

Code) of Act XVIII of 1879 the Legal Practitioners Act This misconduct had been aggravated by the appellant having denied to the Vakil As ociation North Western Provinces and caused evidence to be called to negative his having signed the print ed letter which he had signed Thus there was reasonable cause within s 8 of the Letters Patent of March 17th 1866 establishing the High Courts for his suspension to which for four years from the date of that Court s order his punishment was reduced *In the matter of* PARBATI CHARAN CHATTERJI I L R 17 All 498 L R 22 I A 193

9 ——— Misconduct of pleader—*Legal Practitioners Act (XVIII of 1879) ss 10 32—Mooktear—Illegal practising* A pleader or mooktear practising in contravention of the provisions of s 10 of Act XVIII of 1879 is punishable under s 32 of that Act only by the Court before which he has so practised *In the matter of the petition of* GANGA DAYAL I L R 4 All 375

10 ——— *Refusal to argue case after signing memorandum of appeal Semble* Where a pleader who has signed the memorandum of

11 ——— *Omission to examine record before certifying appeal* A pleader is not guilty of grossly improper conduct but substantially and sufficiently complies with the 2nd of the Rules of 23rd May 1871 if he examine copies of the record and not the original record before he draws the grounds of appeal and certifies them *In the matter of* NOOR AHMED 17 W R 338

12 ——— *Legal Practitioners Act (XVIII of 1879) ss 15 and 40—Interim suspension—Police papers* Depositions of witnesses or confessions taken at a police investigation are not as far as their subject matter is concerned any more the property of the police than the property of the prison is and a pleader is not guilty of misconduct of any kind in making use of such documents for the benefit of his client when delivered to him by the client however improperly the client may have become possessed of such documents provided the pleader is neither party nor privy to obtaining them *In the matter of the petition of* KRISTO LALL NAG I L R 10 Calc 256

13 ——— *Legal Practitioners Act (XVIII of 1879) s 14—Legal Practitioners Amendment Act (XI of 1896) s 2 cl (b)*

— *Grossly improper conduct —Filing of petition containing grounds legally untenable* The mere fact that a legal practitioner has filed a petition which may ultimately turn out to be based on grounds which are untenable in point of law does not constitute on his part improper conduct within the meaning of s 14 of Act XVIII of 1879 as amended by cl (b) s 2 of Act XI of 1896 *In the matter of* SARAT CHANDRA GUHA 4 C W N 663

14 ——— *Unauthorized statement* It having appeared that without any instructions to that effect the pleader conducting a suit in the lower Appellate Court had suggested of his own motion that the mother was a frail woman and being in improper intimacy with the defendant had executed the kobalas for him —*Held* that the pleader had acted with gross impropriety and should be called up and censured by the District Judge GUNGA RAM SADHOOKHAN *v* PANCH COWREE POPAMANICK 25 W R 366

15 ——— *Striking pleader off the rolls—Act XX of 1865 s 16* Case in which the High Court declined on the facts to strike a pleader off the rolls for using improper expressions during the argument of a case before a Zillah Judge who recommended after observing the requirements of s 16 Act XX of 1865 that such punishment should be awarded The Zillah Judge should have called the pleader to order and required him to apologize *In the matter of* CRUISE 14 W R Cr 53

16 ——— Power to suspend pleader —*Act XX of 1865* A Zillah Judge had no power after the 1st January 1866 to make an order under Act XVIII of 1852 dismissing a pleader He should have proceeded under s 10 Act XX of 1865 and referred the matter with his report to the High Court Even under Act XVIII of 1852 under which the Judge erroneously acted in this case a pleader was liable to dismissal only on proof of conviction of a criminal offence by a competent Court or on proof of a declaration or finding by a competent Court (in a suit or proceeding to which the pleader was a party) that he was guilty of a breach of trust or for fraudulent or dishonest conduct in the discharge of his professional duty and this also after notice and adjudication as prescribed by s 4 *In the matter of the petition of* AHMEENOODDEEN AHMED 6 W R Mis 5

17 ——— Procedure—*Pleader or mooktear—Charge of misconduct against* Any charge of misconduct against a pleader or mooktear holding a certificate under Act XX of 1865 other than a recorded conviction of a criminal offence must be made and substantiated and a report submitted to the High Court as provided by s 16 *In the matter of* SUDEROODDEEN MAHOMED 7 W R 316

18 ——— *Act XX of 1865 s 14—Misconduct of pleader* When conduct is charged against any pleader of a subordinate

PLEADER—*contd*

5 REMOVAL SUSPENSION AND DISMISSAL —*contd*

Court which if proved would amount to an offence that conduct should be inquired into not simply as improper conduct but as an offence to be made the *ground if established of his di mi sal under s 14* Act XX of 1865 *In the matter of* CUNESH CHUNDER CANGOOLY 13 W R 456

19 ———— *Act XX of 1865 s 16—Power of Zillah Judge* A Zillah Judge has no authority to initiate proceedings against a pleader of the lower grade under s 16 Act XX of 1865 which requires that the inquiry should be made by the Court in which the pleader committed the act of misconduct *In the matter of the petition of* KOMLAKANT DEGHAL 11 W R 127

20 ———— *Act XX of 1865—Report to Judge on acquittal of pleader by subordinate Court* In a case tried under the provisions of s 16 Act XX of 1865 where the subordinate Court is of opinion that the pleader should be acquitted it is not necessary that there should be any report to the Judge *In the matter of* RAM KINKUR SEIN 13 W R 67

21 ———— *Legal Practitioners Act (XVIII of 1879) 12—Conviction of pleader of criminal offence—Case reported to the High Court—Argument allowed to show that conviction was illegal* A District Judge reported to the High Court for orders the case of a pleader who had been convicted of cheating under s 417 of the Penal Code and who in the opinion of the District Judge was unfit to be allowed to practise Upon the hearing of the case counsel was permitted to go behind the conviction in order to show that the acts of the pleader did not amount at law to the offence of cheating *In the matter of* DURGA CHARAN I L R 7 All 290

22 ———— *Letters Patent High Court North Western Provinces cl 8—Conviction of vakil for criminal offence—Vakil called upon to show cause why he should not be struck off the roll—Argument not allowed to show that conviction was* [illegible]
Court was [illegible]
offence puni[illegible]
and the con[illegible]
on appeal [illegible]
upon to sho[illegible]
quence of such conviction b struck off the roll of vakils of the Court On appearance in answer to this rule it was *held* that the vakil was not entitled to question the propriety in law or in fact of the conviction but that it was open to him to show if he could that his conduct in the matter in respect of which he had been convicted was not such as to render him an unfit person to b retained on the roll of vakils of the Court *In the matter of* RAJENDRA NATH MUKERJI I L R 18 All 174

Held (on appeal to the Privy Council) that in the present case the conviction followed by the sentence was sufficient without further inquiry to justify the High Court in making that order The appellant could not be allowed to have an indirect appeal against the judgment of the Session Judge confirmed by the High Court *The judgment of* Lord Mansfield in *ex parte Brounsall 2 Cowp P p 829* referred to as well explaining the disqualification of a member of the legal profession that attends such a [illegible]
2 Q B [illegible]
what w[illegible]
as a matter of course strike a solicitor off the roll because he had been convicted distinguished from the present case *In re Durga Charan I L R 7 All 290* dealt with under s 12 of Act XVIII of 1879 referred to as a case where the nature of the offence admitted of further inquiry and also distinguished In regard to the finality of the judgment of the High Court in deciding the appeal from the conviction and sentence *In re the petition of Macrea L R 20 I A 90 I L R 15 All 310* referred to *In the matter of* RAJENDRO NATH MUKERJI I L R 22 All 49
L R 26 I A 242
3 C W N 736

23 ———— *Legal Practitioners Act (XVIII of 1879) ss 13 14 40—Suspension from practice without opportunity to defend* Two charges were on 30th December 1899 framed by a Distict Judge against a pleader under s 14 of the Legal Practitioners Act and it was directed that they should be heard on 24th January 1900 On the day on which the charges were framed namely 30th December 1899 the District Judge passed an order suspending the pleader from practice as from 1st January 1900 pending the disposal of the charges With regard to one of the charges no opportunity was given to the pleader to defend himself before the order of suspension was made With regard to the second charge the Judge had prior to the date upon which the charges were framed made an observation in the course of a judgment reflecting in general terms upon the conduct of the pleader in consequence of which the pleader had written a letter and filed an affidavit by way of explanation *Held* that the order suspending the pleader was irregular and must b set aside *In the matter of a* SECOND-GRADE PLEADER (1900) I L R 24 Mad 83

24 ———— **Other reasonable cause** — *Legal Practitioners Act (XVIII of 1879) s 13—Other reasonable cause for suspending a pleader—Writing an anonymous letter to influence* A pleader wrote a letter which he did not sign to an officer who was conducting an inquiry into a charge of bribery against a Revenue Inspector the letter containing allegations which were intended to prejudice the mind of the officer in connection with the matter which he was investigating On a charge being preferred against the pleader under the Legal Practitioners Act —*Held* that these facts showed other reasonable cause for sus

PLEADER—contd

5 REMOVAL SUSPENSION AND DISMISSAL *concld*

Pending the pl ader within the meaning of s 13 cl (f) of the A t *In the matter o Purna Chundur Pal Mukhtar I L P 2, Calc 1023* followed *In the matter of a* PLEADER (190)

I L R 26 Mad 448

25 ——— Bombay Regulation of 1827 s. 56—*Misbehaviour—Suspension of Sanad—High Court s di ciplinary jurisdiction* Pleaders are a privil ged cla s enrolled for the purpo e of render ing a si tan e to the Courts in the administration of ju tice Their position training and practice gives them influence with the public and it is direct ly contrary to their duty to u e that influence for th purpose of bringing the administration of justice into comtempt A pleader who presides at a public meeting and therein procures the passing of a re olution contemptuously denouncing or prot sting against the conduct of a High Court Judge in pas ing s ntence at a t ial at the Crimi nal Ses ions i guilty of mi behaviour (under 56 of Regulation II of 1827) GOVERNMENT PLEADER v JAGANNATH (1908)

I L R 33 Bom 252

6 PURCHASE BY PLEADER AT SALE IN EXECUTION OF DECREE

1 ——— **Purchase by pleader of decree in suit which he has conducted**—*Right to execute decree* It is not expedient that pleaders should by purchase become the persons entitled to execute decrees in suits in which they have been engaged GOSHAIN JUG ROOP GEER v CHINGUN LALL 2 N W 46

2 ——— *Sale in execu*

cum tances the purchase by the vakil or the pur chase by the decree holder in conjunction with him could not be set a ide ROY NANDIPAT MAHATA v URQUHART

4 B L R A C 181 13 W R 209

WAJED HOSSEIN v AHMED REZA

17 W R 480

3 ——— *Civil Procedure Code 1S s 29?—Pleaders not officers of the Court within the meaning of that section* Pleaders of parties to a suit are not debarred by s 29 of the Code of Civil Procedure fr m purcha ing property sold in execution of the decree ALAGIRISAMI v RAMANATHAN I L R 10 Mad 111

4 ——— *Civil Procedure Code s 292 311—Suit to set aside sal in execution of decree—Duty of vakil purchasing at Court sale—Fraud* A mortgagee having obtained a decree

PLEADER—concd

6 PURCHASE BY PLEADER AT SALE IN EXECUTION OF DECREE—*concld*

on her mortgage brought the mortgage property to sale and her vakil bid through an agent at Court sale and became the purchaser It appeared that the vakil had not informed his client that he intended to bid nor obtained the sanction of the Court but he had been instructed by his client and had obtained the permission of the Court to bid on her account and he was found to have acted in an underhand manner towards he In a suit to s t aside the ale brought by the mortgagor who had sought unsuccessfully to obtain the same relief by means of a petition under s 311 in which fraud was not alleged against the purchaser —*Held* (on its appearing that the vakil had not discharged the burden which lay on him of proving that the transaction was free from suspi ion) that the s le should be set a ide SUBBARAYUDU v KOTAYYA I L R 15 Mad 389

7 PROFESSIONAL CONDUCT

1 ——— *Disciplinary jurisdiction—Pleader making use in later proceedings against A of information obtained by him in an ear lier case in which A was his client* With regard to its disciplinary jurisdiction over pleaders the High Court of Bombay will follow the rule laid down by BLACKBURN J in the ca e of *Re Cutts 16 L T (N S) 715* which was as follows Those things which an attorney earns from his client or in consequence of his employment by his client he is forbidden to disclose and any betrayal of his con fidence would be visited by the Court as gross mis conduct But if he learns matters relating to his client under such circumstances that if questioned about them in a Court of justice he could not refuse to answer them he is not within our jurisdiction This rule should not be taken by pleaders as the standard by whi h to regulate their profes ional behaviour It serves only to indicate the extreme low water mark of professional conduct DAMODAR VENKATESH v BHAVANISHANKAR MANGESH (190?) I L R 26 Bom 423

2 ——— *Legal Practi tioners Act (XVIII of 1879)—Pleader appropriat ing client s money—Gro ly improper conduct in the discharge of profes ional duties* A party in a suit gave hi pleader a po er of attorney to draw out a sum of money which he had recovered in that suit The pleader drew the money out of Court appro priated it to his own purpo es and when asked failed to hand it over to his client *Held* that the pleader had acted in a grossly improper manner in the di charge of his profes ional duties *In the matter of* PURNA CHANDRA DUTT (1903)

7 C W N 373

PLEADERS AND MOOKTEARS ACT (XX OF 1865)

See MOOKTEAR.

See PLEADER.

PLEADERSHIP EXAMINATION

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS I L R 6 All 163

See BOARD OF EXAMINERS
I L R 28 Calc 479
I L R 9 All 611

PLEADINGS

See ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS

See BENGAL TENANCY ACT s 60
8 C W N 695

See DEBUTTAR 13 C W N 805

See ESTOPPEL—STATEMENTS AND PLEADINGS

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—PLEADINGS

See FRAUD 13 C W N 87

See HINDU LAW—MAINTENANCE—WIDOW
I L R 27 Bom 485

See JURISDICTION—ADMIRALTY AND VICE ADMIRALTY JURISDICTION
I L R 17 Calc 337

See LANDLORD AND TENANT
9 C W N 460

See LIEN I L R 4 Calc 322

See MAHOMEDAN LAW—PRE EMPTION
I L R 35 Calc 575

See PLAINT

See PRE EMPTION I L R 28 All 691

See RAILWAYS ACT 1890 s 77
I L R 24 Calc 306

See REVENUE SALE LAW s 33
13 C W N 518

See RIGHT OF SUIT 13 C W N 509

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
5 C W N 515

See TRANSFER OF PROPERTY ACT 1882 s 95 I L R 28 All 482

See TRANSFER OF PROPERTY ACT 1882 s 116 12 C W N 587

See VARIANCE BETWEEN PLEADING AND PROOF

See VENDOR AND PURCHASER—CONSIDERATION 6 B L R 530
14 Moo I A 1

See WRITTEN STATEMENT

——— admission in—

See LIMITATION ACT s 19—ACKNOWLEDGMENT OF DEBTS
I L R 18 All 384
I L R 23 Calc 374

——— defamatory statement in—

See DEFAMATION 5 C W N 293

See LIBEL I L R 14 Bom 97
I L R 23 Calc 867

PLEADINGS—*contd*

——— insanity—undue influence—

See BENAMI 10 C W N 570

——— issues—

See BENGAL TENANCY ACT s 29
9 C W N 265

See CONTRACT ACT (IX OF 1872) s 24
I L R 27 All 37 174, 266

See GRANT 9 C W N 1009

See PRACTICE I L R 32 Calc 146

——— reference to—

See DECREE—CONSTRUCTION OF DECREE—GENERAL CASES I L R 18 All 344

1 ——— Rules of pleading in India—The Courts in India are not governed by the technical rules of pleading which obtain in Courts administering English law PITUMBUR PYNE v LOOL SEE DOSSEE 7 W R 39

2 ———Object of pleadings—*Issue not in terms fixed but afterwards raised—Appointment of the religious superior of a Mahomedan institution—Custom as to such appointment* The object of any system of pleading is that each side may be made fully aware of the questions that are about to be argued in order that each may bring forward evidence appropriate to the issues The claim here made was that the last preceding sajjadanashin acting according to the custom of the institution of which he was the religious superior and manager had appointed the plaintiff to succeed him on his decease The finding of the first Court that he had this power by the custom was affirmed on this appeal. As to the fact of the appointment it was not apparent at what stage of the suit the question had first been raised whether the deceased had been of sound and disposing mind at the time of making it The first Court found that he had been of sound mind at the time but the Chief Court on appeal reversed this finding and added that he had been in their opinion unduly influenced As these

[illegible]

L R 22 I A 4

3 ——— Alternative plea of limitation and tenancy—*Limitation.* It is open to a party to plead tenancy and limitation in the alternative *Jonardon Mundul* v *Sambhu Nath Mundul I L R 16 Calc 806* explained *Dinomonee Debia* v *Doorga Pershad Mojoomdar 21 W R 70* relied upon KRAMUDDI v HARA MOHAN MONDUL (1903) 7 C W N 294

4 ——— Plea of pre emption—*Usufructuary mortgage—Purchase of equity of redemption—Suit by purchaser for redemption—Plea of right to pre empt sale to plaintiff* The plaintiffs sued as

PLEADINGS—*concld*

purchasers of part of the equity of redemption of a usufructuary mortgage to redeem the mortgage and recover possession of a proportionate part of the mortgaged property One of the mortgagees defendants pleaded that he had a right of pre emption in respect of the sale which formed the basis of the plaintiff s title and was ready and willing to exercise such right *Held* that this plea could not be admitted as an answer to the plaintiffs suit for redemption *Ajudhia Bakh h Singh* v *Arb Ali Khan I L R " All 89?* and *Ram Chand* v *Durga Prasad I L R 26 All 61* referred to IDARAT KHAN v ILAHI BAKHSH (1905

I L R 27 All 78

5 ———— Partial decree—A plaintiff ought not by reason of his having claimed too much to be precluded from recovering a proper tionate amount to which he is entitled if the pleadings are sufficient to cover such a claim The question as to whether a partial decree ought to be made in such a case is not one of indulgence to be granted or refused at the Court s discretion AHMAD WALI KHAN v SHAMSI JAHAN BEGAM (1906

I L R 28 All 482
s c L R 33 I A 81

6 ———— Pleading and proofs Although the rule is that proofs must correspond with the allegations in the pleadings the requirement in that behalf is fulfilled if the substance of the declaration is proved No variation ought to be regarded as material where the allegation and proof substantially correspond *Nash* v *Towne 5 Wallis 689 6 Pose s Notes 758* followed BELBHADAR PERSHAD SINGH v SHEIKH BARKAT ALI (1906) 11 C W N 85

7 ———— Suit on title—*Declaratory decree —No relief on the ground of adverse possession* A declaration cannot be given on a title neither stated in the plaint nor raised on the issues A plaintiff who comes into Court alleging title without more cannot be allowed to succeed on the basis of title by adverse possession SOMASUNDARUM CHETTY v VADIVELU PILLAI (1908)

I L R 31 Mad. 531

8 ———————— Where a statement by a plaintiff is not admitted by the defendant the plaintiff if he ignores the point does so at his peril for the defence puts him to prove his title ULLMAN & Co v CESAR LEUBA (1908)

13 C W N 82

PLEDGE

See LIMITATION I. L R 30 Bom. 218

See STAMP ACT 18 9 SCH I ART 41
I L R. 21 Calc 241

———— of goods—

See BAILMENT 5 B L R Ap 31

See CONTRACT ACT s 178
I L R 4 Calc 497
I L R 24 Bom. 458

PLEDGE—*concld*

———— of moveable propery suit on—

See LIMITATION ACT ART 57
I L R 22 Calc 21
I L R 17 All. 284

———— suit to redeem—

See DEKKAN AGRICULTURISTS RELIEF ACT s 3 I L R 15 Bom 30

———————— *Suit for money lent —Money secured by a pledge—Limitation—Three years from the time of the loan* A suit for the recovery of money secured by a pledge is a suit for money lent The period of limitation is three years from the time the loan is made YELLAPPA v DESAIAPPA (1905) I L R 30 Bom. 218

PLEDGOR AND PLEDGEE

———— Pledgee taking over the property pledged crediting the value as if it had been sold to him—*Wrongful convers on—Absence of proof of damage to pledgor—Account—Interest* Where a pledgee having power to sell for default takes over as if upon a sale to himself the property pledged without the authority of the [illegible]

borrower afterwards on redeeming a part was led to believe that the paper returned was the whole of that which remained unsold in the bank s possession The bank however had taken over part as if sold to itself crediting the price *Held* that the bank could not after this treat the securities as still subject to the pledge although this transaction had not put an end to the contract of pledge so as to entitle the pledgor to have back the paper without payment of the loan and interest The bank was no longer a pledgee of this paper but having converted it to the bank s own use might have been liable in damages for the value including the interest thereon However had this liability been enforced the pledgor could not have had credit in the loan account for the proceeds of the paper The cessation of interest on the loan was more to his advantage than to receive the interest on the [illegible]

dence of damage to him resulting from the conversion The first Court decreed an account wrongly deciding that interest could not run upon the loan which the amount of the paper transferred by the bank to itself purported to wipe off from the date of the transfer On this point as well as because there was no proof of damage to the pledgor the High Court reversing that decree had rightly dismissed the pledgor s suit NECKRAM DOBAY v BANK OF BENGAL I. L. R. 19 Calc 322

L. R. 19 I. A 60

POISONOUS DRUGS ACT (BOMBAY)

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT VIII OF 1866
I L R 4 Bom 167

POLICE

See BOMBAY CITY POLICE ACT
I L R 31 Bom 480

See CIRCUMSTANTIAL EVIDENCE.
9 C W N 402

See COMPLAINT I L R 33 Calc 1

See CONFESSION 13 C W N 861

See CRIMINAL PROCEDURE CODE ss 160 202 203 9 C W N 199

See CRIMINAL PROCEDURE CODE ss 528 537 I L R 28 All 421

See FALSE CHARGE I L R 33 Calc 30

See POLICE ACTS

———— application of Criminal Procedure Code to Police in Calcutta—

See CRIMINAL PROCEDURE CODE ss 1 (2) 4 (*h*) (*s*) 55 (*b*) 109 (*b*)
7 C W N 661

———— custody—

See CRIMINAL PROCEDURE CODE s 164
13 C W N 861

———— evidence given before if admissible—

See EVIDENCE ACT s 157
13 C W N 197

———— papers value of as evidence against accused—

See EXPLOSIVE SUBSTANCES ACT ss 4 4A 13 C W N 861

POLICE ACT (XIII OF 1856)

———— s 27—

See SENTENCE—WHIPPING
Bourke O C 269

———— s 35—

See STOLEN PROPERTY OFFENCES RELATING TO I L R 20 Bom 948

———— s 57—

See GAMBLING 8 Bom. Cr 1

———— ss 57 and 58—

See WARRANT OF ARREST
8 Bom. Cr 1

———— s 111—

See CERTIORARI WRIT OF
10 Bom. 102 109 note

POLICE ACT (XXIV OF 1859)

See MADRAS POLICE ACT

POLICE ACT (XLVIII OF 1860)

———— s 2—

See POLICE MAGISTRATE.
Bourke O C 186

———— s 8—

See ESCAPE FROM CUSTODY
6 Bom Cr 15

———— s 10—

See MAHOMEDAN LAW—DIVORCE
8 Bom Cr 95

———— s 11 cl. (2)—*License—Tea and Soda water shops* The words 'hotel tavern shop or place' in the second clause of s. 11 of the Police Act (XLVIII of 1860) are wide enough to include every place mentioned in the first clause of that section Tea and sodawater shops are required to be licensed under the Act QUEEN EMPRESS *v* SHERIAR ARDESEER ERAIN
I L R 15 Bom 530

———— ss 11 12—*License—Eating house—Commissioner of Police—Discretion to refuse license—Construction—Specific Relief Act (I of 1877) s 45* The petitioner applied to the Commissioner of Police of Bombay under ss. 11 and 12 of Act XLVIII of 1860 for a license for an eating house in a specified locality in Bombay The license was refused on the ground that no more shops of the description were required in that locality On petition to the High Court under s. 45 of the Specific Relief Act (I of 1877) —*Held* that under ss 11 and 12 of Act XLVIII of 1860 the Commissioner of Police had no discretion to refuse the license PUSTOM JAMSHED IRANI *v* HARTLEY KENNEDY (1901)
I L R 26 Bom. 396

———— s 21—

See PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890) s 3
I L R 26 Bom 609

POLICE ACT (V OF 1861)

See CIVIL PROCEDURE CODE s 424
I L R 26 All 220

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—POLICE ACT 1861
14 W R Cr 41

See SPECIAL CONSTABLES
I L R 35 Calc. 454

———— s 4—

See TRESPASS I L R 36 Calc. 433

———— s 4 (2)—*Criminal Procedure Code s 195—Sanction to prosecute—Sanction to prosecute given by the District Magistrate as head of the Police—Revision* *Held* that the High Court has no power to interfere in revision where a District Magistrate has granted sanction for a prosecution [illegible] Code acting
ama
45
(03)
I L R 27 All. 282

POLICE ACT (V OF 1861)—*contd*

———— s 13—Cost of constable A Magistrate has no power under the Police Act 1861 to realize the cost of a police constable from an individual QUEEN v ROHINIKANT CHASE
1 W R Cr 15

———— ss 17 19—Special constables—*Refusal by persons appointed to accompany police officer to obtain authority of appointment and arms whether refusal to serve as such—Arrest—Arrest on refusal legality of—Public servant—Obstructing him from discharge of his duty—Rioting—Penal Code (Act XLV of 1860) s 147 149 and 353* N S and G were appointed special constables under s 17 of the Police Act A Police Inspector accompanied by some police went to their village and informed them that they had been so appointed and requested them to accompany him to the police station o B which they declined to do The Inspector then had N arrested whereupon N shook himself free and N S and G with other persons who had assembled abused and threatened the police and compelled them to withdraw from the village N S and G were convicted under s 17 of the Police Act and they were also convicted with other persons under s 353 read with 149 of the Penal Code *Held* that the refusal of N S and G to accompany the Inspector constituted no offence under s 19 of the Police Act as the order was intended not for any purpose of police duty but simply that they might obtain the authority of their appointment and the necessary arms *Held* further that the refusal of N to accompany the Inspector was not an offence for which N could be arrested and as the police when obstructed were not acting in lawful discharge of their duty none of the persons concerned could be convicted of an offence under 353 of the Penal Code but that they were guilty of rioting under s 147 o that Code *Empress v Dalip I L R 18 All 246* approved of *Chunder Coomar Sen v Queen Empress 3 C W N 605* distinguished. RAMAN SINGH v QUEEN EMPRESS (1900)
I L R 28 Calc 411 s c 5 C W N 134

———— s 23—Arrest—*Duty of police officer* Under s 23 Act V of 1861 a police officer is not

DEE 26 W R Cr 8

———— s 25—Unclaimed property—*Timber* Timber claimed by a landowner as having been washed on his estate by a river is not unclaimed property within the meaning of s. 25 and following sections of Act V of 1861 CHUTTER LALL SINGH v GOVERNMENT
9 W R 97

———— s 29—

See CANTONMENT MAGISTRATE
1 Agra Cr 24

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION
I L R 22 All 340

POLICE ACT (V OF 1861)—*contd*

———— s 29—*contd*

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—POLICE ACT 1861
4 W R Cr 2
1 W R Cr 5

1 ———— European British subjects—*Magistrate* In a prosecution under the Police Act V of 1861 the Magistrate is bound to take

2 ———— Persons not police officers S 29 of Act V of 1861 is not applicable to persons who are not police officers *In the matter of* RAMKUMAR
10 C L R 521

3 ———— Rashness or negligence of police officers—*Search for stolen property* Mere rashness or negligence on the part of a police officer before ordering the search of a man s house for stolen property does not constitute an offence amounting to a violation of duty under s 29 Act V of 1861 The violation there intended must be wilful intentional violation of some clear duty or other QUEEN v BOLAKI LALL 19 W R Cr 7

4 ———— Police officer—*Overstaying leave without permission* The failure of a police constable to resume his duty on the expiration of his leave does not constitute an offence under s 29 Act V of 1861 *In the matter of the petition of* JANOKI NATH GUPTA. EMPRESS v JANOKINATH GUPTA
I L R 6 Calc 625 8 C L R 56

5 ———— *Police officer with*

nine days *Held* that such absence without leave did not amount to withdrawal from the duties of his office without permission within the meaning of 29 of Act V of 1861 QUEEN EMPRESS v SALIG RAM
I L R 6 All 495

6 ———— Submitting incorrect report—*Penal Code s 218* A police officer negligently or improperly submitting an incorrect report of a local investigation may be punished under s. 29 of Act V of 1861 in cases where the proof is insufficient to bring the case under s 218 of the Penal Code QUEEN v BORODA KANT MOOKHOPADHYA
15 W R Cr 17

7 ———— Offence committed by police officer while under suspension. A police

duties without permission. *Held* that his conviction was illegal after suspension he was no longer a police officer under s. 8 of the Act and therefore

POLICE ACT (V OF 1861)—*contd*

——— s 29—*contd*

could not be legally convicted under s 29 QUEEN v DINANATH GANGOOLY

8 B L R Ap 58 17 W R Cr 12

8 ——— **Neglect to act on information while on other duty** A police officer charged under s 19 Act V of 1861 with a violation of his duties in not acting on information given to him of the likelihood of a breach of the peace which afterwards actually occurred set up in defence that he was when he received the information engaged *bona fide* in duties as a police officer in regard to another offence He was however found guilty and convicted *Held* the conviction was illegal For a conviction under s 29 more than mere neglect of duty must be shown a deliberate and intentional violation of his duty is necessary QUEEN v RADHU SINGH

8 B L R Ap 60 17 W R Cr 34

9 ——— **Power to depute subordinate**—*Police officer—Neglect of duty* Police officer being authorized by law to depute his subordinate to proceed to a place where a crime is reported to have been committed cannot be supposed to have contravened the law by not proceeding to the spot himself and therefore the conviction of the prisoner on the charge of wilful violation of duty was illegal GOVERNMENT v KARAMUT KHAN

1 Agra Cr 1

10 ——— **Extra drill** *Police constable — Neglect of duty — Lawful order* A District Superintendent of Police directed his constables to cut down the jungle in the vicinity of their lines and on their refusal to comply ordered them extra drill every day One of such constables not turning out to such extra drill was thereupon prosecuted and convicted of neglect of duty under s 29 Act V of 1861 *Held* that s 29 provided for no such offence and that any neglect of duty short of a violation of duty does not amount to an offence under that section. *Held* further that the omission to attend such extra drill did not amount to an offence under that section as the words lawful order used in the section mean an order which the authority mentioned therein is competent to make and it did not appear that a District Superintendent of Police was competent to order his constables to cut down the jungle in the vicinity of their lines and on their refusal to do so to order them extra drill *In the matter of the petition of* BHOLA NATH DAS I L R 12 Calc 427

11 ——— **Acts of omission**—*Criminal Procedure Code 18 ? s 148—Summons cases* Acts or omissions punishable under Act V of 1861 s. 29 come within the category of offences punishable under any law other than the Penal Code (Code of Criminal Procedure s. 8) and those offences likewise fall within the terms of s 148 of the same Code QUEEN v GOLAM ARABEE

25 W R Cr 20

12 ——— **Rule or regulation and lawful order**—*Power to make rules under Act V of 1861—District Superintendent of Police power of—A rule or regulation and a lawful order distinguished* There is no express power given by Act V of 1861 to any officer save the Inspector General of Police to make rules therefore the violation of a general rule alleged to have been made by a District Superintendent of Police to the effect that constables are to be within the lines at a particular time or at roll call is not punishable under s 29 of the Act *Semble* The violation of a special order made by a District Superintendent of Police requiring the presence of an officer or of certain officers within the police lines and issued expressly to him or each of them would come within s 29 of the Act as being not a rule or regulation but a lawful order made by a competent authority and relating to the duties of the officer or officers *In the matter of the petition of* ABDUL HOSSEIN QUEEN EMPRESS v ABDUL HOSSEIN I L R 15 Calc 194

POLICE ACT (V OF 1861)—*contd*

——— s 29—*concld*

13 ——— **and s 8—Suspension effect of**—*Police officer—Breach of order* A police constable was suspended and ordered to remain in the lines during suspension Despite the order he absented himself therefrom without leave He was convicted under s 29 of Act V of 1861 *Held* s 29 of Act V of 1861 contemplates that the person to be charged with an offence under it must have been at the time of his doing the act in respect of which the charge is preferred a police constable within the meaning of that Act When a police officer is suspended he ceases to be a police officer the conviction was therefore wrong *Queen* v *Dinonath Gangooly 8 B L R Ap 58* followed. QUEEN EMPRESS v DURGA

I L R 10 All. 459

——— s 30—

See PENAL CODE s 153

I L R 29 All. 569

1 ——— **s 34—Slaughter of cow**—*Police Act Amendment Act (VIII of 1895) s 13—Slaughter of cow—Open verandah—Annoyance to residents of locality— Open place meaning of—General police* The slaughtering of a cow in an open verandah so as to cause annoyance to the residents of the locality and in spite of their remonstrances is a breach of the law being an act in an open place within the terms of s. 34 of Act V of 1861 as amended by Act VIII of 1895 The words open place coupled with road street or thoroughfare should not be interpreted *ejusdem generis* It seems rather that the addition of these words was intended to have *a wider significance and this is shown* by another amendment in the same section made at the same time in which the annoyance etc caused must be not to the residents and passengers but to the residents or passengers. The intention of the Legislature was to extend the Act not only to passengers who would not be on such a road street or thoroughfare but to residents who are not passengers KHAN BAPUTI DEWAN v BISPATI PUNDIT I L R 27 Calc 655

POLICE ACT (V OF 1861)—*concld*

——— s 34—*concld*

2. ——— *Placing tanbans in public road* Placing *tanbans* in a public thoroughfare is an offence under s 34 Act V of 1861 QUEEN v AMEER 2 N W 5

——— s 42—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE OF SUIT
2 W R 425

1. ——— *Objection to want of notice of action* A suit against a police officer under Act V of 1861 should not be dismissed merely because notice under s 42 has not been given unless the objection be taken in the first Court NARAIN DEEN TEWAREE v RAM DASS
8 W R 425

2 ——— and s 29 S 42 of Act V of 1861 has no bearing on or connection with s 29 of the Act QUEEN v HAZAR MIR KHAN
7 N W 237

3 ——— *Suit against Police officer for damages for wrongful confinement—Notice—Action of Police officer malicious* One Panna Lal brought a suit against a Sub Inspector of Police claiming damages for wrongful confinement and other matters It was found that the [illegible]
Held that under these circumstances the defendant was not entitled to receive notice of suit either under s 42 of the Police Act 1861 or under s 424 of the Code of Civil Procedure and the plaintiff s suit was not liable to dismissal for lack of such notice *Shahebzadee Shahunshah Begum* v *Fergusson I L R 7 Calc 499* and *Jogendro Nath Roy Bahadur* v *Price I L R 24 Calc 584* referred to MUHAMMAD SADIQ AHMAD v PANNA LAL (1904) I L R 26 All 220

——— s 44—

See PENAL CODE s 177
21 W R Cr 30

POLICE ACT AMENDMENT ACT (VIII OF 1895)

See POLICE ACT (V OF 1861) s 34
I L R 27 Calc 655

POLICE CONSTABLE

See MALICIOUS PROSECUTION
I L R 18 Mad 136

——— threat to obtain dismissal of—

See CRIMINAL INTIMIDATION
I L R 20 Bom 794

POLICE CUSTODY

See DETENTION OF ACCUSED BY POLICE
7 C W N 457

POLICE CUSTODY—*concld*

——— *Detention in police custody—Duration of detention—Criminal Procedure Code (Act V of 1898) s 167 (3)—Order for such detention* S 167 (3) of the Code of Criminal Procedure by requiring a Magistrate to record his reasons for authorising detention in police custody contemplates that the Magistrate shall consider whether on the facts placed before him there are good grounds for allowing such detention There should at least be something to satisfy the Magistrate that the presence of the person arrested while the police investigation was being held would assist in some discovery of evidence and that his presence was indispensable for this purpose as for instance when he had confessed before the Magistrate and had pointed out some of the property stolen in the offence and was wanting to do more but was unable to do so because the police were by law unable without a special order to detain him In ordering further detention in police custody when there are good reasons for such an order a Magistrate should invariably limit the term as much as possible to what may be necessary for the object in view EMPEROR v KAMPU KUKI (1902)
11 C W N 554

POLICE DIARIES

See ACCUSED PERSON RIGHT OF
I L R 19 Mad 14
I L R 19 All 390
I L R 20 Mad 189

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 162 1 2
I L R 33 Calc 1023

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE DIARIES PAPERS AND REPORTS

See EVIDENCE—CRIMINAL CASE —STATEMENTS TO POLICE OFFICERS

POLICE DUTIES

See SERVICE TENURE 12 C W N 193

POLICE INQUIRY

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS
I L R 9 Mad 282
I L R 12 Bom 161
I L R 20 Mad 387

See DEFAMATION I L R 28 Calc 794

See DETENTION OF ACCUSED BY POLICE
I L R 11 Mad 98

See WITNESS—CRIMINAL CASES—STATEMENTS OF WITNESSES
I L R 29 Calc 483

——— magistrate taking part during—

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER
5 C W N 864

1 ——— Power of Magistrate—*Criminal Procedure Code (Act XVI of 1861) ss 133 180* *Held per* GLOVER, J —Under 133 Act XXV

POLICE INQUIRY—*contd*

of 1861 a Magistrate may order a police inquiry

been extended to cases under that chapter QUEEN v FORTU SHAH

2 B L R S N 6 10 W R Cr 49

2 ——— Order for further detention in custody—*Criminal Procedure Code 1861 ss 152 146—Offering inducement to disclosures* Circumstances may exist in which a special order of the nature contemplated in s 152 of the Criminal Procedure Code may properly be passed for instance if in the case into which the police are inquiring the suspected or confessing parties have voluntarily offered to conduct the police to a place where the stolen property will be found and such offer cannot be carried into execution within the limited period of twenty four hours the power which the above mentioned section confers on a Magistrate may be rightly exercised. But to return accused persons to the police that they may be forced to give a clue to the stolen property is to abuse the provisions of s 152 with a view to the breach of the injunctions of s 146 of the Criminal Procedure Code QUEEN v RUGONATH PERSHAD

3 N W 275

LAKA 6 W R Cr 12

such information in a book and refer the informant to the Magistrate and no police officer shall investigate a non cognizable case without the order of a Magistrate of the first or second class having power to try such case and commit it for trial or of a presidency Magistrate

4 ——— Investigation by police officer—*Criminal Procedure Code 1882 s 160—Summons to answer complaint* S 160 of the Code of Criminal Procedure which authorizes a police officer making an investigation under Ch. V of the Code to require the attendance before himself of any person (within certain limits) who appears to be acquainted with the circumstances of the case does not empower such officer to require the attendance of an accused person to answer the complaint made against him. QUEEN EMPRESS v SAMINADA

I L R 7 Mad. 274

5 ——— *Criminal Procedure Code 1882 ss 155 202 and 203—Magistrate s power to direct a local investigation by the police* S 155 of the Code of Criminal Procedure (Act X of 1882) deals only with the powers of police officers. It confers no power or authority on Magistrates to direct a local investigation by the police or call for a police report *In re* JANKIDAS GURU SITARAM I L R 12 Bom. 161

6 ——— Basis of police inquiry—*Criminal Procedure Code (1898) ss 157 159*—An inquiry can be made under s 159 Criminal Procedure Code only on a report submitted within the terms of s 157 MOULI DURZI v NAURANGI LALL 4 C W N 351

POLICE MAGISTRATE

See TRANSFER OF CRIMINAL CASE—GENERAL CASES 15 B L R Ap 14
12 Bom. 217

1 ——— Police office'—*Clerk of Magistrate of Police—Act XLVIII of 1860 s 2* A clerk in the police Magistrate s office having been convicted under s 2 of Act XLVIII of 1860 as a person employed in a police office a rule for quashing the conviction was made absolute *Held* that the words Police Office in s 2 Act XLVIII of 1860 did not apply to a Police Magistrate *In re* JUDOO NATH MOOKERJEE

Bourke O C 188

2 ——— Power of Magistrate—*Beng Act IV of 1866 s 26—Penal Code (Act XLV of 1860) s 116* A police Magistrate had power to convict summarily under Bengal Act IV of 1866 s 26 for an offence punishable under s 116 of the Penal Code QUEEN v MAHBUB KHAN

1 B L R O Cr 39

POLICE OFFICER

See ARREST—CRIMINAL ARREST I L R 27 Calc 457

See ESCAPE FROM CUSTODY 6 C W N 337

See GAMBLING—BOM ACT IV OF 1887 I L R 26 Bom 533

See MADRAS ABKARI ACT s 26 I L R 9 Mad. 97

See MALICIOUS SEARCH I L R 27 Bom. 590

See PENAL CODE s 221 I L R 3 All. 60

——— confessions and statements to—

See CONFESSION—CONFESSIONS TO POLICE OFFICERS

See DEFAMATION I L R 28 Calc. 794

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE DIARIES PAPERS AND REPORTS I L R 28 Calc 348

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE I L R 28 Calc 348

POLICE OFFICER—*contd*

——— detention by—

See Calcutta Police Act (Ben Act IV of 1866) s. 99 (*1*) 7 C W N 883

——— duty of—

See Abetment I. L. R 20 Bom 394

——— liability of—

See Compensation—Criminal Cases—To Accused on Dismissal of Complaint I. L. R 26 Bom 150

See Opium Act s 9
I L. R 24 Calc 691

See Wrongful Confinement
I L R 19 Bom 72

——— resistance and obstruction to—

See Bengal Excise Act 1878 s 4
I L. R. 24 Calc 324

See Penal Code s 186
I L. R 24 Calc 320

See Penal Code s 332
I L R 18 All. 246

See Sentence—Cumulative Sentences
I L R 19 Calc 105

See *Thumb Impressions*
I L R 30 Calc 97

See Wrongful Restraint
I L R 12 Bom 377

——— search by—

See Trespass I L R 36 Calc 433

——— special—

See Police Act (V of 1861) ss 17 19
I L R 28 Calc 411

——— trespass by—

See Tort 13 C W N 485

1. ——— **Powers of arrest—Torture—** *Detention of prisoners* Exposition of a police officer s power of arrest and detention of accused persons and witnesses with a view to the suppression of the practice of torture Queen v Behary Singh 7 W R Cr 3

2 ——— **Powers in discharge of his duties**—*Rioting* Where a man is grievously wounded in a riot the police are bound to act without taking into consideration who was the aggressing party In the discharge of their duties and in the absence of any proof that they exceeded their duty the police were held entitled to the protection of the Court Queen v Damoo Singh
8 W R. Cr 36

3 ——— **Liability of Police officer—** *Penal Code s 79—Criminal Procedure Code 1861 s 100 cl 5—Illegal arrest by police officer* The general exception provided by s 79 of the Penal Code and the power conferred by cl 5 s 100 of the

POLICE OFFICER—*concld*

Code of Cri[illegible] rotect [illegible] that [illegible] Code [illegible] ich is proved to have been stolen and not to anything which a police officer may choose to imagine has been stolen Sheo Surun Suhai v Mahomed Fazil Khan 10 W R Cr 20

POLICE REPORT

See Complaint—Institution of Complaint and Necessary Preliminaries
I L R 14 Calc 707
I L R 29 Calc 410
26 Bom 150
5 B L R 274
8 Bom. Cr 113
4 C W N 242

See Criminal Procedure Code s 145
11 C W N 835

See Evidence—Criminal Cases—Police Evidence Diaries Papers and Reports

See Evidence Act s 74
I L R 20 Mad. 189

See Magistrate—Powers of Magistrate I L R 29 Calc 885

See Nuisance—Under Criminal Procedure Code 3 B L R A Cr 4

See Possession Order of Criminal Court as to—Likelihood of Breach of the Peace I L R. 7 Calc 46
I L R 13 Calc 175
I. L. R. 20 Calc 513 520
6 C W N 340

See Recognizance to keep Peace—Credible Information
10 W R. Cr 41
4 B L. R F B 46
12 W R Cr 60
21 W R Cr 28

POLICY OF INSURANCE

See Bill of Lading
I. L. R. 30 Calc 565

See Insolvency—Property acquired after Vesting Order.
I. L. R 18 Mad. 24

See Insurance.

See Marine Insurance.
I. L. R. 36 Calc. 516

See Stamp Act 1869 ss. 34 41
I. L. R. 3 Calc. 347

See Stamp Act 1879 s 3 cl. 15
I. L. R. 19 Calc. 499
I. L. R. 19 Bom. 130

POLITICAL AGENT

——— certificate of—

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE
I L R 19 Bom 145

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE
I L R 17 Mad. 14

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION
I L R 13 Mad. 423
I L R 24 All. 256

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING
I L R 19 All. 109

——— Court of—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT
I L R 17 Bom 162

——— order made by in his executive capacity—

See JUDICIAL OFFICERS LIABILITY OF
7 B L R 452 note

POLITICAL JURISDICTION

See PRIVY COUNCIL.
I L R 33 Calc 218

POLITICAL PENSION

See PENSIONS ACT 1871 s 11
I L R 31 All. 382

POLITICAL RESIDENT AT ADEN COURT OF

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER.
I L R 10 Bom 258 263

See TRANSFER OF CRIMINAL CASE—GENERAL CASES I L R 10 Bom. 274

POLL.

See COMPANY—MEETINGS AND VOTING
I L R 15 Bom. 164

POLYGAMY

See BRAHMO SAMAJ
I L R 28 Bom. 597

PORAMBOKE LANDS

——— ——— *Water in poramboke lands not Sircar water* Water in poramboke lands belonging to *mirasidars* cannot be said to be Sircar water and taxed as such NATESA GRAMANI v VENKATARAMA REDDI (1907)
I L R 30 Mad 510

PORT COMMISSIONERS ACT (BENG V OF 1870)

——— ss. 5 6 31, 38 39—*Land Acquisition Act (X of 1870)—Phrase public purpose explained—Highway—Statutory Road—Dedication—Public user—Animus dedicandi—Power to dedicate whether the Port Commissioners have any* Certain lands acquired in 1874 for a public purpose under the Land Acquisition Act of 1870 in conjunction with the Port Commissioners Act of 1870 were conveyed to the Port Commissioners for value in 1876 A road constructed on a portion of these lands was used by the general public from the date of its completion in 1875 till 1881 On the Port Commissioners erecting a fencing in 1903 obstructing access from adjoining premises to the road a suit was instituted by the owners of the adjoining premises for the declaration of a private right of access to the road as a public highway and for incidental relief *Held* that a public right of way may be created either by Act of the Legislature or by dedication express or presumed by the owner of the land to the general public The acquisition in suit did not create any public statutory road The declaration of a public purpose did not make the road a public road The public purpose was under s 38 of the Port Commissioners Act of 1870 for the purposes of that Act By the conveyance the land became vested in the Port Commissioners In order to constitute a valid dedication to the public of a highway by the owner of the soil there must be an *animus dedicandi* of which user by the public is evidence and no more *Poole v Huskin on 11 M & W 827* followed *Quære* Whether the Port Commissioners had having regard to the terms of their Act power to dedicate *The Grand Junction Canal Company v Petty 21 Q B D 273* referred to AKSHOY KUMAR GHOSE v COMMISSIONERS OF THE PORT OF CALCUTTA (1906) I L R 33 Calc 1243

PORT OF CALCUTTA.

——— Limits of port—*Act XXII of 1855—Suit for damages for breach of contract* P & Co agents for the ship *F A* contracted by a shipping order with *G* for freight with option to *G* to cancel the contract if the *F A* should not arrive at the port of Calcutta by the 15th of January On that day she anchored at Atcheepore and remained there till the morning of the 16th *G* refused to fulfil the contract and *P & Co* sued him thereupon *Held* that there is no custom governing the construction of the words the port of Calcutta in shipping orders and that an arrival at Atcheepore is not an arrival at the port of Calcutta POTTER v GENTLE
Bourke O C 41

PORT RULES (BOMBAY)

See SHIPPING LAW—COLLISION
6 Bom. O C 98

PORT RULES (CALCUTTA) 1856

See SHIPPING LAW—COLLISION
Bourke Ad. 1 15

PORT TRUSTEES BOMBAY

See SALE OF GOODS
I. L. R 17 Bom. 62

PORTS ACT (XII OF 1875) s 22

See MASTER AND SERVANT
I L. R 9 Calc 849

PORTS ACT (X OF 1889)

1 ———— s 6 cl. (k)—*Rules made by Local Government—Boats plying and not plying for hire —Ultra vires* It is only with regard to boats plying for hire that s. 6 of Act X of 1889 gives the Local Government authority to make rules Rules purporting to make it obligatory on boat owners to ply for hire are *ultra vires* QUEEN EMPRESS v THOMMAYYA CHETTI
I L R 17 Mad. 397

2. ———— ss 6 8 - *Order purporting to be under the Act by Conservator of Port—Public body authorized by Legislature to make rules powers of—Delegation of power—Rules made by Local Government* The Conservator of the Port of Negapatam purporting to act under the Indian Ports Act s 8 made and published an order that when a certain flag was flying at the signal station all boats returning from the sea should cast anchor and not come inside the river The Local Government had made a rule with reference to s 6 (*k*) of the above Act requiring boat owners to carry out at all times all orders issued by the Conservator in connection with the plying of their boats and which are not inconsistent with the regulation issued by Government A charge was brought against two persons being the owner and tindals of licensed cargo boats for neglecting to obey the aforesaid order and they were convicted under the Indian Ports Act s 8 (?) by the Conservator in his capacity as special first class Magistrate *Held* that the order was *ultra vires* and the conviction was accordingly illegal *Per Curiam* —A public body whether the Executive Government or a corporation being entrusted by the Legislature with the duty of making rules cannot relieve itself of the responsibility and depute other agencies to discharge the duty QUEEN EMPRESS v MARIAN CHETTI **I L R. 17 Mad. 118**

PORTS AND PORT DUES

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—ACT XXII OF 1855
5 Bom Cr 14

PORTUGUESE CONVENTION ACT (IV OF 1880)

See OFFENCE ON THE HIGH SEAS
I L R 14 Bom. 227

PORTUGUESE SUCCESSION

See ENGLISH LAW—PRIMOGENITURE
5 Bom. O C 172

POSSESSION

See ADVERSE POSSESSION

See BENAMI TRANSACTION
9 C W N 89

See BENGAL SURVEY ACT s 62
8 C W N 876

See BENGAL TENANCY ACT (VIII OF 1885) s 106 **12 C W N 8**

See BENGAL TENANCY ACT s 149
8 C W N 248

See CHAUKIDARI CHAKRAN LANDS
I L R 35 Calc 346

See CIVIL PROCEDURE CODE 1882 ss 13 43

See CIVIL PROCEDURE CODE 1882 s 335 **I. L. R 32 Bom. 404**
12 C W N 115

See CLAIMS TO ATTACHED PROPERTY

See COURT FEE **I L R 31 Calc 511**

See COURT FEES ACT (VII OF 1870) s 7
12 C W N 990

See CRIMINAL PROCEDURE CODE ss 145 146

See DECREE—CONSTRUCTION OF DECREE —POSSESSION

See DECREE—FORM OF DECREE—POSSESSION

See DISPOSSESSION

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—POSSESSION FACT OF **4 B L R. F B. 97**
9 W R. 79

See EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION

See HINDU LAW **10 C W N 1**

See JOINT TRIAL **I. L. R. 31 Calc. 1007**

See JURISDICTION **I. L. R. 32 Calc 602**

See JURISDICTION OF MAGISTRATE.
I. L. R 32 Calc. 287

See LANDLORD AND TENANT—OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION

POSSESSION—*contd*

——— discontinuance of—

See LIMITATION ACT 1877 III SCH II ART 142

See VENDOR AND PURCHASER—POSSESSION

——— disturbance of—

See LANDLORD AND TENANT—

OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION I L R 28 Calc 188

LIABILITY FOR RENT 5 C W N 353

——— for purposes of notice when equivalent to registration—

See REGISTRATION ACT (III OF 1877) ss 49 AND 50 I L R 27 Bom 408

——— long—

See LANDLORD AND TENANT—NATURE OF TENANCY I L R 28 Calc 738
5 C W N 846

——— obstruction of—

See PRACTICE—CIVIL CASES—SALE BY RECEIVER I L R 21 Calc 479

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

——— of explosive substances—

See EXPLOSIVE SUBSTANCES ACT 1908 ss 4 5 6 13 C W N 861

——— of goods—

See BAILMENT 5 B L R Ap 31

See CONTRACT ACT s 108
12 B L R 42
I L R 11 Bom 704

See CONTRACT ACT s 178
I L R 4 Calc 497
I L R 3 Calc 264
I L R 24 Bom 458

See INSOLVENCY—ORDER AND DISPOSITION

——— of illicit opium—

See OPIUM ACT (I OF 1878) s 9
I L R 25 All 262

See OPIUM I L R 36 Calc 1016

——— of land onus of proof of—

See UNLAWFUL ASSEMBLY
5 C W N 368

——— of Receiver—

See RECEIVER I L R 30 Calc 593

——— physical—

See LIMITATION ACT 1877 SCH II ART 10 I L R 24 All 17

——— suits for—

See BENGAL RENT ACT 1869 s 27

See BENGAL TENANCY ACT—
s 50 7 C W N 132
ss 101 TO 111A I L R 28 Calc 28
s 184 AND SCH III
I L R 28 Calc 86

See CO SHARER—SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY

See ESTOPPEL I L R 36 Calc 920

See HINDU LAW—JOINT FAMILY—SUITS FOR POSSESSION

See LANDLORD AND TENANT—TRANSFER BY TENANT 6 C W N 919

See LIMITATION ACT 1877 SCH II—
ART 9 7 C W N 218
ART 14 I L R 29 Calc 367
ART 47 I L R 25 Bom 82
ART 91 6 C W N 863
ARTS 120 AND 144
I L R 26 Mad 113
ARTS 136 TO 138 AND 144
I L R 25 Bom 275
ART 139 I L R 25 Mad 452
ART 141 I L R 25 All 435
ART 144—ADVERSE POSSESSION

See MAMLATDAR JURISDICTION OF
I L R 26 Bom 353

See MORTGAGE—CONSTRUCTION
L R 30 I A 54

See PARTIES—PARTIES TO SUITS—

MORTGAGES SUITS CONCERNING
7 C W N 11

RECEIVER 5 C W N 27

See REMAND I L R 34 Calc 996

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE
I L R 27 Bom 302

See RIGHT OF SUIT—POSSESSION SUIT FOR.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
I L R 29 Calc 682

See SPECIFIC RELIEF ACT 1877 s 9

See TITLE—MISCELLANEOUS CASES.
I L R 25 Mad 448

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASE—POSSESSION SUIT FOR.

——— without lease—

See LANDLORD AND TENANT
I L R 31 All 276

POSSESSION—*contd*

1 EVIDENCE OF POSSESSION

1. ———— **Statement as to fact of possession**—*Evidence* A statement by a witness that a party was in possession is in point of law admissible evidence of the fact that such party was in possession MANIRAM DEB *v* DEBI CHARAN DEB 4 B L R F B 97 13 W R F B 42

2 ———— *Acts of ownership* A witness s statement that a party is in possession is no evidence of the fact The question of possession is a mixed one of law and fact and the evidence produced must give the various acts of ownership which go to constitute possession so that the Court may arrive at its own conclusion ISHAN CHANDER BEHARA *v* RAM LOCHAN BEHARA 9 W R 79

3 ———— **Visiting and making use of house**—*Possession as of right* Occasionally visiting and making use of a house is ample evidence of possession unless shown to have been done by the claimant in the capacity of a visitor and not in his own right UNUNTO RAM SEAL *v* BROJO BULLUB SEAL 11 W R 136

4 ———— **Acts of ownership**—*Omission to show acts of ownership* In special appeal the High Court *held* that evidence which did not allude to any specific acts of ownership was not sufficient evidence to prove possession The finding of the fact of possession by the lower Appellate Court upon such evidence reversed on special appeal JAGABANDHU DAS GAJENDRA MAHAPATRA *v* DINABANDHU DAS GAJENDRA MAHAPATRA 2 B L R Ap 30

5 ———— *Suit for recovery of forest land from Government* Where a tract of land with a defined boundary has been throughout claimed by a person as owner and acts of ownership have been done on various portions of it such acts may be accepted as evidence of the possession of the whole tract *Bhaskarappa* v *Collector of North Kanara I L R 3 Bom 452* distinguished SIVASUBRAMANYA *v* SECRETARY OF STATE FOR INDIA I L R 9 Mad. 285

6 ———— **Thakbust award**—*Boundary question of* A thakbust award of boundary would in any case be material evidence of possession PRAHLAD SEN *v* RAJENDRA KISHORE SINGH 2 B L R P C 111, 137 12 W R P C 6 11 Moo I A 293

7 ———— **Survey proceedings**—*Survey by revenue authorities—Records in Government maps* Plaintiff sued in 1876 to recover certain alluvial lands which had been in existence over twelve years together with recent accretions thereto which he alleged appertained to his talukh. The alluvial land had been surveyed by the revenue authorities in 1863 as appertaining to no permanently settled estate and claimed by the Government The plaintiff s predecessor however subsequently in 1864 laid claim to the lands and the Collector abandoning the claim of Government recorded him in the Government maps and papers as proprietor

POSSESSION—*contd*

1 EVIDENCE OF POSSESSION—*contd*

of the survey no presumption from the survey proceedings could arise in favour of the plaintiff in 1863 KUSSESSUR ROY *v* JOGGODISHURY 7 C L R 269

8 ———— *Measurement of land by Government officers* The evidence of Government having sent its officers to measure the land and to surround it with pillars is the very best evidence of possession of a lately formed chur COLLECTOR OF FURREEDPORE *v* KALEE DOSS HAZRAH 17 W R 195

9 ———— **Decree for rent**—*Subsequent suit for possession* A decree against the registered tenant in a suit for rent against him and another is not conclusive evidence of the possession of such tenant as between him and the other in a subsequent civil action HURRO NATH BHUTTACHARJEE *v* HARVEY 25 W R 23

10 ———— **Receipt of rent**—*Failure to show collection of rent for portion of property* Receipt of rent is good evidence of possession but it does not necessarily follow that a party in possession has been disturbed because he cannot prove that he has collected rent of a particular portion of the property PUDAR BINDOO MAHANEE *v* MOHESH CHUNDER SEN 20 W R 183

Receipt of rent is only evidence of possession ABDOOL ALI *v* ABDOOR RUHMAN 21 W R 429

11 ———— **Receipt for revenue** Possession of receipts for Government revenue though evidence of possession does not prove it. LALLEE SINGH *v* AMRIT KOOER 17 W R 490

12 ———— **Registration of tenure**—*Suit for possession—Registration under Beng Act VIII of 1876 Quære* Whether in a suit founded upon possession alone or in which the relief sought [illegible]

MAHTO *v* JEBLI MAHTO I L R 8 Calc 803

13 ———— *Decision of Collector—Beng Act VII of 1876 s 55 Per* GARTH *C J—Semble* That s. 55 of Bengal Act VII of 1876 constitutes the Collector a competent Court under particular circumstances for determining as between two disputants the question of possession [illegible]

SARASWATI DASI *v* DHANPAT SINGH I L R 9 Calc 431 12 C L R 12

14. ———— **Finding as to possession**—*Mamlatdar—Magistrate—Criminal Procedure Code 1872 s 530—Irregularity in taking possession* A Mamlatdar s finding as to the point of actual

POSSESSION—*contd*

1 EVIDENCE OF POSSESSION—*contd*

pos e ion s not co clusive A Magistrate s finding i conclusive unde s 530 of Act X of 1879 LILLU v ANNAJI PARASHRAM
I L R 5 Bom 387

15 ———— *Dispute as to possession between purchaser from heir and grantees from widows—Effect of decision of Magistrate as to possession* In a former suit appellant sought as purchaser from the heir to a former proprietor to e tabli h her mokurari right to certain lands as against the grantees from the widows of such proprietor upon the death of the last surviving widow She obtained a decree establishing uch right and on proceeding to take out execution was opposed by the respondents who claimed the lands as being a patni tenure which had been sold by auction for arrears of rent due by *B S* the former patnidar and which had been purchased by *A B* and *H B*

the Magistrate quitted the former in possession as dar mokuraridars under the widows and ordered the patnidar to institute a suit in the Civil Court to enforce his claim which suit was never brought

lower Courts On appeal to the Privy Council their Lordships *held* that the proceeding in 1841

COOMAREE DEBIA v KESHUB CHUNDER BO OO
18 W R P C 1

16 ———— **Presumption of possession** —*Evidence of possession of certain specific property treated as evidence of possession as regards an appendage to such property though no defin te acts of possession were proved as regards the appendage—*

ing out of the wall and that the suit was not barred by limitation *Rajkumar Roy* v *Gobind Chunder Roy I L R 19 Calc 660* *Asghar Reza* v *Mehdi Hossein I L R 20 Calc 560* and *Mohima Chunder Mo oomdar* v *Mohesh Chunder Neoghi I L R 16 Calc 473* referred to IQBAL HUSEN v NAND KISHORE (1902) **I L R 24 All 294**

2. EVIDENCE OF TITLE

1 ———— **Evidence of possession and enjoyment** Evidence of possession and enjoyment for a series of years is of its lf if unanswered cogent evidence of title BAGRAM v COLLECTOR OF BHULLOOA COLLECTOR OF PUNGPORE v RAM JADUB SEIN **W R 1864 243**

COLLECTOR OF BAREILLY v GHUSEE RAM
1 Agra 260

KIRPA SHUNKUR v PAL PANDEY
1 Agra Rev 47

RUNG LALL MISSER v PUGOOBUR SINGH
9 W R 169

DINOBUNDHOO SUHAYE v COURT OF WARDS
11 W R 347

RAMI UDEEGOWDA v DESSAI SAHIB
17 W R P C 8

2 ———— *Onus of proof—Person out of possession* Pos ses ion is evidence of title and is primarily exclusive It is for him who impugns this exclusive title to show that the possession arose in some way which has preserved hi own right In every case the person who has been out of possession for more than twelve years must make out some *prima facie* title and some agreement or acknowledgment of that title such that possession is deprived of its ordinary effect through being held on a joint right or a subordinate right RAMCHANDRA NARAYAN v NARAYAN MAHADEV
I L R 11 Bom 216

See TATYA v ANAJI
I L R 11 Bom 220 note

and VITHOBA v NARAYAN
I. L. R. 11 Bom. 221 note

3 ———— **Length of possession** Po es ion need not be long in order to be ome evidence of title PURAN CHUNDER MOOKERJEE v PROTAP NARAIN PAUL **9 W R. 120**

4 ———— **Proof of possession and forcible dispossession**—*Onus of p oof* Pos ses ion is evidence of title and if a plaintiff proves that he had posses ion and that the posses ion has been forcibly disturbed by defendant he makes out a *prima facie* title whi h it is for defendant to rebut. AYESHA BEEBEE v KANHYE MOLLAH **12 W R. 146**

5 ———— **Effect of possession as evidence of title**—*Onus of proof* Possession except where it is of such a length and character as of

POSSESSION—*contd*

2 EVIDENCE OF TITLE—*contd*

Khatoon L R 7 I A 73 referred to *Ismail Ariff* v *Mahomed Ghous I L R 20 Calc 834 L R 20 I A 99* distinguished. *Enaetoollah Chowdhry* v *Kishen Soondur Surma 8 W R 386* and *Mohabeer Pershad Singh* v *Mohabeer Singh I L R 7 Calc 591* dissented from. NISA CHAND GAITA v KANCHI RAM BAGANI I L R 26 Calc 579 3 C W N 579

29 ———————— When a person who has been in possession is dispossessed and brings his suit beyond six months from the date of dispossession he is bound to prove his title and cannot merely rely upon his previous possession for recovering in the action although defendant may not prove his title *Furrieshur Chowdhry* v *Brijo Lall Chowdhry I L R 17 Calc 256* and *Erfan Hossein* v *Bany Mistri I L R 9 Calc 130* referred to SHAMA CHURN ROY v ABDUL JABEER 3 C W N 158

30 ———————— *Lost records—Proof of long possession* The plaintiff claimed a

[illegible]

depended on a deed of purchase which it was admitted had been set aside in a former suit in 1855 and that the plaintiff had failed to show that the decision in that suit had been reversed. The plaintiff proved that he had preferred an appeal from that decision and alleged that it had been overruled but there was no proof of the result of the appeal as the records of that suit had been burnt in the Mutiny *Held* on appeal to the High Court that under the circumstances proof of long possession as proprietor was sufficient TUFANI SINGH v DURGABAN 4 B L R Ap 21

31 ———————— *Undisturbed possession.* *Held* on the evidence in the case that defendants long possession was confirmatory of their [illegible] that [illegible] misse[illegible]

32 ———————— *Limitation—Act XIV of 1859 s 15—Dispossession* In a suit for recovery of possession of certain brahmatter land of which the defendant had dispossessed the plaintiffs by virtue of an award passed under s 15 Act XIV of 1859 declaring his right by purchase the defence set up was that the deed of purchase was a forgery and that the suit was barred by lapse of time *Held* that although the plaintiffs failed to prove their title deeds yet their title was sufficiently established by oral evidence of long possession prior to their dispossession two or three years previous to suit. RAM CHANDRA CHOWDHRY v BRAJANATH SARMA 3 B L R Ap 109

33 ———————— *Long possession—Limitation Act (IX of 1871) s 29—Limitation Act (XIV of 1859)—Bom Reg V of 1827 s 1—Prescription—Adverse possession* Some lands in the village of Shirasgam in the Puna Collectorate commonly called Kholhati Bawas Inam originally belonged to His Highness Scindia Plaintiff's family were proved to have been in actual possession of them from 1841 to 1854 and in constructive possession during their attachment by the Inam Commission from 1854 to 1863 when by a mistake in carrying out the orders of the British Government the lands passed into the possession of Scindia and remained with His Highness till 1872 in which year the British Government by exchange of lands came into possession In a suit brought on 20th July 1872 —*Held* that the plaintiff's possession not extending over thirty years gave him no proprietary title under s. 1 of Regulation V of 1827 which as a law of positive prescription was not repealed by Act XIV of 1859 Under the former Limitation Act twelve years adverse possession barred the suit without extinguishing the title so that if a proprietor who had been out of possession for more than twelve years happened to regain it the person who had been in adverse possession must fail in any suit to eject the proprietor unless he sued within six months under s 15 of the Act The effect of Act IX of 1871 s 29 however is not merely to bar the remedy but to extinguish the title of the original proprietor after twelve years of a possession adverse to him RAMBHAT AGNIHOTRI v COLLECTOR OF PUNA I L R 1 Bom. 592

34 ———————— *Mirasidars—Long possession—Local inam and custom—Sanad* Where a plaintiff claimed to hold certain lands in miras and under a right of perpetual cultivation by the custom of the country and sought to recover the lands from the defendant who claimed as purchaser at a Court sale of the right title and interest of the inamdar of the said lands and the lower Court dismissed the suit on the ground that the plaintiff had failed to prove any right of perpetual cultivation the District Court on appeal observing that no term of occupation as a tenant of inam land would confer a right of perpetual cultivation and that nothing short of a regular sanad would confer on the plaintiff his alleged right in the lands the High Court on special appeal reversed the decrees of the Courts below and remanded the case for a new trial on the point whether the plaintiff as a mirasidar or by local usage in virtue of his long possession and uniformity of payment of rent or assessment or otherwise previously to the Court sale to defendant had acquired the right to hold the lands in perpetuity on payment of a fixed or other rent ascertainable by local usage BABAJI v NARAYAN I L R. 3 Bom. 340

35 ———————— *Long possession as evidence of title—Pottah found to be forged—Permanent tenure—Service tenure—Presumption of title* The plaintiff purchased a mirasi talukh at a sale in execution of a decree obtained against the talukhdar for arrears of rent of the talukh and then

POSSESSION—*contd*

2 EVIDENCE OF TITLE—*contd*

sued to recover possession of certain lands held by the defendants within the talukh The defence was that the lands in question were held by the defendants under a pottah which had been granted to their ancestor in 1733 by the then talukhdars in respect of certain services to be performed by the grantees and their descendants The Court of first instance found that the pottah was genuine and dismissed the plaintiff s suit On appeal the Subordinate Judge found that the pottah was a forgery and that although the lands had been granted to the defendants ancestor in respect of services yet the plaintiff was entitled to khas possession as he did not require the services to be performed He therefore decreed the plaintiff s claim *Held* that the decree was right for having found that the pottah on which the defendants chiefly relied was a forgery the Subordinate Judge was not bound as a matter of law to presume that the tenure was a permanent one merely from the fact of long possession of the lands NOBIN CHUNDER DUTT v MODUN MOHUN PAL

I L R 7 Calc 677 9 C L R 233

36 ———————— *Mal and lakhiraj cases—Suit for possession* In *mal* cases of title the question of possession is dependent on the question of title whereas in lakhiraj cases the title may fail and yet if possession as lakhirajdars—that is to say possession without paying rent—is proved it may be sufficient to give a lakhiraj title PADHAGOBIND DASS v PROKASH CHUNDER DASS

14 W R 108

37 ———————— *Finding by Mamlatdar as to possession—Subsequent contrary finding by Civil Court—Onus of proof* The plaintiff brought this suit to recover possession of certain land which had belonged to her nephew and of which after his death in 1878 she had assumed the management In 1881 she brought a possessory suit against the first defendant in the Mamlatdar s Court which suit was dismissed in January 1885 the Mamlatdar holding that she had not been in possession In a civil suit however which (pend[illegible]

awarded her damages against the first defendant (who was held to be her farm servant) for crops which had been taken away by him In 1887 the second defendant as mortgagee from defendant No 1 obtained a decree against plaintiff in the Mamlatdar s Court awarding him possession of the land and in execution of that decree the plaintiff was dispossessed in December 1887 In 1890 the plaintiff filed this suit to recover possession and for mesne profits since 1887 The defendant pleaded that the plaintiff had no title to the land and that the suit was barred by limitation inasmuch as the plaintiff had not brought a suit to establish her right within three years after the Mamlatdar s order in 1885 dismissing her possessory suit *Held* that the plaintiff s possession prior to 1887 confirmed as it was by the decree of the Civil Court in 1885 and by the finding of the lower Court of appeal in the present case must prevail against the defendant who claimed through plaintiff s farm servant only and whose possession commenced with the disturbance which compelled the plaintiff to bring the suit Possession is *primâ facie* evidence of title and is primarily exclusive and it is for him who impugns this exclusive title to show that the possession originated in a way not to affect his own right KRISHNACHARYA v LINGAWA I L R 20 Bom. 270

38 ———————— *Buildings on land occupied under zamindars without evidence of grant—Evidence of reservation of interest* Where there was no evidence of any grant and the owner of buildings had been for upwards of twelve years in possession of the plots of land on which the buildings were situated without in any way paying rent to or acknowledging the title of the zamindars he was *prima facie* entitled to the sites and the mere fact that the sites were situated within the area of a permanently settled mehal did not justify the presumption that the zamindars reserved to themselves reversionary right in the sites GUP PARSHAD v UMRAO SINGH 7 N W 218

39 ———————— *Possession suit for—Onus of proof—Nature of evidence to be adduced by either party—Title proof of effect of—Presumption of possession—Constructive possession—Survey map value of as evidence* In respect of jungle and hilly land possession must be presumed to be with the rightful owner Plaintiff in an action for ejectment must not only prove his title but also his

title by adverse possession which has extinguished the title of the plaintiff but the plaintiff must prove his possession also within twelve years Nature of evidence required in such cases discussed Revenue Survey Maps are evidence of title and possession They are not conclusive and may be shown to be wrong but in the absence of evidence to the contrary they may be properly and judicially received in evidence as correct when made The doctrine of constructive possession applies only in favour of the rightful owner and must not as a rule be extended to the wrong-doer whose possession must be confined to land of which he is actually in possession MIRZA SHAMSHER BAHADUR v KUNJ BEHARI LAL (190) 12 C W N 273

3 NATURE OF POSSESSION

1 ———————— *Possession under deed afterwards set aside as fraudulent—Effect of decree setting it aside* Where a person was in actual possession of property from the time when a deed conveyed it to him a decision which declared

POSSESSION—*contd*

3 NATURE OF POSSESSION—*contd*

that deed to be fraudulent did not have the effect of putting another claimant in possession nor could possession be considered as having ceased in consequence of the decree unless the holder were actually dispossessed under it for the fact of the decree did not prevent the statute of limitation from running and in the particular case under consideration the decree in question was still under appeal MUKBOOL ALI v WAJED HOSSEIN
25 W R 249

2 ———— *Possession in execution of decree—Possession otherwise than by Court—Civil Procedure Code 1859 ss 230 264* Act VIII of 1859 s 230 did not limit the applicant to any particular manner of obtaining possession and s. 264 contained nothing to prevent the purchaser at an execution sale from obtaining possession if he could without the assistance of the Court OBHOYA CHURN DEY v RAJENDRO COOMAR GHOSE
22 W R 406

3 ———— *Possession without executing decree for possession* So long as a plaintiff obtains possession after a decree establishing his right to it it is immaterial for the purpose of limitation whether he obtained it by executing his decree or whether possession was yielded to him If afterwards dispossessed his cause of action does not date from the decree but from his dispossession SALIG RAM v MEHEEN LALL 2 Agra 235

4. ———— *Possession irregularly taken* Possession actually taken by a person having a right to it is not the less effective as perfecting his title by reason of an irregularity in taking it Subsequent ouster will give rise to a new cause of action LILLU v ANNAJI PARASHRAM
I L R. 5 Bom. 387

5 ———— *Decree for possession non execution of—Title—Possession taken*

[illegible]

decree but did not execute it within three years *U* died and after his death and while his daughter (the plaintiff) was a minor *B* took forcible possession of the land. Eight years afterwards the plaintiff attained her majority and she then filed this suit to recover the land. The lower Court held that *B* having failed to execute his decree for possession was wrong in taking possession during the minority of the plaintiff without the intervention of a Court that in so doing he was trespasser and that the plaintiff as *U's* heir was entitled to have possession given to her until evicted in due course of law *Held* (reversing the decree) that subject to the provision of s 9 of the Specific Relief Act (I of 1877) there is no reason for holding that in India the rightful owner dispossessing another is a trespasser and may not rely for the support of his possession on the title vested in him as he clearly may do by English law BANDU v NABA
I L R 15 Bom 238

6 ———— **Possession in execution of decree**—*Proclamation of sale—Suit for possession—Limitation* In a suit for possession of certain lands purchased by plaintiff at a sale in execution of a decree of the Sudder Ameen s Court the lower Court held that possession by proclamation of sale through the Sudder Ameen s Court was possession through the Court and that the suit being brought within twelve years of that proclamation was in time *Held* on appeal that such imaginary possession was no possession at all and that the suit was barred by limitation. JOWHER ALY v RAM CHAND
2 B L R Ap 29 24 W R 419

7 ———— *Proclamation of sale—Possession of auction purchaser* The possession of an auction purchaser at a sale in execution of a decree runs from the date of delivery as provided by s 246 Act VIII of 1859 —*i e* by publication of sale certificate and proclamation by beat of drum —and not from the date of his possession ASUDOOLAH v AKBUR ALI 7 W R 60

8 ———— *Civil Procedure Code 1877 s 264—Certificate of sale.* It was not incumbent on the Court under the Civil Procedure Code (Act X of 1877) s 264 to put a purchaser into possession until he had his certificate of sale *Quære* Whether a purchaser who without a certificate of sale has been put into possession could be lawfully ejected because he has not such a certificate. TUKARAM v SATYAJI KHANDUJI
I L R 5 Bom. 206

See also BASAPPA v MARYA
I L R 3 Bom. 433

9 ———— *Civil Procedure Code 1859 s 224* In order to a legal possession being given under s. 224 Act VIII of 1859 it was essential that all the requirements of that section be carried out COURT OF WARDS v BURRA LALL OPENDRONATH DEO 15 W R 99

10 ———— *Civil Procedure Code 1859 s 224* Where compliance with the formalities prescribed by s 224 Act VIII of 1859 and a legal receipt for possession were found as facts they were *held* to give such a right under a Civil Court s decree as would prevail over one founded on mere actual receipt of rent KHETTUR NATH ROY v DURBESH MOONSHEE 9 W R 358

11. ———— *Possession suit for—Civil Procedure Code 1859 s 224* A suit for possession of immoveable property is not barred by the law of limitation if the suit be brought within twelve years of possession having been delivered to the plaintiff under s. 224 Act VIII of 1859 or if [illegible] with [illegible] in the [illegible] ... 307

POSSESSION—*contd*

3 NATURE OF POSSESSION—*contd*

12. ———————— *Decree for possession effect of—Civil Procedure Code 1859 s ~ 3* Where plaintiff sued defendant as a trespasser the prayer in the plaint being for khas possession and the defendant set up an adverse title the decree given against the latter for possession was *held* to give the judgment creditor the possession sued for—i e legal possession as provided by s 223 Act VIII of 1859 RAJ MUNGUL ROY v ANUNDMOYEE 11 W R 63

13 ———————— *Ameen possession given by—Partition proceedings—Criminal Procedure Code 18 s 530* The possession given by an Ameen in a batwara proceeding is simply one of ownership and not of occupancy Such possession cannot therefore in proceedings under s 530 of the Code of Criminal Procedure be held to oust tenants occupying lands previous to such delivery of possession *In the matter of the petition of* MACKENZIE v SHERE BAHADOOR SAHI I L R 4 Calc 378

14. ———————— *Civil Procedure Code 1859 ss 223 224* A person who has obtained symbolical possession under s 224 of Act VIII of 1859 may subsequently ask for actual possession under s 223 if the terms of his decree warrant such possession being given ROBSON v MASEYK 3 W R Mis 2

15 ———————— *Formal possession—Fresh period of limitation—Act VIII of 1859 s 224* Delivery of possession by going through the process prescribed by s 224 of Act VIII of 1859 is the only way in which the decree of the Court [illegible]

defendant be deemed equivalent to actual possession. As against third parties such symbolical possession is of no avail because they are not parties to the proceedings But if the defendant subsequently dispossesses the plaintiff by receiving the rent and profits the plaintiff will have twelve years from such dispossession to bring another suit JUGGOBUNDHU MUKERJEE v RAM CHUNDER BYSACK I L R 5 Calc 584 5 C L R 548

MOZUFFER WAHID v ABDUS SAMAD 6 C L R 539

DHAPI v BARHAM DEO PERSHAD 4 C W N 297

16 ———————— *Formal possession—Transfer of possession—Civil Procedure Code (Act VIII of 1859) ss 223 224* In a suit for possession it appeared that in 1863 the plaintiff had sued some of the present defendants for khas possession of the same land In that suit the defendants pleaded that they were tenants of the plaintiff and entitled to hold under a pottah which they failed to prove and the plaintiff obtained a decree. Three years afterwards the plaintiff was put into formal possession by the Court under s. 224 of Act VIII of 1859 instead of under s. 223 *Held* that as the plaintiff was put in possession under his decree by the officer of the Court the form in which execution was given was immaterial. The formal possession given by a Civil Court under an execution operates in point of law and fact as between the parties as a complete transfer of possession from one party to the other LOKESSUR KOER v PURGUN ROY I L R 7 Calc 418

See DHONDIBA KRISHNAJI PATIL v RAMCHANDRA BHAGAT I L R 5 Bom. 554

17 ———————— *Symbolical possession—Obstruction or resistance to possession* Symbolical possession such as may be given by the Nazir of a Court by sticking a bamboo into the ground or the like of a dwelling house or of a share in a dwelling house of which actual possession might have been granted is not such a *bona fide* possession as will save limitation SHOTEENATH MOOKERJEE v OBHOY NUND ROY I L R 5 Calc 331

18 ———————— *Symbolical possession—Limitation—Fresh cause of action* Symbolical possession given under a decree does not as against third parties entitled the person to whom such possession has been given to count a fresh period of limitation from the date of the possession A person who prefers a claim to property attached under a decree but whose claim is disallowed is not a party to the decree and the decree holder on [illegible]

19 ———————— *Symbolical possession effect of* Where in execution proceedings symbolical possession is given to a person such possession amounts to an actual transfer of possession as between the parties to the suit but such possession has no such operation against third persons who are not parties to the suit *Juggobundhu Mukerjee* v *Ram Chunder Bysack I L R 5 Calc 584* explained RUNJIT SINGH v BUNWARI LALL SAHU I L R 10 Calc 993

20 ———————— *Formal possession—Limitation.* Where a plaintiff who has obtained a decree for possession of immoveable property undergoes the mere ceremony of receiving formal possession on the spot by beat of drum and posting of bamboos and then allows twelve years to elapse without taking any steps to acquire and assert actual possession he loses the title conferred by the decree PEAREE MOHUN PODDAR v JUGOBUNDHOO SEN 24 W R. 418

21 ———————— *Formal possession—Cause of action—Possession under decree barred by limitation.* Where a decree declared that plaintiff was to get possession of a certain quantity of land on a batwara being made and the decree holder after allowing his right to be barred by lapse of time applied to the Collector had a batwara

POSSESSION—*contd*

3 NATURE OF POSSESSION—*contd*

effected and obtained merely formal possession — *Held* that such possession gave him no fresh cause of action. KISHORE SINGH v GOBIND SINGH 24 W R 33

22 ———— *Formal possession—Limitation—Cause of action—Actual possession* Formal possession given to a decree holder by an officer of the Court in execution of his decree is sufficient to give him a fresh cause of action and notwithstanding that he may never have obtained actual possession he or his assigns may sue to recover possession at any time within twelve years from the time when such formal possession was given UMBICKA CHURN GOOPTA v MADHUB GHOSAL I L R 4 Calc 870 4 C L R 55

23 ———— *Suit for possession after delivery of formal possession to defendant Semble* That the delivery of formal possession in execution of a decree for possession gives a cause of action against a defendant who remains in occupation of the premises which may be enforced in a regular suit SHAMA CHARAN CHATTERJI v MADHUB CHUNDRA MUKERJI I L R 11 Calc 93

24 ———— *Subsequent continuance in possession of judgment debtor—Right to fresh execution of decree* When a formal possession of immoveable property has been delivered according to law to a person holding a decree for the delivery of the same the subsequent continuance in actual possession of the judgment debtor does not give the decree holder a right to a fresh order for delivery of possession in execution of the decree but gives him a right to institute a fresh suit for possession of such property GOPAL DAS v THAN SINGH I L R 4 All 184

RAM NEWAZ SINGH v KISHUN RAI 6 N W 137

25 ———— *Formal and actual possession—Limitation—Sale in execution of decree* A purchased the right title and interest of B a judgment debtor in certain land at an auction sale in execution of a decree in October 1863 was put in formal possession in January 1865 and died without ever having obtained actual possession After his decease a suit was filed in September 1875 on behalf of his minor son C against the defendants who obstructed his taking actual possession *Held* that if B was in possession at the time of the sale—that is to say within twelve years before the institution of the suit—C was not barred by limitation. KOONJO MOHUN DASS v NOBO COOMAR SHAHA I L R 4 Calc 216

26 ———— *Decree of Civil Court—Magistrate duty of—Code of Criminal Procedure (Act V of 1898) s 145* Where in execution of a decree a Civil Court had given symbolical possession of the lands in dispute to the first party on the 9th September 1900 and proceedings under s 145 of the Code of Criminal Procedure were instituted between the parties to the decree in the following December and the Magistrate found and maintained the possession of the second party — *Held* that the Magistrate was bound to give effect to the decree of the Civil Court and to maintain in possession the party who under the decree had already been put in possession of the property in dispute *Doulat Koer v Rameswari Koeri I L R 26 Calc 625* referred to KUNJA BEHARI DAS v KHETRA PAL SINGH (1901) I L R 29 Calc 208 s c 6 C W N 38

4 ADVERSE POSSESSION

1. ———— Effect of adverse possession—*Limitation—Title* Adverse possession for more than twelve years not only bars remedy but extinguishes right and confers title on the party holding such adverse possession BARODAKANT ROY v PRANKRISHNA PAROI 3 B L R A C 343 12 W R 192

RAM SAHOY SINGH v KOOLDEEP SINGH 15 W R 80

2 ———— *Title by length of possession—Limitation—Unexecuted decree* In 1859 A obtained a decree for possession of land against B but no proceedings in execution were taken and B continued in possession In 1869 C having purchased the right and interest of A in the decree forcibly dispossessed B who had been twelve years in possession B now brought this suit against C to recover possession *Held* that the execution of the decree of 1859 being barred and B having been twelve years in possession he was entitled to recover Adverse possession which bars the remedy also transfers the right AMIRUNNISSA BEGUM v UMAR KHAN 8 B L R 540

AMIRUNNISSA BEGUM v AMIR KHAN 17 W R 119

3 ———— Presumption as to possession—*Proof as to nature of possession* Possession must be presumed to be of right and adverse until that presumption is rebutted by evidence BIRESSUR BANERJEE v ONOODA CHURN BANERJEE 3 W R 12

4 ———— *Onus of proof* When parties are in possession of an estate it is generally to be presumed that they are in possession as owners and it lies on the party alleging that possession is of a different nature such as that of an under tenant to prove the allegation SHAHABOODEEN CHOWDHRY v RAM GUTTY CHUCKERBUTTY 9 W R 556

5 ———— *Possession originally permissive* Where occupation was originally permissive its conversion into an occupation of a wholly adverse nature is not to be presumed in the absence of evidence to establish this change WAHEEOODDEEN v JHUNGOREE 2 N W 16

AMMUR SINGH v MURDUN SINGH 2 N W 31

POSSESSION—*contd.*

4 ADVERSE POSSESSION—*contd*

OOPENDRONATH ROY v KALEE CHURN ROY
8 W R 394

6 ———— Limitation—*Suit for possession* To make out a complete legal bar the occupation should be proved to be adverse during the whole of the twelve years before suit and it should be ascertained with what persons the actual possession has been during that time WAHEE OOD DEEN v JHUNGOREE 2 N W 16

7 ———— *Possession obtained by fraud—Suit for ejectment* The defendant in an action of ejectment cannot claim the benefit of the statute of limitations upon a possession obtained by fraud actual or constructive unless the plaintiff have been guilty of such laches as to disentitle him to the interference of the Court HEERA LOLL SHAHA v JADUB CHUNDER CHENCHEY Cor 119

8 ———— *Dishonesty in getting possession* Dishonesty in obtaining possession will not prevent the possessor from availing himself of the law of limitation which however cannot relieve him from the charge of dishonesty PORESH NARAIN ROY v WATSON 5 W R 283

9 ———— Title by long possession—*Purchaser under fraudulent sale* Where a person has been long in possession under a deed of conveyance which was subject to an undertaking to

10 ———— Conversion of permissive into adverse possession—*Cause of action* Where a party in permissive possession of land sets up his own absolute title by suing the tenant for rent he converts his permissive possession into an adverse one which as wrongful possession is a cause of action KHURUCKDHAREE SINGH v REWAT LALL SINGH 12 W R 167

11 ———— Temporary possession—*Possession under decree afterwards set aside—Limitation* A brief possession for a few weeks under a decree subsequently set aside or modified so as not to have effect against the persons who were previously in possession and to whom possession was restored is not such possession as entitles the plaintiff to calculate limitation from that time DEGUMBERY DOSSEE v ANUNDNATH ROY
W R 1864 43

12 ———— *Possession under erroneous order—Limitation.* Possession under an erroneous order of a Magistrate does not constitute such *bonâ fide* possession as will prevent the law of limitation from running MOOKTAKASHY v LUCKEE 2 Ind. Jur O S 4

13 ———— *Possession under Magistrate's order* Possession under the order of a Magistrate which is set aside by a decree of a Civil Court is of no effect against a plea of limitation FIRINGEE SAHOO v SHAM MANJHEE 8 W R 373

14 ———— Attachment of property—*Limitation* The attachment of a property is adverse possession causing limitation to run as against the party in possession of the property BROJO RAJKISHOREE v BISHONAUTH DUTT
W R 1864 305

15 ———— Possession of purchaser—*Mortgagor and mortgagee* The possession of a purchaser at a sale in execution of a decree without notice of a mortgage of the property is adverse to the mortgagee ANAND MAYI DASI v DHAPENDRA CHANDRA MOOKERJEE
8 B L R 122 14 Moo I A 101
16 W R P C 19

Affirming same case in High Court DHUPUNDRO CHUNDER MOOKERJEE v ANNUND MOYEE DOSSEE
1 W R 103

16 ———— *Foreclosure—Purchaser from mortgagor—Adverse possession* Where a party *bona fide* purchased from another as his own property land in fact mortgaged and ob

16 W R P C 33

17 ———— Entry of names in Collector's records—*Absentee holders* Mere conti

18 ———— Decree affirming proprietary title—*Limitation—Declaration of title—Relief* In 1868 *B* made it was alleged a gift of a zamindari estate to *K* In 1869 *B* died and

claiming to have his name recorded His objection having been disallowed and *S's* name having been recorded *M* in 1876 sued *S* for a declaration of his proprietary right to the estate and on the 20th July 1878 obtained such declaration In January 1880 *M* sold a moiety of the estate and in December 1880 *S* sold the entire estate In February 1881 *M's*

to SARSUTTI v KUNJ BEHARI LAL
I. L. R. 5 All. 345

POSSESSION—*contd*

4 ADVERSE POSSESSION—*contd*

19 ———— **Possession of beneficial owner**—*Benami purchase at sale for arrears of revenue* Where property purchased benami at a sale for arrears of revenue remains for more than twelve years from the date of the sale in the adverse and undisturbed possession of the beneficial purchaser such possession is not only sufficient to extinguish the title of the nominal purchaser but it creates a title in the former capable of devolving upon his legal heirs and representatives BOOA RUSSOOLEE *v* NAWAB NAZIM OF BENGAL 11 W R 382

20 ———— **Possession settled with persons paying arrears of revenue**—*Limitation—Suit for possession* *Held* that the mere fact of property in dispute being settled with defendants by reason of their paying up the arrears of revenue does not constitute adverse possession from which limitation can be reckoned BHEEMA *v* PAHLAD 2 Agra 38

21 ———— **Settlement of land with mortgagee**—*Mortgagor and mortgagee* *Held* that as the settlement of rent free land belonging to plaintiff s ancestor was made with the defendant in the character of mortgagee his (defendant s) possession of the land was not adverse to the plaintiffs the mortgagors RAM DIAL *v* SHAH BAZ KHAN 1 Agra 15

22 ————**Chur land**—*Limitation* Limitation or adverse possession as to chur land may commence directly the land is in existence and [illegible]

[illegible]

23 ———— **Encroachment**—*Rent free land holder* Where a rent free holder has encroached on the adjoining land and has enjoyed it rent free and adversely to zamindari right for more than twelve years —*Held* that he cannot be dispossessed of it nor assessed with rent in respect of it BHAGOUTEE CHARUN *v* SHIVA PERSHAD 1 Agra Rev 38

24 ———————— *Occupation of vacant land—Temporary occupation—User* A small piece of land being of no present use to its owner and being convenient in many ways to his neighbour the latter made use of it in various ways without objection for more than twelve years A privy and sheds for cows goats fowls etc and a hut for a gharriwallah—all however structures of a flimsy and purely temporary character—were said to have been constructed and maintained for many years on the said piece of land Such user it was contended amounted to adverse possession *Held* that such user as this was insufficient to give a title to the land by adverse possession User of this sort under similar circumstances is common in this country and excites no particular attention It is neither intended to denote or understood as denoting—on the one side or the other—a claim to the ownership of the land and where this and no more is the case it would be wrong to hold that a claim by adverse possession has been made out FRAMJI CURSETJI *v* GOCULDAS MADHOWJI I L R 16 Bom 338

POSSESSION—*contd*

4 ADVERSE POSSESSION—*contd*

25 ———— **Accreted lands**—*Possession under temporary settlement by Collector* Where one co sharer managed the property and in the absence or during the minority of the other co sharer obtained from the Collector a temporary settlement in his own name of chur lands accreting to the parent estate —*Held* that the latter was entitled to participate in the temporary settlement and that the possession of the former under that settlement was not adverse to the latter BISSESSUREE DOSSEE *v* KALEE COOMAR ROY 18 W R 198

CALLY CHUNDER CHOWDHRY *v* MONIKURNIKA CHOWDHRAIN W R 1864 149

26 ———— **Co sharer**—*Evidence of title—Possession by one co sharer* Possession of ancestral property is good evidence of title against a co sharer if shown to be exclusive and to be inconsistent with the co sharers having any right in the portion claimed HURRO NARAIN SINGH *v* BYKUNT NARAIN SINGH 14 W R 51

27 ———————— *Occupation of and acts of ownership on vacant land—Limitation* The defendant had used as a backyard a small piece of land situated between his house and that of the [illegible]

[illegible] now sued for possession *Held* that the suit [illegible] not barred by limitation CHOKKALINGA NAICKEN *v* MUTHUSAMI NAICKEN I L R 21 Mad 53

28 ———————— *Possession by one co sharer* Possession of a plot of land does not constitute adverse possession in relation to a co sharer unless the latter claims or asserts some right in the land which is denied by the sharer in possession SHURUFUNNISSA BIBEE CHOWDHRAIN *v* KYLASH CHUNDER GUNGOPADHYA 25 W R 53

29 ———————— *Co sharer obtaining by arrangement exclusive possession of a portion of property still remaining joint* Where two parties have from time to time according to their respective means broken up or otherwise obtained possession of lands invariably recorded as joint property and have exclusively enjoyed the profits of them such exclusive possession and enjoyment on either side cannot under the circumstances be deemed to be of an adverse nature and destructive of the rights of the other party YUSAF ALI KHAN *v* CHUBBEE SINGH 5 N W 122

30 ———— **Manager of a Hindu temple**—*Shevaks or servants of an idol—Rights of manager and servants inter se* The plaintiff was the hereditary manager of the temple of Shri Ranchhod Raiji at Dakor The defendants

POSSESSION—*contd*

4 ADVERSE POSSESSION—*contd*

were the shevaks or ministers of the deity The

parties that the land was always to be kept open *and unoccupied for the use of the temple* The shevaks contended that they had been in exclusive and uninterrupted possession of the land in dispute for more than twelve years and that by reason of such user they had acquired a quasi proprietary title at least as against the manager of the temple They therefore pleaded that the suit was barred by limitation *Held* that the defendants had not by occupation and user acquired any title as against the plaintiff who was the manager of the temple estate They had come into occupation originally as servants and representatives of the deity and during their occupation they could not by a wish change the nature of their possession Both they and the plaintiff held the land for the same deity and their rights could not be adverse to each other so as to give rise to a title by prescription The only question then was as to which of them was the proper representative of the deity for the particular purpose of this suit and that question had already been decided in a former suit in favour of the plaintiff MULJI BHULABHAI *v* MANOHAR GANESH

I L R 12 Bom 322

31. ——— Manager of joint family—*Possession of manager* The possession of the man

32 ——— Members of joint family—*Female living with male relatives—Presumption as to management and possession* Where a female lives with her male relatives the ordinary presumption is that they manage her property for her and do not hold it adversely ASAD ALI MIRDHA *v* TOYFAN BIBI

13 C L R 328

33 ——— *Excluded member* The general rule that the possession of one member of a joint Hindu family is the possession of all other members does not apply where the party claiming has been clearly excluded from the family In such a case the possession is adverse and under the general law of limitation time will run from such adverse possession JOWALA BUKSH *v* DHARUM SINGH

10 Moo I A 511

34. ——— *Absence of one member* Where two brothers members of the same family succeeded to equal shares in the paternal estates the mere fact of one brother being absent

sion

hents

sessic

broth

9 W R 98

POSSESSION—*contd*

4 ADVERSE POSSESSION—*contd*

35 ——— *Separation in living and separation by partition* In a suit to recover a share in certain land it was contended that there had been a separation between the plaintiff and the defendant and that the suit was barred by limitation *Held* that the suit was not barred as the separation even if proved was only a separation in living and not a separation by actual partition and therefore the defendant s possession was not adverse to the plaintiff NARAYAN BABAJI DABHOLKAR *v* PANDURANG RAMCHANDRA DABHOLKAR

12 Bom 148

SOOKH LALL BHOOJWALLA *v* GOOLZAR BHOOJWALLA

14 W R 228

See KRISTAYYA *v* NARASIMHAM

I L R 23 Mad 608

36 ——— *Title set up by member of tarwad* When a member of a tarwad in possession of land acquired by former members of his taverai (branch) openly sets up an independent title to those lands his possession becomes hostile to the tarwad and limitation begins to run against the tarwad from that time KANARA PANIKER *v* PYRAPPA PANIKER

I L R 3 Mad. 212

37 ——— *Possession by one member of family—Neglect by plaintiff to take possession of his share notwithstanding request that he would do so—Limitation* The plaintiff and the defendant were brothers and members of an undivided family The plaintiff was in Government service and had been for a long time absent from his native place on duty the family property remaining under the management of the defendant In 1863 the defendant wrote to the plaintiff requesting him to return and manage his share of the property or to employ some one to manage it for him Nothing however was done by the plaintiff in the matter and the defendant continued in possession In 1882 the plaintiff sued the defendant for partition. The defendant pleaded that the suit was barred contending that he had been in adverse

barred. The above mentioned letter of the defendant showed that up to the date at which it was written the defendant had not been in possession of the property as his own property to the exclusion of the plaintiff and the mere circumstance that subsequently to the date of the letter the plaintiff had not participated in the profits would not in the absence of other evidence justify the inference that the plaintiff was then excluded. DINKAR SADASHIV *v* BHIKAJI SADSHIV I. L. R. 11 Bom 365

38 ——— *Decree and execution against father—Subsequent possession by sons—Civil Procedure Code 18 s 63—Limita*

POSSESSION—*contd.*

4 ADVERSE POSSESSION—*contd*

tion One *A* formerly owned the house and land in dispute He sold it to *G* who sold it to the plaintiff *A* however continued in occupation of the property In 1879 the plaintiff sued *A* and *G* for possession and obtained a decree On the 6th April 1880 in execution of the decree he was put in formal possession by the Court under s. 263 of the Civil Procedure Code (Act X of 1877) in the presence of *A* who made no objection At the time of these proceedings *A's* sons (the present defendants) were living with him in the house and they continued to do so subsequently *A* died in 1885 and his sons continued in possession of the property and cultivated it. On the 4th April 1892 the plaintiff brought this suit to eject them They pleaded that the suit was barred by limitation contending that the execution proceedings in 1880 did not bind them as they were not parties to that suit *Held* that as the present suit would not have been barred against *A* had he survived it was not barred against the defendants whose rights were derived from him. The defendants living with their father had no independent juridical possession of the premises. The father *A* was the only person in possession. The possession which the plaintiff [illegible]

I L R 21 Bom. 98

39 ———— *Limitation—Possession under gift making valid title* Of two brothers of a Mitakshara family the younger who had been born deaf and dumb was disqualified from inheriting but the action of the elder to the younger was such as to recognise for some years that the younger had a joint interest in the family property although it was found that there was no intention shown by the acts of the elder brother to waive the rights accruing to him in consequence of his bro [illegible] d and also their only son who the whole family estate under a gift made to him with his mother's assent by his maternal grandfather in 1867 In 1882 the plaintiff a collateral relation sued the widow of the donee to obtain the estate of the younger of the brothers The widow made title under the gift to her deceased husband followed by his possession and hers afterwards since the date of the gift Upon the facts found the suit was *held* to be barred by limitation. LALA MUDDUN GOPAL LAL *v.* KHIKHINDA KOER I L R 18 Calc 341 L R 18 I A 9

40 ———— Transfer of interest by widow—*Life tenancy—Reversioner* A widow (a life tenant of an ancestral estate) having executed an ikrar transferring a share to *N* her granddaughter afterwards sued to set it aside on the ground that *N* had not conformed to its terms While the suit was in the appeal stage the widow died and her reversioner applied to be made and was admitted as her kaem mukam to carry on the appeal on her behalf He afterwards sued to recover possession of the share as reversioner alleging that the succession opened out to him on the death of the widow *Held* that the life tenancy having been made over to *N* with the widow's consent to enure during the grantor's lifetime *N's* possession was not adverse to the reversioner DEORANEL KOOWAR *v.* INDURJEET KOOWAR 12 W R 234

41 ———— Landlord and tenant—*Possession of tenant—Evidence of nature of holding* Possession by a tenant does not in itself lead to any inference as to the character of the tenancy the fact of his having occupied the land and paid rent twelve or even twenty years being equally consistent with his being a tenant at will a farmer or a mokuraridar SHEO DIAL POOREE *v.* MOHABEER PERSHAD 10 W R 477

42 ———— *Possession of tenant* The possession of a tenant is in the eye of the law the possession of his landlord GRISH CHUNDER ROY *v.* BHUGWAN CHUNDER ROY 13 W R 191

43 ———— *Settlement* The possession of a sub lessee of the tenant cannot be adverse to the superior landlord BUNGSRAJ BHOOKTA *v.* MEGH LALL POOREE GOSSAIN 20 W R 398

44. ———— *Person holding adversely to tenant* Possession adverse to a lessee is also adverse to the lessor PROSUNOMOYI DASI *v.* KALI DAS ROY 9 C L R 347

See BRINDABUN CHUNDER SIRCAR *v.* BHOOPAL CHUNDER BISWAS 17 W R 377

and LEKRAJ ROY *v.* COURT OF WARDS 14 W R 395

45 ———— *Adverse possession—Possession of tenant paying rent to stranger* In December 1853 certain lands were let by the plaintiff to be under a kabuliat by the terms of which the lease expired in December 1863 In March 1875 less than twelve years from the expiration of such lease the plaintiffs brought a suit for possession against *B* and the talukhdars of the estate of which the lands in dispute formed part The latter alleged that the lakhiraj title of the [illegible]

barred by reason of their possession since that date *Held* that the suit was not barred inasmuch as nothing had occurred to determine the tenancy [illegible]

POSSESSION—*contd*

4 ADVERSE POSSESSION—*contd*

46 ——— *Assertion of adverse title—Adverse possession—Landlord and tenant* The assertion of an adverse title by a person claiming to be an owner under a permanent lease does not make his possession adverse so as to save limitation unless made to the knowledge of the landlord GANGABHAI v KALAPA DARI MUKRYA I L R 9 Bom. 419

47 ——— *Possession of lessee and proprietor under miras leases* In a suit for possession against a mirasdar who pleaded limitation the Judge was held to have been in error in adding to the time for which the defendant had been holding under the miras lease the period of possession by the lessor because the one is not in continuation of the other the holding of the proprietors being quite a different thing from the holding of the lessee DHUN MONEE CHOWDHRAIN v GOLAM KASOM 23 W R 331

48 ——— *Occupation of house by heirs of tenant at will—Intention of parties* About twenty five years before suit *R* being possessed of a house allowed *K* to occupy it without paying rent on condition that *K* would keep it in repair and restore it to *R* on demand Nine years afterwards and without any demand having been made by *R* *K* died and his heirs continued to occupy the house apparently on the same terms as *K* had done In a suit brought by *R* against the heirs of *K* to recover possession of the house —*Held* that *K* occupied the house as tenant at will of *P* that such tenancy was on the death of *K* as of course converted into an adverse occupation by the heirs of *K* in the absence of proof of the intention of the parties to that effect and in the absence of anything to show that *R* did not assent to the heirs of *K* continuing to held on the same terms as *K* had done RADHABHAI v SHAMA 4 Bom A C 155

49 ——— *Continued possession by heirs of tenant—Non payment of rent effect of after expiration of lease—Permissive possession—Limitation* In 1840 the land in dispute was leased to *P* for life *R* died in or about 1871 and after *R's* death his heirs (the defendants) continued in possession without obtaining a fresh lease or paying any rent to the landlord In 1888 the landlord sued to eject the defendants The defence was that the suit was barred by limitation *Held* that the suit was not barred After *R's* death the defendants though not in possession as tenants, were not trespassers Their possession was permissive and not adverse until they expressly set up a title of ownership in the property KRISHNAJI RAMCHANDRA v ANTAJI PANDURANG I L R 18 Bom. 256

50 ——— *Madras Rent Recovery Act (Mad Act VIII of 1865) effect of—Omission by inamdar to obtain registration of title under Madras Regulation XXV of 180* An inamdar had not obtained registration of his title under the registered landlord and could not therefore sue to enforce acceptance of pottahs and had not collected rent from the tenants for more than twelve years *Held* that the tenants had not by reason of these facts acquired rights against the inamdar by adverse possession SRINIVASARAGAVA AYYANGAR v MUTTUSAMI PADAYACHI I L R 20 Mad 6

51 ——— *Adverse possession of a partial interest (e g a tenant's) in land—Title by adverse possession asserted by a plaint* [illegible]

[illegible] ses ion even against the true owner A partial interest in land may be lost by adverse possession as well as the whole interest and the right to such partial interest may be asserted by suit So where a landlord seeks to recover from his tenant possession of land in his tenant's occupancy and the latter alleging a perpetual tenancy successfully resists on that ground the landlord's attempt to [illegible] twelve years may be debarred from subsequently questioning the right of the tenant to hold under its terms BUDESAB v HANMANTA I L R 21 Bom 509

52 ——— *Bhagdari estate—Alienation by a bhagdar of his share—Bom Act V of 186 s 3—Collector setting aside sale of share—Subsequent suit to recover share—Limitation* In the year 1871 the plaintiff a co sharer in a bhag alienated his share to a stranger In the year 188- the Collector declared the alienation to be illegal and in the year 1883 ordered that the plaintiff should be reinstated in the possession of his share At plaintiff's request his share was given into the [illegible] defendant contended that the suit was time barred the plaintiff not having been in possession since the year 1871 *Held* that the suit was not barred the [illegible] AMANJI DASU I L R 23 Bom. 710

53 ——— *Adverse possession* [illegible]

POSSESSION—*contd*

4 ADVERSE POSSESSION—*contd*

estates of Bengal owe their origin to indicate that the Government intended to guarantee to the proprietors the absolute preservation of their estates By the regulations the Government declared that as regards the estates that came within the scope of the permanent settlement it withdrew its sovereign right to vary the assessments beyond that they did not go they do not constitute a contractual relationship between the Government and the owners of permanently settled estates or any relationship as would debar Government from claiming and exercising against those owners the rights of an ordinary proprietor Although therefore Government continues to receive the full revenue from the proprietor of a permanently settled estate for the entire estate the former is not precluded from claiming title by adverse possession in respect of any portion thereof When a person is let into possession of a particular property by another claiming it to be his own the former cannot contend after the expiration of his tenancy that the latter (*i e* the person alleging himself to be the owner) cannot acquire an adverse title against him as well as others by efflux of time *Kally Churn Sahoo* v *The Secretary of State I L R 6 Calc 725* referred to KRISTO MOHUN GUPTO v SECRETARY OF STATE FOR INDIA 3 C W N 99

54 ——— *Abandonment by tenants* A landlord having obtained a decree declaring that certain homestead land was liable to assessment the occupants owing to certain criminal proceedings against them abandoned the land and the landlord leased it out to others who held possession paying rent for upwards of twelve years after which they were ousted by the original occupants who claimed the land rent free *Held* in a suit by the lessees that they were entitled to recover possession MONEEROODDEEN MOJOOMDAR v PARBUTTY CHURN GHOSE 15 W R 121

55 ——— **Possession in two capacities**—*Possession as farmer and purchaser—Decree declaring sale valid* *R* obtained on 7th January 1862 a decree declaring a deed of sale of an estate in his favour dated 7th January 1854 to be a genuine authentic and valid instrument In the meantime he had acquired possession of the estate under a farm from Government *Held* that from the date of the decree *R's* possession became adverse [illegible]
represe[illegible]
tinued [illegible]
DHUND[illegible]

56 ——— **Possession as patil**—*Separate branches of family—Acquiescence.* *J* held the office of patil more than fifty years ago as representative of two branches descended from a [illegible]

by his son *T* without any opposition from the two other branches *T* was temporarily displaced from the office by *G* who represented the two other branches but recovered it in 1850 *Held* that the presumption arising against *T* having been a nominee of all the branches of the family not having been rebutted by any evidence of an assertion and admission of the rights of the other branches *T's* occupation of the patilship was adverse to the plaintiff's right and being adverse at its beginning it was equally adverse when after a temporary displacement by *G* (whom the plaintiff now represents) *T* recovered it in 1850 An interval of more than [illegible]

[illegible] GIPIAPA v JAKANA 12 Bom [illegible]

57 ——— **Effect of service tenure**— [illegible]

to hold the lands free of service KOMARGOWDA v BHIMAJI KESHAV I L R 23 Bom. 602

58 ——— **Possession after redemption by one of several mortgagors**—*Mortgage—Suit for redemption or recovery of property on payment of a charge—Limitation* The plaintiff sought to recover his father's share in two portions of family property one of which had been mortgaged by the plaintiff's father and the father of the defendant No 1 jointly the other had been mortgaged by the plaintiff's father jointly with the father of defendant No 1 and the husband of defendant No 2 The first was redeemed by the father of defendant No 1 alone in 1868 the second was redeemed by the defendant No 1 more than twelve years before the suit The parties were Mahomedans and the plaintiff had a brother and three sisters only one of whom (defendant No 2) was a party to the suit Defendant No 1 contended that the suit was defective for want of parties and that it was time barred *Held* that the plaintiff's brothers and sisters ought to have been joined as co plaintiffs the defendant No 1's possession after redemption not being adverse to them. If it was adverse at all it was adverse to the whole of the plaintiff's branch of the family so as to bar the right of the group altogether But that was no reason why the co-owners should not be admitted as co plaintiffs and the suit go on upon its merits BHAUDIN v ISMAIL I L R 11 Bom. 425

59 ——— **Purchase by mortgagee of share in mortgaged property**—*Limitation—Mortgagee* A mortgagee of an entire undivided estate does not by a subsequent purchase of a certain share therein from one not in actual possession at the time of conveyance thereby change his character from a mortgagee to that of an owner but his possession continues as a mortgagee *B* held an entire undivided estate under a mortgage

POSSESSION—*contd*

4 ADVERSE POSSESSION—*contd*

(usufructuary) from *C* since 1273 (1866) and as such mortgagee in 1282 (1875) *B* purchased a share therein from *D* who had not been in actual possession since the date of the mortgage On the 20th January 188 *B* brought a suit to recover possession of *his purchased share* *Held that the subsequent* purchase did not change the character of *B* from that of a mortgagee to that of an owner and that his suit was barred by twelve years limitation NUNDO LAL ADDY *v* JODU NATH HALDAR
I L R 14 Calc 674

60 — Denial by mortgagee in possession of mortgagor s right to redeem Denial by a mortgagee in possession of the mortgagor right to redeem is not sufficient to convert such possession into adverse possession MUSSA *v* COLLECTOR OF MALABAR I L R 10 Mad 189

61. ——— Possession of one co sharer when adverse—*Limitation—Co sharer —Mortgage—Mortgage by three co sharers—Redemption by one of several mortgagors—Right of the other mortgagors to sue for redemption—Period of limitation for such suit* In 1847 the property in dispute was mortgaged by three co sharers *D* *A* and *R* In 1859 *P* alone redeemed the property and mortgaged it again to a third person. In 1882 the heirs of *D* and *A* brought a suit to redeem the whole of the property or their portions of it The defence to the suit was that it was barred by limitation being brought more than twelve years after *R* had redeemed the property and *R s* possession subsequent to such redemption having been adverse to

co sharers interests in it as a lienor and as such his possession was not adverse to them It did not contradict but rather implied and preserved their ultimate proprietary right In the case of a co *sharer holding after redemption limitation is computed* only from the date when the possession becomes adverse by the assertion of an exclusive title and submission to the right thus set up in analogy to the provision which bars an excluded sharer generally after the lapse of twelve years from the time when he becomes aware of his exclusion. As *long as possession can be referred to a right consistent* with the subsistence of an ownership in being at its commencement so long must the possession be referred to that right rather than to a right which contradicts the ownership RAMCHANDRA YASHVANT SIRPOTDAR *v* SADASHIV ABAJI SIRPOTDAR I L R 11 Bom 422

62 ——— Equity of redemption—*Mortgage—Limitation* In 1845 the plaintiff s grandfather *A* mortgaged the house in dispute to *D* with possession *A* died in 1849 leaving him surviving his daughter *K* (the plaintiff s mother) and a daughter in law *N* the widow of his predeceased adopted son In 1856 the mortgagee *D* brought a suit on his mortgage against *N* and ob

mortgagee who thereupon at her instance gave up the house to *P* He held possession from 1856 to 1884 In 1881 the defendant *P* obtained a decree against *P* for R2 000 In execution of this decree the house was sold and *P* bought it himself and obtained possession on 17th January 1884 While

the
eem
The
re
ree

He was obstructed by *P s* son who however in a suit (No 205 of 1882) was found to have no right to the house The present suit was brought in 1884 by the plaintiff to recover the house from the defendant *Held* that the suit was barred The defendant in 1884 purchased the house from *R* who had bought it in 1856 from *N* *R s* possession since that time had been adverse to the plaintiff There can be adverse possession of the *equity of redemption* and *N s* possession had been adverse up to the sale in 1856 PUTTAPPA *v* TIMMAJI I L R 14 Bom 176

63 ——— One of several co mortgagees obtaining possession of the whole property—*Usufructuary mortgage satisfied out of usufruct—Limitation* In the case of a usufructuary mortgage by several co mortgagors when such mortgage is satisfied out of the usufruct each co mortgagor is not entitled to recover possession of more than his share of the mortgaged property Consequently where in such a case one of several co mortgagors gets possession of the whole of the mortgaged property he does not occupy the portion of [illegible] but his possession [illegible] *Sadat A* [illegible] DHAN *v* SUJAN I L R 10 All 254

64. ——— Possession of usufructuary mortgagees—*Burden of proof* The possession of a usufructuary mortgagee being the possession of all the persons who have the right of redemption that is of all the persons entitled to the estate it is only when after redemption possession is taken by some of the persons so entitled that their possession can become adverse as against the others In a suit for possession of immoveable property it is for the plaintiff to show by some *prima facie* evidence that he has a subsisting title not extinguished by the operation of limitation before the defendant can be called upon to substantiate a plea of adverse possession *Parmanand Misr* v *Sahib Ali I L R 11 All 438* and *Jafar Husain* v *Mashuq Ali I L R 14 All 193* referred to INAYAT HUSEN *v* ALI HUSEN I. L. R. 20 All 182

POSSESSION—*contd*

5 SUITS BASED ON ALLEGATION OF POSSESSION

1 ——— Suit by party out of possession—*Dismissal of suit—Evidence.* A suit based upon an allegation of possession must be at once dismissed if the plaintiff be shown to be out of possession SUKRAM v KALA KAHAR 3 B L R A C 105

2 ——— *Confirmation of possession—Possession of part of land sued for* A suit for confirmation of possession must be dismissed if the allegation of possession is found to be wholly unfounded but not if the plaintiff is found to be in possession of a part of the land in dispute POOPA KOONWAR v JUGGOOLALL OOPADHYA 11 W R 257

BUSHEERUDDEEN v DAL CHUND 3 Agra 236

RAM CHURN PATTUCK v KHOOR PANDEY 10 W R 176

3 ——— Suit for confirmation of possession—*Evidence* A plaintiff suing for confirmation of possession must prove that he was actually in possession LUTEEFOONISSA BIBEE v RAJAOOP RUHMAN 8 W R 84

GOBINDNATH SEIN v GOBIND CHUNDER SEIN 10 W R 393

RASH BEHAREE ROY v EZUD BAKSH 11 W R 276

SHEO SURUN LALL v CHUMUN LALL 24 W R 220

RASH DHAREE SINGH v NUTHOONEE SINGH 24 W R 301

SANSAR ROY v INDRASUN ROY 25 W R 6

4 ——— *Failure to prove possession* *Held* (MOOKERJEE J *dissentiente*) that the rule that in suits for confirmation of possession by adjudication of title the plaintiff is bound to prove that he was in possession at the time he preferred the suit is not so inflexible a rule that it cannot be departed from as for example where plaintiff sues for confirmation of possession and proves that he was in possession for many years and until within a few months of the institution of the suit he should not be required to bring a fresh suit merely changing the prayer for confirmation of possession into one for recovery of possession ABDOOLLAH v SHAHA MUJEESOODEEN 15 W R 286

On this point confirmed on appeal 16 W R 27

KASHEE NATH MOOKERJEE v MOHESH CHUNDER GOOPTO 25 W R 168

5 ——— *Proof of legal*

sion of any kind is shown within a reasonable time before suit and not (as in this case) where legal possession under a decree has been found. BEEGOO ROY v BAL MOKUND MISSER 17 W R 421

POSSESSION—*contd*

5 SUITS BASED ON ALLEGATION OF POSSESSION—*concld*

6 ——— *Failure to show possession* In a suit in which the plaintiff claimed confirmation of possession it appeared on the face of the plaint that although the suit was in form a suit for confirmation of possession it was in substance a suit for recovery of possession It was found that the plaintiff while he had proved his title was not in possession. *Held* that under the circumstances the suit ought not to have been dismissed AMIR HOSSEIN v IMAMBANDI BEGUM 11 C L R 443

7 ——— *Plaintiff found to be out of possession* In a suit in form for confirmation of possession it was alleged that the Collector had refused to register the plaintiff s name in respect of the property claimed but had registered the defendant s name The plaintiff having been found to be out of possession the lower Court dismissed the suit The plaint bore a stamp sufficient to cover a suit for recovery of possession *Held* that inasmuch as the effect of the refusal of the Collector to register the plaintiff s name under s 78 of the Land Registration Act (Bengal Act VII of 1876) was to prevent the plaintiff recovering the rent of the estate and that such refusal was alleged in the plaint the suit might be taken to be in substance a suit for recovery of possession and ought not to have been dismissed. *Amir Hossein v Imambandi Begum 11 C L R 443* followed CHAMPU DAI v UMA DAI 11 C L R 451

8 ——— Suit against trespasser—*Appointment of a Committee for management of property—Appointment acquiesced in by owner—Committee in management for a long time—Suit by Committee* ... The Par

acquiescence of the Parsi Anjuman Subsequently

were entitle to recover possession from a trespasser JIVANJI JAMSHEDJI v BARJORJI NASSERVANJI (1909) I L R 33 Bom 499

6 SUITS FOR POSSESSION

(a) PROOF OF PARTICULAR TITLE.

1. ——— Failure to prove particular title—*Evidence* Unless a plaintiff can prove the particular title set up by him he is not entitled to a

POSSESSION—*contd*

6 SUITS FOR POSSESSION—*contd*

(a) PROOF OF PARTICULAR TITLE—*contd*

decree for possession RAMDHAN CHUCKERBUTTI v KOMALTARA
3 B L R A C 99 note 11 W R 301

ABDOOLLAH v SHAHA MUJEESOODDEEN
16 W R 27

JANOOBEE CHOWDHRAIN v GENDOO TUPRUFDER
12 W R 203

PUNO LALL MISSER v POGHOOBUR SINGH
9 W R 169

HUPO SOONDUREE DEBIA v UNNOPORNA DEBIA
11 W R 550

2 ———— ———— Plaintiffs brought a suit for recovery of possession on the allegation that they had a mokurari title but no title of any kind was established *Held* that the plaintiffs were not entitled to a decree merely on the ground that the defendants were trespassers and the plaintiff had long prior possession That on the failure of the plaintiffs to prove the title set up it was not necessary to put the defendants to any proof of the title which they set up KEDAR NATH SANYAL v PAJ NATH NEOGI
3 C W N 497

3 ———— *Suit for possession under mirasi leas* Where a plaintiff sued to recover possession of certain lands under a mirasi pottah which had been lost and proved ten years possession —*Held* that such possession alone would not entitle him to recover possession of the land but that he must prove the specific title set up by him. BHOLAI MANDAL v JARIF GAZI
3 B L R Ap 93

RAM COOMAR SHOME v GUNGA PERSHAD SEIN
14 W R 109 note

4 ———— *Suit for declaration of title—Adverse possession* Where a person claims possession of property under a specific

5 ———— — *Claim under deed of sale in lieu of dower* The plaintiff having alleged a distinct title under a deed of sale in lieu of dower was *held* in a suit for possession bound to prove her title and not entitled to claim the benefit of a decision to which she was not a party nor of an admission by her husband as binding on the defendants. SOBRATUN v TOOVA 7 W R 273

6 ———— *Suit on sanad —Evidence* In a suit for recovery of possession of certain land which the plaintiff claimed under and by virtue of a sanad (grant) from the zamindar and from which he had been dispossessed by the defendant the lower Appellate Court held that the execution of the sanad was not satisfactorily proved but that it was not a forgery and that there was the corroborative evidence (such as the dakhilas produced before it) to prove the case of the plaintiff *Held* that when a claim is based upon a sanad and the plaintiff fails to prove the execution of the sanad itself he may prove his claim by other means In a suit for mere possession it is unnecessary to state or prove a particular title PASH BEHARI LAL SINGH v NABAYI PODDAR
3 B L R A C 99 11 W R 465

7 ———— *Suit for confirmation of possession and to recover possession* When a suit is brought for confirmation of possession upon a certain title the plaintiff is bound by the title which he sets up in his plaint except when he sues to recover immoveable property from which he has been ousted UMBICA CHURN BANERJEE v DIGUMBUREE DABEE 12 W R 429

8 ———— *Alternative claim —Adverse possession* Suits for possession distinguished from suits for declaration of a particular title Where a plaintiff seeks to recover possession of property of which he has been dispossessed and bases his claim on the ground of purchase and also upon the ground of a twelve years possessory title he is entitled to succeed if he proves his possession even if he fails to prove his purchase GOSSAIN DASS CHUNDER v ISSUR CHUNDER NATH
I L R 3 Calc 224

9 ———— *Lakhraj title— Suit for possession on forcible dispossession* In

10 ———— *Suit for declaration of right—Right to possession—Right of person with good title ousted by person who had none* Plaintiff sued to establish his right to a dharmakartaship and to the hereditary office of pooja stanika in a pagoda He alleged that he held the office of pooja stanika hereditarily and that the

removed from the dharmakartaship for neglecting his duties and that they were appointed instead by document (No IV) The District Judge gave judgment in favour of plaintiff The defendants appealed An issue was sent to the lower Court

POSSESSION—*contd*

6 SUITS FOR POSSESSION—*contd*

(a) Proof of Particular Title—*contd*

whether assuming exhibit I to be revocable did the persons who executed exhibit IV constitute the collective body entitled to revoke it The lower Court found this issue in the negative *Held* (by the High Court) that this was not properly a suit for a declaration The object of the suit and the effect of the declaration would have been to put the plaintiff in possession of that from which he had been ousted that as to the claim to the dharmakartaship document I showed that the plaintiff was a mere appointee as agent and that as the authority given by it was not revoked by IV the case was that of one ousted from a possession which he held upon a good title by those who had shown none that on the principle of such cases as *Asher* v *Whitlock L R 1 Q B 1* the plaintiff had a right to the restoration of that possession NARAYANASAMI MUDALI v KUMARASAMI GURUKKAL 7 Mad. 267

11 ———————— *Proof of joint possession* In a suit to recover possession it was proved that plaintiffs had purchased shares in a joint property and had held possession The lower Appellate Court thinking they had done so separately without being at the time aware of their ijmal rights held that it could not decree to them the joint possession sought for *Held* that it matters not what position plaintiffs considered themselves to have occupied originally whilst in possession If they can establish their right they are entitled to recover possession whether that possession were originally joint or separate RAJ BULLUB SHAMMEE v WARIS MAHOMED

8 W R. 450

12 ———— Possession as title—*Specific Relief Act (I of 1877) Amendment Act (XII of 1891) s 9—Possession as title against all but true owner—Effect of Specific Relief Act even where suit is brought more than six months after dispossession* Possession is under the Indian as under the English law good title against all but the true owner S 9 of the Specific Relief Act is in no way inconsistent with the position that as against a wrong doer prior possession of the plaintiff in an action of ejectment is sufficient title even if the suit be brought more than six months after the act of dispossession complained of and that the wrong doer cannot successfully resist the suit by showing that the title and the right to possession are in a third person The only effect of s 9 of the Specific Relief Act is that a person who has been dispossessed otherwise than in due course of law and who brings a summary suit within the time prescribed by that section is entitled to be reinstated even if the defendant by whom he was dispossessed be the true owner or a person authorized by or claiming under him But a decree passed in such a suit will not have the force of *res judicata* on the question of title *Nisa Chand Gaita* v *Kanchiram Bagani I L R 26 Calc 579* dissented from NARAYANA ROW v DHARMACHAR (1902) I L R 26 Mad 514

POSSESSION—*contd*

6 SUITS FOR POSSESSION—*contd*

(a) Proof of Particular Title—*concld*

13 ———————— *Suit for possession based on possessory title of plaintiff's predecessor—Plaintiffs never themselves in possession—Cause of action* Musammat Wazir Jan the owner of certain zamindari property died on the 18th of December 1889 leaving no direct heirs After her death the property was taken possession of by the four nephews of Musammat Wazir Jan s deceased husband. One of these nephews Bisharat died on the 7th of August 1890 whereupon the share of which he had been in possession was appropriated by his son Kasim to the exclusion of Kasim s two sisters Ayesha Begam and Kudrat Begam While in Kasim s possession the property or part of it was sold in execution of a decree against Kasim and purchased by Shi Gopal and others On the 7th of August 1902 Kasim s sisters sued to recover their shares of the property as heirs of Bisharat *Held* by KNOX J (AIKMAN J *dissentiente*) that inasmuch as the plaintiffs had never at any time been in possession of the property claimed by them their suit would not lie. *Asher* v *Whitlock L R 1 Q B 1 Govind Prasad* v *Mohan Lal I L R 24 All 157 Narayana Row* v *Dharmachar I L R 26 Mad 514 Pahlwan Singh* v *Ram Bharose I L R 27 All 169 Sunder* v *Parbati I L R 12 All. 51* and *Ismail Ariff* v *Mahomed Ghous I L R 20 Calc 834* distinguished. *Hodson* v *Waller L R 7 Exch 55* and *Butcher* v *Butcher 7 B & C 399* referred to AIKMAN J (*Contra*) —The plaintiff's father Bisharat having held a possessory title heritable and transferable good as against all except

[illegible]

Khan v *Aftabia Kunau I L R 15 All* [illegible] *Govind Prasad* v *Mohan Lal I L R 24 All 157 Asher* v *Whitlock L R 1 Q B 1 Doe d Pritchard* v *Jouncy 8 C & P 99 Pahlwan Singh* v *Ram Bharose, I L R 27 All 169 Babu Ram* v *Banke Bihari Lal All Weekly Notes (1906) 184 Narayana Row* v *Dharmachar I L R 26 Mad 514* and *Sundar* v *Parbati I L R 12 All 51* referred to SHI GOPAL v AYESHA BEGAM (1906)

I. L R 29 All 52

14 ———— Failure of cause of action—*Practice—Possession suit for—Proper decree to be made—Collateral issues—Courts power to decide and pass declaratory decree.* Where the plaintiffs asked for possession of their mother s property on the ground that she was dead and the Court held that it was not proved that the lady was dead the only decree that could be made was that the suit be dismissed. The mere circumstance that some of the *media concludendi* might be the same in other actions did not vest the Court with any right or duty to pronounce upon them. WALIHAN v JOGESHWAR NARAYAN (1907)

I. L. R 35 Calc. 189
s c 12 C W N 227
L R 35 I A. 38

POSSESSION—*contd*

6 SUITS FOR POSSESSION—*contd*

(b) OTHER SUITS FOR POSSESSION

15 ———— Onus probandi—*Necessity to prove title against party in possession* In a suit in which the plaintiff claimed alluvial land in the possession of the Government as being his by right of accretion to his own estate though the churs had re formed on the original sites of land belonging to other persons —*Held* that the case could not be decided on the principle that inasmuch as those other parties were not before the Court the plaintiff had the better title as between him self and Government. The land was in the possession of Government and the plaintiff could not succeed by establishing a better title COLLECTOR OF DACCA v KALEE CHURN PODDAR 21 W R 446

16 ———— *Necessity to prove title—Wife suing by permission of husband* In a suit to recover property in the enjoyment and possession of defendant a female plaintiff can only succeed on the strength of her own right not merely because it is the property of her husband who does not object to her recovering it There is no necessary presumption that property in the possession of a respectable female s husband brother and son respectively is possession on her behalf and not on theirs KAMALOOLLAH v ARIZA BIBEE 23 W R 264

17 ———— *Suit under Act X of 1859—Proof of title* If a person evicted without legal process from land in his occupation sued for possession under Act X of 1859 he was bound to prove his title MADUR KHAN v WOOMA MOYEE DABEE Marsh 389 2 Hay 434

SHUSTEE DHUR MOZUMDAR v NUTEEJA BIBI 7 W R 36

18 ———— *Suit under Act X of 1859* In an ordinary civil suit not brought under cl 6 s 23 Act X of 1859 or under s 15 Act XIV of 1859 a plaintiff could not recover possession as against the undisputed owner merely by proving his previous possession and dispossession But he might claim damages for the value of crops taken away which had been raised by him on the land whereof he was at the time in lawful possession RAM MOHUN DOSS v JHUPPROO DASS 14 W R 41

19 ———— Presumption of title—*Right of suit* In a suit for possession of land claimed as part of a mouzah which plaintiff held under a mokurrari lease and a bill of sale and which he alleged had been taken possession of by defendant under colour of an order of the Criminal Court under s 318 Code of Criminal Procedure relating to a different land defendant objected that plaintiff was not the real owner of the mouzah and there

liberty in a suit of this description to raise the question whether plaintiff was only the nominal owner RAM BHURPOSSEE SINGH v BISSESSUR NARAIN MAHATA 18 W R 454

JOGMAYA CHOWDHRAIN v HUREE MOHUN ROY 24 W R 99

20 ———— Possession after resumption—*Right of zamindar to sue talukhdar for possession* A zamindar cannot sue a dependant talukhdar (the possessor of resumed lakhiraj lands) for confirmation of possession and for an injunction to prevent him from committing waste The only possession that a zamindar can obtain after a decree for resumption is a constructive one derived from the receipt of rent from the tenant MUGNEE RAM CHOWDHRY v GONESH DUTT SINGH W R 1864 275

21 ———— Suit for possession by under tenure holder against zamindar—*Unregistered tenant* No suit for possession will lie

DOSSEE v PEAREE CHOWDHRAIN 7 W R 158

22 ———— Suit by prior mortgagee against subsequent mortgagee in possession—*Sale in execution of decree under second of two mortgage bonds—Right to possession* An estate having been sold by auction on two occasions in satisfaction of two distinct bonds and the person who had proceeded on the later dated of the two bonds but who represented the earlier auction purchaser having actually taken possession of the estate —*Held* that though in a properly brought

KOOER 25 W R 254

23 ———— Suit by mortgagee for possession—*Covenant for possession—Suit for possession after expiration of term of mortgage* A mortgagor covenanted to give the mortgagee possession

rejected on the ground that the mortgagor had by his breach of the mortgage contract put him out of Court. HAR SAHAI v CHUNNI KUAR I L R 4 All. 14

24. ———— *Dispossession of second mortgagee by prior mortgagee without right of possession by means of illegal order of Court in execution of a money-decree against mortgagor* S mortgaged land to R in 1861 P pledged the mortgage-deed to H to secure repayment of a

POSSESSION—*contd*

6 SUITS FOR POSSESSION—*contd*

(b) OTHER SUITS FOR POSSESSION—*contd*

loan of R500 P being entitled on partition with H to half of the debt due by R got a decree against R in the Small Cause Court for his moiety in 1870 R sued S on the mortgage deed (obtained from P and H for that purpose) got a decree to enforce the mortgage and in July 1872 bought the land in execution of the decree In December 1872 R mortgaged the land to V and put him into possession V had no notice of the prior pledge to P In 1876 P in execution of his Small Cause Court decree attached and sold the right title and interest of R in the land became the purchaser at the Court sale and was put into possession by an order of the Court executing the decree V s claim under s 269 of Act VIII of 1859 was rejected *Held* in a suit by V against P that V was entitled to recover the lands in dispute *Per* TURNER C J —*Quære* Whether the decision in *Ramu Naikan* v *Subbaraya Mudali* 7 *Mad* 229 is sound. VENCATACHELLA KANDIAN v PANJANADIEN I L R 4 Mad 213

25 ———— Suit between purchasers under mortgage decrees—*Priority of mortgage —Rival mortgage decree holders—Priority of possession* In a suit for possession between two purchasers who had bought the same property at two several auction sales under decrees obtained on two several mortgage bonds —*Held* that no question could arise as to which mortgage was prior in point of time but that the real question to be decided was which of the parties could prove a prior title to possession NANACK CHAND v TELUCKDYE KOER I L R 5 Calc 265 4 C L R 358

26 ———— *Several mortgages of the same property—Decrees on the mortgage bonds—Priority of purchase—Priority of possession* A on the 11th March 1868 took a

April 1870 B on the 3rd November 1868 took a mortgage bond on the same property and obtained a decree thereon on the 31st May 1869 Under this decree the mortgagor s interest was sold and purchased by B on the 22nd April 1870 B took possession of the property on the 18th May 1872 In a suit by A for recovery of possession —*Held* that B was entitled to retain possession as against A [illegible]
a [illegible]
to [illegible]
to [illegible]
I L R 5 Calc 269

27 ———— Title proof of—*Suit to set aside order of Magistrate under Criminal Procedure Code 1861 s 318* To set aside the effect of an order made by a Magistrate under s 318 of the Criminal Procedure Code 1861 the plaintiff cannot sue for restoration of possession only on the sole ground of previous possession without proof of title RAJESSUREE DEBIA v BRINDABUTTY DEBIA 7 W R 212

ACHUMANDE AGATH KUNHI PATHUMAH v MAKACHINDE AGATH MAKACHI 4 Mad. 478

28 ———— *Act IV of 1840 —Julkur* A originally owned two zamindaris between which lay a bil or marsh of which he also [illegible]

for some years held by B as part of his purchased zamindari A instituted a summary suit under Act IV of 1840 and was by an order of the Magistrate put in possession of these lands B brought a regular suit against A to recover the lands and set aside his order *Held* (reversing the decisions of the Courts below) that it was necessary for B to show a better title to the land than A could produce It was not enough for him to prove possession [illegible]

bil after the auction sale B ought to have shown when and how if at all the right to the fisheries and the right to the soil were severed. BARADA KANT ROY v CHUNDRA KUMAR ROY 2 B L R P C 1 11 W R P C 1 12 Moo I A. 145

29 ———— Effect of previous suit—*Previous suit on the basis of possession without title dismissal of—Dispossession by plaintiff in the previous suit—Previous decree effect of—Title want of of plaintiff in subsequent suit* Defendants brought a suit in 1886 for a declaration of their title and to recover possession of the lands in suit against the plaintiff The suit was dismissed defendants having failed in that suit to prove their title Defendants subsequently dispossessed the plaintiff in 1890 and plaintiff instituted the present suit in 1896 but could not prove his title *Held* that the effect of the decree in the previous suit was to declare as against the present defendant that plaintiff s possession was lawful and such being [illegible] doers and [illegible] on [illegible] his [illegible] er [illegible] *Nisu Chand* W N 568 *Chunder Bose* v *Mahomed Ghous I L R 20 Calc 834* distinguished. FAZLAR RAHMAN CHOWDHRY v RAJ CHUNDER SEN (1900) 5 C W N 234

30 ———— Limitation—*Limitation Act (XV of 1877) Sch II Art 116—Breach of contract in writing registered—Lease of villages—Failure by lessee to put lessor in possession—Executory contract to deliver such possession as the nature of the property admits—Mere execution of lease of villages not a delivery of possession.* By a

POSSESSION—contd

6 SUITS FOR POSSESSION—contd

(b) OTHER SUITS FOR POSSESSION—contd

registered document dated 11th November 1893 defendant leased certain villages to plaintiff for a term of even years and eight months On 5th

damages which he had sustained by the failure on the part of defendant to put him into pos es ion On the plea of limitation being et up —*Held* that the claim for damages was not barred it being governed by Art 116 of Sch II to the Limitation Act Both in the case of a ale and of a lease the registered instrument by which uch sale or lease is effected not only operates as a grant but in the absence of a contract to the contrary is al o con strued and operates as an executory contract to deliver to the vendee or le ee such po ession of the *property as its nature permits and the breach of* such an obligation is a breach of a contract in writing regi tered within the meanin of the article referre l to It was also contended by the defendant that inasmuch as the raiyats were in actual occupation of the villages which formed the subject matter of the lea e the defendant had in fact by the mere execution and delivery of the lease given plaintiff such po ession as the subject matter of the lease permitted and that plaintiff could have collected the rents without any further act on the part of the defendant *Held* that posses sion had not been given. ZAMINDAR OF VIZIANAGRAM v BEHARA SURYANARAYANA PATRULU (1901) **I L R 25 Mad 587**

31 ———— **Mortgage**—*Mortgage of non transferable occupancy holding—Objection of land lord that holding is non transferable—Subsequent suit for po session—Civil Procedure Code (Act XIV of 188_) s 244* Plaintiff to whom a non transferable occupancy holding was mortgaged brought a suit *upon the mortgage against* the mortgagor the occu pancy *raiyat* the landlords who objected that the holding was not tran ferable were made parties in the mortgage suit The Court declined to decide this question and pa sed a decree for the sale of the property which being old was purchased by the plaintiff who not being able to obtain posse sion

cedure Code was no bar to the determination of the question as it was made by the defendants in the suit *Bhiram Ali Sheikh* v *Gopi Kant Saha I L R 24 Calc 355* and *Nil Kamal Mukerjee* v *Jahnhabi Choudhurani I L R 6 Calc. 946* relied upon DURGA CHARAN AGRADANI v KARAMAT KHAN (1903) **7 C W N 607**

32 ———— **Landlord s suit** A suit for recovery of posses ion by a lessor is maintain able if the lessee is a party and does not object.

RAJ KISHORE AWASTI v JADU NATH BASAK (1905) **11 C W N 828**

7 EFFECT OF POSSESSION

1 ———————— *Nature of interest in immoveable property acquired by virtue of mere possession* A person in posses ion of land without

were unimpeachable *Asher* v *Whitlock L R 1 Q B 1* *Sunder* v *Parbati I L R 12 All 51* and *Brindiban Chunder Rao* v *Tara Chand Banerjee 20 W R 114* referred to GOBIND PRASAD v MOHAN LAL (1901) **I L R 24 All 157**

2 ———————— *Title—Nature of merely pos essory title* A person who e title to immoveable property rests upon mere possession is competent to deal with such property as if he were the owner and his acts will be good as against all per ons other than the true owner If such a possessor executes a registered deed of gift of the property he is subject to the rule that no one can derogate from his own grant *Gobind Prasad* v *Mohan Lal I L R 24 All 157* followed *Phul Chand* v *Lalkhu I L P 25 All 358* referred to PAHLWAN SINGH v RAM BHAROSE (1905) **I L R 27 All 169**

POSSESSION ORDER OF CRIMINAL COURT AS TO

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE ss 423 (*d*) 522 **I L R 29 Calc 724**

See CRIMINAL PROCEDURE CODE (Act V of 1898) **ss 145 146**

See DAMAGES—REMOTENESS OF DAMAGES **I L R 6 Mad 426**

See LIMITATION ACT 1877 SCH II ART 47 (1871 ART 46)

See LIMITATION ACT 1877 SCH II ART 174 **I L R 28 Calc 86**

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE **7 C W N 142**

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES **I L R 25 All 537**

See SECURITY FOR GOOD BEHAVIOUR. **I L R 26 Mad 471**

———— **attachment of property**—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION **5 C W N 105 710**

———— **jurisdiction of Civil Court to interfere with**—

See MAMLATDAR JURISDICTION OF **I L R 26 Bom 353**

———— **local inquiry**—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS **5 C W N 686**

———— **parties to proceedings**—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY WATER, ETC **5 C W N 67**

See RECEIVER **I L R 30 Calc 593**

1 CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION

1. ———— **Dispute as to possession**—*Criminal Procedure Code 1861 s 530* A Magistrate has no ground for proceeding under Ch XXII of the Criminal Procedure Code 1861 where there is no dispute as to the fact of actual possession of either the land or crop ANONYMOUS **4 Mad Ap 12**

2 ———— **Dispute as to right to collect rents**—*Order of Criminal Court as to—Report of police officer* Where a dispute between parties was not concerning land or its boundaries or concerning houses water fisheries or produce of land but simply as to what collections one of the parties had made and what rents he was entitled to collect under a decree of Court the case was *held* not to come under the provisions of Act X of 1872 s 530 but under the ruling in *Ram ungnee Dossee* v *Gooroodass Roy 18 W R Cr 36* PUDDOMONEE DASSEE v JUGGODUMBA DASSEE **25 W R Cr 2**

3 ———— *Per* PRINSEP J—That constructive possession through the collection of rents is the actual possession which may be determined in proceedings under s 145 of the Criminal Procedure Code under sub s (2) of that section LALDHARI NARAIN SINGH *v* SUKDEO NARAIN SINGH **I L R 27 Calc 892** **4 C W N 613**

4 ———— *Criminal Procedure Code (Act X of 1882) s 145—Tangible immoveable property Act X of 1872 s 530* A dispute as to the right to collect rents is a dispute concerning tangible immoveable property within the meaning of s 145 of the Code of Criminal Procedure 1882 PRAMATHA BHUSANA DEB ROY *v* DOORGA CHURN BHATTACHARJI **I L R 11 Calc 413**

5 ———— [illegible]
Code (Ac [illegible]
property [illegible]
is a disput [illegible]
perty withi [illegible]
Procedure Code *Harak Narain Singh* v *Luchmi Bux Roy 5 C L R 287* and *Sutherland* v *Crowdy 18 W R Cr 11 9 B I R 229* referred to *Pramatha Bhusana Deb Roy* v *Doorga Churn Bhuttacharji I L R 11 Calc 413* followed Where a dispute arose as to the right to collect the rents of certain land the ownership of which was claimed by both *A* and *B* and the tenants who had been paying rent to *A* refused to pay rent to *A* and attorned to *B* —*Held* that the conduct of the tenants in attorning to *B* was not an assertion of possession adverse to *A* such as to put an end to the relation of landlord and tenant between them and *A* and to *A s* right to collect the rents Such attornment therefore did not deprive *A* of his right to have recourse to s 145 in case of a likelihood of a breach of the peace so as to have his possession of the right to collect the rents maintained pending proceedings in a civil suit SARBANANDA BASU MOZUMDAR *v* PRAN SANKAR ROY CHOWDHURI **I L R 15 Calc 527**

6 ———— *Criminal Procedure Code s 145* A dispute between two persons as to the right to collect rent from the tenants of an estate is cognizable under s 145 of the Code of Criminal Procedure RAMASAMI v DANAKOTI AMMAL **I L R 12 Mad 88**

7 ———— *Criminal Procedure Code 1898 s 145—Jurisdiction of Magistrate—Appointment of Receiver of a joint estate—Joint owners governed by Mitakshara Law* There is no want of jurisdiction in a Magistrate to proceed

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

I CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*contd*

under s 145 of the Criminal Procedure Code because the dispute is one regarding the right to the col

Magistrate at the time when he passed the order SRI MOHAN THAKUR v NARSING MOHAN THAKUR
I L R 27 Calc 259 261 note
4 C W N 420 421 note

8 ———— *Criminal Procedure Code 1882 145—Tangible immoveable property* A dispute as to the right to collect rents is a dispute concerning tangible immoveable property within the meaning of s 145 of the Criminal Procedure Code and the operation of that section cannot be limited by any rule which would depend upon the area of the property in dispute Where in such a dispute which related to two pergunnahs comprising more than three hundred district

the officers appointed by her since such period and when the Deputy Commissioner after recording a certain amount of evidence refused to examine any more witnesses on the ground that the enquiry would extend to an inordinate length and be extremely expensive and passed an order under the section —*Held* that even though it might be

of rent for a short time to the petitioner even *if proved would not amount to dispossession of* the opposite party *Sarbanando Basu Mozumdar v Pran Sankar Roy Chowdhuri I L R 15 Calc 527* followed ABHAYESSARI DEBI v SHIDHESSARI DEBI
I L R 16 Calc 513

9 ———— *Criminal Procedure Code 1882 s 145—Share in joint undivided property—Tangible immoveable property* A dispute as to the right to realize rent in respect not of

ing of s 145 of the Criminal Proc... *Ramrunginee Dossee v Gooroodas Roy 19 W R Cr 36* and *Beni Narain v Achari Nath I L R 5 All 607* approved of *Pramatha Bhusana Deb Roy v Doorga Churn Bhattacharji I L R 11 Calc 413 Sarbananda Basu Mozumdar v Pran Sankar Roy Chowdhuri I L R 15 Calc 527* and *Abhayessuri Debi v Shidhessari Debi I L R 16 Calc 513* distinguished SURB NARAIN SINGH v BIRJ MOHUN THAKUR I L R 23 Calc 80

10 ———— Dispute regarding right of fishery —*Criminal Procedure Code 1882 s 145—Tangible immoveable property* A dispute con

directed to the question as to which party is in possession of the subject of dispute before any proceedings in the Court have been taken in the matter KRISHNA DHONE DUTT v TROILOKIA NATH BISWAS
I L R 12 Calc 537

11 ———— *Criminal Procedure Code 1882 s 145—Julkur right—Tangible immoveable property* A dispute concerning a

12 ———— Dispute concerning ferry including land and water over which it plies—*Right of ferry—Criminal Procedure Code*

I L R 26 Calc 188

See LALDHARI SINGH v SUKDEO NARAIN SINGH
3 C W N 49
I L R 27 Calc 892 4 C W N 613

13 ———— *Ferry—Tangible immoveable property—Offence —Jurisdiction of Magistrate* A ferry does not come within the description of tangible immoveable property as used in s 145 of the Criminal Procedure Code of 1882 Disputes regarding ferries come within the scope of s 147 S 182 relates only to cases of offences that is acts which are punishable by law and a case under s 145 is not a case relating to an offence HARBULLABH NARAIN SINGH v BAJRANG DASS
3 C W N 148

14 ———— Dispute as to alluvial land —*Land left by drying up of river* A Magistrate had jurisdiction under s 308 Code of Criminal Procedure 1861 to prevent breaches of the peace in places where the rivers have dried up The jurisdiction that was on e there under s 30 was not taken away by reason of the land having appeared, and the

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

1 CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*contd*

water disappeared EMAMBANDEE BEGUM *v* TEK BAHADOOR 17 W R Cr 53

15 ——— **Standing crops**—*Criminal Procedure Code s 145— Tangible immoveable pro per*[illegible] moveable pro[illegible] the Code of [illegible]*ul Chand I L*[illegible] *I L R 11* [illegible] NARAIN [illegible] All. 394

16 ——— **Dispute about right to perform service in a public temple**—*Criminal Procedure Code (Act V of 1898) ss 144 145* A dispute relating to the right of performing religious service in a public temple when it is likely to cause a breach of the public peace falls under s 145 of the Criminal Procedure Code (Act V of 1898) *Muhammad Musaliar* v *Kunji Chek Mudaliar I L R 11 Mad 323* referred to A dispute arose between certain classes of priests attached to a Hindu temple about the right of performing a certain religious service On the complaint of one of the parties the Magistrate of the district purporting to act under s 145 of the Code of Criminal Procedure (Act V of 1898) passed an *ex* [illegible]

order was illegal and opposed to the provisions of 145 of the Code The High Court ordinarily has no jurisdiction to interfere with an order under Ch XII of the Criminal Procedure Code (Act V of 1898) which is not a proceeding within the meaning of s 435 of the Code but when the Magistrate exceeds his jurisdiction under s 144 or s 145 the High Court has power to interfere under its revisional jurisdiction (s 439) *In re* PANDURANG GOVIND I L R 24 Bom 527

17 ——— **Dispute as to right in burial ground**—*Possession of manager—Criminal Procedure Code 1872 s 530* A case in which several persons dispute about the proprietary right in a burial ground should be tried in a Civil Court and does not properly come under s 530 or s 532 of the Code of Criminal Procedure and an order of the Magistrate that he found the manager in possession on behalf of one of the proprietors was set aside KASSIM HASSIM SOOPTY *v* ABRAHIM SOLEMAN 25 W R Cr 24

18 ——— **Dispute as to a number of plots of land governed by same circumstances**—*Action of Magistrate only as regards some plots—Criminal Procedure Code 1872 s 530* A dispute having arisen as to the possession of 109 plots of land to which a claim to possession was made by the raiyats of village A on the one hand and by the raiyats of village B on the other the Magistrate instituted a proceeding under s 530 of the Criminal Procedure Code in respect of all the 109 plots but having taken evidence dealt in his order with twelve only directing that the raiyats of village B should be kept in possession *Held* that it appearing that all the 109 plots were covered by the same state of circumstances the Magistrate had exercised a sound discretion in acting as he did AZIM MOLLA *v* SATOO PORAMANICK 10 C L R 523

19 ——— **Dispute as to property of which each of two persons claimed the whole without allegation of joint possession**—*Criminal Procedure Code 1872 s 530* Where each of two parties claimed the same share of certain property as a whole estate neither alleging that the other was joint with him in any way and the Magistrate without reference to the right of possession went into the question of who was in possession and maintained the possession of the party found in possession the High Court *held* that the case fell under Act X of 1872 s 530 and saw no necessity to interfere with the decision BIJNATH SAHOO *v* RUGHOONATH PERSHAD 25 W R Cr 16

20 ——— **Dispute regarding joint property**—*Criminal Procedure Code 1861 s 318* The decision of the Deputy Magistrate was quashed because the property in dispute being ijmali he had no jurisdiction to try the dispute under s 318 Code of Criminal Procedure but ought to have proceeded in the manner laid down in Circular Order No 10 dated 16th April 1863 GOLUCK CHUNDER ROY *v* RAJ MOHUN BOSE 17 W R Cr 33

See RAMRUNGINEE DOSSEE *v* GOOROO DASS ROY 17 W R Cr 9

21 ——— *Criminal Procedure Code (Act V of 1898) s 145—Joint possession—Jurisdiction of Magistrate* S 145 of the Criminal Procedure Code does not apply where two parties are in joint possession of the property in dispute and one of them tries to evict the other so as to endanger the public peace S 145 of the Code contemplates a dispute between two parties each of which asserts the right to hold actual possession of property as against the other and not a dispute between a party claiming to hold joint possession and another contesting such right TARIYAN BIBEE *v* A AMUDDI BEPARI 4 C W N 426

22 ——— *Criminal Procedure Code 1882 ss 145 147—Dispute as to immoveable property—Collection of rent* A dispute existing between one of the co sharers of an undivided estate and the lessee of another co sharer as to the right of the latter to collect rent such right being denied on the ground that the lessor was not in possession of her share an inquiry was made under Ch XII of the Criminal Procedure Code and the lessor was declared to be in possession of her share *Held* that the provisions of that

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

1 CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*contd*

chapter were not applicable to the dispute in question BENI NARAIN v ACHRAJ NATH
I L R 5 All 607

23 ———— *Land held by co sharers—Dispute on erection of edifice by one without consent of other—Criminal Procedure Code (Act X of 18 2) s 530* A a joint owner of a parcel of land erected on it an edifice without the consent and against the will of B another joint owner A dispute having arisen in consequence the Magistrate held an inquiry and made an order under 530 of the Criminal Procedure Code awarding to A exclusive possession of the part of the land on which the edifice had been erected *Held per* JACKSON J that such order was erroneous as the matter was not one to which s 530 could apply EMPRESS v RAJCOOMAR SINGH
I. L. R 3 Calc 573 1 C L. R. 352 2 C L. R 62

24. ———— **Dispute as to building site** —*Persons not parties to proceedings—Criminal Procedure Code 1882 s 145 14* In a suit to recover a building site an injunction was issued by the Court restraining the defendants from building on the land pending the decision of the suit On

other was illegal *Held* also that if a breach of the peace appeared likely to occur the proper course was for the Magistrate to take security from the party from whom a breach of the peace was apprehended but that it was not illegal for the Magistrate to proceed under s 145 or s 147 of the Code of Criminal Procedure SUBBA v TRINCAL [illegible] **I L R 7 Mad 460**

instituted upon a complaint of the commission of various offences none of which necessarily involved a breach of the peace but ...

land to the complainant KESU *alias* KESHWAR SINGH v MOTI MOLLAH **4 C W N 57**

26 ———— **Dispute as to possession of land**—*Code of Criminal Procedure (Act V of 1898) ss 145 146—Joint possession—Attachment of land and crops—Jurisdiction* Where two rival *zamindars* claimed to hold certain alluvial lands and where it was admitted that they were joint proprietors of *mauza G* but the question also in dispute was whether those lands belonged to *mauza G* or to *mauza N* one of the parties claiming that if they belonged to *N* he had absolute right in it and the Magistrate ...

tenants of one of the contending parties —*Held* that the lands not being in the joint possession of the contending parties the Magistrate had jurisdiction in taking action under s 145 Criminal Procedure Code —*Held* also that there being no dispute between the tenants *inter se* the order of the Magistrate as to the attachment of the crops on the land which belonged to the tenant who grew them was a bad order for want of jurisdiction and must be set aside DENOMONI CHOWDHRANI v MOZAFAR ALI KHAN (1900) **5 C W N 105**

27 ———— *Criminal Procedure Code (Act V of 1898) s 145—Joint property—Definite piece of land in dispute—Jurisdiction* Where a dispute related to a definite plot of land but the question was whether this plot was included in a piece of land which was in the exclusive posses...

...trate cannot proceed under s. 145 Code of Criminal Procedure where the disputed property is itself an undivided share in land or rent or profit issuing from an undivided share because in such a case the subject matter of the dispute is uncertain and its boundaries undefined and s 145 Code of Criminal Procedure only contemplates disputes as to the possession of definite pieces of land or the rents and profits issuing from definite pieces of land *Tarujan Bibee v Asamuddi Bepari 4 C W N 46 Krista Alhadini Dasi v Radha Syam Pandey 7 C W N 118 Surb Narain Singh v L j Mohan Thakur I L. R 23 Calc 80* explained *Quære* Whether an order by a Magistrate giving a party to a proceeding under s 145 Code of Criminal Procedure possession of a greater extent of land than is claimed by him, can be [illegible] as made without jurisdiction. [illegible] v RAJENDRA COOMAR GHOSE (1903)
7 C W N 482

28 ———— *Criminal Procedure Code (Act V of 1898) s 145—Dispute as to possession of land—Civil suit brought by one party to recover possession from the other [illegible]—Magistrate's jurisdiction—Duty of Magistrate* ...

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*contd*

1 CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*contd*

water disappeared EMAMBANDEE BEGUM v TEK BAHADOOR **17 W R Cr 53**

15 ——— **Standing crops**—*Criminal Procedure Code s 145— Tangible immoveable property* Standing crops are tangible immoveable property within the meaning of s 145 of the Code of Criminal Procedure *Chedu Lal v Mul Chand I L R 14 All 3* and *Madayya v Venkata I L R 11 Mad 193* followed GANGA PRASAD v NARAIN **I L R 15 All 394**

16 ——— **Dispute about right to perform service in a public temple**—*Criminal Procedure Code (Act V of 1898) ss 144 145* A dispute relating to the right of performing religious service in a public temple when it is likely to cause a breach of the public peace falls under s 145 of the Criminal Procedure Code (Act V of 1898) *Muhammad Musaliar v Kunji Chel Musaliar I L R 11 Mad 323* referred to A dispute arose between certain classes of priests attached to a Hindu temple about the right of performing a certain religious service On the complaint of one of the parties the Magistrate of the district purporting to act under s 145 of the Code of Criminal Procedure (Act V of 1898) passed an *ex parte* order prohibiting the other party from taking any part in the said service although both parties had been previously declared by the Civil Court to be entitled to officiate at the service *Held* that the order was illegal and opposed to the provisions of s 145 of the Code The High Court ordinarily has no jurisdiction to interfere with an order under Ch XII of the Criminal Procedure Code (Act V of 1898) which is not a proceeding within the meaning of s 435 of the Code but when the Magistrate exceeds his jurisdiction under s 144 or s 145 the High Court has power to interfere under its revisional jurisdiction (s 439) *In re* PANDURANG GOVIND **I L R 24 Bom 527**

17 ——— **Dispute as to right in burial ground**—*Possession of manager—Criminal Procedure Code 1872 s 530* A case in which several persons dispute about the proprietary right in a burial ground should be tried in a Civil Court and does not properly come under s 530 or s 532 of the Code of Criminal Procedure and an order of the Magistrate that he found the manager in possession on behalf of one of the proprietors was set aside KASSIM HASSIM SOORTY v ABRAHIM SOLEMAN **25 W R Cr 24**

18 ——— **Dispute as to a number of plots of land governed by same circumstances**—*Action of Magistrate only as regards some plots—Criminal Procedure Code 1872 s 530* A dispute having arisen as to the possession of 109 plots of land to which a claim to possession was made by the raiyats of village A on the one hand and by the raiyats of village B on the other the Magistrate instituted a proceeding under s 530 of the Criminal Procedure Code in respect of all the 109 plots but having taken evidence dealt in his order with twelve only directing that the raiyats of village B should be kept in possession *Held* that it appearing that all the 109 plots were covered by the same state of circumstances the Magistrate had exercised a sound discretion in acting as he did AZIM MOLLA v SATOO PORAMANICK **10 C L R 523**

19 ——— **Dispute as to property of which each of two persons claimed the whole without allegation of joint possession**—*Criminal Procedure Code 1872 s 530* Where each of two parties claimed the same share of certain property as a whole estate neither alleging that the other was joint with him in any way and the Magistrate without reference to the right of possession went into the question of who was in possession and maintained the possession of the party found in possession the High Court *held* that the case fell under Act X of 1872 s 530 and saw no necessity to interfere with the decision BYJNATH SAHOO v RUGHOONATH PERSHAD **25 W R Cr 16**

20 ——— **Dispute regarding joint property**—*Criminal Procedure Code 1861 s 318* The decision of the Deputy Magistrate was quashed because the property in dispute being ijmali he had no jurisdiction to try the dispute under s 318 Code of Criminal Procedure but ought to have proceeded in the manner laid down in Circular Order No 10 dated 16th April 186 GOLUCK CHUNDER ROY v RAJ MOHUN BOSE **17 W R Cr 33**

See PAMRUNGINEE DOSSEE v COOROO DASS ROY **17 W R Cr 9**

21 ——— *Criminal Procedure Code (Act V of 1898) s 145—Joint possession—Jurisdiction of Magistrate* S 145 of the [illegible]

of which asserts the right to hold actual possession of property as against the other and not a dispute between a party claiming to hold joint possession and another contesting such right TARIYAN BIBI v ASAMUDDI BEPARI **4 C W N 426**

22 ——— *Criminal Procedure Code 1882 ss 145 147—Dispute as to immoveable property—Collection of rent* A dispute existing between one of the co sharers of an undivided estate and the lessee of another co sharer as to the right of the latter to collect rent such right being denied on the ground that the lessor was not in possession of her share an inquiry was made under Ch XII of the Criminal Procedure Code and the lessor was declared to be in possession of her share *Held* that the provisions of that

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

1 CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*contd*

chapter were not applicable to the dispute in question BENI NARAIN *v* ACHRAJ NATH

I. L R 5 All 607

23 ———— *Land held by co harers—Dispute on erection of edifice by one without consent of other—Criminal Procedure Code (Act X of 1882) s 530* A a joint owner of a parcel of land erected on it an edifice without the consent and against the will of *B* another joint owner A dispute having arisen in consequence the Magistrate held an inquiry and made an order under s 530 of the Criminal Procedure Code awarding to *A* exclusive possession of the part of the land on which the edifice had been erected *Held per* JACKSON *J* that such order was erroneous as the matter was not one to which s 530 could apply EMPRESS *v* RAJCOOMAR SINGH

I L R 3 Calc 573 1 C L R 352
2 C L R 62

24. ———— **Dispute as to building site** —*Persons not parties to proceedings—Criminal Procedure Code 1882 s 145 147* In a suit to recover a building site an injunction was issued by the Court restraining the defendants from building on the land pending the decision of the suit On appeal the injunction was dissolved on the ground that the defendant was in possession Subsequent to this order the District Magistrate on the complaint of the plaintiff against the defendant

K and *V* not being parties to the proceedings the order was illegal *Held* also that if a breach of the peace appeared likely to occur the proper course was for the Magistrate to take security from the party from whom a breach of the peace was apprehended but that it was not illegal for the Magistrate to proceed under s 145 or s 147 of the Code of Criminal Procedure SUBBA *v* TRINCAL [illegible] I L R 7 Mad. 460

25 ———— **Complaint as to dispossession of land not involving likelihood of breach of peace**—*Criminal Procedure Code 1898 s 145* Where a proceeding under s 145 of the Code of Criminal Procedure (Act V of 1898) was instituted upon a complaint of the commission of various offences none of which necessarily involved a breach of the peace but included dispossession of [illegible]

land to the complainant KESU *alias* KESHWAR SINGH *v* MOTI MOLLAH 4 C W N 57

26 ———— **Dispute as to possession of land**—*Code of Criminal Procedure (Act V of 1898) ss 145 146—Joint possession—Attachment of land and crops—Jurisdiction* Where two rival zamindars claimed to hold certain alluvial lands and where it was admitted that they were joint proprietors of mauza G but the question also in

146 Criminal Procedure Code attaching the lands and also the crops grown upon the lands by the tenants of one of the contending parties —*Held* that the land not being in the joint possession of the contending parties the Magistrate had jurisdiction in taking action under s 145 Criminal Procedure Code —*Held* also that there being no dispute between the tenants *inter se* the order of the Magistrate as to the attachment of the crops on the land which belonged to the tenant who grew them was a bad order for want of jurisdiction and must be set aside DENOMONI CHOWDHRANI *v* MOZAFAR ALI KHAN (1900) 5 C W N 105

27 ———— *Criminal Procedure Code (Act V of 1898) s 145—Joint property—Definite piece of land in dispute—Jurisdiction* Where a dispute related to a definite plot of land but the question was whether this plot was included in a piece of land which was in the exclusive possession of one of the parties or in another which was the joint property of both the parties in dispute —*Held* [illegible]
under [illegible]
trate [illegible]
Proce[illegible]
undivided share in land or rent or profit issuing from an undivided share because in such a case the subject matter of the dispute is uncertain and its boundaries undefined and s. 145 Code of [illegible]

7 C W N 118 *Surb Narain Singh* v *Brij Mohan Thakur I L R 23 Calc 80* explained *Quære* Whether an order by a Magistrate giving a party to a proceeding under s. 145 Code of Criminal Procedure possession of a greater extent of land than is claimed by him can be questioned as made without jurisdiction MON MOHAN GHOSE *v* RAJENDRA COOMAR GHOSE (1903)

7 C W N 462

28 ———— *Criminal Procedure Code (Act V of 1898) s 145—Dispute as to possession of land—Civil suit brought by one party to recover possession from the other how it effects Magistrate's jurisdiction—Duty of Magistrate to*

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

1 CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*contd*

ascertain land in dispute—Order passed in respect of lands in excess of those referred to in the proceedings if proper Under s 145 Code of Criminal Procedure a Magistrate has power to intervene and pass a temporary order in regard to the possession of the land in dispute only until one or other of the parties applies for or obtains a determination of his rights in a Civil Court Where one of the partie by bringing a civil suit for recovery of possession has admitted that the other party are in possession there is no question as to possession for the Magistrate to decide in a proceeding under s 145 Code of Criminal Procedure If he still considers necessary that steps should be taken to preserve the peace it is open to him to take proceedings under provisions of law other than s 145 Code of Criminal Procedure He has no jurisdiction to proceed under s. 145 Code of Criminal Procedure When in a proceeding under s 145 Code of Criminal Procedure a question is raised as to the identity of the land in dispute the Magistrate is bound before going further to ascertain and identify the lands so that neither party may be in doubt as to the specific land in respect of which proceedings are taken A Magistrate has no jurisdiction to decide a dispute as to the lands in excess of those referred to in his proceedings AMRITESHWARI DEBI v DARPA NARAIN DAS (1903) **7 C W N 558**

29 ——— **Evidence of possession**—*Criminal Procedure Code (Act V of 1898) s 145—Order passed ex parte—Evidence necessity of taking* A Magistrate can proceed *ex parte* in a proceeding under s. 145 Code of Criminal Procedure But it is not competent for him to pass an order in favour of the party present without some evidence that such party is in possession RAM KRISTA PATRA v AGHORE NASKAR (1902) **6 C W N 925**

30 ——— **Subject-matter of dispute** —*Criminal Procedure Code (Act V of 1898) ss 145 146— Subject matter of dispute meaning of whether it refers to whole subject matter or to component parts—Magistrate jurisdiction of to make an order under s 145 in regard to some and an order under s 146 in regard to the remaining plots—Separate and distinct subject matter—Divisibility of subject matter—One proceeding in regard to several plots—Irregularity—Prejudice.* The expression subject matter of dispute used in ss 145 and 146 of the Code of Criminal Procedure refers to the whole or to any component part or parts thereof If that component part is distinct and separable from the re t it cannot rightly be held that because a magistrate cannot find po ession of one of the component parts of the subject matter in dispute with either party he is bound to attach the whole [illegible]

in regard to it one order under either s. 145 or s. 146 of the Code as the circumstances may require

Katras Jherriah Coal Company v *Sib Krishto Daw & Co I L R 22 Calc 297* explained and distinguished *Rakhal Dass Singh* v *Sheo Pershad Singh 24 W R Cr 73* referred to *Per* TAYLOR, *J*—In this case each separate plot may be regarded as a separate subject matter of dispute and in that ca e each separate plot might form a eparate independent proceeding and the joint trial in one proceeding of several such matters of di pute would at most amount to an irregularity which in the absence of prejudice shown would not vitiate the inquiry *Isuar Chunder Choudhry* v *Ambica Churn Majumdar 5 C W N 544* relied upon. SADAR ALI v ABDUL KARIM (1901) **5 C W N 710**

2 LIKELIHOOD OF BREACH OF THE PEACE.

1 ——— **Disputes concerning land**—*Criminal Procedure Code (Act X of 1882) s 145 and s 107—Procedure* Where a dispute likely to cause a breach of the peace exists concerning po ses sion of land proceedings under s 145 and not under s 107 of the Criminal Procedure Code should be instituted DOLEGOBIND CHOWDHRY v DHANU KHAN **I L R 25 Calc 559**

In the matter of t e petition of EKRAM SINGH **3 C W N 296**

BEJOY SINGHA NEOGI v EMPRESS **3 C W N 463**

2 ——— **Inquiry**—*Criminal Procedure Code 1861 s 318* No inquiry should be made nor order passed giving posse sion to one side or the other under s 318 of the Code of Criminal Procedure save on the supposition that the dispute is likely to cause a breach of the peace QUEEN v SONAOOLAH **2 W R Cr 44**

3 ——— *Order not made after judicial inquiry—Criminal Procedure Code 1872 s 530* An order of a Magistrate retaining parties in possession of land can only be pas ed after due judicial inquiry as required by the Code of Criminal Procedure s 530 SHOENDOO NOSHYO v RUNG LALL JHAH **25 W R Cr 21**

4 ——— *Criminal Procedure Code 1861 Ch XXII* The inquiry con templated by Ch. XXII of the Code of Criminal Procedure was a personal inquiry by the Magistrate who makes the order ANONYMOUS **4 Mad. Ap 20**

ANUNDEE KOOER v SOONAET KOOER **9 W R Cr 64**

5 ——— **Power of Magistrate**—*Criminal Procedure Code 1872 s 530* The power given to a Magistrate to make a binding declaration as to the possession of any property is an exceptional one and s 530 of the Criminal Procedure Code limits the exercise of that power to cases in which the Magistrate is satisfied that a dispute likely

POSSESSION ORDER OF CRIMINAL COURT AS TO—contd

2 LIKELIHOOD OF BREACH OF THE PEACE —contd

to induce a breach of the peace exists it is this likelihood with the consequent necessity for immediate action which alone warrants action by the Magistrate *In the matter of the petition of* KUNUND NARAIN BHOOP
I L R 4 Calc 650 3 C L R 551

ANONYMOUS CASE 4 Mad Ap 49

6 —— **Ground for action of Magistrate**—*Criminal Procedure Code (Act X of 1872) s 531* In order to justify a magistrate in interfering under s 530 of the Criminal Procedure Code it is necessary that he should be satisfied that there

him to take immediate steps to prevent it and not merely that it is probable a breach of the peace may occur if proceedings under s 530 be not taken DAMODUR BIDDYADHUR MOHAPATRO v SYAMANUND DEY I L R 7 Calc 385 8 C L R 514

7 —— *Dispute likely to cause breach of the peace—Duty of Magistrate—Criminal Procedure Code (Act X of 1882) s 145* It is the duty of a Magistrate before taking proceedings under s 145 of the Criminal Procedure Code to satisfy himself whether there is any dispute likely to cause a breach of the peace and that the suggested apprehension of a breach of the peace is

SABIR I L R 10 Calc 78 13 C L R 410

8 —— *Future breach of peace* There being no present danger of a breach of the peace the fact that such a breach is likely to take place at a future time will not justify a Magistrate in making an order under s 530 of the Criminal Procedure Code 1872. UMA CHURN SANTRA v BENI MADHUB ROY 7 C L R 352

(*Contra*) QUEEN v MOHESH CHUNDER ROY
24 W R Cr 67

9 —— *Criminal Procedure Code 1872 s 530—Order made on insufficient material—Order without jurisdiction* Where the proceeding recorded by a Magistrate under s 530 of the Criminal Procedure Code is based on materials which do not disclose sufficient ground for considering that a breach of the peace is imminent an order calling upon the parties concerned in the dispute to attend in Court and give in a written statement of their respective claims in respect of the fact of actual possession of the subject of dispute may be set aside as made without jurisdiction CHUNDER MADHUB GHOSE v JUGGUT CHUNDER SEN
4 C L R 483

POSSESSION ORDER OF CRIMINAL COURT AS TO—contd

2 LIKELIHOOD OF BREACH OF THE PEACE —contd

10 —— *Criminal Procedure Code 1861 s 318—Grounds for belief in likelihood of breach of peace* Under the provisions of s 318 of the Code of Criminal Procedure the Magistrate should specify the nature of the information received by him and state the principal facts which by the exercise of a judicial discretion he derives therefrom and which in his judgment constitute grounds for believing that a dispute concerning certain land exists which is likely to induce a breach of the peace and the roobokari which s 318 prescribes should plainly set out without reference to any other documents at all the actual facts which constituted the ground for such belief on the part of the Magistrate *In the matter of the petition of Sutherland 9 B L R 229 18 W R Cr 11* explained *In the matter of the petition of* KISHOREE MOHUN ROY 19 W R Cr 10

11. —— *Requisite evidence* There is nothing which defines on what grounds the Magistrate shall be satisfied or limits him to being satisfied by evidence given before him *In the matter of the petition of* SUTHERLAND
9 B L R 229

S C SUTHERLAND v CROWDY 18 W R Cr 11

Under the Code of 1861 the Magistrate had to be satisfied that a breach of the peace was likely and it was formerly *held* he must be satisfied by evidence ANONYMOUS CASE 4 Mad. Ap 49

TARAFDI MUNDUL v CHUNDER BHOOSUN BANERJEE 16 W R. Cr 74

A police report was *held* both under that Code and under the Code of 1872 not to be sufficient evidence *In the matter of the petition of* BHADRESWARI CHOWDHRAIN 7 B L R 329

S C BHUDRESSORY CHOWDHRAIN v COBERDHUN MAJHEE 16 W R. Cr 17

ELAHEE NEWOZ KHAN v SUBURUNNISSA
5 W R Cr 14

In the matter of the petition of SHAMA SANKAR MAZUMDAR 9 B L R. Ap 45

S C SHAMASUNKUR MOZOOMDAR v ANUNDOMOYEE DOSSEE 18 W R Cr 64

ABHAYA CHOWDHRY v BRAE
6 B L R Ap 148
15 W R. Cr 43

QUEEN v BHYRO DAYAL SING
3 B L R A Cr 4
11 W R. Cr 46

See also PUDDOMONEE DASSEE v JUGGODUMBA DASSEE 25 W R Cr 2

And under the Code of 1872 the report of an Ameen was *held* not to be sufficient to base an order upon QUEEN v SOUMBER AHIR
20 W R. Cr 57

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

2 LIKELIHOOD OF BREACH OF THE PEACE —*contd*

Under the Code of 1872 an explanation was added that the Magistrate might be satisfied as to the likelihood of a breach of the peace on a report or other information, but as to the fact of possession on evidence The following however was a later holding under the Code of 1872 with regard to a police report

12 ———————— *Criminal Procedure Code 1872 s 530—Record of grounds—Police report incorporation of—Evidence of possession—* [illegible]

that certain persons were in possession —*Held* that although the record of grounds was unsatisfactory as the initial proceeding did not contain within itself all which the law requires to be recorded, viz in the first place that the Magistrate is satisfied that a dispute likely to induce a breach of the peace exists and in the second place the ground upon which he is so satisfied, yet that as the police report from which the grounds for apprehending a breach of the peace appeared was incorporated by reference the final order was not defective *In the matter of the petition of* KALI KRISTO THAKUR *v* GOLAM ALI CHOWDHRY
I. L. R. 7 Calc 46 8 C L R 245

And under the Code of 1882 the Magistrate is now to be satisfied on a police report or other information

13 ———————— *Police report setting out probability of breach of peace. Semble* That a reference by a Magistrate to a police report which clearly sets out the probability of a breach of the peace is a sufficient statement of the reasons for the Magistrate s being satisfied of the existence of a dispute likely to cause a breach of the peace within the meaning of s. 145 of the Code of Criminal Procedure 1882. GOLUCK CHUNDER PAL *v* KALI CHARAN DE I L R. 13 Calc 175

14. ———————— *Examination of parties—Criminal Procedure Code 1861 s 318—Land dispute.* When both the disputing parties are examined and state that men were collected by their opponents for the purposes of committing a breach of the peace a Magistrate is justified without inquiring who was the aggressor or the aggrieved party to proceed under s. 318 of the Code of Criminal Procedure and to take whatever steps are in his opinion necessary to prevent a breach of the peace GUNGA NARAIN MITTER *v* GOUR SOONDER CHOWDHRY 15 W R. Cr 85

[illegible]

4 Mad. Ap. 49

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

2 LIKELIHOOD OF BREACH OF THE PEACE —*contd*

TARAPDI MUNDUL *v* CHUNDER BHUSUN BANERJEE 16 W R. Cr 74

In the matter of the petition of KUNUND NARAIN BHOOP I L R. 4 Calc 650
3 C L R 551

GRIJAMONEE *v* ISHUR CHUNDER W R. 1864, Cr 2

In re SABHEE SINGH 6 W R. Cr 50

GOVERNMENT *v* GHOLAM MAHOMED 1 Agra Cr 33

In the matter of KASHEE KISHORE ROY *v* TARINI KANT LAHORI 3 B L R A. Cr 76
15 W R Cr 42 note

QUEEN *v* RUNJEET MOLLA 2 W R. Cr 31

MUKHODA DOSSEE *v* QUEEN 18 W R. Cr 4

In the matter of OKHIL CHUNDER BISWAS 1 C L R 48

REG *v* OMIRTO NAUTH JHA 1 Ind Jur N S 399
6 W R Cr 61

and that the omission to do so was fatal to the Magistrate s proceedings. EMAMBANDEE BEGUM *v* TEK BAHADOOR 17 W R Cr 53

HARVEY *v* BRICE 4 W R Cr 26

MUNGLO *v* DURGA NARAIN NAG 25 W R Cr 74

In certain cases it was ruled that the recording of a proceeding was unnecessary DURIAO SINGH *v* UMA PROSHAD 24 W R Cr 16

GOUR MOHUN MAJEE *v* DOOLLUBH MAJEE 22 W R Cr 81

and in one it was doubted whether it was necessary or not. DAMODUR BIDDYADHUR MOHAPATRO *v* SYAMANUND DEY I L R 7 Calc 385
8 C L. R. 514

No form of proceeding was necessary JOYRAM SINGH *v* JUGNARAIN DOOBEY 10 W R. Cr 16

15 ———————— The provisions of s. 318 of the Code of Criminal Procedure were *held* to be substantially complied with when the Magistrate stated that he was satisfied that the disputes between the parties were likely to induce a breach of the peace and recorded his opinion that the only way of bringing those disputes to a satisfactory settlement was by proceeding under the section quoted. *In the matter of the petition of* BISSESHUR NARAIN MAHTAH 8 W R. Cr 83

Under the present Code it is not necessary to record any proceeding but the order for the attendance of the parties must show the grounds which satisfied the Magistrate.

16 ———————— *Criminal Procedure Code (Act V of 1898) s 145—Procedure—Dispute about right to perform service in a public temple.* A Magistrate professing to act under s. 145

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

2 LIKELIHOOD OF BREACH OF THE PEACE —*contd*

of the Criminal Procedure Code (Act V of 1898) is bound to follow the proper procedure He must set forth the grounds on which he is satisfied that there is a dispute likely to cause a breach of the peace *In re* PANDURANG GOVIND I L R 24 Bom 527

17 ———— *Criminal Procedure Code (Act X of 1882) s 145—Breach of the peace—Police report—Duties of Magistrate acting under s 145—Record of grounds* Before instituting proceedings under s 145 of the Code of Criminal Procedure a Magistrate is bound to satisfy himself on grounds which are reasonable that a breach of the peace is imminent in regard to properties of the description specified in that section and that a dispute likely to cause a breach of the peace exist concerning them and the grounds stated by him must be such as to satisfy a Court of revision before which such case may be brought by any of the parties concerned Where a Magistrate in consequence of the institution of various cases relating to breaches of the peace between the partizans of two rival zamindars had directed the police to enquire and report whether there were sufficient grounds for proceeding under s 145 Criminal Proceedure Code and having received a report which both suggested the necessity for such proceedings and set forth substantial reasons in support of the suggestion, made such report the foundation for the proceedings which he instituted it was contended among other things that the Magistrate had not complied with the provisions of the Code in omitting to state the grounds of his being so satisfied of the imminence of a breach of the peace *Held* that inasmuch as the police report contained abundant evidence of the likelihood of a breach of the peace it was sufficient for the purpose of notice to the parties for the Magistrate to cite it as the ground of his proceeding on which he was satisfied that a dispute within the terms of s 145 existed and that it would be open to the parties during the proceeding if they disputed the necessity for them to show before the Magistrate that no such dispute existed or if so advised to move the Court of revision to set aside the proceedings on the ground that the Magistrate had proceeded on grounds which were not reasonable or which could not be held to be sufficient to satisfy him that such a dispute existed. DHANPUT SINGH v CHATTERPUT SINGH

I L R 20 Calc 513

18 ———— *Criminal Procedure Code (Act X of 1882) ss 145 ...—Breach of the peace—Record of grounds for Magistrate taking proceedings under s 145—Police report—Sessions Judge not empowered to order proceedings under s 145—Invalidity of proceedings so instituted*

likely to ensue in consequence of a dispute regarding land. Before taking action the Magistrate is bound to be satisfied from a police report or other information on this point and he is also bound to make an order in writing stating the grounds of his being so satisfied and this must be served on the parties to the dispute for it is the intention of the law not only that Magistrate should have sufficient

so that the Magistrate may exercise his own discretion as to the necessity of proceedings Proceedings so initiated when there is nothing in the police report or elsewhere to justify them would be void and s 537 of the Criminal Procedure Code would have no application *Gour Mohan Majee* v *Doollubh Majee 22 W P Cr 91* dissented from *Dhanput Singh* v *Chatterput Singh I L R 20 Calc 513* followed QUEEN EMPRESS v GOBIND CHANDRA DAS I L R 20 Calc 520

19 ———— *Criminal Procedure Code 1882 s 145—Authority of District Magistrate—Sub Divisional Magistrate* In a case where a District Magistrate made an order stating that in his opinion it was the duty of the Sub Divisional Magistrate to institute proceedings under s 145 of Criminal Procedure Code —*Held* that the

or other information that there is a likelihood of a breach of the peace and he has a discretion as to whether to institute proceedings or not *Queen Empress* v *Govind Chandra Das I L R 20 Calc 520* followed KAILASH CHANDRA PAL v KUNJA BEHARI PODDAR I L R 24 Calc 391

1 C W N 393

20 ———— *Criminal Procedure Code (Act V of 1898) s 145—Likelihood of breach of the peace arising from act of aggressive party* Where the Magistrate found that the persons who attempted to do bastu puja which is said to have provoked the petitioners were not entitled to perform this puja —*Held* that if the

3 C W N 463

21. ———— *Order not stating that Magistrate was satisfied that there was likeli*

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

2 LIKELIHOOD OF BREACH OF THE PEACE —*contd*

hood of breach of the peace—Criminal Procedure Code 1898 s 145 Where the order instituting proceedings under s 145 Criminal Procedure Code did not state that the Magistrate had satisfied himself that a dispute likely to cause a breach of the peace existed concerning any land and there was nothing to indicate a likelihood of a breach of the peace in the petition of complaint on which the proceedings were based —*Held* that the proceedings were without jurisdiction and as such must be set aside KESU *alias* KESHWAR SINGH v MOTI MOLLAH 4 C W N 57

22 ———— *Order instituting proceedings under s 145 of the Code of Criminal Procedure (Act V of 1898)—Contents of such order—Irregularity in order making proceedings without jurisdiction* Unless a Magistrate complies strictly with the terms of s 145 of the Code of Criminal Procedure by stating in his written order all the particulars necessary to enable him to act under that section his proceedings are without jurisdiction It is not sufficient that the Magistrate should have before him a police report and that he should have given orders thereon that a written order be drawn up within the terms of s 145 It is his duty to draw up or have drawn up an order which in all respects satisfies the requirements of the law It is absolutely necessary that the written order should be correct and complete its terms MOHESH SOWAR v NARAIN BAG I L R 27 Calc 981

23 ———— Dispute as to possession— [illegible] s 107 [illegible] peace [illegible] hich is [illegible] to the possession of land the Magistrate should proceed under s 145 Code of Criminal Procedure and not under s 107 Where in such a case proceedings were drawn up under s 107 Code of Criminal Procedure and only one of the parties was bound down to keep the peace the order was set aside as bad *Dole Gobind Choudry* v *Dhanu Khan I L R 25 Calc 5 9* followed BIDHU BHUSAN CHATTERJI v ANNODA CHURN KANANGUI (1902) 6 C W N 883

24. ———— *Criminal Procedure Code (Act V of 1898) ss 107 145 146—Possession of immoveable property dispute as to—Order requiring security for keeping the peace if proper—Procedure* When the apprehension of a breach of the peace is found to be contingent upon an attempt by either of the parties in dispute to exercise [illegible] the [illegible] Code [illegible] 107 [illegible] 7 C W N 29

25 ———— Grounds for action of Magistrate—*Immoveable property dispute as to—*

Order of Magistrate contents of—Breach of the peace —Opportunity to produce evidence—Sessions Judge power of revision or reference—High Court powers of—Code of Criminal Procedure (Act V of 1898) ss 145 and 435—Charter Act (24 & 25 Vict c 104) s 15 Proceedings under Chapter XII of the Code of Criminal Procedure are not proceedings with regard to which a Sessions Judge has any power of revision or reference nor has he the power to call for the records in such proceedings The High Court only can interfere under the power of superintendence conferred upon it by the Charter Act The order of a Magistrate instituting proceedings under s 145 of the Code of Criminal Procedure [illegible]

26 ———— Non joinder of necessary parties—*Jurisdiction—Code of Criminal Procedure (Act V of 1898) s 145—High Court—Subordinate Criminal Courts—Circumstances under which they have jurisdiction* The High Court has power to set aside a proceeding under s 145 of the Code of Criminal Procedure on the non joinder of parties whose presence is essentially necessary for the proper and effectual decision of the case *Laldhari Singh* v *Sukdeo Narain Singh I L R 27 Calc 892* followed Under s 145 of the Code of Criminal Procedure a special jurisdiction is vested in the subordinate Criminal Courts under special circumstances and for a special purpose When the special circumstances do not exist or when the order made under s 145 does not attain the purpose for which the jurisdiction is created then the special jurisdiction vested under that section falls to the ground The circumstances under which the jurisdiction springs up are circumstances which give rise to an apprehension of a breach of the peace and if there is no apprehension of a breach of the peace there is no jurisdiction to make the order The purpose the Legislature had in view was the prevention of a breach of the peace If that object is not attained by an order purporting to be made under s 145 it must be taken to have been without jurisdiction ANESH MOLLAH v EJAHABUDDI MOLLAH (1901) I L R 28 Calc 446 s c 5 C W N 428

27 ———— Initiation of proceedings—*Recording of order under s 145 (1) Criminal Procedure Code* The recording of a proper order under sub s (1) of s 145 Code of Criminal Procedure is necessary to give a Magistrate jurisdiction to take proceedings under that section Such order should state the information upon which the Magistrate has reason to suppose that a breach of the peace

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

2 LIKELIHOOD OF BREACH OF THE PEACE —*contd*

is probable or imminent MANIK v AZIMUDDI (1902) **6 C W N 923**

28 ———— *Criminal Procedure Code (Act V of 1898) s 145—Dispute as to possession of land—Inquiry by Magistrate before institution of proceedings—Source of information if to be stated in order starting proceedings—Reason for making such statement* The object of drawing up a proceeding prior to the issue of notice under s 145 Code of Criminal Procedure can only be to inform the parties of the grounds or the information which satisfied the Magistrate that a dispute existed

likelihood of a breach of the peace and thereupon made an order directing the institution of the proceedings —*Held* that the proceedings were not invalid merely because the Magistrate in his order did not state the source of his information the parties having already become aware of that in the course of the inquiry *Manik v Azimuddi 6 C W N 923 Mohesh Sowar v Narain Bag I L R 27 Calc 981* referred to and distinguished SABID MONDAL v LAKSHMI MONDUL (1903) **7 C W N 599**

29 ———— *Jurisdiction—Criminal Procedure Code (Act V of 1898) ss 107 145—Proceedings under s 145 of the Code initiation of—Security for keeping the peace* The making of a formal order under sub s (*1*) of s 145 of the Criminal Procedure Code is absolutely necessary to give the Magistrate jurisdiction to initiate proceedings under that section Where a notice was issued on the parties under s 107 of the Criminal Procedure Code to show cause why they should not execute a bond to keep the peace and the Magistrate at the hearing recorded an order wherein he stated that it appeared to him that on the facts the case was one for the application of s 145 of the Code and not of s 107 and he then proceeded to "bind down" the first party under sub s (*6*) of s 145 —*Held* that the expression "bind down" was not correct and that the order was entirely bad SUKRU DOSADH v RAM PERGASH SINGH (1902) **I L R 30 Calc 443** s c **7 C W N 174**

30 ———— **Stay of proceedings**—*Jurisdiction—Criminal Procedure Code (Act V of 1898) s 145—Magistrate power of to stay proceedings and cancel order passed by him under sub s (1)—Revision—High Court interference by* A Magistrate has jurisdiction to cancel an order passed under sub s (*1*) of s 145 of the Criminal Procedure Code and to stay proceedings if he becomes satisfied whatever the source of information may be that the state of things does not exist which alone would give jurisdiction to proceed with the inquiry Where therefore a Magistrate having instituted proceedings and passed an order under sub s (*1*) of s 145 received information which he believed that there no longer existed a dispute likely to cause a breach of the peace and before any written statement had been filed by either side cancelled his order and stayed the proceedings —*Held* that the High Court could not interfere as the Magistrate had not acted without jurisdiction *Tarini Charan Choudhry v Amulya Ratan Roy I L R 20 Calc 867* referred to *Hurbullubh Narain Singh v Luchmeswar Prosad Singh I L R 26 Calc 188* distinguished MANINDRA CHANDRA NANDI v BARADA KANTA CHOWDHRY (1902) **I L R 30 Calc 112** s c **6 C W N 417**

31 ———— **Successive police reports**—*Procedure—Criminal Procedure Code (Act V of 1898) s 145—Possession of immoveable property dispute as to—Irregularity of proceedings* When proceedings taken under s 145 on a police report which was defective in not showing the boundaries of the lands in dispute were dropped and fresh proceedings were instituted on a later report which did not state that there was any apprehension of a breach of the peace and the Magistrate in his judgment referred to both reports —*Held* that only the latter report on which he purported to act was to be considered and that report was not sufficient to give jurisdiction under the section RADHA GOBIND v GOSSAIN MOHENDRA GIR (1901) **6 C W N 340**

32 ———— **Police report contents of**—*Breach of the peace—Chur—Extraordinary jurisdiction of the High Court—Criminal Procedure Code (Act V of 1898) s 145—Charter Act (24 & 25 Vict c 104) s 15* A reference by the Magistrate in the initiatory order to a police report which clearly sets out the likelihood of a breach of the peace is a sufficient statement of his reasons for being satisfied of the existence of a dispute likely to cause such breach of the peace *Khosh Mahomed Sircar v Nazir Mahomed 9 C W N 1065* followed The police report on which the Magistrate founds the initiatory order should contain a statement of facts from which he may be satisfied of the existence of a likelihood of a breach of the peace It is essential for the assumption of jurisdiction by a Magistrate that he should be satisfied from a police report or other information that there is a likelihood of a breach of the peace the mere fact that there is a dispute concerning land is not sufficient by itself to give him jurisdiction *Gobind Chunder Moitra v Abdool Sayad I L R 6 Calc 835* and *Anesh Molla v Ejaharuddi I L R 23 Calc 446* referred to The Magistrate should exercise his own judgment in arriving at a conclusion as to the likelihood of a breach of the peace from the mate-

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

2 LIKELIHOOD OF BREACH OF THE PEACE —*concld*

rials before him or the circumstances within his knowledge and he ought not to act upon a mere expression of opinion by the police not accom panied by a statement of facts sufficient to satisfy him and to enable him to form his own opinion. But it is not necessary that the police report should show an actual assembly of men or other specific overt acts *Puddomonee Dassee v Jug godumba Dassee 25 W R Cr 2* and *Rajah Run Bahadur v Ranee Tilessuree Koer 22 W R Cr 79* dissented from The High Court should not ordinarily examine whether the grounds on which the Magistrate was satisfied as to the likelihood of a breach of the peace afford a reasonable foundation for his conclusions *Dhunput Singh v Chatterput Singh I L R 20 Calc 513* dis sented from The imminence of a breach of the peace as indicating a higher degree of the chance of the event happening than is denoted by the likelihood of it is not essential for the exercise of jurisdiction by the Magistrate *Gobind Chunder Moitra v Abdool Sayad I L R 6 Calc 835 Kali Kishen Tagore v Anund Chunder Roy I L R 23 Calc 557* and *Janu Manjhi v Maniruddin 8 C W N 590* dissented from *Uma Churn Santra v Beni Madhub Roy 7 C L R 352* and *Damodur Bidyadhur Mohapatro v Syamanund Dey I L R 7 Calc 385* approved of Under s 15 of the Charter Act the Court will not interfere unless it

Narain Nag 25 W R Cr 74 Chunder Madhub Ghose v Juggat Chunder Sen 4 C L R 483 Queen Empress v Gobinda Chundra Das I L R 20 Calc. 520 and *Kali Kissen Tagore v Anund Chunder Roy I L R 23 Calc 557* explained *Cour Mohan Majee v Doollubh Majee 22 W R Cr 81* referred to Where a party chooses to wait and take the chance of a judgment in his favour he cannot be heard to complain of an excess of

the Code is concluded by every previous order of a Civil or Criminal Court relating to the subject of dispute and the weight to be attached to any such previous order depends on the facts and circumstances of the particular case *Gobind Chund Moitra v Abdool Sayad I L R 6 Calc S ... v Johurry Lal 5 C W N 563* and *Do l t Keeri v Pameswari Koeri I L R 26 Calc ...* distinguished. *Lowsen Santal v Kali Churn Santal 8 C W N 719* and *Gulraj Maniram v Sheikh Bhatoo I L R 30 Calc. 796* approved of KULADA KINKAR ROY v DANESH MIR (1905) I L R. 33 Calc 33

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

3 PARTIES TO PROCEEDINGS

1. ———— **Parties claiming to be in possession of land the subject of dispute right of to appear in proceedings**—*Criminal Procedure Code s 145* Before taking action under s 145 of the Code of Criminal Procedure the Magis trate is bound to be satisfied from a police report or other information as to the likelihood of a breach of the peace and he is also bound to make an order in writing stating the grounds of his being so satisfied and this must be served on the parties to the dispute for it is the intention of the law not only that Magistrates should have sufficient grounds for proceeding under s 145 but that they should inform the parties concerned of the grounds on which they are proceeding Parties who though not actually involved in the dispute claim to be in possession of lands which are the subject of proceedings under s 145 should not be shut out from giving evidence in support of their claims. To do so would undoubtedly occasion very serious prejudice and interference with any possession which they might be able to establish QUEEN EMPRESS v GOBIND CHUNDRA DAS

I L R 20 Calc 520

2 ———— **Parties concerned in proceedings**—*Criminal Procedure Code s 145* The words parties concerned in s. 145 of the Criminal Procedure Code do not necessarily mean only the persons who are disputing but include also persons who are interested in or claiming a right to the pro perty in dispute RAM CHANDRA DAS v MONOHUR ROY I L R 21 Calc 29

3 ———— *Criminal Proce dure Code (Act V of 1898) s 145— Parties con cerned meaning of* The words concerned in the dispute as used in s. 145 Criminal Procedure Code (Act V of 1898) are not limited to the parties actually concerned in the dispute but include parties concerned in the subject matter of the dis pute who would be affected by the Magistrate s order maintaining the possession of any third party in their absence GANESH JALIA v AYABALI CHAU DHURI 4 C W N 753

4 ———— *Criminal Proce dure Code (Act X of 1882) s 145— Parties con cerned in dispute —Death of one of original parties —Substitution of party without fresh proceeding under s 145—Possession at time of institution of proceeding or at time of final order—Criminal Pro cedure Code s 537* In a proceeding under s. 145 of the Code of Criminal Procedure recorded on the 27th April 1893 *A* and *B* were respectively made first and second parties and were ordered to put in statements of their claims to the land in dis pute which they accordingly did *B* died on 24th May 1893 In his statement filed on the 31st May *A* disclaimed any interest in the land but stated that his mother *D K* (who had been a party con cerned in the dispute which led to the original proceeding) was the owner and in possession of it. On 1st June *B S* applied to be substituted as

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

3 PARTIES TO PROCEEDINGS—*contd*

a party in place of his father *B D K* and *B S* were made parties without any fresh proceeding under s. 145 of the Code The case was heard on 27th June and 7th July and on 17th July the Magistrate found as regards the possession in favour of *D K* *Held* by PETHERAM C J and TREVELYAN J (PAMPINI J dissenting) that since the possession to be enquired into was the possession at the time of the initiation of the proceedings the words parties concerned in the dispute meant parties concerned at that time there was no power in such a proceeding to introduce parties who were not concerned in the original dispute No order could therefore be made against *B S* and the proceedings were bad as against him. *Per* PAMPINI J—The preliminary proceeding under s 145 of the Code may and in many cases must partake of the character of a general citation to all the parties concerned in the dispute to appear and it is not necessary for the Magistrate to confine his final order as to possession to the parties whom he may have named in the preliminary proceeding The Magistrate had power to substitute the name of *B S* for that of his father without commencing the proceedings *de novo* The alteration in s 145 of Act X of 1882 the present Criminal Procedure Code of the language of s 530 of the old Code Act X of 1872 implies that the Magistrate is to decide on the possession not at the time of the initiation of the proceedings but at the time of recording the evidence If there was any error in the proceedings it was one cured by s 537 of the Code BECHU SHEIKH v DEB KUMARI DASI

I L R 21 Calc 404

5 ———— Adding parties—*Criminal Procedure Code (Act V of 1898) s 145—Jurisdiction—Breach of the peace—Joint trial of several case whether legal* A Magistrate must deal with a case under s 145 Criminal Procedure Code as it is originally instituted If he finds that he cannot do

action of theirs he should put an end to the case A Magistrate is not competent to add parties after the institution of proceedings Where a Magistrate tried together three cases under s 145 Criminal Procedure Code by consent of parties —*Held* that the parties in all the cases not being the same the procedure adopted by the Magistrate was bad in law That the evidence already taken might be accepted in one of the cases but the other cases must be separately tried RAJ KUMAR SINGH v MAHADEO SINGH 4 C W N 748

6 ———— Manager of company—*Criminal Procedure Code 1882 s 145—Right to notice* Where proceedings under s 145 of the Code of Criminal Procedure were instituted by a Magistrate regarding a dispute as to the right to dig for coal in a certain mouzah which was claimed by a company to the exclusion of those in possession of

was bad and must be set aside as the parties interested were not properly before the Court The manager had no interest except as such or possession except as representing the company and such possession is not the kind of possession contemplated by the section BEHARY LALL TRIGUNAIT v DARBY I L R 21 Calc 915

NEWAZ ALI v RAM BALLABH CHAKRAVARTI I L R 21 Calc 916 note

See BATHOO LALL v DOMI LALL I L R 21 Calc 727

DUKHI MULLAH v HALWAY I L R 23 Calc 55

7 ———— Manager in possession—*Criminal Procedure Code (Act X of 1882) s 145—Possession order of criminal Court as to* A per

8 ———— Parties bound by order—*Criminal Procedure Code 1882 s 145* Orders passed under the Criminal Procedure Code s 145 are binding only on the actual parties to the cases in which they are made QUEEN EMPRESS v KUPPAYYAR I L R 18 Mad. 51

9 ———— Parties concerned—*Criminal Procedure Code 1882 s 145—Initial proceedings—Adding parties during the course of the proceeding* Before initiating proceedings under s 145 of the Criminal Procedure Code it is the duty of the

PROTAP NARAIN SINGH v RAJENDRA NARAIN SINGH I L R 24 Calc 55 1 C W N 3

10 ———— Parties concerned meaning of—*Collection of rents—Zamindars and tenants versus rival zamindars and tenants—Necessary parties to proceedings under s 145 of the Code of Criminal Procedure—Omission to add necessary parties—*

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

3 PARTIES TO PROCEEDINGS—*contd*

Addition of parties during proceedings The words in s 145 of the Code of Criminal Procedure parties concerned in a dispute do not necessarily mean only the parties who are disputing but in

in or claiming a right to the property in dispute and to give notice to them all so that the whole matter so far as his Court is concerned may be disposed of in one proceeding *Ram Chandra Das* v *Monohur Roy I L R 21 Calc 29* and *Protap Narain Singh* v *Rajendra Narain Singh I L R 24 Calc 55* followed Where there was a dispute as to the ownership of lands between certain zamindars and their tenants on the one side and other zamindars and their tenants on the other and the real matter for determination was not merely which of the two parties of zamindar were entitled to collect the rents of the land but also which set of rival tenants was entitled to hold actual po session of the lands and in a proceeding under s 145 of the Code of Criminal Procedure the zamindars only were made parties and not the tenants *Held per* (AMEER ALI and STANLEY JJ) that the tenants were necessary parties to the proceeding and the omission to make them parties went to the root of the case and was an illegality affecting jurisdiction which would justify the High Court in setting aside the order PRINSEP J —The omission to join the tenants could not vitiate an order as between the zamindars on an objection that it was without jurisdiction and that no que tion of jurisdiction arose in the matter The High Court s powers are under the Charter Act and these could be exercised only in respect of jurisdiction LALDHARI SINGH v SUKDEO NARAIN SINGH I L R 27 Calc 892 4 C W N 613

11. ———— Party coming in and showing that there is no likelihood of breach of peace—*Criminal Procedure Code 1898 s 145 cl (5)—Necessary parties* S 145 cl 5 of Act V of 1898 does not enable a Magistrate to add parties to the proceedings but permits a stranger to come in and show that no such dispute likely to cause a breach of the peace concerning any land or water exists or has existed and the latter does not become nor can he be made a party to the dispute which he seeks to show has never existed.

belonging to a joint undivided family such persons ought to have been made parties to the proceedings under s 145 JANOKI NATH ROY v QUEEN EMPRESS 3 C W N 329

12. ———— Addition of parties—*Criminal Procedure Code (Act V of 1898) s 145—Dispute as to possession of land—Parties adding of—Previous proceeding—New proceeding with new parties added whether it can be treated as continuation of previous proceeding—Jurisdiction—Procedure.* In a proceeding under s 145 of the Criminal Procedure Code it is the duty of the Magistrate to find out in the first instance which parties are concerned in the dispute that has arisen and to serve his order upon such parties and when the matter comes before him for trial he should determine which of such parties namely the parties mentioned in the first paragraph of s 145 of the Code is in actual possession A Magistrate is entitled to allow a third party to come in in the course of the proceeding only for the purpose of showing that no dispute likely to cause a breach of the peace really existed or exists *Quære* Whether such third party should be made a party to the proceeding A Magistrate has not the power after recording the proceeding as he is required to do under the first paragraph of the section to add in the course of the investigation any new party as concerned in the dispute *Protab Narayan Singh* v *Rajendro Narayan Sing 1 C W N 3* *Janoki Nath Roy* v *The Queen Empress 3 C W N 329* *Laldhari Singh* v *Sukhdeo Narain Singh 4 C W N 613* followed. A Magistrate cannot treat a subsequent proceeding as a continuation of an earlier one and he cannot refer back to the possession held by one or other of the parties upon the date of the earlier proceeding in determining which of them should be declared to be in possession on the date of the subsequent proceeding BENI SINGH v UMRAO MAHTO (1900) 5 C W N 900

13 ———————— *Jurisdiction—Parties concerned in such dispute meaning of—Addition of parties during proceedings effect of—Fresh Proceedings if necessary—Omission to add necessary parties—Dispute as to separate plots of land—Separate proceedings if necessary—Criminal Procedure Code (Act V of 1898) s 145* Proceedings under s 145 of the Criminal Procedure Code are not without jurisdiction because the Magistrate on information before him has made parties thereto only those actually in dispute and likely to cause a

session as distinguished from a claim to be in possession would be outside the scope of the inquiry Where there has been an addition of a party after the initiation of the proceedings there is no necessity for fresh proceedings if the party added was concerned originally in the dispute which is the foundation o

enquiry begu

added after

sary to init

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

3 PARTIES TO PROCEEDINGS—*contd*

dence previously taken ought if the parties added require it to be again taken in their presence Proceedings under s 145 are not without jurisdiction because some person claiming possession in some way of the lands or a portion of the lands in dispute has not been made a party he not being one of the parties in the dispute likely to cause a breach of the peace so far as appeared to the Magistrate such person not having appeared and raised any objection. Proceedings under s 145 are not without jurisdiction because some of the parties are concerned only with possession of a portion of the lands in dispute *Protap Narain Singh* v *Rajendra Narain Singh I L R 24 Calc 55* declared obsolete KRISHNA KAMINI v ABDUL JUBBAR (F B 1902) I L R 30 Calc 155
s c 6 C W N 737

14 ———— Manager—*Criminal Procedure Code (Act V of 1898) s 145—Order in favour of the manager of the proprietors of an indigo concern—Jurisdiction* An order under s 145 of the Criminal Procedure Code was passed in favour of the manager who was an employee of the proprietors of an indigo concern. *Held* that the order was without jurisdiction. JHABU SINGH v RUTHERFORD (1902)
7 C W N 208

15 ———— Manager or agent—*Criminal Procedure Code (Act V of 1898) s 145—Dispute as to possession of land—Manager or agent if order can be made in favour of—Possession—Actual possession—Possession as proprietor* There is jurisdiction in the Court under s 145 Code of Criminal Procedure to make an order in favour of a person who claims to be in possession of the disputed land as agent to or manager for the proprietors when the actual proprietors are not residents within the appellate jurisdiction of the High Court *Jhabu Singh* v *Rutherford 7 C W N 208* overruled DHONDHAI SINGH v FOLLET (1903)
I L R 31 Calc 48
7 C W N 825

16 ———— Necessary parties—*Criminal Procedure Code (Act V of 1898) s 145—Object of the section—Magistrate duty of to ascertain necessary parties—Necessary parties omission of to bring in whether vitiates proceeding—Jurisdiction of Magistrate—Names of parties disclosed in written statements and police report—Persons interested in or interested in claiming possession of land and person alleged to be in de facto possession of portion of land whether necessary parties* The principal object which a proceeding under s 145 Criminal Procedure Code aims at is the prevention of a breach of the peace and such object cannot be achieved if persons who are interested in or at any rate interested in claiming possession of the land in dispute and persons who are alleged to be in *de facto* possession of a portion of such land are not made parties to it and an order made under the section in the absence of such parties is made without jurisdiction. *Laldhari Singh* v *Sukdeo Narain Singh* 4 C W N 613 and *Anesh Mollah* v *Fjahar Uddi Mollah 5 C W N 428* referred to It is the duty of [illegible] ings unc[illegible] only to [illegible] also to a[illegible] parties c[illegible] *Singh* v [illegible] lowed [illegible] (1901) 6 C W N 101

17 ———— *Criminal Procedure Code (Act V of 1898) s 145—Claims made by two sets of tenants—Parties necessary—Landlords if necessary parties—Omission to make them parties if it vitiate proceedings—Separate plots of land—Separate proceedings if absolutely necessary—Jurisdiction* Where in a proceeding under s 145 Criminal Procedure Code two sets of tenants who claimed possession of the disputed lands were made parties and their landlords were not though the latter were persons interested in the dispute still when they had never moved in the matter themselves an objection as to want of necessary parties made by the tenants was [illegible] ... red to *In the matter of* MANIK MANDAL v GOVIND MANDAL (1901) 6 C W N 206

18 ———— Persons disclaiming interest—*Criminal Procedure Code (Act V of 1898) s 145—Order in favour of persons some of whom disclaim all interest in subject matter of dispute if legal—Jurisdiction* An order under s 145 of the Criminal Procedure Code made in favour of four persons two of whom claim no interest in the property in dispute is not warranted by law and is bad for want of jurisdiction RAMESWAR PERSAD NARAIN SINGH v HARBANS SINGH (1901) 6 C W N 104

4 NOTICE TO PARTIES

1 ———— Obligation of Magistrate to give notice A Magistrate professing to act under s. 145 of the Criminal Procedure Code (Act V of 1898) is bound to issue notices to all the parties concerned so as to give them an opportunity to put in their respective claims *In re* PANDURANG GOVIND I L R 24 Bom. 527

2 ———— Right to notice—*Parties to proceedings—Service of notice—Co-sharers* In a [illegible]

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

4 NOTICE TO PARTIES—*concld*

pute *In the matter of the petition of* GABINDA CHANDRA GHOSH 9 B L R Ap 39

S C GOBIND CHUNDER GHOSE *v* ANUNDO CHUNDER SIRCAR 18 W R Cr 54

3 ———— **Service of notice**—*Criminal Procedure Code 1861 s 318—Service of notice to attend* The mere service of a notice upon a mofussil naib who takes no steps whatever to consult his employer or act under his directions is not such a notice as is contemplated by s 318 Code of Criminal Procedure in a case of dispute regarding possession of land PAMRUNGINEE DOSSEE *v* GOOROO DOSS ROY 17 W R Cr 9

4. ———— *Order under s 530 Criminal Procedure Code 1872 to whom addressed Quære* Whether an order under s 530 Criminal Procedure Code 1872 can be directed to others than the unsuccessful party to the proceedings under the section or whether such an order could properly be directed to the public at large *In the matter of* NOBO KISHORE CHUCKERBUTTY 7 C L R. 291

5 ———— *Nature and form of notice—Intervenor* Although no particular mode of giving notice calling upon parties to attend under this section before the Magistrate has been provided yet the language of the section indicates that the notice shall be addressed to known individuals and not be in the form of a public proclamation or citation. There is no provision in the Criminal Procedure Code for allowing an intervenor to come in in the middle of proceedings held by a Magistrate under s 530 of the Criminal Procedure Code 1872 *In the matter of the petition of* KUNUNDA NARAIN BHOOP I L R 4 Calc 650 3 C L R 551

6 ———— *Criminal Procedure Code (Act V of 1898) s 145—Possession dispute relating to—Notice to party of place of trial to be given in sufficient time to enable him to produce evidence—Magistrate moving about from place to place* In a proceeding under s 145 Code of Criminal Procedure the second party failed to ascertain where the Magistrate who had been moving about from place to place was holding his camp and so failed to procure the attendance of his witnesses at the trial —*Held* that an order passed by the Magistrate directing the first party to continue in possession was bad inasmuch as the second party had no notice of the place of trial in sufficient time to procure the attendance of his witnesses. KALI NATH MISTRI *v* ABHOY BEPARI (1903) 7 C W N 705

5 EVIDENCE MODE OF TAKING ETC

1. ———— **Oral evidence**—*Determination of question of possession.* Oral evidence is the principal matter upon which Magistrates can proceed in determining a question of possession under the

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

5 EVIDENCE MODE OF TAKING ETC—*contd*

Code of Criminal Procedure GOBIND NAUTH PAI *v* ANUND NAUTH PAI 5 W R Cr 79

2 ———— **Witnesses**—*Criminal Procedure Code 1861 s 318—Examination of witnesses* A Magistrate proceeding under s 318 of the Code of Criminal Procedure is bound to examine any witnesses tendered in support of the respective claims to actual possession of the land in dispute before passing an order ANONYMOUS 6 Mad Ap 4

ANUNDER KOOER *v* SONAET KOOER 9 W R Cr 64

3 ———— *Criminal Procedure Code 1882 s 145—Procedure under that section—Attendance of witnesses—Process to enforce attendance* Proceedings under s 145 of the Criminal Procedure Code should on all points of procedure be regarded as summons cases and although it is discretionary with a Magistrate to issue a summons on a witness in such a case yet when any one of the parties applies at a proper time for process to secure the attendance of his witnesses the Magistrate should not arbitrarily refuse his assistance and where such refusal is made it is incumbent on the Magistrate to record his reasons for such refusal *In the matter of the petition of* HURENDRO NARAIN SINGH CHOWDHRY I L R 11 Calc 762

4 ———— *Criminal Procedure Code s 145—Issue of summons to witnesses—Magistrate duty of—Process to enforce attendance of witnesses* Though in a proceeding under s. 145

5 ———— *Evidence on oath—Actual possession* In a proceeding under s. 318 of the Criminal Procedure Code 1861 to determine the right of actual possession it is necessary that the evidence should be taken upon oath QUEEN *v* KALI CHANDRA SHAH 7 B L R 322 16 W R Cr 13

But it appears not to be absolutely necessary to examine witnesses at all *Semble* If examined the evidence should be on oath. QUEEN *v* BALLABH KANT BHATTACHARJEE 7 B L R 324 note 11 W R Cr 36

6 ———— **Recording evidence**—*Omission to record evidence—Inquiry* Taking the statements of both parties without recording evidence in proof of either is not an inquiry QUEEN *v* SONAOOLLAH 2 W R Cr 44

7 ———— *Mode of recording evidence—Dispute likely to cause breach of the*

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

5 EVIDENCE MODE OF TAKING ETC —*contd*

peace In an inquiry under s 530 Act X of 1872 as a preliminary to an order relative to land about which there is a dispute likely to cause a breach of the peace the evidence should be recorded by the Magistrate in the manner provided by s 334 KHETTERMONEE DOSSEE *v* SREENATH SIRCAR
11 B L R Ap 5

8 ———— Neglect to obey order to put in statements—*Criminal Procedure Code 1861 s 318* When in a case under s 318 Code of Criminal Procedure a Magistrate had taken any evidence he was *held* to be not justified in refusing to proceed with the case because the parties neglected to file written statements on the day fixed for filing the statements *In the matter of* GULUCK CHUNDER MITTER **11 W R Cr 9**

9 ———— Irregularity in taking evidence—*Taking evidence in two cases together—Right to separate inquiry* Two investigations under s 318 Code of Criminal Procedure 1861 were before a Magistrate who after deciding one of the cases remarked on the other that because the lands adjoined he had taken the evidence in the two cases together and found it unnecessary to continue the inquiry further *Held* under s 404 that the parties kept out of possession were entitled to a full inquiry WATSON & CO *v* SURNOMOYEE
8 W R Cr 63

10 ———————— *Criminal Procedure Code (Act V of 1898) ss 145 537—Proceeding in respect of several plots of lands—Separate proceedings if necessary—Prejudice* Where a Magistrate drew up one proceeding in respect of several plots of land claimed to be in the possession of different persons and the parties were not prejudiced by the Magistrate not taking separate proceedings but dealing with the matter in one and the same proceeding and where the course taken by the Magistrate did not preclude any of the parties from adducing evidence in the case concerning the different plots of land —*Held* that the procedure taken by the Magistrate did not vitiate the inquiry or the order made therein. ISWAR CHUNDER CHOWDHRY *v* AMBICA CHURN MAJUMDAR (1901) **5 C W N 544**

11 ———— Oral admission by mooktear—*Criminal Procedure Code (Act V of 1898) s 145—Case given up by one side—Recording of the admission if indispensable* Although it is ordinarily necessary to record evidence in a case under s 145 Code of Criminal Procedure before passing final orders it is not indispensable to do so when the case is completely given up by one side Where the mooktear of one of the parties in a proceeding under s 145 Code of Criminal Procedure orally denied their claim to the disputed land though no such denial had been made in their written statements —*Held* that admission by the legal practitioner conducting the case was sufficient in a quasi civil proceeding of this nature and the Magistrate was justified in passing an order in favour of the other party the fact that such admission was not recorded did not invalidate the order HARO MOHAN SARDAR *v* GOBIND SAHU (1902) **7 C W N 351**

6 DECISION OF MAGISTRATE AS TO POSSESSION

1. ———— Objection to decide question of possession—*Procedure by Magistrate* In a case of disputed possession likely to lead to a breach of the peace the Magistrate instead of merely binding down the parties to keep the peace and declining to interfere further is bound to dispose of the question of possession under s 318 Criminal Procedure Code 1861 *In the matter of the petition of* ANUNDNATH ROY **4 W R Cr 12**

2 ———— Power to decide question of possession—*Recognizance to keep peace* If a Magistrate is satisfied that the circumstances require it he may make an order under s 318 of the Code of 1861 notwithstanding that he has taken recognizances under s 282 *In the matter of the petition of* SUTHERLAND
9 B L R 229 18 W R Cr 11

3 ———— Question for decision—*Pos*

[illegible]

sion GRIJAMONEE *v* ISHUR CHUNDER
W R 1864 Cr 2

In re SABHEE SINGH **6 W R Cr 50**

GOVERNMENT *v* GHOLAM MAHOMED
1 Agra Cr 33

REG *v* OMIRTONAUTH JHA
1 Ind Jur N S 399
6 W R Cr 61

4 ———————— *Criminal Procedure Code 1861 s 318—Duty of Magistrate* A Magistrate under s 318 of the Criminal Procedure Code is to inquire into the question who is in

[illegible]

6 Bom. Cr 55

BAPUJI JAGJIVAN *v* MAGISTRATE OF KHEDA
4 Bom. A C 153

5 ———— Duty of Magistrate to maintain possession even when contrary to former order of another Magistrate Where a Magistrate found that an order of his predecessor

[illegible]

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

6 DECISION OF MAGISTRATE AS TO POSSESSION—*contd*

any steps in the matter unless some one actually in po ession and guaranteed po session by that order came to complain to him that his posse sion was threatened or that he had just been forcibly turned out and asked in pursuance of that order to be maintained in posses ion QUEEN v PROTAB CHANDRA BAROOAH 21 W R Cr 2

6 ——— Nature of order—*Illegal dispossession* A Magistrate has no authority to re tore to posse sion a per on who has been illegally dispos e ed He must declare the party in actual pos ession entitled to retain possession until ousted by due cour e of law and forbid all di turbance of such po e sion in the meantime RAMJEEBUN DOOBEY v LUCHMANEE DABEA

W R 1864 Cr 5

DOORJUN SINGH v SHIBBA 3 N W 171

QUEEN v IMAMBANDEE 7 W R Cr 26

7 ——— *Jurisdiction of Magistrate—Order made by a Civil Court—Power of revision by the High Court* It is the duty of the Magistrate when the right to possession has been declared within a time not remote from his taking proceedings under s 145 of the Criminal Procedure Code to maintain any order which has been pas ed by any competent Court and therefore to take proceedings which nece sarily must have the effect of modifying or even cancelling such orders is to assume a jurisdiction which the law does not con template The power of revision to be exercised by the High Court is limited to matters of juris diction that is to say to cases in which it is found that the Magistrate by taking proceedings under s. 145 has acted without jurisdiction. DOULAT KOER v PAMESWARI KOERI *alias* DULIN SAHEBA

I L R 26 Calc 625
3 C W N 461

8 ——— Procedure—*Criminal Procedure Code 1872 s 530—Death of one of the parties before termination of proceedings* On the death of one of the persons concerned in a matter under s. 530 Code of Criminal Procedure just before [illegible]

proceedings are not nece arily bad ince the death has prejudiced no one. *In the matter of* ANNOO DOMOYEE DEBEE v LUCHMAN PERSHAD GOGO

2 C L R 264

9 ——— Dispossession—*Criminal Procedure Code 18 s 530—Illegal dispossession—Ouster without authority of Civil Court* Ouster by one person of another lawfully in po session of property confers no rights on the former which can be recognized in proceedings taken under s 530 of the Code of Criminal Procedure The Court should refer back to a time previous to the quarrel when such possession was peacefully enjoyed by one or other of the disputants *In the matter of the petition of* MOHESH CHUNDER KHAN

I L R 4 Calc 417

10 ——— Onus Probandi—*Criminal Procedure Code 1872 s 530 effect of order under* The effect of an order under s 530 of the Criminal Procedure Code (Act X of 1872) is to declare the person in whose favour it is made to be in posses ion at the time of the proceedings had under the section and to cast the burden of proof upon his adversary in an ejectment suit but such an order can decide nothing as to how that possession was ob tained or as to antecedent posses ion. *Boolee Singh v Hurobuns Narain Singh 7 W R 21?* com mented upon. NOBO COOMAR DASS v GOBIND CHUNDER ROY 9 C L R 305

11. ——— Keeping person in possession to reap crop—*Criminal Procedure Code 1872 s 530* A Magistrate cannot under s. 530 Code of Criminal Procedure order that a person be kept in po es ion until he has reaped the crop tanding on the ground and then that he shall give way to another When there have been long pending disputes in the Courts he should de termine who was in peaceable possession when they commenced *In the matter of* BUNWARI LAL MISSER v RADHA PERSHAD SINGH 1 C L R 136

12 ——— Nature of required possession—*Criminal Procedure Code 1872 s 530—Possession at time of dispute* The possession re garding which parties are required to give proof in a case under s 530 Act X of 1872 relating to a dispute for land in respect of which a breach of the peace is apprehended is possession at the time the proceedings are instituted by the Magistrate and not pos ession at the time the Magistrate comes to his decision. *In the matter of the petition of* PIRTHIRAM CHOWDHRY 20 W R Cr 51

13 ——— *Actual possession—Criminal Procedure Code (Act X of 1882) s 145* Under s. 145 of the Criminal Procedure Code the Magistrate has to find which of the par ties is in po ession of the subject matter of the dispute at the time when he is inquiring into the matter which in the contemplation of the law is identical with the time of the institution of the proceedings and not at any time previous thereto and he has no concern as to how the party th n in actual posse sion obtained posses ion but has only to pass an order retaining him in his posses n AMBLER v PUSHONG I L R 11 Calc. 365

CHUNDER COOMAR PODDAR v CHUNDER KANTA GHOSE I L R 1? Calc 521

14 ——— *Criminal Procedure Code (Act X of 1882) s 145—Possession inquiry into—Time at which Magistrate has to deter mine who was in possession—Undisturbed possession immediately before dispute* In an enquiry under s. 145 of the Criminal Procedure Code where

POSSESSION ORDER OF CRIMINAL COURT AS TO—contd

6 DECISION OF MAGISTRATE AS TO POSSESSION—contd

the property in dispute was forest land the right to possession of which was exercised by cutting and removing timber from time to time the Magistrate found that the men of the first party had been driven away by those of the second and had been unable to enter the forest and remove the timber alleged to have been cut by them that this happened before the time of the initial proceedings and continued to the date of the hearing and that the men of the second party had been able to bring out of the forest the timber which had been cut Upon these findings he came to the conclusion that the possession of the second party had been established and made an order under the section in their favour *Held* that

having regard to the nature of the property in dispute and the mode in which possession may be exercised over it in order to find which party was in possession when the proceedings were instituted it is necessary to inquire which party was in undisturbed possession of the land in dispute by felling timber and removing the same without objection on the occasion immediately preceding the one on which the dispute arose and whichever party be

ASHANULLAH KHAN BAHADUR
I L R 16 Calc 281

15 ———— Criminal Procedure Code 1882 s 145—*Magistrate to determine who was in possession at what time* Under s 145 of the Code of Criminal Procedure (Act X of 1882) a Magistrate is required to decide which of the parties between whom a dispute exists is in possession of the subject of the dispute at the time when the Magistrate decides the question of possession and not at any time previous thereto *In the matter of* HUCHAPA
I L R 15 Bom 152

16 ———— *Criminal Procedure Code s 145—Order for interim possession—Point of time at which possession is to be looked at in determining which party is entitled to an order under s 145* The possession which a Magistrate acting under s 145 of the Code of Criminal Procedure has to find and support is possession at the time of the Magistrate's proceedings Hence where a Magistrate decided a question of possession under s 145 upon evidence taken six months previously —*Held* that such order was irregular and unsustainable *In the matter of the petition of* JAI LAL
I L R 13 All 362

See BECHU SHEIKH v DEB KUMARI DASI

Per PETHERAM *C J* and TREVELYAN *J* (PAMPINI *J* dissenting) I L R 21 Calc 404

POSSESSION ORDER OF CRIMINAL COURT AS TO—contd

6 DECISION OF MAGISTRATE AS TO POSSESSION—contd

17 ———— *Criminal Procedure Code 1882 ss 145 and 146—Possession inquiry as to—Time at which Magistrate is to determine who was in possession—Order passed under s 146 on proceedings taken under s 145 Criminal Procedure Code—Attachment of property* In setting aside an order passed by a Magistrate under s 145 of the Code of Criminal Procedure the High

must be directed and the time at which possession must be found in one party or the other must be governed by the facts of each particular case To

intention of the Legislature In a proceeding under s. 145 regarding a dispute between two parties concerning certain collieries it appeared that the first party were certainly in possession of the buildings which contained the office where the business of the collieries was transacted and where all the cash books and papers of the business were kept and that the second party had during a period of about fourteen days prior to the commencement of the proceeding succeeded in obtaining possession of the pits wharves tramways etc of the colliery by what the Court considered to be a high handed and improper scheme and acting in an unwarrantable manner The Magistrate considering himself bound to find who was in actual possession at the date of the commencement of the proceedings by himself passed an order in favour of the second party *Held* that such order was bad and that

the proper order to make under such circumstances was one under s. 146 attaching the property KATRAS JHERRIA COAL CO v SIBKRISHTA DAW & CO
I L R 22 Calc 297

18 ———— *Criminal Procedure Code 1882 ss 145 and 146—Possession inquiry as to—Time at which Magistrate is to determine who is in possession—Presumption.* A Magistrate in making an order under the Criminal Procedure Code ss 145 and 146 must inquire into the question which party was in actual possession at the time of the institution of the proceedings and

In making resume that he retains all LEISHMAN
I L R 18 Mad. 41

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

6 DECISION OF MAGISTRATE AS TO POSSESSION—*contd*

19 ——— *Final order against person not made partie —Criminal Procedure Code 1898 ss 145 146* A final order under s 145 Criminal Procedure Code cannot be made against persons who were not made parties to the proceeding under s 145 Criminal Procedure Code or who were in the case regarded by the Magistrate as such though notices had been issued upon them to file written statements and they had only entered appearance but had done nothing else JANOKI NATH ROY v QUEEN EMPRESS
3 C W N 329

20 ——— *Criminal Procedure Code 1872 s 530—Parties in possession through raiyats* The Criminal Court has jurisdiction under Act X of 1872 s 530 to determine questions of contested possession between parties who are not in immediate possession of the subject matter of dispute but claim rent from tenants who actually occupy it NOBIN CHUNDER KOONDOO v JOGENDRONATH BHUTTACHARJEE
25 W R Cr 18

21 ——— *Criminal Procedure Code (Act X of 1872) s 530—Intermediate holders—Constructive possession* In a case of disputed possession between two rival zamindars constructive possession through intermediate holders (ticadars) to whom the raiyats pay rents is not such possession as is contemplated by s 530 of the Code of Criminal Procedure EMPRESS v THAKOOR DYAL SINGH **I L R 3 Calc 320**

22 ——— *Criminal Procedure Code 1872 s 530—Possession by raiyats* In a case of dispute regarding land of a considerable area in which both parties contended that they held ... the question which party was in possession of the constituent portions of the land piece by piece in the hands of his raiyats MUDHOOSUDUN SHAHA v BEJOY GOBIND CHOWDHRY **21 W R Cr 55**

23 ——— *Criminal Procedure Code 1872 s 530—Dispute between owners of land—Constructive possession* S 530 of the Code of Criminal Procedure contemplates disputes between owners as well as occupiers *Per* JACKSON J—Where a zamindar has let his lands in farm his farmer and the occupying raiyat are all in their degree concerned in any dispute as to possession which may arise and they ought to be maintained in possession of the interests which they severally enjoy *Sheikh Limd v Crowdy 18 W R Cr 11* and *Empress v Thakoor Dyal Sing I L R 3 Calc 320* commented upon as having gone too far HARAK NARAIN SINGH v LUCHMI BUX ROY
6 C L R 287

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*contd*

6 DECISION OF MAGISTRATE AS TO POSSESSION—*contd*

24 ——— *Occupation of trespasser—Possessor* The actual possession intended by Ch XXII of the Code of Criminal Procedure 1861 does not include the occupancy of a mere trespasser ANONYMOUS **6 Mad Ap 13**

25 ——— *Breach of the peace—Actual possession—Recognizance to keep peace* The possession of a master by his servant —of a landlord by his immediate tenant the person who pays rent to him —of the person who has the property in the land by the usufructuary —come within the meaning of the words actual possession in s 318 of the Code of Criminal Procedure 1861 Their meaning is not limited to bodily possession But a person is not in actual possession where the rents are paid by the actual occupier not to him but to an intermediate holder *In the matter of the petition of* SUTHERLAND
9 B L R 229

s c SUTHERLAND v CROWDY **18 W R Cr 11**

26 ——— *Claim to possession by one acting as servant of owners—Parties* Where there is a dispute likely to lead to a breach of the peace concerning lands and proceedings are recorded and had under s 530 of the Criminal Procedure Code 1872 no order should be made against one who is acting as the servant of another person who claims to have possession of the land unless that other person is made a party to the proceeding *In the matter of* JITBAHAN v BANSRUP DHOBI **6 C L R 193**

27 ——— *Symbolical possession Held* (KEMP J dissenting) that although symbolical possession is not entitled to weight as against a party proved to be in possession yet in the absence of evidence it is in itself deserving to be taken into consideration MUNGLO v DURGA NARAIN NAG **25 W R Cr 74**

28 ——— *Criminal Procedure Code (Act X of 1882) s 145—Possession—Title—Symbolical possession* A Magistrate trying a case under s 145 of the Criminal Procedure Code in determining the question of possession took into consideration the question of title *Held* that he had a right to discuss the question of title if in his opinion it was material upon the question of possession and that the mere fact that he had considered and discussed the question of title would not invalidate his decision on the point of possession provided that there was evidence before him as to who was in possession. *Semble* In the absence of any other evidence of possession a Magistrate would be justified in finding possession to be with a person to whom symbolical possession has been shown to have been given in execution of a decree although possibly slight evidence would be sufficient to rebut such evidence of possession. RAJA BABU v MUDDUN MOHUN LALL
I L R 14 Calc 169

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

6 DECISION OF MAGISTRATE AS TO POSSESSION—*contd*

29 ———— *Criminal Procedure Code 1872 s 530—Symbolical possession under decree of Court* A certain mouzah having been sold in execution of a decree obtained upon a mortgage the purchaser claimed a right under the sale to a hat appurtenant to the mouzah and was put by the Nazir of the Civil Court into symbolical possession of the hat as well as of the mouzah The judgment debtor refused to give up actual possession of the hat maintaining that it was debutter property of which he was the shebait A breach of the peace being imminent in consequence of the rival claims *proceedings were taken under s 530 of* the Criminal Procedure Code and the Magistrate finding that the judgment debtor was in actual possession of the hat made an order maintaining him in such possession until ousted by a Civil Court *Held* (setting aside that order) that the Magistrate had no power under s 530 of the Criminal Procedure Code to direct the judgment debtor to be retained in possession until ousted by a Civil Court but was bound to see that the possession as given by the Nazir was maintained leaving it to the debtor to substantiate his claim as shebait in a Civil Court The Court accordingly directed that the purchaser be restored to possession and that the Magistrate do see that he is kept in possession until ousted by due course of law *In the matter of* CHUTRAPUT SINGH

5 C L R 200

30 ———— *Criminal Procedure Code 1872 s 530—Actual possession—Possession of wife or agent* In an inquiry under 530 of the Code of Criminal Procedure the only thing to be determined is the fact of actual possession. In a dispute between the wife of a lunatic and the manager of his estate with regard to the possession of certain property the Magistrate attached the property under s 531 of the Code of Criminal Procedure on the ground that he was unable to satisfy himself as to who was in possession. It had been proved before him that the wife was in actual possession but there was a doubt as to whether she was not in possession merely as the agent of her husband. *Held* that s 530 has only to do with actual possession and that the Magistrate should have decided that the wife was in possession *In the matter of* JUGGODESHARY CHOWDHRAIN

3 C L R 94

31 ———— *Criminal Procedure Code 1872 s 530—Real right to possession*

[illegible]

keeping alive that right so as to be an answer to the plea of limitation raised in a civil suit is not of itself

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

6 DECISION OF MAGISTRATE AS TO POSSESSION—*contd*

a sufficient possession on which the Magistrate s order under s 530 may be based for the purpose of

[illegible]

32 ———— *Criminal Procedure Code 1872 s 530—Manager in joint possession—Question for Civil Court* A mooktear holding and managing a burial ground for several joint proprietors cannot make himself out to be in possession for one more than for another KASSIM HASSIM SOORTY v ABRAHIM SOLEMAN

25 W R Cr 24

33 ———— *Criminal Procedure Code (Act XXV of 1861) s 318—Act X of 1872 s 530—Certificate of administration—Act XXVII of 1860* A and B had a dispute about possession of a certain muth A was declared by the Magistrate under s 318 of the Criminal Procedure Code to be in possession Subsequently B got a certificate under Act XXVII of 1860 and applied to the Magistrate for possession which was given to him *Held* that the Magistrate s order giving possession to B was irregular and must be set aside DHUNRAJ GIRI GOSWAMI v SRIPATI GIRI GOSWAMI

2 B L R A Cr 27

S C QUEEN v SRIPUTT GIRI GOSSAIN

11 W R Cr 24

See ANURAGEE KOOWAR v RAMPUCHYA DASS

25 W R Cr 16

34 ———— Decision based on evidence of title—*Right to possession* No sufficient evidence of possession was produced before the

[illegible]

dence of possession he was wrong in basing his decision on the evidence of title and his order was set aside. *In the matter of the petition of* KALI KRISTO THAKUR v GOLAM ALI CHOWDHRY

I L R 7 Calc 46 8 C L R 245

35 ———— *Criminal Procedure Code (Act X of 1882) s 145—Joint hearing of the case of several claimants—Number of plots dispute as to—Practice* A Magistrate proceeding under s. 145 of the Criminal Procedure Code in a case in which one party (thirty nine in number) claimed to be the tenants of 708 bighas of land belonging to one T H and the members of the other party (seventeen in number) claimed to hold the same land in separate parcels as their maurasi jote tried the question of possession as between the two parties in one case notwithstanding the pro-

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

6 DECISION OF MAGISTRATE AS TO POSSESSION—*contd*

test of the maurasi claimants to this mode of procedure and decided that possession was with the party of thirty nine directing that they as a body should remain in possession until ousted by the order of a Civil Court *Held* that the course pursued

sion to make all the persons declared to be in possession defendants in any civil suits brought to recover possession of the land. *Azim Mollah* v *Satoo Poramanic 10 C L R 523* distinguished KUTUHUL SINGH v UMA SINGH

I L R 15 Calc 31

36 ———— *Criminal Procedure Code (Act X of 1882) s 145—Order passed under s 146 on proceedings taken under s 145 Criminal Procedure Code—Power of Court on revision* Where a Magistrate has passed an order under s 145 of the Criminal Procedure Code whereas the proper order in the case should have been one under s 146 the High Court on revision will make the order which the lower Court ought to have made *Raja Babu* v *Muddun Mohun Lall I L R 14 Calc 169* explained. REID v PICHARDSON

I L R 14 Calc 361

37 ———— Arbitration—*Criminal Procedure Code (Act V of 1898) s 145—Possession dispute as to—Arbitration reference to—Magistrate s jurisdiction* The parties to a proceeding under s. 145 Code of Criminal Procedure asked to refer their dispute to an arbitrator who was to decide which of them was in possession. The Magistrate consented, and pending the decision of the arbitrator attached the properties in dispute under s 146 Code of Criminal Procedure On an award being made by the arbitrator deciding the question of actual possession —*Held* that the Magistrate ought to take the finding of the arbitrator as to the fact of possession into consideration in bringing the proceedings to a legal termination TARAMONI CHAUDHURANI v GYANENDRA MOHAN CHAUDHURI (1902) 7 C W N 461

38 ———— Attendance of parties—*Code of Criminal Procedure (Act V of 1898) ss 145 438—Summary finding of possession by Magistrate in proceeding under s 145—Written statement in such proceeding proof of—Warrant issue of for attendance of parties legality of—Sessions Judge power of on application for redress of irregularity under s 145 to report to High Court under s 438 Code of Criminal Procedure for orders* In a case under s. 145 of the Code of Criminal Procedure a Magistrate cannot on the failure of one party to file a written statement, summarily pass an order declaring possession with the party who has filed a written statement without taking evidence in proof of such statement. He has no jurisdiction to issue a warrant to compel the attendance of a party in such proceeding On

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

6 DECISION OF MAGISTRATE AS TO POSSESSION—*contd*

out jurisdiction KETATULLAH v FERUZUDDIN MIAH (1900) 5 C W N 71

39 ———— Claim of undivided share—*Criminal Procedure Code (Act V of 1898) s 146—Decree of Civil Court—Jurisdiction* The 1st party obtained a decree against the mother of the 2nd party in a suit in which the 2nd party were also defendants the 1st party purchased the property at the sale held in execution of the decree and obtained possession thereof through the Civil Court The 2nd party not being the debtors the sale certificate which originally contained their name was subsequently amended by those names being struck off The Magistrate found that the 2nd party now claimed an undivided share and passed an order under s 146 Code of Criminal Procedure *Held* that [illegible] ed sh[illegible] inasm[illegible] two parties each of whom asserts the right to hold actual possession of the property as against the other and not a dispute between parties claiming to hold joint possession and neither contesting such right. *Tarujan Bibee* v *Asamuddi Bepari 4 C W N 426* followed *Held* also that taking it that there was a claim on each side to exclusive possession the 1st party being actually put in possession of the property by the Court as the result of the sale it was the duty of the Criminal Court to uphold the status of the 1st party as established by the Civil Court. *S Gordon Sims* v *Johurry Lal 5 C W N 563* followed KRISTA ALHADINI DASI v RADHA SYAM PANDAY (1902) 7 C W N 116

40 ———— Joint family—*Criminal Procedure Code (Act V of 1898) ss 145 146—Decree against member of joint family—Possession granted of whole property to auction purchaser—Dispute as to possession between other members of the joint family and the auction purchaser—Jurisdiction of Magistrate to adjudicate upon rights of parties—Possession by Civil Court effect of* Where in execution of a decree against a member of a joint *Mitakshara* family possession of the whole property was given to an auction purchaser thereof —*Held* that in a proceeding under s. 145 Criminal Procedure Code between the other members of the joint family and [illegible] the Court to

For the purposes of that section it is sufficient that possession of the whole property was made over by the Civil Court to the auction purchaser and the latter should continue in possession thereof until evicted by due course of law MADHOLAL

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

6 DECISION OF MAGISTRATE AS TO POSSESSION—*concld*

BITHUL GALAWAL v JUG LAL SINGH (1909)
6 C W N 841

41. — — Specification of land—*Criminal Procedure Code (Act V of 1898) s 145—Dispute as to land—Specification of land if and when necessary—Civil Court decree for possession—Decree effect of—Magistrate duty of—Procedure* Although in a proceeding under s 145 Criminal Procedure Code the disputed land should be thoroughly ascertained by both parties yet where the parties were not at issue upon the question as to what the disputed lands were and neither the Court nor anybody concerned in the dispute was under any misapprehension as to that point there is no ground for holding that the Magistrate who tried the case had no jurisdiction to make an order under the section for want of proper specification of the lands in dispute The duty of a Criminal Court in a case under s 145 Criminal Procedure Code where there is a decree of a Civil Court for possession in respect of the disputed land is to find which party held such Civil Court decree and then to maintain that party in possession it is not necessary that such decree should be a decree for possession as between the parties to the proceeding under 145 Criminal Procedure Code *Daulat Koer v Rameswari Koeri I L R 26 Calc 625* followed GORDON SIMS v JOHURRY LAL (1901) 5 C W N 563

42 ——— Transfer of case—*Criminal Procedure Code (Act V of 1898) ss 145 and 526—Criminal case—Bias of Judge—Magistrate s powers under s 145—Breach of peace—Right of the parties* The provision of s 526 of the Criminal Procedure Code (Act V of 1898) do not give any power to direct the transfer of any proceedings initiated under s. 145 of the Code Such proceedings do not constitute a criminal case within the meaning of s 526 of the Code A criminal case means a case arising out of and dealing with some crime already committed. It does not include proceedings taken for the prevention of crime Under s 145 of the Code a Magistrate is not at liberty to go into the merits of the claims of any of the parties to the dispute to a right to possess the subject thereof. He can decide only the fact of possession at the date of the order requiring the parties to put in their statements The parties cannot be called upon to furnish a statement of their rights nor can the Magistrate take as the basis of any action he may finally decide upon any conclusion at which he may arrive or at which he may have arrived as to the respective titles of the parties *In re* PANDURANG GOVIND PUJARI (1900) I L R 25 Bom. 179

7 NATURE AND EFFECT OF DECISION

1. ——— Effect of order as regards rights of parties as determined by a Civil Court—*Criminal Procedure Code (Act V of 1898) s 145* The order of a Magistrate dealing with a case under s 145 of the Criminal Procedure Code (Act V of 1898) should not interfere with the rights of the parties as determined by previous decisions of the Civil Court *In re* PANDURANG GOVIND
I L R 24 Bom 527

2 ——— Finding as to possession—*Criminal Procedure Code 1872 s 530* A Magistrate s finding under s 530 of the Criminal Procedure Code 1872 is conclusive as to the question of actual possession A Mamlatdar s finding on such a point is not conclusive LILLU v ANNAJI PARASHRAM I. L R 5 Bom 387

3 ——— Fouzdari Court jurisdiction of—*Possession—Question of title* The jurisdiction of the Fouzdari Court was confined to cases of possession and it was beyond its province to inquiry into and ascertain titles to landed property MOHESHUR SINGH v GOVERNMENT OF INDIA
3 W R P C 45 7 Moo I A 283

4 ——— Effect of order as to possession—*Right and title of party under order* The effect of the order of the Criminal Court giving possession of real estate is merely to prevent the occupation being disturbed by violence and confers no right or title on the party put in possession KADIR BUKSH KHAN v FUSSEEH OON NISSA
5 Moo I A 413

5 ——— *Prevention of breach of peace—Adjudication of title—Criminal Procedure Code 1861 Ch XXII ss 318 321* The object of Ch. XXII of the Criminal Procedure Code 1861 (ss 318 321) is to prevent breaches of the peace likely to be occasioned and not the adjudication of title *In the matter of the petition of* RAM DUTT MISR 1 Agra Cr 29

GOVERNMENT v GHOLAM MAHOMED
1 Agra Cr 33

6 ——— *Question of title* In a simple question of possession all that a Criminal Court can dispose of is the necessary right not the proprietary title KASHEE NATH KOOER v DEB KRISTO RAMANOOJ DOSS 16 W R 240

GRIJAMONEE v ISHUR CHUNDER
W R 1864 Cr 2

In re SABHEE SINGH 6 W R Cr 50

GOVERNMENT v GOLAM MAHOMED
1 Agra Cr 33

PORESH NARAIN ROY v WATSON
17 W R Cr 3

GOVERNMENT v SREEPUTTEE ROY
17 W R. Cr 59

REG v OMRITO NAUTH JHA
1 Ind. Jur N S 399 6 W R. Cr 61

BAPUJI JAGJIVAN v MAGISTRATE OF KHEDA
4 Bom A. C 153

DOORJUN SINGH v SHIBBA 3 N W 171

QUEEN v IMAM BANDEE 7 W R. Cr 29

POSSESSION ORDER OF CRIMINAL COURT AS TO—contd

7 NATURE AND EFFECT OF DECISION—contd

7 ——— *Third parties—Disobedience of order* Where an order under s 318 of the Criminal Procedure Code 1861 was made between *A* on the one side and *B* and the three tenants of *B* on the other declaring that *A* was in possession of the property in dispute —*Held* that this order was only binding on the actual parties to the case before the Magistrate and that subsequent tenants of *B* could not be criminally punished for disobeying the order in question *In the matter of* GOPAL BURNAWAR 3 B L R A Cr 13

8 ——— **Nature of Magistrate s order**—*Criminal Procedure Code 1861 s 318—Execution of decree by Civil Court* A Magistrate is not competent to interfere under s 318 of the Code of Criminal Procedure with the execution of a decree of the Civil Court When a Civil Court decree has been passed regarding the whole or any portion of disputed land it is the Magistrate s duty to maintain that decree and he cannot again institute under s 318 proceedings regarding the land covered by it RAI MOHUN ROY *v* WISE 16 W R Cr 24

9 ——— *Decree of Civil Court for possession* A Magistrate ought not to interfere under s 318 Code of Criminal Procedure 1861 with the execution of a decree of the Civil Court. If called on to interfere at all because he is apprehensive of a breach of the peace he should under s. 319 maintain in possession the person who has been actually put in possession by a decree of the Civil Court SHAMA SOONDERY DEBIA *v* JARDINE SKINNER & CO 6 W R Cr 10

10 ——— *Resistance to execution of decree* A Criminal Court ought not to interfere in cases where a purchaser under a decree is resisted in getting actual possession of the property which he has bought the procedure to be adopted in such cases being that provided in Ch XIX of the Civil Procedure Code 1861 PRAYAG SINGH *v* FUZOOL HOSSEIN 6 C L R 206

11 ——— *Criminal Procedure Code 1872 s 530* The object of Act X of 1872 s. 530 is to prevent a breach of the peace by retaining in possession the party already there [illegible] summary order which proceeds not upon title but on mere possession RANEEGUNGE COAL ASSOCIATION *v* HEM LALL 24 W R Cr 17

12 ——— *Criminal Procedure Code 1872 s 530—Duty of Magistrate as to enforcing decree of Civil Court* Where a decree has been passed by a Civil Court determining the rights of the parties to a suit to disputed land it is a Magistrate s duty to uphold that decree and he cannot as between such parties proceed under s 530 of the Code of Criminal Procedure to decide afresh upon the question of possession *Rai Mohun Roy v Wise 16 W R Cr 24* and *Raneegunge Coal Association v Hem Lall 24 W R Cr 17* followed *In the matter of* BHOLA NATH GHOSE *v* MOTHOOR MUNDLE 7 C L R 516

13 ——— **Power of Magistrate**—*Delivery of possession in execution of decree of Civil Court* The act of a process peon delivering over possession of the disputed land to the purchaser as part of a tenure sold in execution does not take away the power of a Magistrate to inquire into the question of possession between the parties under s 530 Criminal Procedure Code 1872. NOBIN CHUNDER KOONDOO *v* JOGENDRONATH BHUTTACHARJEE 25 W R Cr 18

14 ——— *Civil Court decree of—Criminal Procedure Code 1872 s 530* A Magistrate acting under s. 530 cannot interpret the meaning of a decree of a Civil Court He can determine only the fact of actual possession *In the matter of* LEELA NUND SINGH 1 C L R 273

15 ——— **Suit in Civil Court for possession**—*Proof of title—Criminal Procedure Code 1861 s 318* S 318 of the Code of Criminal Procedure does not mean that any party who can show in the Civil Court a possession prior to the Magistrate s award shall be entitled to have the award set aside and to be put in possession but only that the party out of possession must prove title SHIB PERSAD ROY *v* RUGHOONATH SINGH W R 1864 295

16 ——— *Tenant dispossessed by order of Magistrate under s 318 Criminal Procedure Code 1861—Obligation to sue for reversal of order* A tenant dispossessed by order of a Magistrate under s. 318 of the Code of Criminal Procedure is not bound to sue for the reversal of that order in order to recover possession LUCKHEE DEBEA CHOWDHRAIN *v* GOOROO DOSS SEN W R 1864 Act X 54

17 ——— *Award of possession under s 318 Criminal Procedure Code 1861—Effect of on subsequent suit for possession.* An award under s 318 of the Criminal Procedure Code 1861 is no bar to a possessory action under Act XIV of 1859 s. 15 *In the matter of* CHYTUN CHUNDER ROY CHYTUN CHUNDER ROY *v* BROJO KANT ROY 20 W R 12

18 ——— *Order under Act* [illegible]

1 Agra 120

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

7 NATURE AND EFFECT OF DECISION—*concld*

19 ———————— *Suit for declaration of title* A plaintiff in a civil suit brought for confirmation of his possession by a declaration of his title to certain land obtained pending his suit an order from Magistrate under s 318 of the Criminal Procedure Code 1861 that he should be maintained in possession until ousted by due course of law The suit was dismissed the plaintiff failing to prove his title and the defendants then applied to the High Court under s 404 of the Criminal Procedure Code to set aside the Magistrate s order and put them in possession *Held* that their proper course was by a suit in the Civil Court for possession and the application under the Criminal Procedure Code was rejected. JUGGESH PRAKASH GANGULI *v* NILKAMAL MOOKERJEE

3 B L R A C 57

S C *In re* JOGESH PROKASH GANGOLEE

11 W R Cr 43

20 ———————— *Obstructing road —Suit for exclusive possession* The Magistrate had on the complaint of the defendant passed an order under s 320 of the Criminal Procedure Code 1861 forbidding the plaintiff to retain possession of a piece of land to the exclusion of the public until he had obtained the decision of a competent Court adjudging him to be entitled to such exclusive possession. The plaintiff accordingly brought his suit in the Munsif s Court to recover possession of the

land The Judge s decision was reversed on special

S C MOHESH CHUNDER MOOKERJEE *v* RAMJOOT TUM PALIT 14 W R 163

8 ATTACHMENT OF PROPERTY

1. ———— Preliminaries to order for attachment—*Criminal Procedure Code 1872 s 531* It is only when after recording a proceeding made under s 530 Code of Criminal Procedure and taking evidence a Magistrate decides that neither party is in possession or is unable to satisfy himself as to which party is in possession that he can under s. 531 attach land in dispute He is not competent summarily to order attachment without such preliminary proceedings *In the matter of* RAM SOONDAREE DABEE 1 C L R 86

2 ———————— *Criminal Procedure Code 18?? s 53—Proceedings before attachment* The doubt upon which a Magistrate can act under s 531 Code of Criminal Procedure must arise from his inability to decide on evidence offered

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

8 ATTACHMENT OF PROPERTY—*contd*

by the contending parties as to their possession and not on a doubt entertained without such inquiry *In the matter of* LEELANUND SINGH

1 C L R 273

3 ———— Power to attach land—*Criminal Procedure Code 1861 s 318—Zamindari in possession by raiyat* The power of attaching land regarding which there is a dispute conferred on a Magistrate by s 318 of the Code of Criminal Procedure extends to disputes as to possession of land of which rival zamindars are in possession by their raiyats *In the matter of* MASSEYK

15 W R Cr 1

4. ———— Ground for order of attachment—*Criminal Procedure Code 1872 s 531* Sufficiency of evidence to justify proceedings under s 531 of the Criminal Procedure Code (Act X of 1872) considered. DEO SARUN SINGH *v* TULSI KANT 12 C L R 221

5 ———————— *Criminal Procedure Code 1872 s 531—Ijmal property* Where an Assistant Magistrate acting under Act X of 1872 s 531 found one of the proprietors of an ijmali

held to have committed an error in law in attaching the whole estate as involved in the dispute The words institution of proceedings in s 531 mean the commencement of the action which results in the application to the Magistrate s Court and the possession to be determined is possession at the time the dispute arose *i e* at the time the police reported that a breach of the peace was likely to take place RAKHAL DASS SINGH *v* SHEO PERSHAD SINGH 24 W R Cr 73

6 ———— Second attachment power to issue—*Criminal Procedure Code 1872 s 531—Attachment of land in dispute and release—Re attachment* Where a Magistrate being in doubt as to which of two persons was rightful owner of some disputed property attached it in order to prevent a breach of the peace and released it on their coming

only competent to order a fresh attachment after taking the preliminary steps under s 530 if on completion of the inquiry he found himself in the position described in s. 531 and that, if there was any new dispute he ought to have proceeded *de novo* but that the best course to pursue would be to exert his powers under Ch. XXXVII QUEEN *v* KALY KISHORE POY 25 W R Cr 68

7 ———— Dispute between rival raiyats—*Attachment of estate—Criminal Procedure Code 1861 s 319* Where there was a dispute as to the actual possession of land not between two co proprietors but between rival raiyats —*Held*

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

7 NATURE AND EFFECT OF DECISION—*contd*

7 ——— *Third parties—Disobedience of order* Where an order under s 318 of the Criminal Procedure Code 1861 was made between *A* on the one side and *B* and the three tenants of *B* on the other declaring that *A* was in possession of the property in dispute —*Held* that this order was only binding on the actual parties to the case before the Magistrate and that subsequent tenants of *B* could not be criminally punished for disobeying the order in question *In the matter of* GOPAL BURNAWAR **3 B L R A Cr 13**

8 ——— **Nature of Magistrate s order**—*Criminal Procedure Code 1861 s 318—Execution of decree by Civil Court* A Magistrate is not competent to interfere under s 318 of the Code of Criminal Procedure with the execution of a decree of the Civil Court When a Civil Court decree has been passed regarding the whole or any portion of disputed land it is the Magistrate s duty to maintain that decree and he cannot again institute under s 318 proceedings regarding the land covered by it PAI MOHUN ROY *v* WISE **16 W R Cr 24**

9 ——— *Decree of Civil Court for possession* A Magistrate ought not to interfere under s. 318 Code of Criminal Procedure 1861 with the execution of a decree of the Civil Court If called on to interfere at all because he is apprehensive of a breach of the peace he should under s 319 maintain in possession the person who has been actually put in possession by a decree of the Civil Court SHAMA SOONDERY DEBIA *v* JARDINE SKINNER & Co **6 W R Cr 10**

10 ——— *Resistance to execution of decree* A Criminal Court ought not to interfere in cases where a purchaser under a decree is resisted in getting actual possession of the property which he has bought the procedure to be adopted in such cases being that provided in Ch XIX of the Civil Procedure Code 1861 PRAYAG SINGH *v* FUZOOL HOSSEIN **6 C L R 206**

11 ——— *Criminal Procedure Code 1872 s 530* The object of Act X of 1872 s 530 is to prevent a breach of the peace by retaining in possession the party already there [illegible]

summary order which proceed not upon title but on mere possession RANEEGUNGE COAL ASSOCIATION *v* HEM LALL **24 W R Cr 17**

12 ——— *Criminal Procedure Code 1872 s 530—Duty of Magistrate as to enforcing decree of Civil Court* Where a decree has been passed by a Civil Court determining the rights of the parties to a suit to disputed land it is a Magistrate s duty to uphold that decree and he cannot as between such parties proceed under s. 530 of the Code of Criminal Procedure to decide afresh upon the question of possession *Pai Mohun Roy v Wise 16 W R Cr 24* and *Raneegunge Coal Association v Hem Lall 24 W R Cr 17* followed *In the matter of* BHOLA NATH GHOSE *v* MOTHOOR MUNDLE **7 C L R 516**

13 ——— **Power of Magistrate**—*Delivery of possession in execution of decree of Civil Court* The act of a process peon delivering over possession of the disputed land to the purchaser as part of a tenure sold in execution does not take away the power of a Magistrate to inquire into the question of possession between the parties under s 530 Criminal Procedure Code 1872 NOBIN CHUNDER KOONDOO *v* JOGENDRONATH BHUTTACHARJEE **25 W R Cr 18**

14 ——— *Civil Court decree of—Criminal Procedure Code 1872 s 530* A Magistrate acting under s 530 cannot interpret the meaning of a decree of a Civil Court. He can determine only the fact of actual possession *In the matter of* LEELA NUND SINGH **1 C L R 273**

15 ——— **Suit in Civil Court for possession**—*Proof of title—Criminal Procedure Code 1861 s 318* S 318 of the Code of Criminal Procedure does not mean that any party who can show in the Civil Court a possession prior to the Magistrate s award shall be entitled to have the award set aside and to be put in possession but only that the party out of possession must prove title SHIB PERSAD ROY *v* PUGHOONATH SINGH **W R 1864, 295**

16 ——— *Tenant dispossessed by order of Magistrate under s 318 Criminal Procedure Code 1861—Obligation to sue for reversal of order* A tenant dispossessed by order of a Magistrate under s. 318 of the Code of Criminal Procedure is not bound to sue for the reversal of that order in order to recover possession. LUCKHEE DEBEA CHOWDHRAIN *v* GOOROO DOSS SEIN **W R 1864 Act X, 54**

17 ——— *Award of possession under s 318 Criminal Procedure Code 1861—Effect of on subsequent suit for possession.* An award under s 318 of the Criminal Procedure Code 1861 is no bar to a possessory action under Act XIV of 1859 s 15 *In the matter of* CHYTUN CHUNDER ROY CHYTUN CHUNDER ROY *v* BROJO KANT ROY **20 W R 12**

18 ——— *Order under Act IV of 1840 as to possession omission to set aside* *Held* that the plaintiff having failed to set aside an award as to possession made by the Criminal Court under Act IV of 1840 within the limitation period his claim in opposition to that award was not maintainable GOPAL NATH *v* ABDOOL GHANEE **1 Agra 120**

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

7 NATURE AND EFFECT OF DECISION—*concld*

19 ———————— *Suit for declaration of title* A plaintiff in a civil suit brought for confirmation of his possession by a declaration of his title to certain land obtained pending his suit an order from Magistrate under s 318 of the Criminal Procedure Code 1861 that he should be maintained in possession until ousted by due course of law The suit was dismissed the plaintiff failing to prove his title and the defendants then applied to the High Court under s 404 of the Criminal Procedure Code to set aside the Magistrate s order and put them in possession *Held* that their proper course was by a suit in the Civil Court for possession and the application under the Criminal Procedure Code was rejected JUGGESH PRAKASH GANGULI *v* NILKAMAL MOOKERJEE

3 B L R A C 57

s c *In re* JOGESH PROKASH GANGOOLEE

11 W R Cr 43

20 ———————— *Obstructing road —Suit for exclusive possession* The Magistrate had on the complaint of the defendant passed an order under s 320 of the Criminal Procedure Code 1861 forbidding the plaintiff to retain possession of a piece of land to the exclusion of the public until he had obtained the decision of a competent Court adjudging him to be entitled to such exclusive possession. The plaintiff accordingly brought his suit in the Munsif s Court to recover possession of the [illegible]

land The Judge s decision was reversed on special [illegible] to try [illegible] to the [illegible] Moo [illegible] p 68

s c MOHESH CHUNDER MOOKERJEE *v* PAMOOTTUM PALIT

14 W R 163

8 ATTACHMENT OF PROPERTY

1 ———— Preliminaries to order for attachment—*Criminal Procedure Code 1872 s 531* It is only when after recording a proceeding made under s 530 Code of Criminal Procedure and taking evidence a Magistrate decides that neither party is in possession or is unable to satisfy himself as to which party is in possession that he can under s 531 attach land in dispute He is not competent summarily to order attachment without such preliminary proceedings *In the matter of* RAM SOONDAREE DABEE

1 C L R 86

2 ———————— *Criminal Procedure Code 1872 s 53—Proceedings before attachment* The doubt upon which a Magistrate can act under s 531 Code of Criminal Procedure must arise from his inability to decide on evidence offered by the contending parties as to their possession and not on a doubt entertained without such inquiry *In the matter of* LEELANUND SINGH

1 C L R 273

3 ———— Power to attach land—*Criminal Procedure Code 1861 s 318—Zamindari in possession by raiyats* The power of attaching land regarding which there is a dispute conferred on a Magistrate by s 318 of the Code of Criminal Procedure extends to disputes as to possession of land of which rival zamindars are in possession by their raiyats *In the matter of* MASSEYK

15 W R Cr 1

4 ———— Ground for order of attachment—*Criminal Procedure Code 1872 s 531* Sufficiency of evidence to justify proceedings under s 531 of the Criminal Procedure Code (Act X of 1872) considered DEO SARUN SINGH *v* TULSI KANT

12 C L R 221

5 ———————— *Criminal Procedure Code 1872 s 531—Ijmali property* Where an Assistant Magistrate acting under Act X of 1872 s 531 found one of the proprietors of an ijmali [illegible]

held to have committed an error in law in attaching the whole estate as involved in the dispute The [illegible]

to take place PAKHAL DASS SINGH *v* SHEO PERSHAD SINGH

24 W R Cr 73

6 ———— Second attachment power to issue—*Criminal Procedure Code 1872 s 531—Attachment of land in dispute and release—Re attachment* Where a Magistrate being in doubt as to which of two persons was rightful owner of some disputed property attached it in order to prevent a breach of the peace and released it on their coming [illegible]

completion of the inquiry he found himself in the position described in s. 531 and that if there was any new dispute he ought to have proceeded *de novo* but that the best course to pursue would be to exert his powers under Ch XXXVII QUEEN *v* KALY KISHORE ROY

25 W R Cr 68

7 ———— Dispute between rival raiyats—*Attachment of estate—Criminal Procedure Code 1871 s 319* Where there was a dispute as to the actual possession of land not between two co proprietors but between rival raiyats —*Held*

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

8 ATTACHMENT OF PROPERTY—*contd*

that instead of attaching the whole estate under s 319 of the Code of Criminal Procedure 1861 the Magistrate ought to have settled the dispute as between the raiyats RAMDYAL *v* CHINTA MOONEE W R 1864 Cr 28

8 ———— **Dispute as to boundaries**—*Contiguous estates* When the dispute is as to a common boundary between two contiguous estates the Magistrate instead of attaching the boundary land should find for one party or the other with reference to the point of possession. HARVEY *v* BRICE 4 W R Cr 26

AMRITHNATH JHA *v* AHMED REZA 6 W R Cr 61

9 ———— **Dispute in respect of colliery**—*Order under 144—Prohibition to both parties from exercising right of possession—Proceedings under s 145 of the Code of Criminal Procedure—Date of possession—Code of Criminal Procedure (Act V of 1898) ss 144 145 146* On the 10th of November 1899 the Magistrate passed an *ex parte* order under s 144 of the Code of Criminal Procedure by which both parties to a dispute were prohibited ... ect of ... 145 ... same ... the ... aving found that the second party had been in possession on the 10th of November 1899 passed an order declaring them to be in possession *Held* that the proper way of dealing with this case in interpreting the Magistrate s order was to hold that whereas by reason of the operation of h s order under s 144 of the Code of the 10th of November 1899 no evidence could be offered to show the possession of either party from that date up to the 29th of December he was consequently obliged to ascertain the possession immediately before this order and to *regard his intervention as an attachment suspending* the previous possession whatever it might be but that at the same time the former possession continued and although the lawful exercise of its rights had been forbidden for a time the possession had never ceased to exist That the order of the Magistrate was correct JOYANTI KUMAR MOOKERJEE *v* MIDDLETON I L R 27 Calc 785 4 C W N 562

10 ———— **Power to deal with land under attachment**—*Power to lease—Criminal Procedure Code 1861 s 319* A Magistrate may lease land attached under s 319 of the Criminal Procedure Code 1861 *In the matter of* GREESH CHUNDER DOSS 17 W R Cr 38

11 ———— **Withdrawal of order for attachment**—*Criminal Procedure Code 1872 s 531* A Deputy Magistrate after notice issued under the Code of Criminal Procedure s 530 to two parties finding himself unable to determine who was in possession attached the property in dispute

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

8 ATTACHMENT OF PROPERTY—*contd*

Upon this a third party represented that he as landlord had taken possession of the land on the death of the person to whom it had been leased But the Deputy Magistrate refused to remove the attachment holding that the landlord s possession was without colour of law *Held* that the duty of the Deputy Magistrate under the circumstances was to withdraw his order *In the matter of the petition of* JOY KISSEN MOOKERJEE *In the matter of the petition of* PEARY MOHUN MOOKERJEE 24 W R Cr 40

12 ———— **Rights determinable by Revenue Court**—*Criminal Procedure Code s 146* S 146 of the Code of Criminal Procedure does not give jurisdiction to pass an order of attachment in a dispute between parties whose rights regarding such dispute would have to be determined by a Revenue Court GANGA PRASAD *v* NARAIN I L R 15 All 394

13 ———— **Crops**—*Jurisdiction—Attachment of crops cut and stored— Crops or other produce of land meaning of—Criminal Procedure Code (Act V of 1898) ss 145 and 146* The words crops or other produce of land in sub s (2) of s 145 of the Criminal Procedure Code mean crops *or other produce of land attached to* the land. A Magistrate therefore has no jurisdiction under s 146 of the Code to attach crops which have been severed from the land and stored RAMZAN ALI *v* JANARDHAN SINGH (1902) I L R 30 Calc 110 *s c* 6 C W N 881

14 ———— *Criminal Procedure Code (Act V of 1898) s 145—Suit in Civil Court dismissal of—Finding as to title—Order of Magistrate giving possession—Jurisdiction—Jurisdiction of High Court* In a proceeding under s 145 Code of Criminal Procedure crops growing on the land in dispute were cut by the Magistrate s order sold and the money deposited in Court One of the parties then sued the other for damages The Civil Court found that the crops belonged *to the* plaintiff but dismissed the suit on the ground that the cutting was by the Magistrate s order and there was no cause of action against the defendant Upon this finding the Magistrate ordered the deposit to be made over to the plaintiff *Held that* as in passing this order the Magistrate was not exercising any judicial power no question of his jurisdiction arose and the High Court could not interfere ANNADA PERSAD PAL *v* KHODA BOX MALLIK (1902) 6 C W N 882

9 TRANSFER OR WITHDRAWAL OF PROCEEDINGS

... Sub- ...

Ch XII of the Criminal Procedure Code ... inquiry within the meaning of s 4 of the Code The general power conferred by ss 192 and 528 of

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

9 TRANSFER OR WITHDRAWAL OF PROCEEDINGS—*concld*

the Code upon a District or Sub divisional Magistrate to transfer or withdraw any case for inquiry or trial by any Magistrate subordinate to him is not taken away or cut down by anything in s 145 The word of 192 are wide enough to include cases under Ch XII SATISH CHANDRA PANDAY v RAJENDRA NARAIN BAGCHI I. L. R 22 Calc 898

2 ——— Transfer—*Criminal Procedure Code (Act V of 1898) ss 145 148 192 sub s (2) 528 529 (f) 530 (j)—Transfer of case under s 155 by District Magistrate to another Magistrate to try it himself or make it over to another—Valid or invalid transfer—Jurisdiction local—Prejudice—Local inquiry by trying Magistrate* In a proceeding under s 145 Criminal Procedure Code the second ... tran fe... trate ... senior Deputy Magistrate at the *Sudder* with instructions to try it himself or make it over to another Magistrate at *Sudder* and the senior Deputy Magistrate made over the case to a subordinate Magistrate who tried the case and made an order after holding a local inquiry himself *Held* that the fact that the subject matter of the dispute was not within the local jurisdiction of the subordinate Magistrate who tried the case would not oust his jurisdiction or render him incompetent to try the case provided that he was vested with the powers of a proper class and that the order made by him would not on that account be bad S 530 (j) refers to a case where a Magistrate is not competent by virtue of the position he holds or powers vested in him to try a case of the character referred to in s 145 Criminal Procedure ...

erroneously and in good faith by one Magistrate in transferring a case under s 145 Criminal Procedure Code to another under s 192 is cured by the provisions of s 529 (f) RAJ MOHAN ROY CHOWDHURY v PROSUNNO CHANDRA CHATTERJI (1901) 5 C W N 686

10 STRIKING OFF PROCEEDINGS

1 ——— **Striking off proceedings under s 145 Code of Criminal Procedure effect of**—*New proceeding* Proceedings under s 145 of the Code of Criminal Procedure cannot be renewed after the dispute has been settled and an order has been made that the case be struck off Under such circumstances a new proceeding would not be justified only on the materials upon which the proceeding which was struck off was based TARINI CHARAN CHOWDHRY v AMULYA RATAN ROY I. L. R 20 Calc 867

2. ——— *Recording of order under s 145 Criminal Procedure Code—Revival of*

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

10 STRIKING OFF PROCEEDINGS—*concld*

proceedings—Fresh material if to be recorded Where proceedings taken under s 145 Code of Criminal Procedure have been struck off and it is intended to take fresh proceedings upon new materials it is necessary for the Magistrate to record such new materials in his order renewing the proceedings *Tarini Churn Chowdhry v Amulya Ratan Roy I L R 20 Calc 867* followed Where proceedings under s 145 Code of Criminal ...

s 145 Code of Criminal Procedure to record an order Parties absent case filed MANIK v AZIMUDDI (1902) 6 C W N 923

11 DISPUTES AS TO RIGHT OF WAY WATER ETC

1 ——— **Jurisdiction of Magistrate**—*Criminal Procedure Code 1861 s 320 and s 62* S 320 of the Criminal Procedure Code gives special jurisdiction to Magistrates with full powers and in the cases provided for by it the general power given to any Magistrate by s 62 is barred ANONYMOUS 3 Mad Ap 23

2 ——— *Criminal Procedure Code 1872 s 532* In order to found the jurisdiction of a Magistrate to take action under s 352 of the Criminal Procedure Code it is necessary that a dispute exists between two persons concerning the right to the use of any land or water or any right of way the jurisdiction is intended for the purpose of preserving the public peace ROSIK LAL KUNDU v KARLIK SHAUT 22 W R Cr 48

3 ——— **Procedure**—*Dispute as to right of water* In deciding a dispute as to a right of water the Magistrate must follow strictly the course pointed out by Ch XXII of the Code of Criminal Procedure 1861 QUEEN v RAMNATH 7 W R Cr 45

QUEEN v MADHOO CHURN 13 W R Cr 51

4 ——— *Criminal Procedure Code 1882 s 14—Easement—Procedure to be observed by Magistrate when dispute exists regarding an easement—Parties entitled to notice* The inquiry contemplated under s 147 of the Code o...

persons who respectively claim or deny the right the subject of the dispute Notice to servants of such persons is not equivalent to notice to them and in ...

they are satisfied that a real danger of the evil for

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

11 DISPUTES AS TO RIGHT OF WAY WATER ETC —*contd*

the prevention of which the procedure was devised does in fact exist Such inquiries may lead to injustice being done from defective procedure and a Magistrate would be wise not to use the section in cases where it must involve a long and complicated inquiry and the presence of a large number of people when the remedy of binding down a few persons to keep the peace is ready to his hand BATHOO LAL v DOMI LAL I L R 21 Calc 727

5 ———— ———— ———— *Criminal Procedure Code (Act X of 1882) s 147—Necessity of recording order before process—Proper parties to the proceedings under the section—Manager* S 147 does not require the Magistrate as s 145 does to formally record a proceeding stating the grounds of his being satisfied that a dispute likely to cause a *breach of the peace exists before he can institute* proceedings under that section though it requires the Magistrate to be satisfied upon proper materials before him that such dispute exists The proper parties to a proceeding under s 147 are the persons claiming a proprietary right in the tangible immoveable property in question Where therefore an order under the section was made against a manager of a Coal Syndicate and it was not shown or alleged that he had any interest in the land upon which the disputed right of way was claimed —*Held* that such manager was not a proper party and that the order was bad *Bathoo Lal v Domi Lal I L R 20 Calc 727* followed *Dukhi Mullah v Halway I L R 23 Calc 55* referred to MILLAR v RAJENDRA NATH CHOWDHRY 2 C W N 670

6 ———— Right of way dispute as to—*Criminal Procedure Code 1861 s 320—Obligation of Magistrate in case of right of way* A Magistrate is bound under s 320 of the Code of

[illegible]

complainant to the Civil Court *In the matter of the petition of* BHOIRO MUNDUL 14 W R Cr 28

7 ———— *Obstructing a road* Where *A* complained merely to the Magistrate that a certain road had been obstructed by *B* and others —*Held* that the Magistrate was not bound to inquire into the matter under s 320 of Act XXV of 1861 QUEEN v RASSUL NUSHY 2 B L R Ap 9

S C *In re* PUSSOOL NUSHYO 11 W R Cr 3

8 ———— *Criminal Procedure Code 1861 s 320* In a case of dispute concerning a right of way the Magistrate instead of deciding against the complainant on the ground that he has another way of approach to his house ought to inquire whether or not the disputed road has been in the use and occupation of the complainant and for how long and if he holds him to be in possession to retain him in it leaving the owner of the land to determine the question of right to the easement in the Civil Court S 320 of the Code of Criminal Procedure does not require that there should be an apprehended breach of the peace before the authorities can interfere to decide a right of way QUEEN v TOYLUCKONATH SIRCAR 2 W R Cr 64

[illegible]

property should not be exercised except on clear and satisfactory proof Where the only evidence is that of user it should be such as to show satisfactorily acts of enjoyment exercised as a matter of right and permitted uninterruptedly for some considerable length of time ANONYMOUS 4 Mad. Ap 24

10 ———— Dispute as to use of land—*Order to fill up ditch—Criminal Procedure Code 1861 s 320* A Deputy Magistrate has no jurisdiction under s 320 of the Code of Criminal Procedure to order a ditch which was once a pathway but afterwards filled up to be opened out and a wall to be pulled down which had been built upon it before any complaint was made about filling up the ditch

[illegible]

CHAND ADUCK [illegible]

11 ———— Dispute as to use of road —*Criminal Procedure Code 1872 s 532—Declaratory order* Gates having been placed at one end of

[illegible]

private road be not taken by the person [illegible] to be proprietor to the exclusion of the public until he shall have obtained the decision of a competent Civil Court adjudging him to be entitled to exclusive possession —*Held* that there being no evidence of any one having exercised or claimed to exercise the right of passing over the road between sunset and sunrise there was no dispute under s 532 of the Criminal Procedure Code *and that the order of the Magistrate* was made without authority and must be set aside *S 532* does not enable a Magistrate to make a purely declaratory order It only enables him to prevent arbitrary interruptions by any person of rights actually enjoyed which have been exercised by the public or a person or class of persons *In the matter of the* MAHARAJA OF BURDWAN v CHAIRMAN OF THE DARJEELING MUNICIPALITY I L R 5 Calc 194 4 C L R 334

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

II DISPUTES AS TO RIGHT OF WAY WATER ETC —*contd*

12. ——— *Right of way Obstruction to—Criminal Procedure Code 18 — s 53* Where a complaint was made to a Magistrate that an obstruction had been raised and existed on land reserved by Government and dedicated as a public road —*Held* that an *ex parte* order purporting to be made under s 3? of the Code of Criminal Procedure directing the party in possession not to retain possession of the land until he should obtain the decision of a competent Civil Court adjudging him to be entitled to exclusive possession with a further direction to remove the obstruction was bad in law *In re* LINDSAY

I L R 4 Mad 121

13 ——— *Criminal Procedure Code 18 ? s 53—Public street—Funerals* A dispute having arisen between the Mahomedan

burning ground and not by the street to the use of which for such purposes the Mahomedans objected *Held* that the order of the Magistrate was illegal *In re* NARAYANA I L R 7 Mad. 49

14 ——— Reasonable likelihood of a breach of the peace—*Criminal Procedure Code 1882 s 14—Police report* The lessee of

5th September 188? and pending this prosecution the villagers assembled on the land in question and there was a riot The offenders were convicted and punished On appeal the Sub divisional Magistrate on the 11th October 1886 upheld the conviction. On the same day finding from the

He however postponed the inquiry until the decision of the second class Magistrate in the

gers had unlawfully entered upon the land but as the damage done was inappreciable he acquitted the accused on the 19th October 1886 The Sub divisional Magistrate being of opinion that after this decision a breach of the peace was probable held the enquiry under s 147 of the Criminal Procedure Code

preceding season He therefore made an order allowing the right of grazing to the villagers On application by the lessee to the High Court under s 435 of the Criminal Procedure Code —*Held* that the order was illegal Though the police report afforded some justification for entering upon an inquiry under s 147 still after the rights of the parties had been judicially pronounced upon by the second class Magistrate in the sense that the

I L R 11 Bom 584

15 ——— Dispute concerning right to officiate in a mosque—*Criminal Procedure Code s 147* Where a dispute likely to cause a breach of the peace is shown to exist concerning the right to perform a religious ceremony in a mosque the Magistrate may exercise the powers conferred by s 147 of the Code of Criminal Procedure MUHAMMAD MUSALIAP *v* KUNJI CHEK MUSALIAP I L R 11 Mad 323

See In re PANDURANG GOVIND

I L R 24 Bom. 527

16 ——— Dispute about the right of performing worship and other religious rites in temples—*Jurisdiction of Magistrates to interfere in cases where Civil Courts cannot grant relief—Procedure to be adopted where breach of the peace is apprehended—Right of suit* A Magistrate first class made an order under s 147 of the Criminal Procedure Code (Act X of 1882)

Magistrate apprehend a breach of the peace his proper course is to act under the provisions of Ch VIII of the Criminal Procedure Code (Act X of 188?) *In re* ATMARAM NARAYAN PARAB

I L R 14 Bom. 25

17 ——— Dispute concerning the use of land or water—*Code of Criminal Procedure (Act V of 1898) ss. 145 147—Right to build upon land whether a use of land—Proceeding*

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*contd*

11 DISPUTES AS TO RIGHT OF WAY WATER ETC —*contd*

under s 147 whether legal—Summary disposal of case upon written statements without taking any evidence whether proper In a matter under s 147 as under s 145 of the Code of Criminal Procedure a Magistrate is bound to hear the evidence tendered by the parties and he cannot summarily deal with it after inspection of the locality The right of use of land contemplated by s 147 is one of an entirely different description resembling a right of easement not one arising from the terms of a contract between landlord and tenant A dispute between the land lord and tenant regarding the right of the latter to erect or re erect a gola which has fallen down is not a matter properly coming within s 147 of the Code The settlement of such a dispute involving issues of right can be properly determined by a Civil Court EMPRESS v GANPAT KALWAR 4 C W N 779

18 ———— Right of fishing—*Criminal Procedure Code 1882 s 147—Easements—Profits a prendre—Parties to the injury* The words right to do anything in or upon tangible immoveable property in s 147 of the Criminal Procedure Code include the right of fishing The term easements includes profits *a prendre* it has not been used by the Legislature of this country in the restricted sense in which it is used in English law so as to exclude profits *a prendre* For the purposes of an inquiry contemplated under s 147 of the Criminal Procedure Code it is sufficient if the persons who claim for themselves the right though that right is derived from others are made parties The proprietors are not necessary parties *Ram Chandra Das v Monohur Roy I L R 21 Calc 29* and *Bathoo Lal v Domi Lal I L R 21 Calc 727* distinguished DUKHI MULLAH v HALWAY I L R 23 Calc 55

19 ———— *Criminal Procedure Code 1882 s 14 —Dispute concerning right of fishery—Grounds for Magistrate taking proceedings under s 14 —Procedure* The words right to do anything in or upon tangible immoveable property in s 147 of the Criminal Procedure Code include julkur right A Magistrate is competent to take action under that section in the case of a dispute concerning the exercise of a julkur right *Dukhi Mullah v Halway I L R 23 Calc 55* followed If the materials upon which the proceedings are based do not disclose the fact that there is an imminent danger of a breach of the peace then the Magistrate has no jurisdiction to take action under s 147 of the Criminal Procedure Code Any evidence that he may take in the course of the trial cannot give him a jurisdiction which he does not otherwise possess *Queen Empress v Gobind Chandra Das I L R 20 Cal 520* The proper course to be adopted by the Magistrate when a dispute concerning easements etc arises is to bind down under s 107 of the Code such of the persons as are likely to disturb the peace *Bathoo Lal v*

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*contd*

11 DISPUTES AS TO RIGHT OF WAY WATER ETC —*contd*

Domi Lal I L R 21 Calc 727 followed KALI KISSEN TAGORE v ANUND CHUNDER ROY I L R 23 Calc 557

20 ———— Jalkar—*Criminal Procedure Code (Act V of 1898) s 145—Jalkar dispute as to possession of —Boundary dispute—Decree of Civil Court defining such boundary—Magistrate duty of—Interpretation of decree of Civil Court effect of—Interpretation by trying Magistrate if proper* When a dispute as to the boundaries of a jalkar gives rise to a likelihood of a breach of the peace and a proceeding under s 145 Criminal Procedure Code is drawn up by a Magistrate to settle the dispute subsequent to civil litigation in which such boundaries were defined and laid down the duty of the trying Magistrate is to follow the Civil Court s decree and to give effect to the same and not to attempt an explanation of such a decree FANI BHUSAN SINGH v JAMIRUDDIN MUNDUL (1901) 6 C W N 161

21 ———— Dispute as to right to use water—*Criminal Procedure Code 1872 s 532—Right to use of water* A Deputy Magistrate was held to have been authorized by Act X of 1872 s [illegible]

[illegible]

possession provided the right of use had been exercised within three months if capable of being exercised throughout the year or during the last season if it existed at particular seasons CHOWDHREE ZUCHOORUL HUQ v KURUM CHAND SINGH 24 W R Cr 15

22 ———— Water—*Code of Criminal Procedure (Act V of 1898) s 147—Construction and meaning of the section—Comparison of the language used in s 147 of Act V of 1898 s 147 of Act X of 1882 and s 532 of Act X of 1872—Previous law bearing on the subject—Meaning of the term such thing shall be done etc —Form of the order—Whether order affects persons not parties to the proceedings* [illegible]

[illegible]

for purposes of irrigation from a certain channel passing through the village of the second party who obstructed such flow by erecting certain [illegible]

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

11 DISPUTES AS TO RIGHT OF WAY WATER ETC—*concld*

to affect the persons not parties to the proceedings under s 147 is null and void but that does not render the whole order bad and so far as persons who are parties to the proceedings are concerned it is binding on them. The finding of the Deputy Magistrate that the first party have proved an uninterrupted user of water of the channel for twenty years which they have enjoyed as an easement and as of right and that the erection of the *bunds* led to the dispute is a sufficient finding that the right in dispute had been exercised within either of the periods mentioned in the proviso to s 147 Criminal Procedure Code PASUPATI NATH BOSE v NANDO LAL BOSE (1900)
5 C W N 67

23 ———— **Right of way**—*Code of Criminal Procedure (Act V of 1898) s 147—Easement right of obstruction to—Right of way likelihood of breach of the peace concerning—Exercise of right within statutory period—Such thing shall be done etc meaning of—Order form of* Where one party has a right of way over the land of another who obstructs such right by erecting certain huts and there is a likelihood of a breach of the peace in consequence of such obstruction —*Held* that a Magistrate is competent under the provisions of s 147 Criminal Procedure Code to direct that the obstruction be removed. *Pasupati Nath Bose v Nando Lal Bose 5 C W N 67* followed. LALIT CHANDRA NEOGI v TARINI PERSAD GUPTA (1901)
5 C W N 335

24. ———— **Right to restrain exercise of easement**—*Burden of proof—Criminal Procedure Code 1882 s 147* The right to restrain another from exercising ordinary proprietary rights over his own land is of the nature of an easement [illegible]

e
R
2

12 LOCAL INQUIRY

1 ———— **Nature and object of inquiry**—*Criminal Procedure Code 1872 ss 530 533* In a proceeding under s 530 of the Code of Criminal Procedure the Magistrate must decide the fact of possession on evidence taken by himself and not according to the result of a local inquiry made under s 533 unless the parties have consented to be bound thereby *Per* PRINSEP *J*—The local inquiry referred to in s 533 should be

2 ———— **Person to make local inquiry**—*Criminal Procedure Code 1872 s 533*

POSSESSION ORDER OF CRIMINAL COURT AS TO—*concld*

12 LOCAL INQUIRY—*concld*

The duty of making an inquiry under s 533 of the Criminal Procedure Code should be deputed to a Magistrate not a Canungoe *In the matter of* UMA CHURN SANTRA v BENI MADHUB ROY
7 C L R 352

3 ———— **Effect of inquiry as evidence**—*Right to rebut evidence—Criminal Procedure Code 1872 s 533* When a local [illegible]

with the results of it and to have an opportunity of rebutting the deputed Magistrate s report if he thinks necessary so to do DHUNOO v BROWN
21 W R Cr 25

4 ———— **Discretion of Magistrate as to local inquiry**—*Criminal Procedure Code 1872 s 533—Security to keep peace* The holding of an inquiry under Ch XL of the Code of Criminal Procedure is a matter entirely within the discretion of the Magistrate of the district or of a division of a district and the High Court has no authority to require him to proceed under that chapter The taking of security for keeping the peace is also a matter within the discretion of the Magistrate provided that he has materials upon which to proceed *In the matter of the petition of* KALI PROSUNNO ROY
23 W R Cr 58

13 DISPOSSESSION BY CRIMINAL FORCE

1 ———— **Order as to person dispossessed from immoveable property by criminal force**—*Criminal Procedure Code 1872 s 534* An order under s 534 Criminal Procedure Code must be founded on a finding that the person in whose favour it was made was dispossessed of specific immoveable property by the use of criminal force which formed a material ingredient in the matter of a criminal conviction and it must in terms restore such person to the property from which he had been dispossessed LUCHMI DASS v PALLAT LALL
23 W R Cr 54

2 ———— **Restoration of possession of immoveable property**—*Criminal Procedure Code (Act X of 1882) s 522* The words an offence attended by criminal force in s 522 of the Criminal Procedure Code (Act X of 1882) mean an offence of which criminal force forms an ingredient S 522 is not applicable to cases where there has been no conviction for criminal force either separately or as an ingredient of the offence of which there is a conviction and where there is no finding that any person has been dispossessed of any immoveable property by criminal force *Luchmi Dass v Pallat Lall 23 W R Cr 54* and *Soshi Bhusan Dutt v Pyari Kishore Biswas 1 C W N 356* followed. RAM CHANDRA BORAL v JITYANDRIA
I L R 25 Calc 434
2 C W N 305

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

13 DISPOSSESSION BY CRIMINAL FORCE —*contd*

3 ———————— *Criminal Procedure Code (Act X of 1882) ss 522 523 524—Order to restore po ses ion of immoveable property* An order made under s 522 of the Crim nal Procedure Code (Act X of 1882) restoring po se sion of immoveable property to a person who has been dispos e sed of it by criminal force is an independ ent order and may be made subsequently to the date of the conviction of the offender It need not be made at the same time as the conviction The ca e contemplated by s 522 is that of a person in possession (the complainant) being dispo sessed by force by another per on (the accused) and the latter being in posse sion at the date of conviction In such a case the section gives the Magistrate power to order possession to be restored to the compla nant In the case of a proper order third persons could not be affected if they are the order is not thereby necessarily invalid Cl 2 of the section gives them a remedy by civil suit On 27th September 1897 complainant charged one *R* with criminal trespass under 447 of the Penal Code (Act XLV of 1860) He alleged that in the previous July *P* had entered into po ession of the land and sowed rice upon it and that when in the month of September 1897 he (the complainant) w nt to the field *P* had turned him out by force and refu ed to vacate the land On the 17th November 1897 the case was heard by the Third Class Magistrate who convicted *R* of the offence charged On the following day (18th November 1897) the complain ant applied to the Magistrate under s 522 of the Code of Criminal Procedure (Act X of 1882) to be restored to possession of the land and of the standing crops The Magistrate ordered possession of the land to be restored to the complainant but attache l th crops under Ch XLIII of the Cri minal Procedure Code Thereupon one *F* inter ve [illegible]
by [illegible]
we [illegible]
to [illegible]
He [illegible]
s [illegible]
plainant was bad becau e it did not appear that the offence of which the accused was convicted was attended with criminal force and that the di po ses sion was due to the use of such force The illegal entry complained of had taken place in July 1897 The accu ed then took pos e sion and in Septem ber being then still in pos ession forcibly resisted the complainant when he attempted to enter upon the land The complainant however did not charge the accuse l with this assault but with the trespass which had taken place in July It is only when the actual use of criminal for e leads to dispos session that an order under s 522 can be made *Held* also that the order passed under ss 523 and 524 with reference to the crops were illegal The crops were not property in respect of which the offence was committed nor were they used in the commi ion of the offence They were not such property as is referred to in s 517 523 or 524 of the Criminal Procedure Code *Held* further that the Third Class Magistrate as such had no authority to make an order under s 524 NARAYAN GOVIND v VISAJI

I. L. R 23 Bom. 494

4. ———————— *Criminal Procedure Code (Act V of 1898) s 522—Restoration of possession of property—Use of criminal force—Penal Code (Act XLV of 1860) s 350* In order to support an order under s 522 of the Criminal Procedure Code (Act V of 1898) there must be a finding that the dispossession was by the use of criminal force as defined in s 350 of the Penal Code *Ram Chandra Boral v Jityandria I L R 25 Calc 434* approved of ISHAN CHANDRA KALLA v DINA NATH BADHAK

I L R 27 Calc 174
4 C W N 307

5 ———————— *Code of Criminal Procedure (Act V of 1898) s 522—Order for restoration of possession of immoveable property to complainant—Order passed not simultaneously with the order of conviction but subsequent thereto* An order under 522 of the Code of Criminal Procedure restoring possession of immoveable property to a complainant can only be made simul taneously with the order of conviction and not sub equent thereto *Ram Chandra Boral v Jityandria I L R 25 Calc 434 2 C W N 505* r ferred to MOHAN THETA v RAICHAND BASNI

4 C W N 308

6 ———— **Restoration**—*Criminal Procedure Code (Act V of 1898) s 522—Posse sion of immoveable property re toration of—Object and scope of th law—Jurisdiction of Criminal Court* The object of the provi ions of s 522 of the Code of Criminal Procedure is to enable the Criminal Court by a ummary order to restore the state of things which existed at the time of the dispo session by the convicted per on or persons and the Criminal Court cannot go behind the state of affair at the time of the forcible ejectment which led to the criminal pro secution Sub s (2) of 522 provides that any right or interest which a third party may have in the property cannot be affected and such third party in case of eviction under an order under s. 522 mu t seek his remedy in the Civil Court *Narayan Govind v Visaji I L R 23 Bom 494* referred to and explained PARMESWAR MARWARI v BISWA NATH BANERJEE (1900) 5 C W N 374

7 ———————— *Code of Criminal Procedure (Act V of 1898) s 522—Order for re storation of possession of immoveable property—Conviction of accused on charge of criminal tres pass—No finding of use of criminal force—Legality of order for restoration* Certain persons were convicted of having committed criminal tre pass on a piece of land, under s. 447 of the Indian

POSSESSION ORDER OF CRIMINAL COURT AS TO—*contd*

13 DISPOSSESSION BY CRIMINAL FORCE —*concld*

Penal Code There was no finding that they had u ed criminal force or that the complainant had been dispos es ed of the land by such force An order was sub equently made which purported to be under s. 522 of the Code of Criminal Procedure directing the accused to restore pos es ion of the land. On a revision petition being preferred against this order —*Held* that as there was no finding that criminal force had in fact been u ed or that complainant had been dispo se sed of the land by it and as criminal force was not an ingredient of the offence for which the accused had been con victed the order was made without jurisdiction BATAKALA POTTIAVADU (1902)

I L R 26 Mad. 49

8 ———— *Criminal Procedure Code s 52 —Penal Code (Act XLV of 1860) s 350—Pe toration of possession of immovable property—Use of criminal force.* To support an order under 522 of the Code of Criminal Procedure restoring po ession of immovable property it is nece sary for the Court to find as a fact not only that the per on in who e favour such order is made was deprived of possession by an offence but that such [illegible] force

25 Ca

Badh

MAN t

14. COSTS

1 ———— Order for costs—*Criminal Procedure Code s 148—Assessment of such costs by successor in office—Magistrate power of* When a Magistrate passed an order for costs under s 148 Criminal Procedure Code but did not state what the amount was to be —*Held* that his successor in office had no jurisdiction to pass an order assessing such costs BHOJAL SONAP v NIRBAN SINGH

I L R 21 Calc 609

2 ———— *Criminal Procedure Code 1882 s 148—Assessment of costs by Magistrate other than the Magistrate passing the decision and making the order for costs—Application within reasonable time* Where a decision has [illegible]

DHAR CHATTERJEE v EBADULLAH NASKAR

I L R 22 Calc 384

3 ———— *Criminal Procedure Code 1882 s 148— Magistrate passing a decision Meaning of—Magistrate power of—Civil Procedure Code 1882 s 218—Criminal*

POSSESSION ORDER OF CRIMINAL COURT AS TO—*concld*

14 COSTS—*concld*

Procedure Code 1882 s 439—Revision The award of costs under s 148 of the Code of Criminal Procedure is a *quasi* civil proceeding and should be made by the Magistrate at the time of passing his de ision under s 145 in the same manner as under s 218 of the Code of Civil Procedure the order [illegible]

was not made until the 16th June 1894 but then by the ame Magistrate who passed the order under s 145 —*Held* that the order was not void for want of jurisdiction and there being no suggestion that it was unjust or improper on the merits the Court declined to interfere with it in the exercise of their discretionary power of revision under s 439 BINODA SUNDARI CHOWDHURANI v KALI KRISTO PAL CHOWDHURY

I L R 22 Calc 387

4 ———— *Criminal Procedure Code 1882 s 148—Assessment of costs by Magistrate other than the Magistrate passing the decision and making the order for costs* When an order to pay costs under s 148 of the Criminal Procedure Code (Act X of 1882) has been made by the Magistrate who decided the case another [illegible]

PROSAD SHAHA

I L R 23 Calc 37

5 ———— *Criminal Procedure Code 1882 s 148—Order for and assessment of costs—Power of Magistrate—Delay—Notice to parties* An order for and the assessment of costs under s 148 of the Criminal Procedure Code should be made at the time of passing the decision under s 145 of the Code in the presence of the parties Such costs should not be ordered [illegible]

6 ———— *Jurisdiction—Costs—Order for assessment of without notice to party affected thereby—Revision by High Court—Code of Criminal Procedure (Act V of 1898) s 148* A Magist [illegible] under s making without opportunity of contesting the same PROKASH CHUNDER SARKAR v RAM PRASAD PATTAK (1900)

I L R 28 Calc 302
s c 5 C W N 291

POSSESSORY LIEN

See RECEIVER I L R 36 Calc 713

POSSESSORY SUIT

See MAMLATDAR I L R 28 Bom 215

See MAMLATDARS COURTS ACT I L R 31 Bom. 88

POST CARDS

See OBSCENE POST CARDS I. L. R 32 Calc 247

POST MORTEM REPORT

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE 6 C W N 98

POST OFFICE ACT (XVII OF 1854)

——— s 49—*Liability of Government for loss in conveyance* Under s 49 of the Post Office Act 1854 the Indian Government like Post Master General is not responsible for loss or damage occurring to anything entrusted to the Post Office for conveyance WINTER *v* WAY 1 Mad. 200

——— s 50—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—POST OFFICE ACT 3 Bom. Cr 8

——— *Conviction for fraudulently secreting letter—Subsequent charge of fraudulently making away with letter* Where a prisoner was convicted and sentenced under s 50 of Act XVII of 1854 upon the charge of fraudulently secreting a post letter and on appeal such conviction and sentence were confirmed —*Held* that he could not subsequently be convicted under the same section of having fraudulently made away with the same letter upon the same occasion both acts being connected and substantially a part of one criminal transaction QUEEN *v* DALAPATI RAU 1 Mad. 83

POST OFFICE ACT (XIV OF 1866)

See ABETMENT 7 W R Cr 54

See CARRIERS 3 N W 195

——— s 5—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—LETTERS IN POST OFFICE. I L R 13 Mad. 242

——— ss 47 48—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—POST OFFICE ACT 3 Bom. Cr 8 5 Bom Cr 36

——— *Opening newspaper and replacing it in envelope—Offence* Per KEMP J (GLOVER, J doubting) that the opening of a newspaper by a person employed in the Post Office and replacing it in its envelope does not constitute an offence under s 48 Act XIV of 1866 as it could not be said that the accused stole fraudulently appropriated wilfully secreted destroyed or threw away any letter or other article sent by post *Per*

POST OFFICE ACT (XIV OF 1866)—*concld*

——— ss 47, 48—*concld*

KEMP and GLOVER JJ —There must be a fraudulent intention in the act of the accused before he can be convicted under s 48 QUEEN *v* PANNA LALL MOOKERJEE 19 W R Cr 4

——— s. 48—*Secreting and fraudulently appropriating letters—Theft—Dishonest misappropriation—Penal Code (Act XLV of 1860) ss 378 403* The accused being in the employ of Government in the Post Office Department while as ist [illegible]

dishonest misappropriation of property within the meaning of the Penal Code QUEEN EMPRESS *v* VENCATASAMI I. L R. 14 Mad. 229

POST OFFICE ACT (VI OF 1898)

——— s 13—

See SMALL CAUSE COURT MOFUSSIL. I. L. R. 28 Mad. 213

——— ss 20 61—

See OBSCENE POST CARDS I. L. R. 32 Calc 247

POSTAL MONEY ORDER.

——— payment by—

See EXECUTION OF DECREE—MODE OF EXECUTION—INSTALMENTS I L R. 24 All. 85

POSTHUMOUS SON

See BENAMI 9 C W N 89

See HINDU LAW I. L R. 29 Bom. 51

See HINDU LAW—WILL. I L R 30 Mad. 369

See LIMITATION 9 C W N 111

See RIGHT OF SUIT 9 C W N 477

POSTPONEMENT

——— *sine die*, if legal—

See CRIMINAL PROCEDURE CODE, s 145 13 C W N 104 601

——— petition for—

See CIVIL PROCEDURE CODE 1882 ss 257 258 (1859 s 206) I. L R 1 Mad. 387

POTTAH.

See JURISDICTION OF CIVIL COURT—POTTAS

See KABULIAT

See LANDLORD AND TENANT
8 C W N 155
I L R 28 Mad 553

See LEASE—CONSTRUCTION
I L R 28 Calc 720

See PATTAH

See TENDER.

———— construction of—

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT

See LEASE—CONSTRUCTION

———— grant of—

See LANDLORD AND TENANT
I L R 31 Mad. 64

———— objection to—

See LANDLORD AND TENANT
I. L. R 30 Mad 498

———— tender and acceptance of—

See JURISDICTION OF CIVIL COURT—POTTAHS I L R 17 Mad. 1
I. L. R 18 Mad. 434

See KABULIAT—REQUISITE PRELIMINARIES TO SUIT

See MADRAS RENT RECOVERY ACT VIII OF 1865

———————— *Grant of pottah by Collector—Conditional grant—Effect of reversal of grant—Appeal to Board of Revenue* The grant of a pottah by a Collector is conditional on the result of an appeal against such grant to the Board of Revenue TIRUMALASWAMI AYYANGAR *v* TIRUMALAI GOUNDAN I L R 19 Mad. 324

POUNDAGE

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
I. L. R 20 Mad. 158

———— right to—

See SHERIFF 4 Bom. O C 139
6 Bom. O C 22
I L R 2 Calc 385 387 note
I. L. R 37 Calc 649

POUNDAGE-FEE.

———— application to receive—

See LIMITATION ACT 1877 SCH. II ART 179—STEP IN AID OF EXECUTION
I L R 23 Calc 827
I. L. R. 23 Calc 196

POVERTY

———— of appellant—

See SECURITY FOR COSTS—APPEALS
18 W R 102
I L R 7 All 542
I L R 8 Calc 203
I L R 13 Bom. 458
I L R 21 Calc 526

POWER OF APPOINTMENT

See COURT FEES ACT SCH I ART 11
I L R 25 Mad. 515

See WILL—CONSTRUCTION
I L R 4 Calc 514
I L R 18 Bom. 1

———————— *Will—Appointment by general bequest—Power created subsequently to the will—Indian Succession Act (X of 1865) s 78—Civil Procedure Code (Act XIV of 1882) s 527 case stated under* A general power of appointment may be well exercised by a will executed previously to the creation of the power and that too by a mere residuary gift DINSHAW SORABJI *v* DINSHAW SORABJI (1907) I L R 31 Bom 472

POWER OF ATTORNEY

See CHARGE I. L R 35 Calc 854

See EVIDENCE ACT ss 85 114
9 C W N 986

See PARDANASHIN WOMAN—EXECUTION OF DOCUMENT BY
I L R 29 Calc 744

See PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION
I L R 16 Calc 776
I L R 22 Calc 491
I. L. R 21 Mad. 492

See STAMP ACT 1879 SCH I ART 50
I L. R. 9 Mad 146 358
I L. R 15 Mad. 386

1 ———— Construction of power—*Power to sell or mortgage ship* In construing [illegible]

2. ———————— *Power to refer to arbitration.* *T* having frequent occasion to prosecute and defend suits in different Courts and being

POSSESSORY SUIT

See MAMLATDAR I L R 28 Bom 215

See MAMLATDARS COURTS ACT
I L R 31 Bom. 86

POST CARDS

See OBSCENE POST CARDS
I L R 32 Calc 247

POST MORTEM REPORT

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE 6 C W N 98

POST OFFICE ACT (XVII OF 1854)

——— s

in conveyance
1854 the Indi
General is no
occurring to anything entrusted to the Post Office for conveyance WINTER *v* WAY 1 Mad 200

——— s 50—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—POST OFFICE ACT
3 Bom. Cr 8

——— *Conviction for fraudulently secreting letter—Subsequent charge of fraudulently making away with letter* Where a prisoner was convicted and sentenced under s 50 of Act XVII of 1854 upon the charge of fraudulently secreting a post letter and on appeal such conviction and sentence were confirmed —*Held* that he could not subsequently be convicted under the same section of having fraudulently made away with the same letter upon the same occasion both acts being connected and substantially a part of one criminal transaction QUEEN *v* DALAPATI RAU
1 Mad. 83

POST OFFICE ACT (XIV OF 1866)

See ABETMENT 7 W R. Cr 54

See CARRIERS 3 N W 195

——— s 5—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—LETTERS IN POST OFFICE
I L R 13 Mad. 242

——— ss 47 48—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—POST OFFICE ACT
3 Bom. Cr 8
5 Bom Cr 36

——— *Opening newspaper and replacing it in envelope—Offence* Per KEMP J (GLOVER, J doubting) that the opening of a newspaper by a person employed in the Post Office and replacing it in its envelope does not constitute an offence under s 48 Act XIV of 1866 as it could not be said that the accused stole fraudulently appropriated wilfully secreted destroyed or threw away any letter or other article sent by post *Per*

POST OFFICE ACT (XIV OF 1866)—*concld*

——— ss 47 48—*concld*

KEMP and GLOVER JJ —There must be a fraudulent intention in the act of the accused before he can be convicted under s 48 QUEEN *v* PANNA LALL MOOKERJEE 19 W R Cr 4

——— s. 48—*Secreting and fraudulently appropriating letters—Theft—Dishonest misappropriation—Penal Code (Act XLV of 1860) ss 378 403* The accused being in the employ of Government in the Post Office Department while assist

offence of secret ng them within the meaning of that

dishonest misappropriation of property within the meaning of the Penal Code QUEEN EMPRESS *v* VENCATASAMI I L R. 14 Mad. 229

POST OFFICE ACT (VI OF 1898)

——— s 13—

See SMALL CAUSE COURT MOFUSSIL
I. L. R. 28 Mad. 213

——— ss 20 61—

See OBSCENE POST CARDS
I. L R. 32 Calc 247

POSTAL MONEY ORDER

——— payment by—

See EXECUTION OF DECREE—MODE OF EXECUTION—INSTALMENTS
I L R. 24 All 85

POSTHUMOUS SON

See BENAMI 9 C W N 89

See HINDU LAW I L R. 29 Bom 51

See HINDU LAW—WILL
I L R 30 Mad. 369

See LIMITATION 9 C W N 111

See RIGHT OF SUIT 9 C W N 477

POSTPONEMENT

——— *sine die*, if legal—

See CRIMINAL PROCEDURE CODE s 145
13 C W N 104 601

——— petition for—

See CIVIL PROCEDURE CODE 1882 ss 257 258 (1859 s 206)
I L R 1 Mad. 387

POTTAH.

See JURISDICTION OF CIVIL COURT—POTTAS

See KABULIAT

See LANDLORD AND TENANT
8 C W N 155
I L R 28 Mad 553

See LEASE—CONSTRUCTION
I L R 28 Calc 720

See PATTAH

See TENDER

——— construction of—

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT

See LEASE—CONSTRUCTION

——— grant of—

See LANDLORD AND TENANT
I L R 31 Mad 64

——— objection to—

See LANDLORD AND TENANT
I L R 30 Mad 498

——— tender and acceptance of—

See JURISDICTION OF CIVIL COURT—POTTAHS I L R 17 Mad 1
I L R 18 Mad 434

See KABULIAT—REQUISITE PRELIMINARIES TO SUIT

See MADRAS RENT RECOVERY ACT VIII OF 1865

——————— *Grant of pottah by Collector—Conditional grant—Effect of reversal of*

[illegible]

MALAI GOUNDAN I L R 19 Mad 324

POUNDAGE[1]

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
I L R 20 Mad 158

——— right to—[1]

See SHERIFF 4 Bom O C 139
6 Bom O C 22
I L R 21 Calc 385 387 note
I L R 37 Calc 649

POUNDAGE-FEE

——— application to receive—

See LIMITATION ACT 1877 SCH II ART 179—STEP IN AID OF EXECUTION
I L R 22 Calc 827
I L R 23 Calc 196

POVERTY

——— of appellant—

See SECURITY FOR COSTS—APPEALS
16 W R 102
I L R 7 All 542
I L R 8 Calc 203
I L R 13 Bom 458
I L R 21 Calc 526

POWER OF APPOINTMENT

See COURT FEES ACT SCH I ART 11
I L R 25 Mad 515

See WILL—CONSTRUCTION
I L R 4 Calc 514
I L R 18 Bom 1

——————— *Will—Appointment by general bequest—Power created subsequently to the will—Indian Succession Act (X of 1865) s 78—Civil Procedure Code (Act XIV of 1882) s 527 case stated under* A general power of appointment may be well exercised by a will executed previously to the creation of the power and that too by a mere residuary gift DINSHAW SORABJI *v* DINSHAW SORABJI (1907) I L R 31 Bom 472

POWER OF ATTORNEY

See CHARGE I L R 35 Calc 854

See EVIDENCE ACT ss 85 114
9 C W N 986

See PARDANASHIN WOMAN—EXECUTION OF DOCUMENT BY
I L R 29 Calc 744

See PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION
I L R 16 Calc 776
I L R 22 Calc 491
I L R 21 Mad 492

See STAMP ACT 1879 SCH I ART 50
I L R 9 Mad 146 358
I L R 15 Mad 386

1 ——— Construction of power—*Power to sell or mortgage ship* In construing power-of attorney the special purpose for which the power is given is first to be regarded and the mo t [illegible]

[illegible]

master —*Held* that the master had no authority to sell or mortgage the ship. JUDAH *v* ADDI RAJA QUEEN BIBI 2 Mad 177

2 ——————— *Power to refer to arbitration.* T, having frequent occasion to prosecute and defend suits in different Courts and being

POWER OF ATTORNEY—*contd*

unable to give his personal attention to them exo cuted a power-of attorney in *S s* favour whereby he uthorized *S* to watch the ca es on his behalf to appoint any pleader or mooktear to receive after giving a receipt for the same any money deposited for and due to him from the Courts to act on his behalf in cases of dakhil kharij and obtain the entry of his name after getting the names of other per sons expunged to purchase villages with the money due under decrees to file on his behalf receipts acquittances raji namahs and other documents and to get back deeds and decrees and give receipts and acquittances *Held* that the terms of the power of attorney did not authorize *S* to refer questions to arbi ration. THAKOOR PERSHAD *v* KALKA PERSHAD 6 N W 210

3 ———— *Power to sue given to an agent extent of—Vakil Reasonable remu neration to under such power* A mere power to sue does not authorize an agent to do more than employ a vakil on the terms of paying him a reasonable remuneration KESHAV BAPUJI *v* NARAYAN SHAM RAV I L R 10 Bom. 18

4 ———— *Authority to enter into special agreement with vakil—Agreement to remunerate according to proportion recovered* The defendant on behalf of her minor son gave to *S M* a power of attorney by which she authorized *S M* for her and in her name and on her behalf to appear in or sue or defend any suit appeal or special appeal and to act in all such proceedings in any way in which she might if present be permitted or called on to act *Held* that the above power did not authorize *S M* to enter into a special agreement with a vakil under which the vakil (in an appeal which he was employed to conduct for the defendant on behalf of her minor son) was to receive for his services a minimum reward of R4 000 and in cases of success a reward proportional to the amount awarded by the Appellate Court RAV SAHEB V N MANDLIK *v* KAMALJABAI SAHEB NIMBALKAR 10 Bom 26

5 ———— *Power to execute bond* Under a power of attorney executed by twenty proprietors of a joint estate empowering ...

prietors. *Held* that under the power-of attorney the manager was not authorized to execute a bond on behalf of any one or more of the proprietors making him or them responsible for the whole money borrowed to the exclusion of the rest *Held* further that in a suit upon a bond so executed the plaintiffs were not entitled to rely upon the general power which the manager might have as the manager s authority must be con idered as strictly confined to the terms of the power of attorney BUDH SINGH DUDHURIA *v* DENENDRA NATH SANCUL 11 C L R 323

6 ———— *Mooktearnama—Execution of bond to secure barred debt—Contract Act s 25* A mool tearnama empowering the mook tear to execute bonds in lieu of former debts does not authorize the mooktear to execute a bond to secure a debt already barred by limitation Where however a suit is brought upon a bond executed to secure a former debt it must be shown by the person all g ing it that such debt was barred HUBLAL SUKUL *v* RAM GOTI DEY ROY 11 C L R 581

7 ———— *Mooktearnama—Authority of agent—Power to make gift* A mook tearnama merely gave the mooktear power to grant ticca ijara leases and when advisable to sell mort gage and make gift of the whole or portion of the property of the prin ipal *Held* that the mooktear had no power to create a permanent tenure The power of making a gift given by the mooktearnama authorized the mooktear formally to execute a deed of gift only when the disposing power had been exercised by the principal TYEBUNNESSA *v* KANIZ FATIMA 13 C L R 247

8 ———— *Power to dispo e of property—Authority to pledge* A power-of attorney authorized the holder to dispose of certain property in any way he thought fit *Held* that the holder of such power had no authority to mortgage the property A power of attorney mu t be construed strictly MALUKCHAND BIN GYANMAL *v* SHAN MOGHAN VARDRAJ I L R 14 Bom. 590

9 ———— *Power to sell endorse and assign negotiable securities* The ...

private bankers borrowed money of the bank of Bengal offering as security these promissory notes The Bank made the advance and the a ents en dorsed the notes such endorsement purporting to be as attorney for their principal and deposited them with the Bank by way of collateral security for their personal liability at the same time authori ing the Bank, in default of payment to sell the notes in reimbursement of the advances The agents after wards became insolvent and default having been made in payment the Bank sold the notes and realized the amount of their loan. *Held* that the endorsement of the notes by the agents of the payee to the Bank was within the cope of the authority given to them by the power of attorney and that the payee could not recover in detenue against the Bank The rule laid down in the ca e of *Gill v Cubitt 3 B & C 466* and *Down v Halling 4 B & C 330* that the negligence of a party takin a negotiable instrument fixes him with the defective title of the party passing it observed upon and those ca es declared to be no longer law BANK OF BENGAL *v* MACLEOD 5 Moo I. A. 1

BANK OF BENGAL *v* FAGAN 5 Moo I A. 27

10 ———— *Power to sell or mortgage.* Under a power of attorney containing a clause empowering *A* to sell or mortgage the donor s property for the payment of his debts *A* executed a

POWER OF ATTORNEY—*contd*

simple money bond to one of the donor s creditors for payment of the sum due and interest *Held* that the act was *extra vires* and did not bind the donor POORNA CHUNDER SEN v PROSUNNO COOMAR DASS

I L R 7 Calc 253 8 C L R 433

11 ——— *Principal and agent— Purchase s ll endorse and transfer — Meaning of Power to sell* N & Co having a joint and several power of attorney from the plaintiff authorizing them to purchase sell endorse and transfer for the plaintiff and in the plaintiff s name and on the plaintiff s behalf all shares standing in his name in the books of any public company or society entered into a contract embodied in bought and sold notes agreeing to sell by order and on account of N & Co to the defendant twenty five Muir Mill Cotton shares and agreeing to buy by order and for account of *N & Co* from the defendant twenty five Muir Mill Cotton shares in three months time at an advanced rate the bought and sold notes bearing the same date and being one transaction. The transfer deed were signed by a partner in the firm of N & Co as attorney for the plaintiff and N & Co received the purchase money of the shares Previous to the time fixed for the sale of twenty five Muir Mill Cotton shares by the defendant to N & Co the latter became insolvent The plaintiff then brought a suit to recover the shares from the defendant *Held* by GARTH C J that the transaction between *N & Co* and the defendant was not justified by the power of attorney the contract not having been entered into for and on behalf and in the name of the plaintiff within the meaning of the power and that the transaction was either an actual loan or a transaction in the nature of a loan for the purpose of raising money *Per* WILSON *J* that the defendant took no title to the shares for two reasons *viz* (i) because a power to sell is only a power to sell in the ordinary course of business *i e* for a money price (ii) because it was the duty of the defendant seeing that the shares were sold to him under a power to see that he paid the price to the plaintiff or his attorney JUMNA DOSS v ECKFORD

I L R 9 Calc 1

12 ——— *Meaning of the word negotiate with reference to Government securities* W gave to *A* and *B* a power of attorney authorizing them jointly and severally to negotiate make sale dispose of assign and transfer

[illegible]

WHITE *J* —(i) That the words of the power were to be read disjunctively and the powers conveyed by the words were to be treated as joint and several (ii) that even supposing the word negotiable to be applicable to transactions with Government securities (which was doubtful) and that such Government securities stood in the same position as ordinary commercial notes the word negotiate did not authorize *B* to do more than put the Government securities in the market or to put them in circulation in the ordinary way in which such a transaction takes place in the market and if necessary to endorse them in the name of *W* (iii) that the loan which was the principal transaction being irrecoverable from *W* because unauthorized the defendant could not return the Government securities which were deposited as security for the

[illegible]

money in the name of *W* and that therefore the defendant was not entitled to retain the security given for the advance (*viz* the Government promissory note) WATSON v JONMENJOY COONDOO

I L R 8 Calc 934

[illegible]

I A 27 not containing in express words power to indorse Had it done so the question would have been whether there was anything to prevent it from being a power in the discretion of the donee of it to indorse the note and convert it into one payable to bearer whenever he thought fit to do so for any purpose It was not laid down in the judgment in those cases that the words used in a power of attorney to express its objects are always to be construed disjunctively though they may be so construed and there is no reason why a rule of construction intended to aid in arriving at the meaning of th[illegible] ing a [illegible] docume[illegible]

13 ——— A power of attorney contained among t others the power to sell and convert into money the goods effects and *things* belonging to the principal —*Held* that the word *things* in the power included mortgages as being *things in action* there being nothing in the deed which suggested that the things were to be limited to *choses in possession* and not to *choses in action* *Held* further that the mortgages were capable of being transferred by the attorney *In re Dawson & Jenkin s Contract* [1904] 2 *Ch* 219

POWER OF ATTORNEY—*contd*

referred to An executrix is not competent to exercise the power of sale given by statute or will by an attorney there is no distinction between a power given by statute and a power given by a will A power of attorney in so far as it delegates to an attorney power to exercise the discretion vested in an executrix is void But where the executrix granting the power was actually present when certain deeds of transfer were executed and

express whether they were executed under a power given in writing or under verbal instructions —*Held* that the case fell within the legal maxim of *ut res magis valeat quam pereat* and that it must be taken that the attorney executed the document under the express verbal authority given to him by the executrix principal JOGENDRA CHUNDER DUTT v APURNA DASSI (1908) 13 C W N 1191

14. ———— Principal and agent—*Bank manager acting as private agent—Transaction for benefit of Bank* *A* being in uncontrolled management of the National Bank in Calcutta and purporting to act under a power of attorney intended to be given to him in his private capacity but addressed to him as acting manager of the National Bank by *B* a constituent of the Bank without drawing any cheque on *B* s account and

power of attorney to bind B by consenting to any dealings by the Bank or *C* with goods in the Bank s godowns which would prejudice *B* BEER v NATIONAL BANK OF INDIA 19 W R 67

15 ———— Stamp law—*Operation of power confined to British India—Stamp Act (I of 1879) s 5* It is not necessary for the Courts in India to consider whether a power of attorney issued in England but which is intended to operate in British India complies with the fiscal requirements of the stamp laws in England It is sufficient if such power of attorney is stamped according to the stamp laws of British India *Bristow* v *Sequeville 5 Ex 275* and *James* v *Catherwood 3 D & R 190* followed *Clegg* v *Levy 3 Camp 166* not followed *Semble* If such a power of attorney was intended to operate in England as well as in British India it would not be invalid so far as it was intended to operate in British India because the requirements of the stamp laws in England had not been fulfilled It would be sufficient if it complied with the requirements of the Indian law *In the goods of* MCADAM

I. L. R. 23 Calc 187

16 ———— Identity affidavit of—*Notary Public—Administration—Affidavit—Evidence Act (I of 1872) ss 85 and 114—Presumption of regularity—Rules and Orders of the High Court of Calcutta—Rule 748—Direction of Court in particular case to require further evidence of identity* On an application for grant of letters of administration with copy of the will annexed to the constituted attorney of the sole executor of deceased —*Held* that s 85 of the Evidence Act is mandatory In the case of a document purporting to be a power of attorney and to have been executed before and authenticated by a Notary Public the authentication of the Notary is to be treated as the equivalent of an affidavit of identity of the executant and no affidavit of identity is necessary In any particular case if the Court is not satisfied it may under Rule 748 of the Rules and Orders of the High Court of Calcutta require further evidence of the verification of the power of attorney *In the Goods of* MYLNE (1905) I. L. R 33 Calc 625

17 ———— Registration—*Charge on immoveable property—Registration Act (III of 1877) ss 17 21 49 80—Non compliance with provisions of Registration Act* Where a power of attorney purporting to create a charge on immoveable property did not sufficiently describe the property and was stamped and registered as a power of attorney and entered in Book IV (the Miscellaneous Register) —*Held* that the document was not registered in accordance with the provisions of the Registration Act and therefore could not under *s* 49 of the Act affect any immoveable property comprised therein *Najibulla Mulla* v *Nasir Mistri I L R 7 Calc 196* referred to INDRA BIBI v JAIN SIRDAR AHIRI (1907) I L R 35 Calc 854 s c 12 C W N 316

POWER OF COURT TO RECTIFY MISTAKE

———— *Power of Court to correct its own mistake—Inherent power—Amend*

both the properties and the purchaser got possession of both —*Held* that the Court had inherent power to rectify the mistake by amending the sale certificate and to direct that the delivery of possession of the second property be cancelled That the matter would also come under s 244 of the Civil Procedure Code the question being one between the decree holder and the judgment debtor and relating to the satisfaction or discharge of the decree GOBINDA CHANDRA CHANDA v ABHOY CHARAN BAGCHI (1908) 12 C W N 1027

POWER OF DISPOSAL

See STRIDHAN I L R 30 Bom 220

POWER OF SALE

See MORTGAGE—CONSTRUCTION OF MORTGAGES I L R 16 Bom 303
I L R 13 All 28
I L R 17 Bom 425
I L R 20 Bom 296
I L R 21 All 4

See MORTGAGE—POWER OF SALE

See STAMP ACT 1879 SCH I ART 44
I L R 21 Calc 241

PRACTICE

PRACTICE—*contd*

PRACTICE—*contd*

See Abatement of Appeal.
I L R 27 Mad 588

See Administration Bond
10 C W N 673

See Admissibility of Evidence
9 C W N 111

See Appeal Admission of
I L R 36 Calc 385

See Appeal—Notice 13 C W N 142

See Appeal to Privy Council—Practice and Procedure

See Appellate Court 11 C W N 732
I L R 35 Calc 538

See Arbitration I L R 33 Calc 498

See Bombay Civil Courts Act s 16
I L R 33 Bom 371

See Burden of Proof
10 C W N 985

See Civil Procedure Code 1882 ss 26 179 180 I L R 32 Bom 599

See Civil Procedure Code 1882 s 28
I L R 31 Bom 516
I L R 33 Bom 293

PRACTICE—*contd*

See Civil Procedure Code 1882 s 193
I L R 30 Bom 455

See Civil Procedure Code 1882 s 204
I L R 26 All 234

See Civil Procedure Code 1882 ss 371 596 9 C W N 369 370

See Civil Procedure Code 1882 s 596
I L R 33 Calc 757

See Civil Procedure Code 1882 s 539
I L R 30 Bom 603

See Civil Procedure Code (Act V of 1908) O VI r 17
I L R 33 Bom 644

See Civil Procedure Code 1908 s 2
I L R 31 All 545

See Commission I L R 35 Calc 28
I L R 36 Calc 566

See Criminal Procedure Code 1898 ss 206 *et eqq* I L R 26 All 564

See Criminal Procedure Code 1898 s 439 I L R 30 All 116
I L R 32 Bom 162

See Custom I L R 30 All 311

See Deposition of Witnesses
I L R 36 Calc 955

See Evidence I L R 33 Calc 1345

See Evidence Act (I of 1872) ss 4 3? 90 I L R 26 All 581

See Execution I L R 29 Bom 79

See False Charge
I L R 29 All 587

See Ground of appeal
9 C W N 636

See Guardians and Wards Act ss 47 48 I L R 31 Bom 590

See High Court Rules
I L R 32 Bom 262 428

See Hindu Law 10 C W N 95

See Hindu Law—Reversioners—Administration Suit by
I L R 29 Calc 260

See Insolvency I L R 36 Calc 512
9 C W N 221

See Insolvency Act (11 & 12 Vict c 21)

See Interest 10 C W N 684

See Jurisdiction
I L R 32 Calc 796

See Legal Practitioners Act s 36
I L R 31 All 59

See Letters of Administration
I L R 34 Calc 706

See Letters Patent cl 12
I L R 30 Bom 364

PRACTICE—*contd*

See LIMITATION PLEA OF
I. L. R. 34 Calc. 941

See LIMITATION ACT 1877 s 5
I. L. R 30 Bom 329

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS I L. R. 28 Calc 242

Se MINORS I L. R. 34 Calc 83

See OFFICIAL ASSIGNEE
I L. R 36 Calc 990

See PARTITION I. L. R. 36 Calc 762

See PARTITION ACT (IV OF 1893) s 2
I L R 32 Bom. 103

See PARTITION ACT (V OF 1897 IV OF 1893)

See PARTNERSHIP
I. L. R 28 Bom 176

See PLEADINGS I L. R. 26 All 331

See PRIVY COUNCIL APPEAL
I L. R. 36 Calc 653

See PRIVY COUNCIL, PRACTICE OF

See PROBATE—OF WHAT DOCUMENTS GRANTED I. L R 29 Calc 311

S e PROCEDURE

See PROSECUTION I L R 35 Calc 114

See RECEIVER I L R 34 Calc 336
I L R 36 Calc 52

S e RECEIVER NEW TRIAL, REMAND
I. L R 32 Calc 276 339 1069
I L. R 30 Bom 250

S e RESTITUTION OF CONJUGAL RIGHTS
I L R 34 Calc 352

S e SANCTION FOR PROSECUTION
I L R 34 Calc 848

See SMALL CAUSE COURT—

MOFUSSIL—PRACTICE AND PROCEDURE

PRESIDENCY TOWNS—PRACTICE AND PROCEDURE

S e SMALL CAUSE COURT MOFUSSIL.
I. L. R. 30 Bom. 147

Se SPECIFIC PERFORMANCE
11 C W N 946

S e SUIT RESTORATION OF
I L. R. 31 Calc 150

See TAXATION I L R 33 Calc 827

See TRANSFER I L R 35 Calc 457

See TRIAL BY JURY
I L R. 31 Calc 142

See TRUST I. L. R. 33 Calc 143

See WILL, GENUINENESS OF
13 C W N 782

See WITNESS I. L. R. 36 Calc 560

——— appeal—

See TRIAL—ALLEGING OR PLEADING FRAUD 6 C W N 787

——— articled clerk to attorney—

See ATTORNEY 13 C W N 402

——— civil cases—

Se ADMINISTRATION—CONTESTED LEGACIES 6 C W N 321

See COSTS—SPECIAL CASES—DIVORCE
I L. R 28 Calc 84

——— consideration of question outside rule—

See SECURITY FOR GOOD BEHAVIOUR.
6 C W N 593

——— criminal cases—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE

See JOINDER OF CHARGES
I L. R. 25 Bom. 90

——— probate and letters of administration—

S e PROBATE—OPPOSITION TO AND REVOCATION OF GRANT 5 C W N 377

——— receiver appointment of—

See RECEIVER I L R. 28 Calc 250

——— rule to show cause—

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT
5 C W N 377 383

——— substitution of representative of defendant—

See MORTGAGE 13 C W N 787

1 CIVIL CASES

1 ——— Account—*No specific d rection as to accounts in the decree—Court cannot direct accounts to be taken before th Commi s oner when part es have arrived at an agreem nt after the decree—Appeal against such an order* A decree of the High Court on the Original Side contemplated an account being taken between the parties but it was silent on the question as to how that account was to be taken whether by the Commis ioner or by some person selected by both the parties. The Court of first instance decided that where a direction as to account ought to have been incorporated in a decree when passed it was competent to the Court at any stage of proceedings to direct necessary inquiries or accounts to be made or taken *Held* on appeal that as some account was taken under the decree by a person appointed jointly by the parties a new agreement had come into existence superseding the decree and the Court was not competent to make the order appealed against. An appeal lies

PRACTICE—*contd*

I CIVIL CASES—*contd*

against an order of a Judge sitting on the Original Side if that order decides a question of some right between the parties JEHANGIR COWASJI *v* THE HOPE MILLS LIMITED (1908)
I L R 33 Bom. 216

medan will—Gift to a class—Construction M a Khoja Mahomedan died in 1864 By his will and codicil he left his property to trustees upon trust *inter alia* to pay his daughter *L* a monthly sum during her life and after her death to pay it to her children *M s* residuary estate was charged in favour of certain charitable objects In 1868 the Advocate General commenced a suit (962 of 1868) for the administration of *M s* estate In 1869 *L* died leaving four children surviving her In 1871 a decree for the administration of *M s* estate was granted to *R* the husband of *L* in another suit (370 of 1870) In 1873 a decree for administration was passed in the Advocate General s suit (962 of 1868) By the decree the Advocate General was given liberty to join in taking the accounts and making the enquiries directed in suit 370 of 1870 In 1899 the Commissioner made his final report in suit 370 of 1870 to which however exceptions were filed In 1902 the case came before TYABJI J for further directions Up to this date the validity of the gift to *L s* children had not been questioned by the parties and the Commissioner s report was based on the assumption that it was valid The Advocate General was now by consent of the parties joined as a co defendant to simplify and regularize the suit He thereupon contended

was not entitled at this stage to raise the point *Held* (reversing TYABJI J) that the Advocate General was not precluded even at this stage from questioning the validity of the gift to *L s* children Where the accounts actually taken and completed in one suit are adopted in another the ordinary practice is to allow the result of those accounts and enquiries to be questioned in the suit wherein they are adopted A beneficiary is generally taken as sufficiently represented by his trustees but this does not hold good where the contest lies between the beneficiaries themselves *Held* on further hearing on the construction of the will that such of *L s* children as were in existence at the death of the testator were entitled to an annuity at *L s* death ADVOCATE GENERAL *v* KARMALI (1905)
I L R 29 Bom. 133

4. ———— **Admiralty Court**—*Consolidation of salvage claims—Civil Procedure Code 1882—Rules and Regulations under Stat 2 & 3 Will IV c 51—Procedure* On an application by the impugnant for the consolidation of three separate salvage claims made by three different promovents for salvage services rendered by them —*Held* (following the more recent English practice) that the claims should not be consolidated against the will of the promovents but should be heard one after the other successively subject however to one set only of costs being allowed to them in the event of the Court finding at the hearing that the application for consolidation was resisted without

the Court of Admiralty in England ought to be followed so far as such practice can be applied to this country by analogy *In the matter of the* BRITISH SAILING SHIP FALLS OF ETTRICK. THE CHUSAN *v* FALLS OF ETTRICK
I L R 22 Calc 511

5 ———————— *Application for consolidation of salvage claims—Application for commission to take evidence before written statements are filed* On an application by the impugnant for the consolidation of two separate salvage

cretion of the High Court to consolidate the actions without regard to the consent of the parties each of the promovents being allowed to appear separately through their own attorney and counsel *Held* further that though no written statements had yet been filed the application for consolidation and for a commission to examine *de bene esse* was not *premature* *In re the Falls of Ettrick* *I L R 22 Calc 511* referred to *The Strathgarry* [*1895*] *P D 264* followed. *In the matter of the* DRACHENFELS RETRIEVER *v* DRACHENFELS
3 C W N 67

6 ———— **Affidavits**—*Entitling affidavits*
... cipal ... the High ... tled

were admitted. JUSTICES OF THE PEACE FOR CALCUTTA *v* ORIENTAL GAS COMPANY
8 B L R 438 17 W R 384

7 ———————— *Affidavit on application to take documents out of Court* An affidavit in support of an application for taking docu

PRACTICE—*contd*

1 CIVIL CASES—*contd*

ments out of the custody of the Court for the purpo es of another suit should state in what way they are material to that suit. MOLLOW MARCH & Co v PERBAT CHUNDER SINGH

1 Ind. Jur N S 283

8 ———— *Affidavit on showing cause against motion or petition.* An affidavit intended to be u.ed to oppose or show cause against a motion or petition is filed in time if filed on or before the sitting of the Court on the day that cause is in fact hown although not filed before the sitting of the Court on the day for which notice was given. *In re* HURRUCK CHUND GOLICHA

I L R 5 Calc 605 6 C L R 382

9 ———— *Affidavits on motion—Affidavits filed after adjournment for convenience of counsel* The Court refused without the consent of the other side to allow an affidavit in support of a motion to be read which had been filed after an adjournment granted for convenience of coun el. COURJON v COURJON 9 B L R Ap 10

NEERUNJUN MOOKERJEE v OOPENDRO NARAIN DEB 10 B L R 57

10 ———— *Act XVIII of 1863—Verification of affidavit* When an individual who is unable to read and write presents him

mark in lieu of hi signature and in affirming or swearing him to vary the usual words by saying mark instead of signature in lieu of signature ANONYMOUS 9 W R 357

11. ———— *Use of affidavits in motions—Rule to show cause* The practice is in

PROSONNO GHOSE

I L R 6 Calc 485 8 C L R 43

12 ———— *Non production of affidavit—Withdrawal of suit* The plaintiff s attorney being under the misapprehension that one o the plaintiffs who was a material witness was in Bombay when in fact he was in England and an application to consent to a commission had been made to the defendant s attorney and refused on

made note that the application for a commission was made upon no affidavit and as the affidavit (presented in Chambers) having been sent to the office of the plaintiff s attorneys for a copy to be made and served upon the defendant was not then

was no legal ground whatever for the refusal to withdraw the suit which was accordingly restored to its place in the list and remanded in order to be tried DADABHAI NAOROJI & Co v SORABJI COWASJI 3 Bom O C 55

13 ———— *Application for decree on terms of agreement to compromise suit—Civil Procedure Code 1882 s 375* After the hearing of the suit had begun the plaintiffs and defendants came to an agreement by which they settled all the matters in dispute between them in the suit The agreement was in writing and dealt in one clause with the dispute the subject matter of the suit and in a second clau e with another dispute of long standing between the parties with which the suit had nothing to do The plaintiff subsequently objecting to consent to a decree being taken in terms of the first clause of the agreement the defendants took out a *rule nisi* calling on the

evidence must be gone into *Held* that in the circumstances of the case no definite procedure having been enjoined by the Code the matter might properly be decided on affidavits RUTTONSEY LALJI v POORIBAI I L R 7 Bom. 304

14 ———— *Petition—Affidavit necessity of—High Court Rules 1 3 and 4—Ch XII—Civil Procedure Code (Act XIV of 1882) s 17 20 57 and 572—Cause of action—Plaint return of—Jurisdiction illegal exercise of* When a petition to the High Court states facts which are matters of record and which are supported by copies of the order pas ed by the Court below such a petition need not be supported by an affidavit *A* brought a suit for dower in the Court of the Subordinate Judge of Saran alleging that the marriage as well as the divorce took place in that district The defendant objecting to the suit on the ground that he worked and resided at Calcutta the Subordinate Judge returned the plaint to be presented in the Presidency Small Cause Court The District Judge on appeal declined to interfere with the order of the first Court *Held* that s 17 cl (a) of the Civil Procedure Code applied to the case and the order

PRACTICE—*contd*

I CIVIL CASES—*contd*

returning the plaint was bad in law the cause of action having arisen in the district of Saran *Held* further that inasmuch as the Subordinate Judge had failed to exercise a jurisdiction vested

cedure Code ZAMIRAN v FATEH ALI (190) I L R 32 Calc 146

15 ——— *Affidavit of documents by order of the Prothonotary against Advocate General—Power of the Court—Prerogative of the Crown—High Court Rule 80a—Civil Procedure Code s 129* The position of the Advocate General in India corresponds by statutory enactments to the position held by the Attorney General in England and there is ample authority for the view that generally speaking the Attorney General is not called upon to make discovery on oath An order by the Prothonotary calling upon the Advocate General to show cause why a suit instituted by him should not be dismissed for want of prosecution is not one which is within the jurisdiction of the Prothonotary to make ADVOCATE GENERAL OF BOMBAY v ADAMJI (190) I L R 30 Bom 474

16 ——— Appeal—*Appeal against a co plaintiff—Consent of parties* By consent of parties the High Court allowed an appeal by one plaintiff against another plaintiff and adjudicated upon their rights BHAGIRTHIBAI v BAYA I L R 5 Bom 264

17 ——— *Appeal by one plaintiff against another—Rival claimants put on the record as representatives of deceased plaintiff* In a suit for redemption one of the plaintiffs died *A* the adopted son and *B* the daughter made separate applications under s 365 of the Civil Procedure Code to be placed on the record The Judge ordered them both to be put on the record and proceeded with the suit and finding that *A s* adoption was proved and that *B* was not the legal heir of the deceased he gave a decree for redemption in favour of *A* *B* appealed making *A* alone respondent The Appellate Court held that *B* and not *A* was heir of deceased and passed a decree in *B s* favour against *A* On second appeal to the High Court —*Held* that the Judge had no power under s 367 of the Code to admit on the record both rival claimants as legal representatives or adjudicate by his decree between their rival claims and that the Appellate Court ought not to have allowed one plaintiff to appeal against another or to have decided the rights of different plaintiffs *inter se* VITLU v BHIMA I L R 15 Bom 145

18 ——— *Appeal between co-defendants—Right of appeal* Where a Subordinate Judge dealt with a case at the hearing as raising not only a question between the plaintiff and defendants but also as between the defendants —

PRACTICE—*contd*

I CIVIL CASES—*contd*

Held that one of the defendants could appeal against the decree as between himself and the other defendants *Gudadhar Banerjee v Mun Mohinee Dossea 7 W R 366* and *Atma Ram v Balkishen I L R 5 All 266* distinguished SOBBU PADMANABH PANGAPPA v NARAYANRAO BIN VITHAL RAO I L R 18 Bom 520

19 ——— *Respondent not appearing in lower Court—Right of appeal* An appellant who was respondent in a lower Court of Appeal is not precluded by reason of his non appearance in such Court from preferring an appeal to the High Court KALIKISHORE ROY v DHUNUNJOY ROY I L R 3 Calc 228

20 ——— *Right of respondent who has filed cross objections to appeal where appellant withdraws his appeal* No leave to appeal should be granted to a respondent who has filed cross objections unless the Court is thoroughly

I L R 9 Calc 738 12 C L R 395

21 ——— *Decision showing grounds of judgment appealed from* The copy of a decision to which reference is made by the lower Appellate Court for the grounds on which an appeal is disposed of is not necessary at the time of filing a special appeal ANONYMOUS 1 Ind Jur O S 50

22 ——— *Pleaders certi*

23 ——— *Certificate of grounds of appeal—Vakil a party to suit* Where a party appealing to the High Court is himself a vakil of the Court he is not at liberty to certify his own grounds of appeal THAKOOR DOSS MOOKERJEE v AMEER MUNDUL 14 W R 168

24 ——— *Certifying that ground of appeal taken was omitted from his notice by Judge—Affidavit* In order to satisfy the High Court that a point which the Judge omitted to notice was actually taken in the oral pleadings a party may put in either an affidavit of some person who heard the point raised or a copy of the petition to the Judge drawing attention to the omission with his orders thereon YUSOOF ALI CHOWDRY v FYZOONISSA KHATOON CHOWDRY 15 W R 296

25 ——— *Grounds of ap*

a dec
allega
and
v PARBUTTY DOSSEE I L R 3 Calc 612 1 C L R 404

PRACTICE—contd

1 CIVIL CASES—contd

26 ———— *Civil Procedure Code 1882 s 558—Application to restore an appeal dismissed ex parte—Evidence—Practice* When

plement such evidence in a Court of Appeal on appeal from the order dismissing his application *Hari Das Mukerji v Radha Kishen Das All Weekly Notes (1890) 196* followed MUZAFFER ALI KHAN v KEDAR NATH I L R 20 All 266

27 ———— *Arguments on appeal under Letters Patent High Court North Western Province cl 10—Points on which appellant may be heard* In appeals under the Letters Patent s 10 an appellant is not entitled to be heard on points which he has not raised before the Judge against whose decree he is appealing BRIJ BHUKHAN v DURGA DAS I L R 20 All 258

28 ———— *Rules of Court 30th November 1889—Memorandum of appeal—Misdescription in—Appeal described as first appeal from order instead of first appeal from decree* It is not a fatal objection to an appeal that the same is described in the memorandum as

point distinguished. SANT LAL v SRI KISHEN I L R 14 All 221

29 ———— *Necessity for copy of decree appealed against accompanying a memorandum of appeal—Civil Procedure Code 1882 s 541* A memorandum of appeal is not a good memorandum of appeal in law unless it is accompanied by a copy of the decree appealed against *Gulab Debi v Sankar Lal All Weekly Notes (1892) 47* followed. CHAMELA KUAR v AMIR KHAN I L R 16 All 77

30 ———— *Appeal hearing of when records have been accidentally destroyed—New trial right of* Where in the interval between

be tried de novo —Held that the mere fact that the record was accidentally destroyed cannot give the appellant a right of re trial of the original suit and that it is open to the Court of Appeal to try the case upon any materials proved to have been used at the hearing of the first Court and it is for the appellant to put those materials before the Court. HAR KUMAR PAL CHOWDRY v ASIATULLAH 3 C W N 150

PRACTICE—contd

1 CIVIL CASES—contd

31 ———— *Decree awarding costs as against two defendants—Payment by one*

on behalf of survivor alone—Reversal of decree by High Court—Claim by legal representative of deceased defendant for restitution of amount paid as costs A decree was obtained in a District Court against two defendants by which they were ordered to deliver

and when the appeal came on for hearing it was proceeded with by the second defendant on his own behalf The result was that the High Court reversed the decree of the District Court but the High Court decree recited that the appeal had been prosecuted on behalf of the surviving defendant alone The son and legal representative of the first defendant now preferred a petition in execution and claimed that the whole decree of the District Court had been reversed and that in consequence he was entitled to restitution of the costs which had been realised by the plaintiffs (counter petitioners) from the deceased first defendant

entitled to restitution of the costs levied from his

(1901) I L R 25 Mad. 420

32 ———— *Appeal—Privy Council—Practice—Concurrent judgments on facts—Disagreement on subordinate points* The Judicial Committee does not ordinarily entertain an appeal from concurrent judgments on a mere question of fact The mere fact that the two Courts do not agree on all the steps which lead to one and the same conclusion is no reason for disregarding the above well known rule That rule however is not an absolute rule it presses upon the appellant with more or less weight according to the circumstances of the case and the fact that the Courts have differed on some important but subordinate questions is a matter to be taken ...

I L R 28 All. 219
s c 10 C W N 225

33 ———— *Appeal—Privy Council—Practice—Concurrent findings of fact on*

PRACTICE—contd

I CIVIL CASES—*contd*

questions relating to Indian manners and customs—Succession—Family custom When the question upon which there are concurrent findings of the Lower Courts is not only a question of fact but is one which embraces a great number of facts whose significance is best appreciated by those who are familiar with Indian manners and customs the Judicial Committee is specially unwilling to depart from the general rule which forbids a fresh examination of facts for the purpose of disturbing such concurrent findings *Umrao Begum v Irshad Husain L R 21 I A 163* referred to KUNWAR SANWAL SINGH v SATRUPA KUNWAR (1905)

I L R 28 All 215
s c 10 C W N 230
L R 33 I A 53

34 ———— *Suit for damages for injuries on railway—Appeal decided not on evidence at trial but on observations of Judges at presentation of scene and events of accident on another night than that on which accident occurred* The plaintiff sued the defendants a Railway Company for damages for injuries sustained by him when

possible to those which prevailed when the plaintiff met with his injuries This was done the Judges and the legal advisers of the parties went to the

and gave judgment in accordance with them reversing the decision of the Court which tried the case *Held* that such procedure was illegal The result of it was that the appeal was decided not on the testimony given at the trial as to what took place on the night of the accident but by the Judges observation of what they saw on another night altogether and the decision based on it was set aside the judgment of the first Court being restored KESSOWJI ISSUR v GREAT INDIAN PENINSULA RAILWAY COMPANY (1907)

I. L. R. 31 Bom 381 L R. 34 I A 115

35 ———— *Appeal—Point—Court* A point not taken by a party before either of the lower Courts was not open to it at the time of the hearing of the appeal before their Lordships MAHOMED NASEEM v MIRZA MUHAMMAD ABBAS ALI KHAN (1907) 12 C W N 345

36 ———— *Allegations by*

the Courts should check the tendency of defeated litigants to evade their defeat by devising a new case which was never set up when it should have been set up A Court of appeal is not justified in exposing a party after he has obtained his decree to the brunt of a new attack of which he had never had notice during the hearing of the suit NATHU PIRAJI v UMEDMAL GADUMAL (1908)

I L R 33 Bom. 35

37 ———— **Application after refusal—** *Making application to another Judge after refusal by one Judge to make it* It is irregular when an

38 ———— *Application to another Judge after refusal of application by one Judge of High Court—Review—Appeal* If an interlocutory order is wrongly refused by one Judge the proper course is to apply for a review or to appeal from it not to seek to obtain the order by resorting to another Judge even though arguments should then be forthcoming which were not put before the first Judge MOTIVAHU v PREMVAHU

I L R 18 Bom 511

39 ———— **Application by person not party to suit**—*Lessors—Receiver* Case in which persons not parties to a suit in which a receiver had been appointed were permitted to apply by motion or notice in the suit for the purpose of establishing their rights to obtain an order directing the receiver to make over to them certain properties of which he was holding possession after expiry of the lease under which those properties had been held by him and which had been granted to his predecessor in title by certain persons

MED MEDHI GALISTANA v ZOHARRA BEGUM

I L R 17 Calc 285

40 ———— **Arbitration**—*Written statement—Application for extension of time—Stay of proceedings—Step in proceedings—Arbitration Act (IX of 1899) ss 4 19* The Calcutta Corporation applied for further time to file their written statement and obtained a fortnight's time Subsequently they applied to the Court for a reference to arbitration and stay of proceedings The plaintiffs objected on the ground that an application

application for reference to arbitration could not be maintained *Ford's Hotel Company Limited v Bartlett [1896] A C 1* followed SARAT KUMAR ROY v CORPORATION OF CALCUTTA (1907)

I. L. R. 34 Calc 443

PRACTICE—*contd*

1 CIVIL CASES—*contd*

41. ——— Attachment—*Civil Procedure Code (Act XIV of 1882) s 266 (c)—House—Sale in execution—Exemption from liability to attachment or sale—Facts to be taken to exist which are proved* Only the e facts can be taken to exi t which are proved In the ab ence of proof the exemption from liability to attachment for sale does not exi t for the purpo es of execution proceedings

Strangers to a suit are justified in believing that the Court has done that which by the direction of the Code it ought to do PANDURANG BALAJI *v* KELHNAJI GOVIND (1904) I L R 28 Bom 125

42. ——— Cause list—*Transfer of case from undefended to defended board—Costs* A case entered on the undefended board can only be trans ferred to the defended board on payment of the co ts of the adjournment if any thereby occasioned BINDOOMADHUB MITTER *v* WOOMESH CHUNDER PAUL 2 Hyde 86

BHOYRUB CHUNDER DOSS *v* CHUNDI CHURN MITTER Bourke O C 238

43 ——— *Setting down case in general cause list—Entering appearance* The Court has power to order a case to be set down [illegible]

44 ——— *Cases to be en tered in the list of suits for liquidated claims—Rules 281 and 284 of the Calcutta High Court Original Jurisdiction—Removal of cases improperly entered in that list—Ordinary mortgage suit—Notice of transfer of case* *Held* that the practice of the [illegible]

a claim only for a liquidated demand in money the pract ce should be adhered to *Held* also that [illegible]

BENODE LALL ROY *v* BUSSUNTO KUMARI DEBI I L R 27 Calc 355

45 ——— Certificate of sale—*Unregis tered certificate of sale—Fresh certificate of sale* On 10th July 1883 the applicant bought at a Court sale a portion of a house for R385 and on confirma tion of the sale on the 10th October 1883 obtained the sale certificate which, however he did not register On attemping to obtain possession the applicant was obstructed. He applied for removal of the obstruction to the Subordinate Judge and submitted with his application the unregistered certificate The Subordinate Judge rejected the application on the ground that the certificate was not registered. The applicant then applied for a fresh certificate which was refu ed On applica tion to the High Court —*Held* that a fresh certifi cate dated the day on which it might be granted reciting the fact of the sale and the date thereof should be given to the applicant the original certi ficate being returned. *In the matter of the applica tion of* LAKSHMAN I L R 9 Bom 472

46 ——— *Grant of fresh certificate of sale to auction purchaser while one al ready granted is in existence—Insufficient stamp* [illegible] tificate being insufficiently stamped NANDRAM MOTIRAM *v* KACHA BHAU I L R 9 Bom 526

47 ——— Commission—*Commission to examine witnesses—Non attendance of witnesses—Mode of enforcing attendance—Code of Civil Pro cedure 1882 ss 399 and 400 and Sch IV No 156* On an application to the High Court to authorize a commissioner to issue process for the purpose of compelling the attendance of witnesses before him —*Held* that the commissioner should return the commission to the High Court The High Court may then send the commission to a Civil Court within the local limits of whose jurisdiction the witnesses to be examined reside MAHOMED ALI *v* WAZID ALI I L R 23 Calc 404

48 ——— *Examination of witness on commission—Prolonged and unnecessary cross examination.* Where the Court is satisfied that the cross examination of any witness on com mission is being unnecessarily prolonged it will order such cross examination to be concluded with in a certain time SURAJ PROSAD *v* STANDARD LIFE INSURANCE COMPANY (1903) I L R 30 Calc 625

49 ——— *Civil Procedure Code (Act XIV of 1882) ss 387 399—Oaths Act (X of 1873) s 13—Evidence, taken by commission of foreign subject in foreign territory—Admissibility* [illegible] reign ter und r a the Civil ance with the provisions of s 399 of the same is admi ible and s 13 of the Oaths Act has no application KADAMBINI DASSI *v* KUMUDINI DASSI (1903) I L R 30 Calc 934 s.c. 7 C W N 806

50 ——— Commissioner for taking accounts—*Certificate of power to grant—Mode of taking accounts* The general nature of a certificate or report—whether general or separate—by the commissioner for taking accounts is that it hould in the case of a general certificate comprise the re sult of all the proceedings under the decree or order

PRACTICE—*contd*

1 CIVIL CASES—*contd*

of reference or in the case of a separate certificate or report that it should comprise the result of some or one of such proceedings and the Court is not bound to consider a certificate granted by the commissioner unless he has certified what may be regarded as the result either of the whole enquiry referred to him or of some branch or part of it The power of the commissioner to grant certificates and of the Court to deal with motion made with reference thereto considered *Quære* Whether where a suit has been referred to the commissioner for the purpose of having account taken such accounts in the absence of any direction in the decree or order [illegible]

NAIK I L R 3 Bom 161

51 ——— *Report of Commissioner—Motion to discharge or vary—Affidavits filing of—Memorandum of objections* In moving to discharge or vary the report of the commissioner for taking accounts the right practice is to move on a memorandum of objections filed on the Prothonotary s office and upon the evidence taken by and the proceedings before the commissioner and not on affidavits made for the purpose of the motion. In such a motion affidavits should only be filed (*a*) when ordered by the Court if it desire fresh evidence or (*b*) by special leave of the Court for the purpose of advancing a fact which does not appear on the face of the proceedings before the commissioner SUMAR AHMED *v* ISMAIL HAJI HABIB I L R 1 Bom. 158

52 ——— *Notice to vary final report—Limitation—Rule of Court Ch 6 cl 6 (ed 1867) Held* that under the rule which [illegible]

to extend the time for making such motion HORMASJI CURSETJI ASHBURNER *v* BOMANJI CURSETJI ASHBURNER I L R 9 Bom. 250

53 ——— *Commissioner s report Application to vary time for—Extension of time—High Court Rules Ch VI Rule 6* A party desiring to move to vary a report made by the commissioner must not only file his exceptions to such [illegible]

54. ——— *Disobedience of order made by commissioner for taking accounts—Attachment issue of* An attachment will issue to compel a party to a suit to obey an order made by the commissioner for taking accounts upon the certificate of the commissioner that such order has been made and disobeyed without in the first instance making such order a rule of Court DHURANDHARDAS SAKHARAM *v* BHAU GOVIND 10 Bom 4

55 ——— Consent decree—*Civil Procedure Code 1877 s 375* According to the practice of the High Court a consent decree upon a compromise will not be granted unless the suit be entered in the cause list of the Court PELL *v* VALETTA 5 C L R 464

56 ——— *Mode of consent* The practice of the High Court at Calcutta on its original side in the case of decrees by consent is to require the defendant in person or some one instructed by him to appear in Court to consent SAUNDERS *v* POMANATH PAUL 1 Ind Jur N S 395

57 ——— *Setting aside consent decree—Motion—Separate suit—Allegation of fraud—Affidavits* A consent decree cannot be set aside on motion on the ground that it was obtained by fraud and misrepresentation A separate suit must be brought for that purpose Charges of fraud cannot properly be tried upon affidavit *Gilbert v Endean L R 9 Ch D 259 Huddersfield Banking Company v Lister & Son 11 Ch 273* and *Ainsworth v Wilding [1896] 1 Ch 673* applied FOOLCOOMARY DASI *v* WOODOY CHUNDER BISWAS I L R 25 Calc 649

58 ——— Costs—*Partition proceedings—Form of order for costs—Order for execution on* [illegible]

of the costs he is not entitled to embody in his order against them for payment an order for execution He must first obtain an order for payment and if payment be not obtained application for execution may be made BROJOLALL SEN *v* MOHENDRO NATH SEN I L R 18 Calc 199

59 ——— Counsel—*Hearing counsel—Hearing of preliminary issue* Two counsels for the same party may be heard in argument of a preliminary issue FATMABAI *v* AISHABAI I L R 12 Bom. 454

60 ——— *Insolvent Debtors* [illegible]

of Counsel includes acting as Counsel in the ordinary way *In the matter of* CHUNI LAL OSWAL (1902) I L R 29 Calc 507

61 ——— *Certifying Counsel—Chamber proceedings* In certifying for Counsel in chamber matters the Court ought to have regard to the following circumstances (i) Whether

PRACTICE—*contd*

1 CIVIL CASES—*contd*

notice has been given by either side of the intention to employ Coun el (ii) Whether the matter to be dealt with involves the con ideration of complicated facts or merely of imple facts (iii) Whether there arise any ub tantial question of law which has to be argued and di cussed Per CURIAM — The rule as to certifying for Coun el has been interpreted as meaning that Coun el should be certified unle it i not a fit ca e for Counsel ZULEKA BAI v AYESHABAI (1905) I L R 30 Bom 196

62 ———— *Rule allowing co ts of two Counsel—Junior Counsel should return brief if neither Counsel able to be present* The rule of allowing the co ts of two Counsel on each side in taxation was introduced by the Judges in order to obviate the di location of the bu iness which might re-ult from ca es being called on at the same time in two or more Courts in which the ame Coun el was engaged. This rule has always been supplemented by the unwritten rule of the Bar that one or other Coun el mu t return his brief in good time if there is a chance of neither being able to attend when the ca e is called on and that in case of dispute it is the duty of the junior to return the brief or to make arrangements for ome other Counsel to attend until he can come in. ESMAIL EBRAHIM v HAJI JAN MAHOMED (1908)

I L R 33 Bom 475

63 ———— **Counsel s fees**—*Costs—Attorney and client—Taxation—Refreshers to counsel—Rules of Court 707 708* Refreshers are not as a general rule to be allowed on motion heard by

I L R 12 Calc 601

64 ———— **Court fees**—*Remission of process fees—Rules of High Court Calcutta Ch XIV—Process fees—Remission of fees in analogous appeals by the same appellants* Where twenty nine appeals were presented by certain appellants and

appeals were analogous and on behalf of the same appellants the Court (GHOSE and RAMPINI, JJ) refu ed the application. *Held* by RAMPINI J that the High Court has no power to grant the remission and that the fees prescribed by the rules *must* be levied. *In the matter of the application of* STUDD I L R 28 Calc 124

3 C W N 82

65 ———— **Courts of Justice**—*Object of Courts of Justice—Shortening litigation.* The object of Courts of Justice under the Code of Civil Procedure is if po sible to decide at one and the same time all questions which can justly be so decided and not to assist in unnecessarily prolonging litigation FIDAYE SHIKDER v OZEEOODDEEN

7 W R 87

66 ———— **Damages assessment of**—*High Court Original Side* Practice of Original Side as to assessing the amount of damages discussed. MANIRAM v BIBI MASHIHAN

4 B L R Ap 66

67 ———— **Decision by single Judge**—*How far binding on his succes ors* A Judge sitting on the original side is bound ordinarily to follow the judgment of another Judge when he has decided a point of law or laid down certain principles of practice or procedure or judicially construed any provision of the law prevailing in the country

reliable and may tend to lead him to a different conclusion. JAMSHEDJI C. TARACHAND v SOONABAI (1907) I. L. R 33 Bom 122

68 ———— **Default**—*Suit for account against executor—Account on footing of wilful default—Limitation.* Modern practice allows of an order charging wilful default being made at any time during the action on a proper cause being shown. AYESHABAI v EBRAHIM (1908)

I L R 32 Bom. 364

69 ———— **Erroneous Judgment**—*Judgment based upon an assumption or hypothesis subsequently ascertained to be erroneous—Re opening the portion of the case affected by the error—Grant by Government of the revenue of a village as a unit assessment—Cultivation by grantee of uncultivated or*

certain issue On the ca e coming again before a differently constituted Bench of the High Court for final disposal —*Held* that the remanding judgment was conclusive on all points therein specifically decided beyond possibility of revision but that it

mand judgment is based on an assumption or hypothesis which is now ascertained to be erroneous, it is we think competent to us—or rather it is incumbent on us—to disregard it and to re-open that part of the case affected by the error When Government grants the revenue of a village considered as a unit of assessment and in course of time the grantee is able to bring under cultivation land which had previously been uncultivated or even unassessed it is open to him under the grant to do so and to profit by the new cultivation. BALVANT RAMCHANDRA v SECRETARY OF STATE (1908)

I. L. R 32 Bom. 432

PRACTICE—*contd*

1 CIVIL CASES—*contd*

70 ——— Evidence taken in particular way—*Consent of parties—Jurisdiction of the Court* In a suit to recover damages for wrongful diversion by the defendants of the course of a brook the Subordinate Judge at the desire of both the parties, proceeded to the spot of the diversion made inspection and examined witnesses on the spot The position of the witnesses were taken down in vernacular by a clerk of the Court On going through the evidence the Subordinate Judge dismissed the suit holding that the defendants had not diverted the course of the brook and the plaintiff had not suffered any damage The plaintiff appealed and raised a preliminary objection to the procedure of the Subordinate Judge The Judge in appeal held that the Subordinate Judge s procedure vitiated the decision and reversed the decree and remanded the suit for trial on the merits On second appeal by the defendants against the order of remand — *Held* reversing the decree of the Judge and restoring the appeal to the file that the parties if so minded may ordinarily agree that evidence shall be taken in a particular way and it is a common experience that parties do agree that evidence in one suit shall be treated as evidence in another That is not a matter which can be said to affect the jurisdiction of the Court It is merely that parties allow certain materials to be used as evidence which apart from their consent cannot be so used PAMAYA *v* DEVAPPA (1905)
I L R 30 Bom 109

71. ——— *Recording evidence in English—Suit for ejectment—Irregularity—Civil Procedure Code (Act XIV of 1882) s 578* In a suit for ejectment the recording of evidence in English—which not being the language of the Court—is merely an irregularity which may be cured by the application of s 578 of the Code of Civil Procedure. RATAN LAL GIR *v* FARSHI BIBI (1907) I L R 34 Calc 396

72 ——— Execution of decree application for—*Civil Procedure Code 1859 s 212* An application for execution of a decree need not be accompanied with either the original decree or a copy GUNGA GOBIND GOOPTOO *v* MAKHUN LALL HATTEE
9 W R 362

KHETTUR MOHUN CHUTTOPADHYA *v* ISHUR CHUNDER SURMA 11 W R 271

MODHOO DOSSIA *v* NOBIN CHUNDER ROY
16 W R 25

73 ——— *Copy of judgment* A Court in executing a decree in a case which has been appealed to the Privy Council should not receive a mere copy of the printed judgment of the Privy Council as if it were a decree JOY NARAIN GIREE *v* GOLUCK CHUNDER MYTEE
20 W R 444

74. ——— Execution of decree application for—*Execution of decree—Declaratory decree erroneously construed as a decree capable of execution—Orders in execution after notice to judgment debtor and without contest by him— Subsequent objection that the decree was not capable of execution —Judgment-debtor bound by previous orders* A decree which was in form declaratory was construed as being capable of execution and on several occasions execution of it was ordered (after notice to the judgment-debtor and without contest by him) attachments of the judgment debtor s property were made and amounts alleged to be due were paid Upon a subsequent application for execution being made it was objected that the previous orders had been erroneously passed under the decree and that no further order could be made *Held* that the judgment debtor was bound by the previous orders as the Court which had passed them must be held rightly or wrongly to have determined that the decree was capable of execution *Venkatanarasimha Naidu* v *Papammah* (I L R 19 Mad 54 and *Mungul Pershad Dichit* v *Grija Kant Lahiri Chowdhry* L R 8 I A 123 followed. SUBBARAMA AYYAR *v* NAGAMMAL (1901)
I L R. 24 Mad. 683

75 ——— Execution of deed—*Motion* [illegible] *of land*

[illegible]

for specific performance MONOMATHONAUTH DAY *v* AUSHOOTOSH DAY Cor 8

76 ——— Execution proceedings—*Jurisdiction—Decree cannot be varied in the execution department* A decree of the High Court declared the title of the plaintiffs to share in all the properties described in the schedules thereto excepting in two *mauzas* which were declared to belong to the defendants In execution the objection was taken that certain parcels sued for and decreed as *lakh* or *jote* lands were in reality *kamat* land which necessarily from the character of that holding must have belonged to the proprietors of the *mauzas* within the limits whereof these parcels were situated [illegible] be [illegible] rt [illegible] a

variation of the decree But the objection was allowed by the High Court s decree now appealed from. *Held* reversing the order of the High Court that it was beyond the jurisdiction of the executing Court to vary the decree which plainly awarded the parcel as *jote* or *kasht* lands lying within the villages and defined by measurements so that there was no doubt as to their identity To re open the decree because the defendants raised a new question regarding the nature of the relation of these parcels to the *mauzas* would be to re hear the suit on that matter That would be an error of procedure of a substantial kind calculated to cause great irregularity in the conduct of suits UDWANT SINGH *v* TOKHAN SINGH (1901) I L R 28 Calc. 353
s c. L R 28 I A 57

PRACTICE—*contd*

1 CIVIL CASES—*contd*

77 ———————— *Execution of decree—Transfer of decree from one district to another—Rules of execution different in the two districts—Procedure* Where in different districts different modes of execution are prescribed and where the question is how a decree passed in one but of which the execution is sought in another of such district is to be executed the executing Court must be guided by the rules in force in its own district MARTAND *v* VINAYAK (1906)
I L R 31 Bom 5

78 ———————— *Decision on a point not raised by the defendant—Execution of decree—Agreement—Khata* It is not open to a Judge to decide a case in defendant s favour on a point not raised by him with the result that if the decision be upheld it will cast upon the defendant a far higher liability than if he had made the order which the plaintiff had asked for RAICHAND *v* NARAN (1904) I L R 28 Bom. 310

79 ———— Ex parte decree or order
Suit set dow[illegible]
summons—[illegible]
ss 68 69
Rules Nos
iff to obtain an *ex parte* decree before the returnable date mentioned in the summons DHIRAJLAL *v* HORMUSJI (1908) I L R 32 Bom 534

80 ———————— *Ex parte order—Defence* No order can be passed against a person without allowing him to be heard and to adduce evidence in his defence SATO KOER *v* GOPAL SAHU (1907) 12 C W N 65

81 ———————— *Ex parte order—False representation—Suit for relief inconsistent with order—Set off claimed in written statement—*[illegible]

involving the person affected in serious liability is much to be deprecated AHMEDABAD ADVANCE SPINNING AND WEAVING CO *v* LAKSHMISHANKER (1904) I L R Bom. 173

82 ———— [illegible]

matter of such application and should be presented within the time allowed for the presentation of special appeals *In the matter of the petition of* NAGAPPA BIN HULGAPPA 5 Bom. A C 215

[illegible]

relied upon as constituting fraud *Per* CHANDA

PRACTICE—*contd*

1 CIVIL CASES—*contd*

VARKAR J —It is a matter of supreme importance [illegible]

complied with the party relying on a case of fraud shall not be allowed to raise that case in the form of an issue It is generally advisable indeed when framing an issue on the point of fraud to set forth in the issue itself a brief statement of the fraud alleged or at least to refer to the passage in the pleadings where it is specified If this be made an invariable practice the door will be closed to vague and indiscriminate allegations BALAJI *v* GANGADHAR (1908) I L R 32 Bom. 255

84. ———— Fund in Court—*Costs—Attorney s lien—Lien—Attaching creditor—Fund in Court attached* A sum of money had been paid into [illegible]

to enforce his lien as against the attaching creditor for all costs incurred up to the date of attachment that the attaching creditor was then entitled to be satisfied before the attorney could claim payment out of the balance in Court of any sum remaining due to him on account of his costs SUPRAMANYAN SETTY *v* HURRY FROO MUG
I L R 14 Calc 374

[illegible]

the same parties are pending in two Courts under two different High Courts —*Held* that the High Court under the conjoint operation of ss 20 and 24 [illegible]

DAS (1905) [illegible]

86 ———— Inspection and production of documents—*Civil Procedure Code (Act* [illegible]

[illegible] in the last resort order his defence to be struck out ASSENOOLLA JOO *v* ABDOOL AZIZ
I L R. 9 Calc 923

87 ———————— *Filing list of documents—Suit for land—Title-deeds—Affidavit* In a suit for possession of land the order that the party in possession do set forth a list of document is to be confined to documents other than title deeds Where the title-deeds are required by the plaintiff on special grounds as for instance where it is alleged that the defendant is a trustee for the plaintiff those special grounds on which they are

PRACTICE—*contd*

1 CIVIL CASES—*contd*

required should be set forth by affidavit HEERA LOLL SAHA v JADHUB CHUNDER CHENCHKEY Cor 66

88 ———————— *Discovery—Civil Procedure Code 1882 ss 131 134 and 136* If a notice under s 131 of the Civil Procedure Code be not answered as provided by s 132 the party seeking the inspection of documents may apply for an order under s 133 and his application must be supported by an affidavit The Court has no jurisdiction to pass an order under 136 unless the provisions of s 131 are strictly complied with DHAPI v RAM PERSHAD I L R 14 Calc 768

89 ———————— *Affidavit of document —Sealing up immaterial parts—Sufficiency of affidavit* A defendant in his affidavit of documents objected to allowing inspection of such portions of certain account books as did not contain entries relating to the matters in question in the suit and claimed the right to seal up such portions but did not state what portions of the books or which particular entries did not relate to the matters in dispute Upon the plaintiff asking for inspection only certain entries were disclosed but inspection of the rest was refused Thereupon the [illegible]

[illegible]

that the defendant do give inspection of his books of account to the plaintiff with liberty to the defendant to seal up such parts as by an affidavit to be made by him do not relate to the matters in question in this suit HORENDRO NATH MUKERJEE v GIRINDRA KUMAR DUTT 3 C W N 495

90 ———————— *Affidavit of documents—Sealing up immaterial parts—Sufficiency of affidavit* A plaintiff in his affidavit of documents objected to allowing inspection of such portions of certain account books as he stated did not contain entries relating to the matters in question in the suit and claimed the right to seal up such portions Upon that affidavit being filed the defendant took out a summons to consider the sufficiency thereof It was objected that this was not the proper mode of procedure and that the defendant should take steps when inspection was refused *Held* that though technically the better way of raising the question would have been to take out a summons for production the course taken by the defendant might if preferred be adopted and that he was entitled to an order that the plaintiff should make a better and further affidavit showing what parts of the documents he claimed to seal up and the grounds upon which the claim was based. JADUB LOLL SHAW v KANAI LOLL SHAW I L R 20 Calc 587

91 ———————— *Insufficient affidavit of documents meaning of—Application for further affidavit of documents—Civil Procedure Code 1882 ss 129 130 134 135* When the affidavit of documents is not insufficient in its terms and does not fail to comply with the requirements of the Code and a further affidavit of documents is demanded by a party alleging that his opponent has documents in his possession which he has failed to disclose in his affidavit of documents the proper course for him is to apply on affidavit stating what document ought to have been disclosed and that such documents are relevant to the issues The proper time for making such application is at the hearing of the suit and not before AMARENDRA NATH CHATTERJEE v KALLY KISSEN TAGORE 2 C W N 17

92 ———————— *Inspection by agent of a party* When under an order giving liberty to a party to a suit his attorneys and agents to inspect and peruse the documents produced by the opposite party inspection by an agent is contemplated the order should be read in such a way as would give the Courts some control over the persons to be appointed to inspect the documents Such an order contemplates that the agent will be a person standing in the position of the party for the purposes of the suit *Held* therefore that the Court ought not to [illegible] formerly in the [illegible]

I L R 20 Calc [illegible]

93 ———————— *Civil Procedure Code (Act XIV of 1882) ss 59 140—Madras High Court Rules Nos 39 43 44 and 47* A defendant is entitled [illegible] to be furnished [illegible] are dep[illegible] Aziz v [illegible]

94 ———————— *Inspection and production of documents—Civil Procedure Code (Act XIV of 1882) s 130* Where inspection of documents is objected to on the ground of immateriality the Court will if necessary order them to be produced for its own inspection in order to judge of their materiality GUPMUK ROI v TULARAM (1901) I L R 28 Calc 424

95 ———————— *Civil Procedure Code (Act XIV of 1882) s 59—High Court Rule 16[illegible]* [illegible]

[illegible]

in all cases for there may be many cases where it would be imperative to order the plaintiffs to pro-

PRACTICE—*contd*

I CIVIL CASES—*contd*

duce and give inspection to the defendant before he has filed his written statement a document or documents which they may not have mentioned in their plaint or enumerated in the list of documents annexed thereto KHETSIDAS v NAROTUMDAS (1907) I. L R 32 Bom 152

96 ———— Interrogatories—*Civil Procedure Code, 18*[illegible] *s 121—Ex parte order for interrogatories* S 121 of the Code of Civil Procedure [illegible]

that stage what questions the party interrogated should be compelled to answer Where an *ex parte* order is made in chambers giving leave to interrogate the party ordered to answer has a right to come into Court to have the order set aside if the case is one in which interrogatories should not have been allowed When an order for the administration of interrogatories is properly made a party objecting to the interrogatories administered may at his peril omit to answer the interrogatories to which he objects but the more prudent course is to file his affidavit in answer stating in it his objection to answer such questions as he [illegible]

v SHOSHIBHOOSUN BISWAS I L R 5 Calc 707 5 C L R 509

97 ———— *Failure to answer within the time limited—Dismissal of suit—Civil Procedure Code (Act XIV of 1882) Ch X ss 121 126 and 136* The question as to whether the Courts below have exercised a proper discretion [illegible]

interrogatories to be answered within ten days under s 126 there is virtually an order passed [illegible]

98 ———— *Discovery—Guardian ad litem—Party for purposes of discovery* Where a guardian *ad litem* of a lunatic defendant was made a party defendant for purposes of discovery —*Held* that the discovery was not intended to include the right to administer interrogatories to him. WAGHJI THACKERSEY v KHATAO POWJI I. L. R. 10 Bom. 167

99 ———— *Cross interrogatories* Where interrogatories have been administered for the examination of a witness by one party and the other party delivers cross interrogatories the latter must if he objects to any of the other party s questions make his objections on the face of his cross interrogatories and such objections shall be argued at the hearing GOBIND CHUNDER ROY v SIB NATH SHAW 5 C L R 171

100 ———— *Evidence* A party at whose instance interrogatories have been administered must put in the answers as part of his evidence if he wishes to use them at the hearing GOSTO BEHARI PAL v JOHUR LAL PAL I L R 4 Calc 836 4 C L R 164

101 ———— *Refusal to answer—Particulars of damage—Civil Procedure Code (Act XIV of 1882) ss 125 127* The plaintiff alleged that the defendant bank improperly and without notice and in violation of an agreement sold some Government promissory notes which had been deposited as security for certain loans and claimed a specified sum as damages or in the alternative a decree for an account The defendant bank denied the alleged agreement and asserted that the notes had been sold after due notice and on failure of the plaintiff to comply with the terms on which the loans were made Interrogatories were administered for the examination of the plaintiff and amongst them one in the following terms State how your estimate of damages to the amount of R1 30 000 mentioned in the eighth paragraph of the plaint is arrived at ? Upon [illegible]

it was intended to elicit the principle on which the damages were estimated by the plaintiff the defendant was not entitled to discovery on that point If on the other hand it was sought to elicit an account of the transactions between the parties it was unnecessary as the transactions were within the knowledge of the defendant bank and if it were not then the enquiry was premature as the question whether there had been any wrongful act committed and whether the plaintiff was entitled to any damages should be first determined NECKRAM DOBAY v BANK OF BENGAL I. L. R 14 Calc 703

102 ———— Issues. The fact that no issue raised as to matters which the plaintiff is bound to prove does not justify the inference that the defendant intends to admit them The duty of raising issues rests under the Civil Procedure Code with the Court GANOO v SHRI DEV SIDHESHWAR (1901) I. L. R 26 Bom 360

103 ———— Leave to sue or defend—*Leave to sue—Civil Procedure Code 1877 s 19—Immoveable property situate in different districts—Letters Patent cl 12—Plaint admission of* Under s 19 of the Civil Procedure Code it is not necessary to obtain the leave of the Court to sue in respect

PRACTICE—*contd*

I CIVIL CASES—*contd*

of immoveable property situate partly within and partly without the ordinary original civil jurisdiction of the High Court NARAIN SINGH *v* RAM LALL MOOKERJEE I L R 3 Calc 370

104 ———— *Leave to sue—Civil Procedure Code 1877 s 30—Suit by one creditor on behalf of others* A suit by one or more creditors on behalf of other creditors cannot be entertained without the leave of the Court being obtained for its institution Such leave cannot be granted at the hearing ORIENTAL BANK CORPORATION *v* GOBIND LALL SEAL
I L R 9 Calc 604 13 C L R 142

105 ———— *Suit brought without leave—Costs* Where a suit was brought by one legatee on behalf of himself and others without leave of the Court and the plaintiff was a minor suing by his next friend the next friend was made to pay the costs of the suit GEEPEEBALLA DABEE *v* CHUNDER KANT MOOKERJEE
I L R 11 Calc 213

106 ———— *Leave to defend—Promissory note summary procedure on—Civil Procedure Code 1877 s 533—Power to extend time to defendant to come in and defend* The High Court has power to extend the time within which a defendant in a suit brought under Ch XXXIX (summary procedure on negotiable instruments) of the Civil Procedure Code can come in and obtain leave to defend therefore in a suit in which it appeared that the defendant resided at Peshawar the time for the defendant to obtain leave from the Court to appear and defend was extended to twenty eight days GROOM *v* WILSON I L R 3 Calc 539

107 ———— *Application to take plaint off the file after leave given—Summons to rescind leave given* Where leave to bring a suit has been given to a plaintiff under s 12 of the Letters Patent and a defendant objects and asserts that the Court has no jurisdiction he is not bound to wait until the case comes on for hearing but may take out a Judge s summons calling on the plaintiff to show cause why the leave given should not be rescinded and the plaint taken off the file *Ismail Hadjee Habbeeb* v *Mahomed Hadjee Joosub 13 B L R 91* referred to KESSOWJI DAMODAR JAIRAM *v* LUCKMIDAS LADHA
I L R 13 Bom 404

108 ———— **Lunatic**—*Suit by next friend—Plaintiff a person of unsound mind not so found—Civil Procedure Code (Act XIV of 1882) s 463—Not exhaustive—Landlord and tenant—Abandonment—Transfer by tenant of non transferable holding—Usufructuary mortgage* The provisions of s 463 of the Civil Procedure Code are not exhaustive and a lunatic may sue through a next friend even though not adjudged a lunatic under any law When a tenant of a non transferable holding executes a usufructuary mortgage of it places the mortgagee in possession abandons the holding and leaves the village the landlord is entitled to treat the mortgagee as a trespasser and to ask for his ejectment *Per* MOOKERJEE J—The Code of Civil Procedure is not exhaustive A Court in which a suit has been instituted by or against a lunatic not so found has an inherent power to determine whether he is a lunatic and if he is found to be so to make an order for the appointment of a next friend or guardian *ad litem* RASIK LAL DATTA *v* BIDHUMUKI DASI (1906)
I L R 33 Calc 1094

109 ———— **Minor Co parcener**—*High Court—Original Side—Suits by manager of joint Hindu family having minor co parceners—Minors names should be added as parties—Will—Construction—Rule against perpetuity—Succession Act (X of 1865) s 101* As a matter of practice suits are not filed on the Original Side of the Bombay High Court by managers representing their minor co parcener the practice is to join all persons interested but it would seem that even if on the face of the plaint there were an allegation of a sole plaintiff that he sued as manager on behalf of a co parcenary the minor co parcener would not be bound by the proceedings unless by judicial sale under the decree rights had been created in innocent third parties and no prejudice were shown to the absent minor Cl 13 of the will produced in this case was as follows — As to my other property which there is that is the property situated on the east side of the house of my step brother I give the same to my younger son Chiranjiv Mahadev for his life He shall have no authority either to mortgage or to sell the said property He shall only receive the income of the said property and I give the property after his death to his son or to his sons in equal shares should there be any such son or sons In case he leaves no sons behind him my Mukhtyars shall get a [illegible] favour of a son of Madhadev who might be adopted at any time after Mahadev s death by a widow who might not have been living at the testator s decease was void under s 101 of the Indian Succession Act (X of 1865) KASHINATH CHIMNAJI *v* CHIMNAJI SADASHIV (1906)
I L R 30 Bom 477

110 ———— **Motions**—*Hearing two counsel* It is not the practice to hear more than one counsel or vakil in support of original motions or applications against which no cause is shown in the first instance *In the matter of the petition of* BARODA SOONDREE DASSEE
B L R Sup Vol 600 6 W R Mis 114

111 ———— *Taking further evidence on hearing of motions—Oral evidence—* [illegible]

PRACTICE—*contd*

1 CIVIL CASES—*contd*

adjourn the hearing for that purpose BAMASUNDARI DASI v RAMNARAYAN MITTER
8 B L R Ap 65

112 ——————— *Motions—Decree passed without the suit appearing on the list for hearing* There is a fixed practice in Bombay which prevents a decree being obtained on motion without the suit appearing on the list for hearing PRAGDAS SAGURMALL v GIRDHARDAS MATHURADAS (1901)
I L R 26 Bom 76

113 ——————— Next friend—*Minor defendant application by next friend of for transfer of case when no guardian ad litem has been appointed —Civil Procedure Code (Act XIV of 1882) ss 410 441 443 449* A suit was instituted in a Mofussil Court against two defendants one of them being a minor Before a guardian *ad litem* had been appointed for the minor defendant an

I L R 16 Calc 771

114 ——————— *Attorney and client—Change of attorneys on record—Application for change of attorney by next friend—Right of next friend of minor plaintiff to change attorney—Groundless charges against solicitors—Costs* The next

(*1883*) *unreported Ram Chander Roy v Poorno Chunder Roy 4 C W N 1 5* (*notes*) and *Sarat Chunder Daun v Kristo Dhone Daun 5 C W N 83* (*notes*) dissented from *Brown v Brown 11 Beav 562* referred to The rights and obligations of next friend discussed *Semble* If the next friend of an infant plaintiff is not doing his duty and is acting in a manner detrimental to the interests of the infant the proper course under such circumstances would be to apply for his removal and for the substitution of a new next friend *Peyton v Bond 1 Sim 390* approved *Semble* An appeal lies from an order refusing change of attorney DINENDRA NATH DUTT v WILSON (1901)
I L R 28 Calc 264
s c 5 C W N 434

PRACTICE—*contd*

1 CIVIL CASES—*contd*

—Presumption arising from such non appearance—Duty of parties to suit to come forward as witnesses in their own case—Circular No 1750—Civil Procedure Code (Act XIV of 1882) s 170 A mortgagee sued his mortgagor for possession to which he was entitled under the provisions of the mortgage

apparently to support his case by cross examining him as to the alleged consideration The plaintiff however did not appear and the defendant himself did not go into the witness box at the hearing Under these circumstances the Court of first instance passed a decree for the plaintiff holding that the inference which might be made against the plaintiff by reason of his non appearance would not supply the want of positive proof which the

tain entries showing the payment of consideration to the defendant but held that such presumption did not relieve the defendant from the obligation

compelled if possible to attend and give evidence and produce the mortgage deed and accounts and the defendant also should have given evidence on his own behalf and have submitted to cross examination SUBBAJI NARSINGH KULKARANI v SHIDDAPA BIN KALLYANAPA HUBBI (1901)
I L R 26 Bom 392

116 ——————— Notice re issue of—*Notice*

117 ——————— Objections—*Objection taken at hearing that application made to Court was not the application of which notice had been given to opposite party—Preliminary point* In a motion made by the defendants for rectification of a decree for specific performance counsel for the plaintiffs contended that the defendants were not entitled to ask for a rectification of the decree inasmuch as their notice of motion did not intimate that the point would be raised *Held* that such an objection ought to be taken at once as a preliminary point. As it was not made until the argument of counsel for the defendants was concluded, it should be taken that the form of the motion as made to the Court was acquiesced in. The objection was then too late KARIM MAHOMED v RAJOOMA
I L R 12 Bom 174

118 ——————— Omission to argue question of law or abandoning a point—*Counsel*—

PRACTICE—*contd*

1 CIVIL CASES—*contd*

Power of Court to go into question Omission by a counsel either to argue a question of law or his abandoning a question of law is not sufficient to disentitle Court to go into the question *Beni Pershad Koeri v Dudh Nath Roy I L R 27 Calc 151* followed RAMSARAN SINGH v KHAKHAN SING (1906) 11 C W N 340

119 ———— Opening case for defendant—*Suit—Plaintiff s case closed—Both defendants*

sets of defendants and their interests are the same both should address the Court before any evidence is taken *In re* DUKSHINA MOHUN ROY (1902) I. L. R 29 Calc 32

120 ———— Orders—*Order to file with the record*

an applicati on

demned as

SHURBO MI 193

LUCHMEE NARAIN SAHEE v KOSHUKEE DUTT JHA 8 W R 107

121 ———— *Practice of Courts of co ordinate jurisdiction as to considering orders binding* A District Judge has no authority when hearing an appeal from a Munsif s decision to vary or ignore the directions made by an Appellate Court of co ordinate jurisdiction such as that of the Subordinate Judge In such cases he should be guided by the practice in the High Court where when one Division Bench s es fit to give certain directions any other Bench before which the case may afterwards come on has to keep itself within those directions BROJO SOONDUR GOSSAMEE v JUGGUT CHUNDER DEY 21 W R 199

See VYTHELINGA MUDELLY v CUNDASAWMI MUDELLY 8 Mad 21

122 ———— Paper books—*Preparation of paper books—Appeals to High Court* In appeals to the High Court where the subject matter is more than R10 000 the appellant is bound to put

123 ———— *Untranslated accounts not in paper books—Special leave* Under the rules of the High Court account books which are not translated and are not therefore a part of the paper book cannot be referred to in a trial without special leave MADHUB PERSHAD v TOOL COOMAREE BIBEE 19 W R 121

124 ———— *Costs of translation of papers not included in list for paper book* The petitioner in a regular appeal to the High Court should not be called upon to deposit the costs of translating etc any papers of which he has not furnished a list with a view to their inclusion in the paper book. What papers a party requires or ought to print is a matter which he or his vakil must in the first instance determine the Deputy Registrar preparing his estimate and demanding payment according to the requirements made on him LALLA BHOOP NARAIN v ABASEE BEGUM 23 W R 458

125 ———— *Omission to furnish list of papers—Notice of estimate of cost of printing* If the petitioner in a regular appeal to the High Court does not furnish the Deputy Regis

KOONWAR 23 W R

126 ———— *Appeal—Delivery of paper book—Costs—Rule 49 of Original Side* Where the respondent has not delivered paper books as he is allowed to do by rule 49 of the

14 B L R Ap 136

127 ———— *Rules of Original Side High Court—Appeal—Paper book Delivery of—Costs* When an appeal is filed but no paper books are delivered by the appellant the respondent is entitled without taking upon himself to deliver paper books to have the appeal dismissed with costs *Hurroosoondery Dossee v Cullypodo Dutt 14 B L R App 11* not followed KABULI v BHUTI I L R 17 Calc 289

128 ———— *Filing paper books for appeal—Application for enlargement of time to file paper books—Subsequent application at*

—*High Court* An extension will not shown e appel the date of filing their memorandum of appeal till the 2nd September 1898 before applying for office copies of the necessary papers to enable them to prepare their paper books and an application was made by the appellant on the 12th December 1898 for two months further time to file their paper books the delay between the 13th August and the 2nd September 1898 being unexplained —*Held* that no sufficient cause had been shown for extension of

CHAND I L R 7

PRACTICE—*contd*

1 CIVIL CASES—*contd*

GOPAL CHUNDER DAS *v* RADHABULLUB DAS
I L R 27 Calc 60 note

129 ——— **Parties**—*Error in title of appeal—Party on record by mistake—Objection to his appearance by party who caused error* A suit was brought by a minor who appeared by her next friend and a decree was given in her favour The defendant appealed making the next friend alone respondent and had the decree of the Court of first instance modified in his favour The next friend appealed to the High Court where the respondent objected to the next friend being heard on the ground that she was no party to the suit *Held* that the Court would not entertain the objection at the instance of the party through whose fault the error occurred but that the judgment of the Court below should be set aside and that of the Court of first instance restored BHOBOTARINI DEBI *v* SPEP PAM PAUL **I L R 9 Calc 629**

130 ——— *Adding party as co appellant—Notice* A party should not be added as co appellant without notice to the appellant JANKIBAI *v* ATMARAM BARAPAN
8 Bom A C 241

131 ——— *Suit instituted on behalf of minor by next friend—Application for execution of decree by plaintiff on attaining majority and after death of next friend without complying with requirements of s 451 Civil Procedure Code—Title of suit* Unless there is an absolute bar created by positive enactment a person who has attained his full age is *primâ facie* entitled to proceed with a suit instituted on his behalf during his minority or to make any application therein and if necessary the Court will as a matter of course give him leave to proceed or act in his own name When a person on whose behalf a suit had been revived and carried on by his next friend made after attaining his majority and long after the death of the next friend an application in his own name for execution of the decree in the suit without having complied with the requirements of s 451 of the Civil Procedure Code as to electing to proceed with the suit and obtaining leave of the Court to do so and the application was admitted and notice of execution given to the defendant —*Held* under the circumstances that such omission to comply with the requirements of s 451 though an irregularity was not a bar to the application being allowed to proceed An application under s 451 for leave to proceed with a suit does not require any notice but may be made *ex parte* at any time Even if the application in this case therefore were not itself a sufficient indication that the applicant elected to proceed with the

the title of a suit to be corrected in such a case applies to a pending suit and not to a suit after final decree in which it only remains to proceed in execution DOORGA MOHUN DASS *v* TAHIP ALLY TAHIR ALLY *v* ROOPSOMBOO
I L R 22 Calc 270

132 ——— *Appearance of parties—Appearance where party is represented by attorney on the record—Consent decree* A defendant who has an attorney on the record cannot appear to consent to a decree even if the plaintiff makes no objection to his doing so PANCHANON SINGH *v* JEEBUN KISTO BOSE
1 C W N 303

133 ——— *Application for payment of money by receiver—Consent order* A plaintiff who has an attorney on the record cannot appear in person to consent to an application for payment of money by the Receiver CHAITAN CHARAN MULLICK *v* GOCOOL CHANDRA MULLICK
1 C W N 303

134 ——— *Deposit by defendant of money in Court in satisfaction of claim—Right of plaintiff to draw out such money and prosecute suit for balance claimed—Discretion of Court—Code of Civil Procedure (Act XIV of 1882) ss 376 375* Suit for recovery of Rs 500 on three promissory notes Defendant pleaded minority at the date of the transactions denied all liability also denied receiving R5 500 but admitted receipt of R1 500 which sum together with the interest he tendered to the plaintiff in full satisfaction of his claim On refusal by the plaintiff to accept that sum it was paid into Court The plaintiff then applied to the Court for payment to him of the said amount The defendant contended that the amount should be kept in Court pending the hearing as all liability was denied and offered to pay interest if plaintiff succeeded in his suit *Held* that the plaintiff was entitled to take the money out of Court DWARKA DASS AGURWALLAH *v* GIRISH CHUNDER ROY **I L R 26 Calc 766**

135 ——— *Revival of suit—Substitution of parties—Code of Civil Procedure (Act XIV of 1882) ss 368 372— Pending suit —Right to apply accrual of—Limitation Act (XV of 1877) Sch II Art 178* On directions to take an account in a suit the suit is still pending within the meaning of s. 372 of the Code of Civil Procedure until the final order on the taking of the account is made and the right to apply in such a suit to have the death of a certain defendant recorded and the names of his heirs substituted on the record accrues from day to day and is not barred under Art 178 Sch II of the Limitation Act The provisions of s 368 of the Code have no application to a case like this *Gocool Chunder Gossamee* v *The Administrator General of Bengal I L R 5 Calc 726* *Kedarnath Dutt* v *Harra Chand Dutt I L R 8 Calc 420* and *Ram Nath Bhattacharjee* v *Uma Charan Sircar 3 C W N 756*

PRACTICE—*contd*

1 CIVIL CASES—*contd*

relied upon SURENDRA KESHUB ROY v KHETTER KRISTO MITTER (1903) I. L. R 30 Calc 609 s.c 7 C W N 517

136 ——————— *Parties—Issues—Ca e* Their Lordships of the Judicial Committee

in a narrower ense MA WUN DI v MA KIN (1907) I L. R. 35 Calc 232 s c L R 35 I A 41 12 C W N 220

137 ——— **Payment out of money de posited in Court**—*Petition without suit—Payment out of Court of moneys on petition without suit* Case in which an order was made on a petition without suit directing the payment out of certain moneys paid into Court under an order entitled In the matter of Florence Emily Brownlow and Lilian Kate Brownlow infants *In the matter of the petition of* BROWNLOW I. L. R 11 Calc 219

138 ——————— *Execution of decree—Receipt and paying over of money in satisfaction of decree.* If money is brought into Court under process of execution and the party entitled to it or his vakil is present to receive it the Court shall cause it to be paid over immediately MUTTUVELU PILLAY v SAMU PILLAY 5 Mad. Ap 2

139 ——————— *Payment into Court of money due under a bond bearing interest—Appropriation of such payments first to satisfaction of interest* It appears to be a well settled practice of the Courts to appropriate payments made upon a bond first to the interest due thereon and thereafter if any balance remain to the principal. *Luchmeswar Singh Bahadur v Syed Lutf Ali Khan 8 B L R 110* and *Gooroo Das Dutt v Ooma Churn Roy 22 W R. 525* referred to MAHARAJA OF BENARES v HAR NARAIN SINGH (1905) I. L. R. 28 All. 25

140 ——— **Plaintiff meaning of**—*Judicature Acts 36 and 37 Vict ch 66 s 100—Civil Procedure Code (Act XIV of 1882) s 26 179 180—Right to begin—Some of defendants supporting plaintiff s case—Order in which to address the Court* The word plaintiff means every person asking relief against another person. The plaintiff and such of the defendants as support the plaintiff s case wholly or in part must address the Court and call their evidence in the first place and then following the words of s. 180 of the Civil Procedure Code

141. ——— **Pleader appearance of**—*Second appeal—Vakil right of to be heard without certified grounds of appeal or without any order admitting the appeal—Rules and Orders of Court (Appellate Side) 86 and 169* A vakil will not be heard on behalf of an appellant on second appeal when neither duly certified ground or grounds of appeal have been filed nor the appeal been admitted by order of Court under Rules 86 and 169 of Court. *Kishen Chunder Roy v Hurish Chunder Bose, 3 W R 216* followed. OLIULLAH v BACHU LAL KHOTTA I L R 15 Calc. 706

142 ——— **Pleader s Fees**—*Taxation—Pleader s fees—Appeals in Probate Proceedings—Scale of cost.—Act I of 1846 s 7* The taxation of pleader s fees in appeals from probate proceedings should according to a long standing practice of the High Court of Bombay be valued at R30 SUNDRABAI v THE COLLECTOR OF BELGAUM (1905) I. L. R 33 Bom. 256

143 ——— **Possession of land**—*Suit to ascertain area of land to which plaintiff is entitled—Confusion of boundaries—Court no power to fix boundaries—No equity shown by plaintiff* Where the plaintiff sued for recovery from the defendants of possession by severance and demarcation of a certain area of land out of the area described in the plaint allowing the defendants to retain possession of as much land thereout as they could possibly retain consistently with it the Judge in appeal dismissed the suit on the ground that the plaintiff had no cause of action against the defendants The plaintiff preferred a second appeal When the assistance of the Court is sought for the purpose of ascertaining the boundaries, which the plaintiff himself is unable to point out by reason of some confusion in them and to recover possession when those boundaries have been ascertained by the Court *Held* following *Wake v Conyers (1 Wh & T L C 1 0 at p 17)* that the Court has no power to fix the boundaries of legal estates, unless some equity is superinduced by the act of the parties as some particular circumstance of fraud or confusion KAVASJI v HORMASJI (1905) I L R. 29 Bom. 73

144. ——— **Probate and letters of administration**—*Withdrawal of letters of administration—False representation.* When letters of administration have been granted to the Administrator General and subsequently withdrawn on a false representation the Court will grant a rule calling on the executors to show cause why the rule should not be extended to the Registry of the Court. *In the goods of* SREEMUNTO BENAICH RAO IMRIT [2 Ind. Jur N S 10

145 ——————— *Contentious matter—Duty of Registrar—When a petition for probate or letters of administration becomes contentious—Non-appearance of caveator—Form of order* So long as a petition for probate or letters of administration is non-contentious, it is to be dealt with by the Registrar As soon as it becomes contentious, it is to be treated as a plaint in a suit and the suit is governed as far as practicable by the procedure prescribed by the Civil Procedure

PRACTICE—*contd.*

I. CIVIL CASES—*contd*

Code The petition becomes contentious not upon the entry of a caveat but upon the filing of the affidavit in support of the caveat Where in consequence of the filing of the affidavit the matter becomes a suit the whole suit must be disposed of by the decree of the Court Where therefore at the hearing of the suit the defendant does not appear in support of the caveat it is not a correct procedure for the Court merely to dismiss the caveat leaving it to the Registrar to dispose of the petition as a non contentious matter The proper form of order is that the caveat be dismissed and that probate or letters of administration issue provided that the Court is satisfied that the papers are in order CHHOTALAL CHUNILAL *v* BAI KABUBAI
I. L R 22 Bom 261

146 ———————— *Power of-attorney—Evidence Act (I of 1872) s 85—Letters of administration application for* On an application for letters of administration to the estate of a deceased who was domiciled in Scotland and to whose estate one *P* had been appointed executor *datir qua father* the application being made by one *K* under a power of attorney granted by *P* such power not having been executed and authenticated in the manner provided by s 85 of the Evidence Act —*Held* that the application must be refused *In the goods of* PRIMROSE I L. R. 16 Calc 776

147 ———————— *Petition by Administrator General for letters of administration—Prayer for remission of Court fees where estate is of small value—Rule of High Court 697—Veri*

(Belchambers Rule and Orders p 278) is sufficiently verified by the signature of the Administrator General in accordance with s 12 of Act II of 1874 The effect of that Act is to do away with the requirements of the rule in such a case so far as it makes verification by affidavit necessary as to the value of the assets. *In the goods of* MC COMISKEY I. L R 20 Calc 879

148 ———————— *Administrator General s Act (II of 1874) s 12—Verification of petition—Court fees Amendment Act (XI of 1899)* The Administrator General as a public officer is exempted from verifying otherwise than by his signature any petition presented by him under the provisions of Act II of 1874 *In the goods of McComiskey I L R 20 Calc 879* followed The form of affidavit prescribed by Act XI of

appli

n the

404

298

149 ———————— *Application for letters of administration by constituted attorney—Power of-attorney executed in Glasgow—Verification—Declaration as to execution of power* The Chief Magistrate of the city of Glasgow being a person lawfully authorized to administer oaths a declaration as to the execution of a power of attorney taken before him and authenticated by his certificate and the common seal of the city of Glasgow and by a notarial certificate is sufficient proof of the execution of the power *In the goods of* HENDERSON I. L. R. 22 Calc 491

150 ———————— *Evidence Act (I of 1872) s 85—Power of attorney—Declaration before notary public in proof of power of attorney* On an application for letters of administration

attesting witnesses had made a declaration before a notary public to the effect that he witnessed the execution of the power of attorney by one of the executors and that the signature of the other attesting witness was the proper signature of the person bearing that name and each declaration was signed sealed and certified by a notary public *Held* that the power of attorney was sufficiently proved *In re* SLADEN I L R. 21 Mad 492

151 ———————— *Court fees Act (VII of 1870) s 3 Sch I Art II s 19H—Court Fees Amendment Act (XI of 1899)—Payment of ad valorem fee on probate or letters of administration* In an application for probate or letters of administration the *ad valorem* fee prescribed by statute should be prepaid to the satisfaction of the Court Such payment must be made to

152 ———————— *Bond form of —Succession Act (X of 1865) s 256* The Indian Succession Act s. 256 requires that an administration bond should be taken in every case It may however be varied by special order of the Court in the case of a limited or special administration and follow the English form. *In the goods of* GILBBOY I L. R. 26 Calc 408
3 C W N 364

153 ———————— *Probate application to recall—Citation—Proof of will—Genuineness*

such an application ought to be granted, and that the probate of the will must be recalled and kept

PRACTICE—contd

I CIVIL CASES—contd

in the record until the case is decided ELOKESHI DASSI v HARI PROSAD SOOR (1903)
I L R 30 Calc 528
s c 7 C W N 450

154 ———————— Grant of letters of administration—Scope of enquiry prior to grant On the hearing of a petition for issue of letters of administration to the estate of a deceased person it is not the province of the Court to go into questions of title to the property to which the letters of administration refer OCHAVARAM NANABHAI v DOLATRAM JAMIETRAM (1904)
I L R 28 Bom 644

155 —— —— Record documents forming—Documents not proved Documents which have not been proved but simply filed in accordance with a usage in the mofussil should not be put up with the record It is the duty of a Judge to pass over such documents as unproved but it is also the duty of the pleader of the party against whom they are intended to be used to insist that they should not remain on the record at all KALLIDA PERSHAD DUTT v RAM HARI CHUCKERBUTTY
I L R 5 Calc 317

156 ———— —— —— —— Remission of case by Privy Council for enquiry —Record to be forwarded with decree When the Privy Council ... Court ... the ... forth ... art of the judicial record and should be forwarded to the Zillah Court with the decree of the Privy Council GOLOCK CHUNDER DUTT v MOHUN LOLL SOOKUL
5 W R 271

157 ———— Redemption—Interpleader suit —Suit to redeem mortgage against two parties claiming mortgage money—Appropriate relief When a mortgagor was about to pay off the mortgage amount to an assignee of the mortgage the mortgagee disputed the assignment and also claimed to be paid the mortgage amount. The mortgagor thereupon filed a suit impleading both the mortgagee and assignee as defendants. The plaint contained in substance a claim for redemption but it also prayed that the defendants should be required to interplead concerning their claims to the mortgage amount and that the mortgagor should be indemnified in consequence of the loss of the original mortgage deed Prior to the hearing the defendants agreed that the assignee was entitled to receive the mortgage amount The suit ... interpleader ...

it was erroneous to treat the suit as only one of interpleader Inasmuch as the plaint also contained in substance a claim for redemption that was the appropriate relief under the circumstances. Tyrvan v Vyvyan 4 DeG F & J 183 followed JAGGANATH HIRALAL v TULKA KERA (1908)
I L R 32 Bom 593

158 ———— Reference to High Court —Reference by Collector of decision under Mamlatdar s Courts Act—Civil Procedure Code 1882 s 622—Practice. The High Court will not interfere on a reference by the Collector with a Mamlatdar s Court's decision in a possessory suit The aggrieved party can himself apply to the Court Satu v Shivrambhat P J 1891 p 52 followed PANDU v BHAVDU
I L R 21 Bom 806

See VORA ISABALLI v DAUDBHAI MASABHAI
I L R 14 Bom. 371

159 Reference to Registrar—Statement of facts filing of after appointed time —Right of party failing to appear and support such statement—Rules of High Court Calcutta Nos 529 537 On the 4th February 1899 one G was granted a month s time to file his statement of facts in a reference which was pending before the ... that ... refused to deal with the statement of facts without an order of Court G then applied to the Court for an order that he Registrar might be at liberty to refer to the statement of facts and that G might be ... them The party ... to be allowed ... might appear in ... by counsel or attorney Held that G was entitled to file his statement of facts and that the reference should be proceeded with in the usual course TARAK MOHINEY DASSEE v GREES CHUNDER DASS
I L R 26 Calc 585

160 ———— Remand—Remand on point raised as issue in lower Court A case ought not as a rule to be remanded upon a point which has been framed as an issue by the Court below and brought to the attention of the parties and where they have failed at the trial to give any evidence upon it. RAM PRASAD v ABDUL KARIM
I L R. 9 All. 513

161 ———————— Remand Case where on objection being taken at a late stage that a mortgage bond was not attested as the law required by two witnesses the suit instead of being dismissed was sent back to enable plaintiff to adduce further evidence to prove that at least two of the persons whose names appeared on the face of the document were attesting witnesses. DINAMOYEE DEBI v BON BEHARI KAPUR (1902)
7 C W N 160

162 ———————— Remand—Erroneous ... On remand by ... of certain ... case to the ... might be

PRACTICE—*contd*

I CIVIL CASES—*contd*

taken there The evidence of the plaintiff was taken on commission *Held* that the defendant was in nowise aggrieved by the procedure followed. KHASHABA v CHANDRABHAGABAI (1908)
I L R 32 Bom 441

163 ———— Report of Registrar—*Exceptions to report—Notice—Rule 565 of Belchambers Rules and Orders of the High Court Original Side* In making an application to discharge or vary a report it is necessary that notice should be given within the time required by rule 565 of the Rules and Orders of the High Court Original Side and that such notice should be accompanied with the grounds of exceptions relied on by the party objecting to the report. LUTCHMEE NARAIN v BYJANAUTH LAHIA I L R 24 Calc 437

LUCHMEE NARAIN v RUNGO LAL LOHEA
2 C W N 57

164. ———— *Report of Registrar—Application to discharge or vary report—Exceptions to report—Notice of motion—Time for such notice—Belchambers Rules and Orders of High Court Original Side (1900) Rules 615 617—Solicitor's mistake as to course of procedure— Fraud surprise or mistake or such other special ground under rule 61* If a party to a suit desires to discharge or vary a report he must adopt the procedure laid down by Rule 615 (Belchambers

surprise or mistake or such other special ground in Rule 617 refer to fraud surprise or mistake or some other special ground incident to connected with or which resulted in the making of the certificate or report itself and not to something which has occurred quite outside and independent of the certificate or report A mistake in not complying with the procedure laid down in Rule 615 is not a special ground within the meaning of Rule 617 or re opening the report ROYAL INSURANCE Co v AUKHOY COOMAR DUTT (1901)
I L R 28 Calc 272
s c 5 C W N 337

165 ———— Review—*Certifying review without good grounds* Junior pleaders of the High Court should be cautious how they certify for a review when they find that the case has been in the hands of members of the bar and of pleaders more experienced than they who they ought to consider have declined to certify to the review
ROUSSEAU v PINTO 10 W R 54

TOOG OUNG v BRITISH INDIA STEAM NAVIGATION COMPANY 24 W R 430

ing to the High Court under second appeal it is discovered that there is evidence which ought to have been placed before the lower Courts the proper practice to pursue is to allow the second appeal to be withdrawn in order that a review petition may be presented to the lower Appellate Court But this course cannot be pursued when the review petition has been already presented to and rejected by the lower Court RAMCHANDRA v KRISHNAJI (1904) I L R 24 Bom 4

167 ————

against decision of superior Court S 153 of Act X of 1859 does not preclude revision by the High Court of an order of a Collector which is final within the meaning of that section The High Court has power either under s 622 Civil Procedure Code or if not under s 15 of the Charter Act to interfere in cases where the lower Courts have not acted correctly in accordance with law Where a plaintiff failed to secure the production of an important document from the records of another Court though he took all reasonable steps for that purpose and the suit was disposed of by both the Courts of first instance and the Appellate Court without reference to that document the High Court in revision set aside the judgments of both the Courts When appeals

Appellate Court GOBIND RAMANUJA DAS v LAKHUN PARIDA (1906) 11 C W N 112

168 ———— Revival of suit—*Civil Procedure Code (Act X of 1877) s 372—Plaint taken as petition to revive* A suit was instituted by the trustee appointed under a will against the executrix for the purpose of having the trusts of the will carried into execution A decree was made and certain directions were given for the purpose of having a scheme settled by which the trusts were to be carried out but before the scheme was finally settled and approved, and while the proceedings were pending the case was struck out of the board for want of prosecution. Subsequently both the plaintiff and defendant died. The heirs of the plaintiff

pursue was to allow the plaintiffs to amend their plaint by putting it in the form of a petition under s. 372 of the Civil Procedure Code the defendant being at liberty to put in any answer which he might have done if the proceeding had been by petition in

PRACTICE—*contd*

I CIVIL CASES—*contd*

the first instance *Per* PONTIFEX *J*—The words pending the suit in s. 372 relate to a suit in which no final order has been made GOCOOL CHUNDER GOSSAMEE *v* ADMINISTRATOR GENERAL OF BENGAL

I L R 5 Calc 726 5 C L R 569

169 ———— Rule to show cause—*Rule nisi to show cause why a person should not be made a party defendant—No grounds stated in or served with the rule—Rule granted during hearing of suit—Civil Procedure Code (Act XIV of 1882) s 32* During the hearing of a suit for recovery of immoveable property it appeared from the evidence and certain documents put in that the plaintiff had mortgaged his right title and interest to a third person by whom the suit was practically

know what he had to answer and consequently the rule being informal it was discharged with costs RAMNARAIN KALLIA *v* MONEE BIBEE. RAM NARAIN KALLIA *v* GOPAL DOSS SING

I L R 9 Calc 735

170 ———— Rulings of High Court—*Different rulings of different High Courts—Judge what rulings to be followed by* Where there are different rulings of the different High Courts on a particular point a Judge should follow the rulings of the High Court to which he is subordinate SWAMIRAO NARAYAN DESHPANDE *v* KASHINATH KRISHNA MUTALIK DESAI

I L R 15 Bom. 419

BALAJI GANESH *v* SAKHARAM PARASHRAM NGAL I L R 17 Bom. 555

171 ———— Sale by Receiver—*Obstruction of possession—Purchaser rights of—Code of Civil Procedure (Act XIV of 1882) Ch XIX and s 647—Costs* Practice of the Original Side of the Court followed in recognizing the right of a purchaser at a Receiver s sale to obtain the assistance of the Court ...

172. ———— Sale by Registrar—*Purchase money payment of into Court—Conditions of sale—Interest—Costs* Where the purchaser of a property at a Registrar s sale is out of time in paying into Court the balance of his purchase money the practice of the Original Side of the High Court is that payment of interest shall follow as a matter of course But if there has been delay on the part of the party having the carriage of the proceedings and if that party appears on the summons taken out by the purchaser for the purpose of paying into Court the balance of such purchase money he shall not be allowed his costs against the purchaser KANYE LALL DASS *v* SHAMA CHURN DAWN I L R 21 Calc 566

173 ———— Conditions of sale—*Deficiency in area—Compensation—Annulment of sale—Costs* Where there is a substantial deficienc ... Registrar s sa ... have offered ... aware of such ... the purchaser to take the property with compensation but will discharge him from the sale *Kissory Mohan Roy v Kali Charan Ghosh 1 C W N 106* distinguished. *Jacobs v Revell [1900] 2 Ch 858* referred to The purchaser so discharged from his sale is entitled to repayment of the purchase money with interest from the date of payment into Court and the costs charges and expenses incurred by reason of his bidding for and being declared the purchaser of the property and of and incidental to the application to be discharged from his purchase *Quære* Whether he is entitled to the costs of a survey made by him to ascertain the area of the property BANK OF BENGAL *v* AKHOY KUMAR MUKERJEE (1901)

6 C W N 365

174. ———— Sale notification—*Misdescription of property—Remedy of purchaser—Compensation—Annulment of sale* Where the misdescription of property in the sale notification does not go to the essence of the contract the remedy which the purchaser can claim is compensation and not annulment of the sale ADMINISTRATOR GENERAL OF BENGAL *v* AGHORE NATH MOOKERJEE (1902) I L R 29 Calc 420

s c 6 C W N 873

175 ———— Security for costs—*Bond to secure costs of appeal—Rule nisi against obligor—Sureties* The proper mode of proceeding to put a bond to secure the costs of an appeal in suit is ... breach of the ...

NUJJOO KHAN

I L R 5 Calc 437 5 C L R 524

176 ———— *Appeal—Poverty* Mere poverty is no ground for requiring an appellant to give security for the costs of the appeal. MANECKJI *v* GOOLBAI

I L R 3 Bom. 241

See SESHAYYANGAR *v* JAINULAVADIN

I L R 3 Mad. 66

177 ———— *Filing copy of Judge s notes—Certificate of payment of security for costs* A certified copy of the Judge s notes not

PRACTICE—*contd*

1 CIVIL CASES—*contd*

having been filed and there being no certificate from the Prothonotary that security had been given for costs the appeal was dismissed for non compliance with the rules of the Court BHIMJI GRIDHAR *v* MORGAN 3 Bom O C 63

178 ———— *Time for objecting to appeal for non compliance with rules of Court* Appeal dismissed as the appellants had not given security for costs and as the appeal had not been filed within the time required by the rules of the Court. It is sufficient for the respondent to object at the hearing of the appeal in the case of non ... need not ... when ... ICHAM

... C 64

179 ———— *Civil Procedure Code s 549—Dismissal of appeal—Practice* The ...

application of the respondent in a second appeal pending before the High Court an order was passed requiring the appellant to furnish security for the ...

appeal. *Held* that the proper course was to have applied to the Judge who passed the order for security at any time before the case came on for hearing for the rejection of the appeal and that it was too late at the hearing to ask the Court to reject the appeal THAKUR DAS *v* KISHORI LAL I L R 9 All. 164

180 ———— *Delay in applying for security* An application for security for costs already incurred and estimated costs of appeal should be made promptly *Pooley's Trustee v Whetham L R 33 Ch D 76* referred to BHOBONATH LAHIRI *v* RADHAPROSAD LAHIRI 1900) 5 C W N 119

181 ———— **Setting down case for hearing**—*Civil Procedure Code 1877 s 135—Trial of particular issue.* It should be a rule of practice that when an order is made under s 135 of the Civil Procedure Code (Act X of 1877) by ...

LEEBHOY CASSUMBHOY I. L. R. 6 Bom. 572

182. ———— **Small Cause Court cases** —*Transfer to High Court—Revival of claim aban-*

application by summons in chambers was allowed to amend his plaint so as to include the R500 abandoned in the Small Cause Court PAM LALL *v* BRAJAHARI PAUL 1 C W N 32

183 ———— *Court invested with small Cause Court powers—Decision—Reasons —Provincial Small Cause Courts Act (IX of 1887) ss 17 and 32* The judgment of a Court invested with Small Cause Court powers need not contain more than the points for determination and the decision thereupon the practice and procedure of such Courts being determined in the matter of judgments by paragraph (1) of s. 203 of the Civil Procedure Code (Act XIV of 1882) *Ramchandra v Ganesh I L R. 23 Bom 332* dissented from NARAYAN *v* BHAGU (1907) I. L R 31 Bom. 314

184. ———— **Stay of proceedings**—*Suit between same parties and for same property before Privy Council—Stay of suit* A suit should not be allowed to go on while an appeal relating to the same property and between the same parties is pending before the Privy Council SHEOPROSUN MISSER *v* RAJENDERKISHORE SINGH W R 1864 100

185 ———— *Procedure—Staying suit until costs of a previous suit in a foreign Court have been paid* The Courts in India have no power to stay proceedings in a suit insti...

v BOWLES ...

186 ———— *Dismissal of suit effect of—Application to restrain receiver parting with funds pending appeal—Power of Court* Under the Code of Civil Procedure once a suit has been dismissed, the Court dismissing it is *functus officio* save that it may stay execution of its own ...

in his hands pending an appeal cannot be granted YAMIN UD DOWLAH *v* AHMED ALI KHAN I. L. R 21 Calc 561

187 ———— *Companies Act (VI of 1882) s 134—Winding up company—Stay of proceedings when petition to wind up is pending —High Court Rule No 10 cl. (r)* The plaintiff sued the defendant company to recover R10 000 The claim was not disputed but shortly after the suit was filed another creditor filed a petition to wind up the company This petition was pending when the suit came on for hearing but no order to stay

PRACTICE—*contd*

1 CIVIL CASES—*contd*

... by the defendants ... cum ... ving ... nade ... 10 ... ibers ... hear ... BAIJI ... n. 65

188 ———— *Application for stay of execution—Costs* Where the defendants in an original suit applied to the Appellate Court for stay of execution of the decree pending the appeal —*Held* (BANERJEE J dissenting) that the applicant who asked for the indulgence must pay the costs of the application CHUNI LAL v ANANTRAM I L R 25 Calc 893

189 ———— *Stay of proceedings in Small Cause Court—Transfer of suit on a promissory note—Suit for an account in the High Court—Procedure—Matter of convenience rather than of right—Costs* As a general rule it would be no answer as regards a suit in the Small Cause ... for the defendant in ...

190 ———— **Summons for directions**— ...

... nity on a third party ... is a valid one but only whether ... tablished it ... *Carshore* ... *Ch D 344* ... followed The effect of a refusal by the Judge to give directions is to dismiss the third party from the action *Baxter v France* [1895] *1 Q B 591* referred to SHIVLAL v SHRIKISSONDAS AND MITCHELL (1907) I L R 31 Bom 465

191 ———— **Test case**—*Stay of proceedings until trial of test case—Court fees—Court fees Act (VII of 1870) s 1, Sch I Art 1—Consolidation of appeals* The petitioners who were the appellants in 44 references under the Land Acqui... ... order directing the trial of ... test case The test appeal ... adversely to the appellants they next applied to have the decision of the Court on the remaining appeals offering to pay the proper court fees leviable thereon *Held* that having regard to the terms of the order the appellants were not precluded from requiring the consideration of the Court with regard to the other appeals *Held* further that having regard to the fact that the parties were the same in all the cases and the plots of land were contiguous to one another and formed part of one estate although in the occupation of different tenants who were however not parties to the appeals the appeals should be consolidated and the court fee paid upon the value of the consolidated appeals under s 17 of the Court fees Act (VII of 1870) subject to the limitation prescribed in the proviso to Art 1 Sch I of that Act KASHI PROSAD SINGH v SECRETARY OF STATE FOR INDIA (1901) I L R 29 Calc 140

192 ———— **Testamentary matters**—*Testamentary and probate matters—Probate Act (V of 1881)* The practice in India in testamentary matters previously to Act V of 1881 was the same as that of the Ecclesiastical Court in England except so far as that practice might be inconsistent with the Civil Procedure Code *In the matter of* PITAMBER GIRDHAR I L R 5 Bom 638

See In the Goods of BHUGGOBUTTY DASSEE PROSUNNOMOYEE DOSSEE v AGHORE CHANDRA DUTT 4 C W N 757

193 ———— **Translation of papers**—*Application for translations* Translations of papers if required should be applied for before the case is posted. KONDAYYA GAUNDAN v RAMASVAMI GAUNDAN 1 Mad 130

194 ———— **Transfer of case**—*Applications under s 4 Act XXIII of 1861—Suits on bonds etc* In all applications under s 4 Act XXIII of 1861 in suits brought on a bond or other document the place at which the document was executed must be definitely stated ANONYMOUS 7 Mad Ap 34

195 ———— **Transmission of documents**—*Documents relating to security for costs* ... transmit to the High ... t the ... y as ... in re ... security in Privy Council cases ... porting upon the securities state particulars of the documents upon which the title of the surety appears to be made out *In the matter of* AMEEROONISSA KHATOON 14 W R 94

196 ———— **Vakil and Counsel**—*Vakils right to audience on the Original Side of the*

PRACTICE—*contd*

1 CIVIL CASES—*concld*

High Court—Revisional jurisdiction of the High Court over the Presidency Small Cause Court—Civil Procedure Code (Act XIV of 1882) s 622 A vakil is not entitled to audience on the Original Side of the High Court Applications for the exercise of the Court s revisional powers over the Presidency Small Cause Court are properly dealt with in the exercise of the Ordinary Original Civil Jurisdiction of the Court and should be made in the usual way by an advocate of the Court instructed by an attorney SARAT CHANDRA SINGH v BROJO LAL MUKERJI (1903)
I L R 30 Calc 986

197 ———— Withdrawal of suits or appeals—*Withdrawal of suit—Landlord and tenant—Forfeiture for non payment of rent—Right to relief from application in motion.* A motion was made on summons that a suit seeking a declaration that defendants had forfeited their right to a lease by reason of non payment of rent be discontinued or dismissed. *Held* that such an application should not be made by motion but the defendant was entitled to be relieved from the forfeiture on payment of what was due GHOLAM MOHAMED v CALCUTTA CLUB Cor 67

198 ———— *Withdrawal of second appeal—Discovery of new evidence—Review by lower Court—Civil Procedure Code (Act X of 1877) s 623* Having regard to the decisions in *Nanabhai v Nathabhai 9 Bom 89* and *Narayan v Darudhai 9 Bom 938* and the uniform practice in accordance with them which had since obtained and the practical similarity on this point of Act X of 1877 s 623 and Act VIII of 1859 s 376 (on

199 ———— Witness expenses of—*Application in Chambers—Expense for attendance in Court—High Court Rule 19* A witness who attends the Court on a subpœna is entitled to demand at any time his reasonable expenses of such attendance from the party using the subpœna even though he only gives evidence as a witness for a party to the suit other than the party summoning him *In re* BULLOCK (1904)
I L R 28 Bom. 647

2 CRIMINAL CASES

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

1 ———— Adjournment—*Adjournment of trial by proclamation.* The adjournment of a trial by public proclamation is irregular and objectionable ANONYMOUS 6 Mad. Ap 30

PRACTICE—*contd*

2 CRIMINAL CASES—*contd*

2 ———— Affidavits—*Contradicting allegation in verified petition* Important statements made in a verified petition to the High Court if untrue should be contradicted on affidavit REG v KASHINATH DINKAR 8 Bom. Cr 126

3 ———— *Showing want of jurisdiction and error in law on merits* Though affidavits may be used to show a want of jurisdiction in a Magistrate even though the affidavits contradict for this purpose the finding of the Magistrate they cannot be used as affording materials for reviewing the Magistrate s decision on the merits REG v NATHALAL PITAMBAR
10 Bom 102

4 ———— *Inadmissibility of affidavit of accused when Magistrate has recorded plea of guilty* Where a Magistrate has recorded

5 ———— *Hearing of rule*

2 C W N 498

6 ———— Appeal—*Criminal Procedure Code (Act V of 1898) s 471—Judgment of Appellate Court contents of* It is very desirable that an Appellate Court without going to the length of writing an elaborate judgment should in deciding a criminal appeal notice briefly but clearly the objections urged on appeal and how they were disposed of EKCOWRI MUKERJEE v EMPEROR (1905) I L R 32 Calc 178

7 ———— *Privy Council*

injustice may have been done by reason of some departure from the principles of natural justice *Ex parte Carew [1897] A C 719* and *Dinizulu v Attorney General of Zululand 61 L T 740* followed *In re* BAL GANGADHAR TILAK (1905)
I L R 33 Bom. 221

8 ———— Approvers—*Application for sanction to prosecute an approver* An application to the High Court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the Crown in open Court. QUEEN EMPRESS v MANIK CHANDRA SARKAR
I L R 24 Calc 492

9 ———— Caution to accused—*Warning accused before hearing his statement* In an allegation of having warned an accused person before taking down his statements a Magistrate should state how the accused was warned. QUEEN v DEDAR NUSHYO 14 W R Cr 81

PRACTICE—*co td*

2 CRIMINAL CASES—*contd*

10 ———— **Evidence mode of recording**—*Applications under Criminal Procedure Code 1861 s 196* All applications from Judges and Magistrates for bringing into operation the provisions of s 196 of the Code of Criminal Procedure should be made through the High Court ANONYMOUS 5 Mad. Ap 9

11 ———— **Judgments copies of**—*Copies of judgments for prisoners* Copies of judgments should be made out at once without waiting for written applications from pri oners under sentence *In the matter of* RAM CHUNDER MUNDLE 9 W R Cr 19

12 ———— **Petition for bail**—*Petition for prisoner s admission to bail—Form of petition—Petition containing defamatory allegations against trying Magistrate and other public officers* When a prisoner applied to the High Court to be admitted to bail pending the dispo al of his appeal and the petition contained defamatory allegations consisting (*inter alia*) of irrelevant attacks on the trying Magi trate and other officers in the service of the Government of India the Court refused to allow the petition to be filed and ordered it to be returned *In re* DURANT I L R 15 Bom. 488

13 ———— **Record in Sessions cases**—*Proper contents of record* There ought to be only one Ses ions record which should be continuous and hould contain accurately and consecutively the whole of the proceedings in the trial including the examination of the accu ed QUEEN v BILASH MOSLEMAN 14 W R Cr 46

14. ———— *Criminal Procedure Code 1861 ss 372 374* A Se sions nuthee hould contain the record of the defence set up by the pri oners in the Se sions Court Points out how such record is to be made up with reference to ss 372 373 and 374 of the Code of Criminal Procedure QUEEN v GOPAL HAJJAM 15 W R Cr 16

15 ———— *Principal documents on record in Sessions cases* The principal documents in a case should be put in a prominent place on the record not buried among a ma s of le s important papers in the nuthee QUEEN v BHEEKUN 8 W R Cr 30

QUEEN v RUTTON MEAH 8 W R Cr 57

See QUEEN v BROOND SHAHOO *alias* CHUNDRA CHATTERJEE 7 W R Cr 112

16 ———— **Reference to High Court**—*District Magistrate competency of to refer—Criminal Procedure Code (Act X of 1882) s 435* When a ca e has been decided by the Sessions Judge on appeal from a Sub divi ional Magistrate the District Magistrate should not refer the ca e to the High Court on the ground that the Sub divisional Magistrate acted without jurisdiction. If he desires to move in the matter he should proceed through the Legal Remembrancer Ob ervations of STRAIGHT J in *Queen Empress v Shere Singh I L R 9 All 362* referred to with approval. HIRAMAN DE v RAM KUMAR AIN I L R 18 Calc 186

PRACTICE—*contd*

2 CRIMINAL CASES—*contd*

17 ———— **Revision**—*Criminal Procedure Code 1882 s 439—Rule to show cause why conviction should not be quashed* A rule to show [illegible] granted it would be prepared to make the rule absolute if no cau e be shown against it BASIRADDI v QUEEN EMPRESS I L R 21 Calc 827

18 ———— *Form of application for revision—Motion* Application for revision by the High Court of an order pas ed in appeal by a Ses ions Judge must be by motion HAZARI v CHUNDI CHURN CHUCKERBUTTY 16 W R Cr 72

19 ———— *Criminal motion to High Court without previous application to lower Court with concurrent jurisdiction—Criminal Procedure Code (Act V of 1898) ss 435 to 439* The High Court will not entertain an application for revi ion in ca es where the Se sions Judge or Magistrate has concurrent jurisdiction whether final or not save on some special ground unless a previous application has been made to the lower Courts but where concurrent jurisdiction is not possessed by the lower Courts no such general rule exists. *Queen Empress v Reolah I L R 14 Cal 887* followed EMPEROR v ABDUS SOBHAN (1909) I L R 36 Calc 643

20 ———— **Rule to show cause**—*Mode in which Magistrate should appear to show cause—Appearance through Legal Remembrancer* When a Magi trate wishes to show cause against a rule i sued by the High Court the proper course for him to adopt is to apply to the Legal Remembrancer to [illegible] in Court [illegible] *In the* [illegible] L. R. 93

21 ———— *Criminal Procedure Code (Act X of 1882) ss 10 118—Rules issued upon the Magistrate—Right to appear of a party interested in the result* When a rule is issued upon the Magistrate to show cau e and the order sought to be set aside is one that is only intended to secure the peace of the district by binding down the petitioner the Magistrate is the only party entitled to be heard Any other party interested in the result of the order cannot appear DRIVER v QUEEN EMPRESS I L R 25 Calc. 798

22 ———— *Explanation of Magistrate to supplement judgment if proper* In the absence of any finding in the judgment of a Magi trate a finding in the explanation submitted by the Magistrate in showing cau e against a rule *nisi* should not be considered and given

PRACTICE—*contd*

2 CRIMINAL CASES—*contd*

effect to at the hearing of the rule. *In the matter of* NAZIR MALITA *v* HARI CHARAN PAPUI (1901) 6 C W N 118

23 ——————— *Discharge of rule on the ground of error of parties—Liberty to apply for fresh rule upon the same facts* Where a rule was discharged on the ground of some error as to the parties and the petitioner being allowed liberty to apply for another rule obtained a fresh rule on similar terms and it was objected that the same could not be heard *Held* that the rule could be

24 ——————— *Rules issued by the High Court—Right of Sessions Judge to show cause.* Rules issued by the High Court are addressed to District Magistrates as a matter of convenience and in accordance with the practice for appeals followed under s. 422 Code of Criminal Procedure the Local Government having under that section appointed the District Magistrate as the officer to receive notices of appeals If a rule is granted against the order of a Sessions Judge he is the proper person to show cause BEPIN BEHARI DE *v* NENDI HABIANI (1902) 7 C W N 80

25 ——————— *Magistrate* ...

7 C W N 859

26 Sentence—*Criminal Procedure Code (Act V of 1898) s 439—Reference to High Court—Enhancement of sentence—Practice of the*

conclusive and to consider the question of enhancement of sentence on that basis EMPEROR *v* CHINTO (1908) I L R 32 Bom. 162

27 ——————— Sessions Trials—*Criminal Procedure Code (Act V of 1898) s 269—Trial by Jury—Trial with the aid of assessors—Difference in the modes of trial—Accused if prejudiced can complain—Procedure.* The accused were tried with a jury on charges of murder (ss. 302 109 Indian Penal Code) and with the aid of jurors as assessors on charges of rioting grievous hurt and hurt (ss. 147 148 323 and 326 of the Code) respectively The Judge charged the jury and asked for their verdict on both the charges in the manner prescribed for jury trials. He agreed with the

second charge and to write a judgment *Held* that the law makes no distinction as to the procedure at the trial between a trial by a jury and one with the aid of assessors except as to the summing up in the case of the former and the manner in which the verdict in the former and the opinions of the assessors in the latter are respectively taken It is at this latter point that there is a departure of ways and if the accused who is tried does not intervene at that crucial point and get the procedure applicable to trials with the aid of assessors enforced he cannot be heard to complain EMPEROR *v* MAVSING (1909) I L R 33 Bom 423

28 ——————— Signature of Magistrate—*Warrant of commitment—Summary trials* The signature of a Magistrate to a warrant of commitment under s 303 of the Code of Criminal Procedure 1872 should not be affixed by a stamp In summary trials under the provisions of Ch XVIII of the Code of Criminal Procedure 1872 the record in non appealable cases and the judgment in appealable cases must be written by the Magistrate A Magistrate in such cases is not authorized to depute that duty to a clerk nor to affix his signature to the record or judgment by a stamp SUBRAMANYA *v* QUEEN I L R 6 Mad 396

29 ——————— Stay of proceedings—*Duty of Magistrate on obtaining reliable though not official information of stay of proceedings by High Court* When a rule is issued by the High Court

accused who had received telegrams from counsel and vakil informing him of the issue of the rule directing stay of proceedings by the High Court and the Magistrate refused to look at the telegrams and to stay proceedings but on the other hand proceeded with the enquiry it was held that the Magistrate had acted improperly that he should not have proceeded with the enquiry and in case he entertained any doubt as to authenticity of the telegrams the proper course for him was to send a telegram to the Registrar of the High Court to ascertain the truth *Semble* A supplementary affidavit stating facts which have transpired subsequent to the issue of the rule may be filed. PATNESSARI PERSHAD NARAYAN SINGH *v* EMPRESS 2 C W N 498

30 ——————— *Procedure—Sanction to prosecute—Stay of Criminal proceedings pending disposal of civil suit—High Court—Revision—Criminal Procedure Code (Act V of 1898) ss 195 498 476* The High Court is com

of any person for the offences referred to in that section. The High Court in this case refused to stay

PRACTICE—concld

2 CRIMINAL CASES—concld

criminal proceedings directed by a subordinate Court under s 476 of the Criminal Procedure Code (Act V of 1898) until an appeal in the civil suit in connection with which the criminal charges were made had been decided. *In re* BAL GANGADHAR TILAK (1902) I L R 26 Bom 785

31. ——— Transmission of record to High Court—*Record of proceedings prior to commitment* The Magistrate s record of the proceedings prior to commitment should always be forwarded to the High Court QUEEN v KASIM ALI 15 W R Cr 67

32 ——— Undefended accused—*Court to test statements of witnesses for prosecution Per* PETHERAM C J —Where an accused person is not defended the Court should in the interests of justice test the statements of the witnesses for the prosecution by questions in the nature of cross examination QUEEN EMPRESS v KALLU I L R 7 All 160

PRECATORY TRUST

See DEBUTTER I L R 33 Calc 511

PRE EMPTION

		Col
1	SUBJECTS OF AND TRANSFERS GIVING RISE TO PRE EMPTION	9712
2	RIGHT OF PRE EMPTION	9716
3	CONSTRUCTION OF WAJIB UL ARZ	9738
4	PURCHASE MONEY	9755
5	PROFITS OF LAND	9761
6	LOSS OR WAIVER OF RIGHT	9761
7	CUSTOM	9764
8	MISCELLANEOUS CASES	9766

See CIVIL PROCEDURE CODE 1882 s 13 EXPL. II I L R 26 All 61

See COURT FEES ACT ss 7 12 I L R 28 All 411

See COURT FEES ACT s 17 I L R 27 All 186

See CUSTOM I L R 9 All 513
I L R 13 All 373
I L R 16 All 40
I L R 17 All 226
9 C W N 874

See CUSTOM—PRE EMPTION WAJIB UL ARZ

See DECREE—CONSTRUCTION OF DECREE —PRE EMPTION

See DECREE—FORM OF DECREE—PRE EMPTION

See FALSE STATEMENT I L R 25 All 31

PRE EMPTION—contd

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS I L R 23 All 129

See LANDLORD AND TENANT 9 C W N 871

See LIMITATION ACT 1877 SCH II ART 10

See LIMITATION ACT 1877 SCH II ARTS 10 AND 120 I L R 28 All 424

See MAHOMEDAN LAW—PRE EMPTION

See MAHOMEDAN LAW I L R 32 Calc 982 988
9 C W N 826
I L R 28 All 24

See MORTGAGE—REDEMPTION—RIGHT TO REDEEM I L R 24 Mad 449
I L R 29 All 163

See ONUS OF PROOF—PRE EMPTION

See OUDH LAWS ACT 9 C W N 129

See OUDH LAWS ACT s 9 cl. (2) I L R 26 All 574

See PRE EMPTION—CUSTOM

See PUNJAB LAWS ACT I L R 30 Calc 635

See RIGHT OF SUIT—ACCRUAL OF RIGHT W R 1864 285
I L R 2 All 884
I L R 3 All 610 770
I L R 5 All 187

See RIGHT OF SUIT—PRE EMPTION

See VALUATION OF SUIT—SUITS 3 B L R Ap 143
I L R 13 Calc 255
14 W R 228
I L R 16 All 493
I L R 24 All 218

See WAJIB UL ARZ

——— execution of decree for—

See LIMITATION ACT 1877 SCH II ARTS 178 AND 179 I L R 24 All 300

——— right of—

See MALABAR LAW I L R 30 Mad 388

1 SUBJECTS OF AND TRANSFERS GIVING RISE TO PRE EMPTION

1 ——— Permanently settled estates in Sylhet—*Act XXIII of 1861 s 14—Extent of of Act* S 14 of Act XXIII of 1861 was not applicable to permanently settled estates in Sylhet nor to estates in any district of Bengal unless extended thereto ABDUL JABEL v KHELAT CHUNDER GHOSE 1 B L R A C 105 10 W R 165

2. ——— Right and interest of co sharer in estate in Sylhet—*Substitution of claimant for actual purchaser—Act XXIII of 1861 s 14* The right and interest of a co sharer

PRE EMPTION—*contd*

1 SUBJECTS OF AND TRANSFERS GIVING RISE TO PRE EMPTION—*contd*

in an estate in Sylhet being put up for sale in execution of a decree the petitioner claimed the right of pre emption under 14 Act XXIII of 1861 and he was thereupon substituted for the actual purchaser *Held* that in such circumstance the Court executing a decree had no authority to substitute the claimant for the actual purchaser without the consent of the latter and that a party claiming a share under the section cited was simply in the position of a party who having a right of pre-emption has observed the requisite formalities to enable him to assert the right and must resort to a civil suit to obtain the benefit thereof The order of the lower Courts were set aside accordingly ABDOOL JALEEL *v* KALEE COOMAR DUTT 6 W R Mis 3

3 ———— Puttadari estate—*Act I of 1841 s 2* A claim for pre emption under s 2 of Act I of 1841 was sustainable in respect of an imperfect puttadari tenure KADIR BUX *v* RAM TAHUL BHAGUT 3 N W 125

4 ———— Confiscated property—*Confiscation of property in suit for pre emption* A

5 ———— *Purchaser of confiscated property* *Held* that a claim for pre emption would not lie against the purchaser of a confiscated property sold by the revenue authorities MOHAMED VILLAYET OLLAH KHAN *v* AHMED HUSSUN KHAN 3 Agra 70

6 ———— *Confiscation and*

1 Agra 88

7 ———— Buildings—*Custom—Exercise of pre emption in kotee and golah* Exercise of

8 ———— Separate estates—*Co-parcenary pre emption on ground of* Properties

9 ———— Claim to mesne profits A claim to mesne profits due before the date on which a right to pre emption arose cannot form the subject of pre emption EMAMOODDEEN SOWDAGUR *v* ABDOOL SOOBHAN 7 W R 117

10 ———— Lease in perpetuity—*Transfer other than sale* *Pre emption applies only to sales* A lease in perpetuity with a rent (however small) reserved is not a sale and cannot therefore be the subject of pre emption MOOROOLY RAM *v* HUREE RAM 8 W R 106

11 ———— Transfer by lease—*Alienation of transfer of proprietary right* *Held* that a

terms of the wajib ul urz to alienation or transfer of proprietary right MANICK CHAND *v* BISHAISHUR BUKHSH SINGH 2 Agra 99

12 ———— Transfer to manager on trust—*Alienation giving right to pre emption* Where shares in a mouzah were by arrangement between the parties made over to a manager upon trust to pay part of the profits to the debtors of the transferor and the residue of the profits to the transferors who bound themselves not to alienate until the debts were paid —*Held* that it was not such alienation as would confer on the plaintiff a right of pre emption under the wajib ul urz OUTAR SINGH *v* ABLAKHEE KOONWER 2 Agra 328

13 ———— Alienation of chuck tenure—*Right of sharer in zamindari* Where a resumed maafee chuck was aliened by the holder thereof and a preferential right to take it was claimed by a sharer in the zamindari under the terms of the wajib ul urz agreed to by the co sharers at the time of settlement and to which the holder of the chuck was no party —*Held* that such alienation was not an alienation of a share within the meaning of the wajib-ul urz that the holder of the chuck could neither confer on its possessor a right of pre emption nor subject his estate to such right in the event of alienation SHEO LALL SAHOO *v* RUMZANEE 2 Agra 35

14 ———— Exchange of property—*Transfer giving right of pre emption—Consideration* A share in a mouzah together with the dwelling house of the proprietor was exchanged for a share and dwelling house in another mouzah *Held* that the transaction being an exchange of property was a sale and that the right to purchase the land but not the house was claimable by a co sharer by right of pre-emption. The consideration payable by the pre-emptor is the estimated value of the property given in exchange and not that of the property claimed SEWA RAM *v* RISAL CHOWDHRY 1 Agra 144

PRE EMPTION—*contd*

1 SUBJECTS OF AND TPANSFERS GIVING PISE TO PRE EMPTION—*contd*

15 ———— **Sale and re sale before confirmation**—*Transfer raising right of pre emption* Where the decree holder purchased the rights of his judgment debtors old at auction in satisfaction of his own decree but having received the amount of the decree re sold the property to the judgment debtors before the confirmation of the sale —*Held* that the transaction did not amount to an alienation such as would give a right to the co sharers of the debtors to exercise the right of pre emption under the terms of the wajib ul rz MAHOMED RAZA KHAN *v* JAWAHIR SINGH 2 Agra 1

16 ———— **Transfer under compromise and decree thereon to person claiming pre emption**—*Wajib ul ur* An appeal having been preferred from a decree in a suit for pre emption ba ed on the wajib ul urz of a village the parties to the suit entered into a compromi e whereby the plaintiff pre emptor relinquished his claim to a part of the property in dispute in favour of the defendants vendees and the latter admitted his claim with re pect of the remainder of the property Upon this compromi e a decree was passed Subsequently a co sharer in the village where the property was situate brought a suit for pre emption upon the contention that the compromise and the decree pas ed thereon amounte l to a transfer to the plaintiff in the former suit within the meaning of the wajib ul urz *Held* that the suit was not maintainable HANUMAN RAI *v* UDIT NARAIN PAI I L R 7 All 917

17 ———— **Transfer by compromise**—*Wajib ul ur — Transfer — Sale* On the 1st September 1881 *L* and *R* entered into an agreement (which was duly registered) with *B* that in consideration of their bringing a suit for recovery of a 12 anna share in a village which *B* claimed by right of inheritance again t *G* they hould receive a moiety of the share *L* and *R* found funds for the pro ecution of two suits in respect of the hare which on the 5th April 1882 were compromi ed *B* getting 1 anna and 3 pies out of the 12 annas originally claimed by her In that compromi e *B* stated as follows I mal e over 1 anna to *L* and *P* my partners in lieu of the prosecution of the two cases. I the plaintiff shall remain in pos e ion of the remaining 3 pies Meanwhile on the 3rd September 1881 *G* had sold 3 annas out of the 12 annas share to *M* On the 3rd April 1883 *M* brought a suit against *L* and *R* claiming the right of pre emption in respect of the 1 anna which they ha l acquired from *B* on the allegation that the tran fer of the share had taken place on the 5th April 1882. This claim was based on the wajib ul urz of the village which gave a ri ht of pre emption to the co sharers of any sharer wishing to tran fer his share *Held* that the compromi e of the 5th April 1882 was only a re a ljustment of the amount of the interest in the share between *B* and *I* and *R* that the real tran fer to *L* and *P* was given eff ct to on the 1st September 1881 and that this having been prior to the acquisition by *M* of any right in the village he was not a co sharer at the time of the transfer and that he had consequently no right as against *L* and *R* by way of claim for pre emption. LACHMI NARAIN *v* MANOG DAT I L R 7 All 391

18 ———— **Sale of property to a stranger**—*Re sale to a co sharer before a suit for pre emption is brought* Where property in respect of which a right of pre-emption exists in favour of a co sharer is sold to a stranger but before a suit for pre emption is brought passes back into the hands of co sharer a suit for pre emption cannot be maintained and this rule is not affected by the fact that the co sharer in whom the property sold to a stranger revests was a party to its sale to a stranger *Bhagwan Das* v *Mahan Lal I L R 25 All 421* referred to LIAKAT HUSAIN *v* RASHID UD DIN (1906) I L R 29 All 125

2 RIGHT OF PRE EMPTION

1 ———— **Sale in execution of decree**—*Act XXIII of 1861 s 14—Share sold in execution of decree.* A suit by a person claiming possession by right of pre emption under the provis ons of s 14 of Act XXIII of 1861 of a share sold in the execution of a decree was held to be premature and unmaintainable The claimant should have sued to set aside the order of the Court confirming the sale in favour of the auction purchaser and to have himself declared entitled to the pre emption of the property and to be substituted for the aucti n purchaser as its purchaser SHIB SAHAI *v* THIKA PAM 7 N W 87

2 ———— **Property subject to conditional sale**—*Time for making claim* A party alleging a right of pre emption in respect of property [illegible] is bound to [illegible] of the [illegible] [illegible] 116

3 ———— **Rights and interests of mortgagee**—*Share of undivided immoveable property—Civil Procedure Code 1877 s 310* The provi ions of s. 310 of Act X of 1877 are not applicable in a case where the property sold is not a share of an divided immoveable property but the ri hts and interests of a mortgagee in such a share JAIRAM DAS *v* BENI PRASAD I L R 3 All 15

4 ———— **Co sharer**—*Sale in execution of share in immoveable property—Stranger—Highest bidder—Civil Procedure Code 1877 s 310* A co sharer in undivided immoveable property of which a share is sold in the execution of a decree does not under s 310 of Act X of 1877 acquire the ri ht of pre emption as against a stranger to whom such share has been knocked down by merely asserting such right at the time of sale and fulfilling the conditions of sale required by ss. 300 and 30, of that

PRE EMPTION—*contd*

2. RIGHT OF PRE EMPTION—*contd.*

5 ———— *Sale in execution of share in immoveable property—Manner of claiming pre emption—Highest bidder—Civil Procedure Code 18 s 310* The requirements of s. 310 of Act X of 1877 are not satisfied by the co harer preferring his claim to the right of pre emption before the property is knocked down and offering to pay a sum equal to that bid by the highest bidder That section contemplates a distinct bid by the co harer in the ordinary manner of off ring bids *Tej Singh v Gobind Singh I L R 2 All 850* followed HIRA v UNAS ALI KHAN I L R. 3 All 827

6 ———— *Holder of pattidari estate—Act XXIII of 1861 s 14* A person holding a hare in a pattidari estate as mortgagee was not in a position which gave him a right of pre emption under the provisions of s 14 of Act XXIII of 1861 in respect of a share in the estate sold in execution of a decree nor does he obtain such a po ition becau e a hare in the estate has been put up for ale and knocked down to him DWARKA PARSHAD SUKUL v RAM AUTAR SUKUL 7 N W 281

7 ———— *Right against stranger—Act XXIII of 1861 s 14* A share in ...

... SHEO DUTT 6 N W 243

8 ———— Pattidari estate—*Act XXIII of 1861 s 14—Sale of land for arrears of revenue —Act XVIII of 1873 s 177—Act XIX of 1873* ...

cution of such a decree a claim to the right of pre emption can be preferred under the provisions of s 177 of Act XVIII of 1873 and s 188 of Act XIX of 1873 that such claim can only be preferred where the land is a patti of a mehal not where it is part only of a patti of a mehal *Semble* That where land which is a patti of mehal is sold in execution of such ...
can
Act
18 3

...

depo it of the purchase money the sale could not be h ld void merely by the failure of the person to whose bid the property was knocked down al o to complete the deposit All that the claimant was bound to do was to establish that he was a pattidar within the meaning of the section in the estate of which the property sold formed part and that he had fulfilled the conditions of sale If he established this the sale should be confirmed in his favour ...

apply to a claim brou ht under the section DABEE PERSHAD v BISHESHUR PERSHAD SINGH 6 N W 289

10 ———— *Wajib ul urz claim under—Conditions required by Mahomedan law Held* that the person in who e favour a preferential right of purchase is stipulated for by the terms of the wajib ul urz is entitled to a decree if he comes forward and claims his right without unreasonable delay after he hears that a sale has been ...

PUT v MAHARAJ DOOBEY 1 Agra 278

11 ———— *Act XXIII of 1861 ...*

... to take notice of a ...

title to advance the claim When the whole of the purchase money has been paid by the claimant within due time the Court executing the decree ...

become absolute he cannot maintain a suit for possession If the claimant has fulfilled the conditions of sale and his right is clear the Court executing the decree is bound to give effect to the right TASUDUK ALI v MUKSUD ALI 6 N W 272

12 ———— Sale in execution of decree During the minority of two out of four brothers an ikrarnama was entered into between them to the effect that no separation was to take place without the consent of all and that if one of them separated without such consent he was to forfeit his share of the family property and that if any one wished to dispose of his share he was to give his brothers the

PRE EMPTION—*contd*

2. RIGHT OF PRE EMPTION—*contd*

preference One F purchased at a private sale the share of M one of the brothers On this two of the brothers A and I brought a suit against F to set aside the sale as contrary to the terms of the ikrar nama and urged their claim to pre emption The suit was decreed with a stipulation that the pur chase money should be paid back This not having been done F sued M got a decree and in execution put up for sale M s rights and interests in the family estate bought them himself and took possession The present suit is by A and I to recover possession on the ground that M had no rights and interests left which could be sold in execution *Held* that as M had never separated his share had not been forfeited and that the only other privilege left to the plaintiffs under the ikrar nama vi pre emption could not be exercised in asmuch as M had not sold his share the sale having been the act of the Court FERASUT ALI v ASHOOTOSH ROY SINGH 15 W R 455

13 ———— *Right of auc tion purchaser as against party whose claim to pre emption is allowed* The auction purchaser at a sale in execution of a decree of a share in a pattidari estate seeking to establish his right as against a person whose claim to the right of pre emption under the provisions of s 14 Act XXIII of 1861 has been allowed and in whose favour the sale has been confirmed cannot maintain a suit for possession of the share but should sue for a decla ration that the person claiming the right of pre emption has no such right and to set aside the sale FARZAND ALI v ALIMULLAH

I L R 1 All 272

SANGAM RAM v SHEOPART BHAGAT

I L R 3 All 112

14. ———— **Condition for assertion of right**—*Wajib ul urz—Offer of property—Notifica tion that property is for sale and offers will be received—Acquiescence* In order to entitle a co sharer to assert a right of pre emption based on the wajib ul urz there must as a condition precedent to such assertion be a sale of a share already nego tiated with a stranger and a price fixed with the stranger by the co sharer desiring to sell The only mode in which a pre-emptive claim can then be defeated is by proof of a distinct intimation to the co sharer seeking to maintain such claim of the contemplated sale and of the price agreed to be paid by the stranger of an offer to him (the co sharer) at such price and of his refusal to purchase Where the sale in respect of which the pre emptive claim was raised was one made by the Collector as Manager of the Court of Wards and the Collector before selling the pro perty issued a proclamation through the tehsil dar notifying to all the shareholders that the property was for sale and that shares ... pur ... not ... d ... stra ...

an offer to purchase from subsequently asserting their pre emptive rights SUBHAGI v MUHAMMAD ISHAK I L R 6 All 463

15 ———— Association of strangers in ...

landed property —*Held* that they must be regard ed in the light of total strangers in respect of the whole of the property included in the sale deed and that a note at the foot of the sale deed mentioning the interest severally purchased by each of the vendees would not entitle them to retain the shares respectively purchased by them CUNESHEE LAL v ZARAUT ALI 2 N W 343

16 ———— *Joint purchase by co sharer and strangers—Specification of interests taken by purchasers* A co sharer of an estate sold his share to R who was also a co sharer in such estate and to two other persons who were not co sharers but strangers selling it to all of them jointly and collectively for one integral sum as the consideration for the whole The deed of sale speci fied that each of the purchasers took a one third share of the property sold The co sharers of the estate were entitled on the sale by a co sharer of his share to the right of pre emption *Held* that such specification could not alter the joint nature of the sale transaction or permit of its being broken up and treated as involving three separate contracts so as to entitle P as a co sharer having an equal right of pre emption to resist so far as one third of the property was concerned a claim by another co-sharer to enforce a right of pre emption in respect of such sale but R must be regarded as a stranger in respect of the whole of the property sold by reason of having associated himself with stran gers *Guneshee Lal v Zaraut Ali 2 N W 343* observed on MANNA SINGH v RAMADHIN SINGH I L R 4 All 252

17 ———— *Wajib ul urz— Co sharer — Ekjaddi* The wajib ul urz of a village gave a right of pre emption in cases of sal to brothers and provided that on refusal by a brother there should be a right of pre-emption in favour of co sharers in the thoke who were re lated to the vendor by descent from a common ancestor (hissadaran ekjaddi thoke) It was also provided that in the event of any dispute arising as to price it should be settled by arbitra tion and that if the co sharer do not take at the amount fixed by the arbitrators the co sharer desiring to sell might make the transfer to a stran ger *Held* that co-sharers who were not of common descent from the vendor were entitled to pre-emp tion after own brothers and co sharers ekjaddi and to have preference over strangers. *Guneshee Lal v Zaraut Ali 2 N W 343* followed SABIR ALI v JAD RAM I L R 9 All 660

18 ———— **Benami purchaser**—*Pur chaser not a co-parcener—Act XXIII of 1861 s 14*

PRE EMPTION—*contd*

2 RIGHT OF PRE EMPTION—*contd*

Where the rights of a judgment debtor in a patti dari estate were sold at auction in execution of decree and bid for by the son of the judgment debtor who gave the name of his father in law to whom the property was knocked down (and who was not a co parcener in the estate) as the actual purcha er such father in law subsequently waiving his claim as auction purchaser in favour of the [illegible]

[illegible]

19 ———————— *Co sharers—Recorded co sharer—Benami purchase of shares—Sale by co sharer—Claim for pre emption resisted by person claiming to be co sharer by virtue of be* [illegible]

under the provi ion of a wajib ul urz so as to enable him upon the strength of the interest so acquired to defeat an otherwi e unquestionable pre-emptive right preferred by a duly recorded shareholder who had no notice direct or constructive of his title and as erted imme liately upon his purchase of a share for the first time in his true character *Ram coomar Koondoo* v *Macqueen L R I A Sup Vol 40* referred to BENI SHANKAR SHELHAT v MAHPAL BAHADUR SINGH I. L. R. 9 All. 480

20 ———— Co sharer— *Proprietor — Transferee of lands in a village who has not obtained mutation of names in his favour—Wajib ul urz* In a suit for pre emption under a wajib ul urz which gave a right of pre-emption to co sharers in a village —*Held* that the word co sharer included a per on who had acquired lands in the village which were not merely sir of a co sharer and were not grove lands held by a licen ee from a zamindar but lands belonging to a zamindar and in his occupation notwithstanding the fact that he had not yet obtained mutation of names in re pect thereof DAKHNI DIN v RAHIMUNNISSA I L R 16 All 412

21 ———————— *Mortgagee of co sharer* A mortgagee of a co sharer is not a co sharer NAND LAL v BANI I L R. 20 All. 19

22 ———————— *Wajib ul urz construction of—Purchaser of isolated plot of land in mehal—Purchaser of sir land* The wajib ul urz of a village gave a right of pre emption to co sharers in the mehal One of the co sharers brought a suit for pre emption which the vendee [illegible]

of sale executed by a co sharer and comprising (i) an isolated plot of land in the mehal (ii) sir lands in the mehal *Held* by the Full Bench that it being found that the vendee defendant had already become a co sharer in the mehal prior to the date of the purchase which was in question in the suit the plaintiff had no preferential right of pre emption *Per* MAHMOOD J—The deci ions of the Full Bench in *Naimat Ali* v *Asmat Bibi I L R 7 All 626* have overruled *Hazari Lal* v *Ugrah Rai All Weekly Notes (1884) 103* and *Rup Ram* v *Mungni All Weekly Notes (1886) 136* SAFDAR ALI v DOST MUHAMMAD I L R 12 All 426

23 ———————— *Pre emption among co sharers under the Oudh Laws Act (XVIII of 1876) ss 9 to 12—Pre emptor s right as such dependent on the intending vendor s right to sell—Accounts between co sharers—Contribution right to for expenses of suit* Pre emption as declared [illegible]

emption as to part in consequence of the above transaction (iii) that the share in dispute was [illegible]

[illegible]

plaintiffs could not have a decree for mesne profits during the whole period of the defendant s po es sion yet if any account was to be taken of the de fendant s payments it must also be taken of his receipts and it was held that the incidental benefit to the plaintiff who had not authorized the liti gation in which expense had been incurred did not give rise to any implied contract on their part or render them liable in equity for any portion of that expense ABDUL WAHID KHAN v SHALUKA BIBI I L. R. 21 Calc 496 L. R. 21 I A. 26

PRE EMPTION—*contd*

2 RIGHT OF PRE EMPTION—*contd*

24 ———— **Co sharers in pattidari village**—*Preferential claim* In a pattidari village the sharers in each patti have a preferential claim to the right of pre emption in that patti MAHARAJ SINGH v BEECHOOK LALL 1 W R 233

25 ———— **Co sharers in pattidari estate**—*Act XXIII of 1861 s 14—Stranger—Purchaser at sale in execution of decree* A share holder in one patti of a pattidari estate was not a stranger with reference to a shareholder in another patti of the estate within the meaning of that term in s 14 Act XXIII of 1861 FARZAND ALI v ALIMULLAH I L R 1 All 272

SANGAM RAM v SHEOBART BHAGAT I L R 3 All 112

26 ———— *Strangers* Where a share in a certain patti was sold by the holder of the share to a stranger and three persons holding equal shares in the patti were equally entitled under the village administration paper to the right of pre emption of the share —*Held* that such persons were each entitled to have the sale made to him to the extent of one third of the share MAHABIR PARSHAD v DEBI DIAL I L R 1 All 291

27 ———— *Act XXIII of 1861 s 14—Land held rent free in zamindari* Where a plot of land formerly held rent free situate in a pure zamindari estate is sold at auction—*Held* that the claim of preferential purchase under s 14 Act XXIII of 1861 would not lie as the estate was not a pattidari estate within the meaning of s 2 Act I of 1841 CHOOROO SINGH v DABEE DYAL 2 Agra 280

28 ———— *Act I of 1841 s 2—Preferential right* Where a resumed maafee estate comprising three pattis in an adaee mehal was assessed with a lump sum of Government revenue payable through the lambardars of the adaee mehal who were empowered to proceed summarily against the sharers of the pattis in case of default and to *bring the share of the defaulter to public sale and* were held liable to Government for payment of the revenue as assessed on the three pattis and in case of [illegible]

[illegible]

contemplated by s 2 Act I of 1841 and the right of pre emption given to co sharers of the patti by that enactment could not attach to it To constitute a pattidari estate as contemplated by the 2nd section of the Act it was necessary not only that it should come within the express terms of that section but also that it should be liable to the same incidents which attached to the estates described in the section by the *other provisions of the same* Act SALIG RAM v PURSIDH RAM 1 Agra 186

29 ———— *Act I of 1841 ss 2 and 4—Act XXIII of 1861 s 14—Imperfect pattidari estate—Right of co-sharer to pre empt on against stranger* It appeared from the settlement wajib ul urz that the lands in a certain mouzah were held in the following manner —that is to say the co sharers had divided them into pattis and each pattidar realized the rents or proceeds of his own separate holding and his share of the rent of the common lands and paid his own quota of revenue separately *Held* that the tenure came within the definition of a pattidari estate contained in s 2 of Act I of 1841 RAM AUTAR v SHEO DUTT 6 N W 24

30 ———— *Wajib ul urz—Partition of mehal—Mode of division of property where there are several pre emptors equally entitled* The wajib ul urz framed in 18[illegible] of a village consisting of several pattis or thokes gave a right of pre emption to the owners of each thoke in respect of property situate in every other thoke when such property was sold to anyone having no share in the village co parcenary The mehal subsequently became the subject of perfect partition under the N W P Land Revenue Act (XIX of 1873) and one of the pattis was constituted a separate mehal and a new wajib ul urz was framed for it Prior to the partition a proprietor of land both in the pattis which remained in the original mehal and in the patti which formed the new mehal sold property in both to a stranger Thereupon a co sharer in the original mehal brought a suit for pre emption [illegible]

[illegible]

the operation of the wajib ul urz framed in [illegible] and to place it under new conditions as to the right [illegible] after the [illegible]

[illegible]

right of pre emption against the plaintiff and his property remaining in the mehal from which they had separated and that the suit to pre-empt that portion only of the property sold which was situate in the original mehal was maintainable *Durgha Prasad v Munsi I L R 6 All* [illegible] *Hulasi v Sheo Prasad I L R 6 All 455 Kashi Nath v Mukhta Prasad I L R 6 All 3*[illegible] *Shah v Golli N W P S D* [illegible] *Ram Prasad v Buljeet Singh 2 Agra* [illegible] *Oomar Khan v Murad Khan N W P S D* [illegible] *p 1 3* and *Salig Ram v Debi Prasad* [illegible] referred to *Per* MAHMOOD J —The rule of the Mahomedan law that where more persons than one owning the property in virtue of which the pre emptive right exists appear for the purpose of suing their rights are to be taken as equal *per capita* with reference to the number of pre-emptors [illegible] to the number of the shares [illegible]

[illegible] that it [illegible] pre emption under the wajib-ul urz where there is nothing to show that the rival pre-emptors are

PRE EMPTION—*contd*

2 RIGHT OF PRE EMPTION—*contd*

not equally entitled JAI RAM v MAHABIR RAI MAHABIR RAI v RAGHUNANDAN RAI RAGHUNANDAN RAI v MAHABIR RAI
I L R 7 All 720

31 ———— **Partition of village originally one into three separate mehals**—*New record of village customs framed on partition—Wajib ul urz—Co sharers—Rules of the Board of Revenue of the 13th November 18 5—N W P Land Revenue Act (XIX of 18 3) s 95* Where at the settlement of a village constituting a single mehal a record of rights was framed giving certain pre emptive rights to the co sharers in the village but subsequently the village was divided by perfect partition into three separate mehals and in accord

...

ded by perfect partition into two or more mehals unless at the time of partition a right of pre emption is specifically reserved by the co sharers in respect of lands lying outside any given mehal such right of

...

L R 7 All 720 referred to Under the above circumstances the mere retention of a community of

...

right of

...

All 7 2 dissented from GHUREE v MAN SINGH
I L R 17 All 226

32 ———— **Effect on pre emptive rights of partition without new wajib ul urzes being framed**—*N W P Land Revenue Act (XIX of 1873) s 107* When a mehal is divided by perfect partition into two or more separate mehals a separate record of rights should be framed for each of the new mehals Where under such circumstances no fresh records of rights are framed for the new mehals the co sharers in any one of the new mehals cannot unless under very exceptional circumstances claim under the terms of the old records of rights applicable to the original undivided mehal pre emption in respect of land situated in any of the other new mehals *Ghuree v Man Singh I L R 17 All 4?2* referred to ABDUL HAI v NAIN SINGH
I L R. 20 All 93

33 ———— **Effect of partition on pre emptive rights no new wazib ul urz being framed**—*Wajib ul urz—Partition—Cause of action—Extinction of cause of action before suit brought* In order that a suit for pre emption may

...

ganjam Singh v Kalka Singh All Weekly Notes (1899) 111 JANKI PRASAD v ISHAR DAS
I L R 21 All 374

34 ———— **Meaning of the terms patti and patti of mehal** —*Co sharers—N W P Land Revenue Act (XIX of 1873) ss 166 168 188—N W P Rent Act (XII of 1881) s 1?7—Interpretation of statutes* The expression pati of a mehal as used in s 188 of the N W P Land Revenue Act (XIX of 1873) means a division of a mehal distinct from the share of an individual co sharer The right of pre emption therefore which is given by the above named section is not exerciseable on the sale merely of the share of an individual co sharer not amount

...

of a co sharer in an imperfect pattidari village not being the land in respect of which the arrears of rent for the satisfaction of which the said share is sold are due is sold under the provisions of s 1?7 of the N W P Rent Act (XII of 1881) no right

...

The exigencies of the law of pre emption require that in s 188 of Act XIX of 18 3 the word patti should be construed in its broader signification as equivalent to any share of a pattidar The words of s 168 which provide that land sold under that section is to be proceeded against as if it were the land on account of which the revenue is due under the provisions of this Act render the incidents of sales under s 166 including pre-emption applicable to sales under s 168 with the exception that

...

35 ———— **Partition of village into separate mehals** Cases where after the division of a village area into separate mehals for which no new wajib ul urz is drawn up the old wajib ul urz

PRE EMPTION—contd

2 RIGHT OF PRE EMPTION—contd

for the whole area has been held to apply generally to the new mehals and such division has been held not to affect covenants existing between the co sharers under such wajib ul urz distinguished from cases where a new wajib-ul urz has after the division been drawn up for each mehal *Gokal Singh* v *Mannu Lal I L R All 2* and *Jai Ram* v *Mahabir Rai I L R All* referred to KUAR DAT PARSAD SINGH v NAHAR SINGH I L R 11 All 257

36 ———— Effect of perfect partition —*Wajib ul urz —Co sharers—Purchase of equity of redemption by mortgagee in possession—Acquiescence—Equitable estoppel* The wajib ul urz of three villages which originally formed a single mehal gave a right of pre emption to co sharers in case of transfers of shares to strangers Afterwards the shares in these villages were made the subject of a perfect partition and divided into separate mehals Subsequently by two deeds of sale executed on the 13th January 1884 and registered on the 17th January 1884 some of the original co sharers sold to strangers their share in all three villages At the time of the sale the shares in two of the villages were in possession of the vendees under a possessory mortgage the amount due upon which was set off against the purchase money The share in the third village was at the time of the sale in possession of another of the original co sharers under a possessory mortgage On the 17th January 188 this last mentioned co sharers brought a suit against the vendors and the vendees to enforce his right of pre emption under the wajib ul urz in respect of the shares sold in the three villages *Held* that notwithstanding the partition of the village into separate mehals the existing wajib-ul urz at the time of partition must be presumed to subsist and govern the separate mehals until it was shown that a new one had been made *Gokal Singh* v *Mannu Lal I L R All* referred to *Held* also that the Court below was wrong in holding that the plaintiff by reason of his having omitted in a suit previously brought against him for redemption of his mortgage and dismissed for want of jurisdiction to set up in defence any right of pre-emption or to express any desire to purchase was equitably estopped by acquiescence in the sale from asserting his pre emptive right SHAM SUNDER v AMANAT BEGAM I L R 9 All 234

37 ———— Hindu widow in possession of property of her deceased husband, but not as his heir—*Stranger—Effect of joining a * [illegible] *in a suit for pre emption* A Hindu widow in possession of the immoveable property of her deceased husband but not as his heir therefore in law has no right of pre emption as a co sharer by virtue of such possession even though she may be recorded as a co sharer in the village papers *Rhori Ram* v *Pulmin Kuar All Weekly Note* (1897) and *Imam ud-din* v *Surjati All Weekly Note* (1897) followed INDRPAL SINGH v MOHAN SINGH I L R 19 All 324

RHORI RAM v PURMIN KUAR I L R 19 All 327 note

IMAM UD DIN v SURJATI I L R 19 All 329 note

38 ———— Hindu widow with estate [illegible]

claim to pre-emption as a shareholder in such village PHULMAN RAI v DANI KUARI I L R 1 All 452

39 ———— *Joinder of plaintiffs one of whom has no right to sue for pre emption—Amendment of plaint* The plaintiffs in a suit to enforce a right of pre emption based on the wajib ul urz of a village which gave the right to co sharers alleged themselves to be jointly interested in the village and in their plaint claimed relief jointly One of the two plaintiffs was the widow of a co sharer in the village who at the time of his death was a member of a joint Hindu family *Held* that inasmuch as the widow had only a right of maintenance out of the estate of her husband she was not a co sharer in the village and therefore had no right to claim pre emption KARAN SINGH v MUHAMMAD ISMAIL KHAN I L R 7 All 860

40 ———— *Possession of share of village in lieu of maintenance—Right of* [illegible]

pre emption on the sale of another share of the village DILA KUARI v JAGAR NATH KUARI I L R 6 All 17

41 ———— Purchaser of share subsequent to sale—*Wajib ul urz—Purchaser's right of pre emption* Where there is a right of pre [illegible] shareholder [illegible]

claim and enforce pre emption as his vendor might have done SHEO NARAIN v HIRA I L R 7 All 535

42 ———— Reservation of interest by father on partition—*Right of son to pre emption* Where a Hindu father made a partition of his property among his sons reserving to himself an interest in one village which upon his death was to be divided among his sons —*Held* that during the father's lifetime no son could claim a right of pre-emption in respect of the village so reserved by the father I AM ADHEEN PANDEY v COONDIL PANDEY 2 N W 434

43 ———— Right of pre-emption reserved in family partition deed—*Covenant by guardian of infant co-parcener—Notice of covenant—Construction of notice—Transfer of Property Act —Tender of purchase money* The plaintiff and

PRE EMPTION—*contd*

2 PIGHT OF PPE EMPTION—*contd*

his step mother as guardian of her son defendant No 1 then an infant made a divi ion of the family property under a deed of partition by which (*inter al i*) a house was divided the deed contained a covenant that if either co parcener should de ire to sell his hare of the hou e the other hould have the right of pre emption Defendant No 1 without the knowledge of the plaintiff sold his hare of the house to defendant No 3 for R130 under a sale deed which referred to the deed of partition The plaint iff now sued to enforce his right of pre emption and in the course of the uit ordered to pay R130 *Held* (i) that the purcha er had con tructive notice of the covenant in the deed of partition (ii) that the covenant was not invalid and that it was un nece ary for the plaintiff to prove ten ler by him of the purcha e money before suit PAJARAM v KRI HNA AMI I L R 16 Mad 301

44. ———— Transfer to plaintiff pre emptor after sale—*Hindu widow in pos e sion fo widow e t te Held* that the daughter of a Hindu widow to whom the widow had relinqui hed a hare in a village of which hare she was in pos ses ion for a widow s life estate was entitled to pre emption in re pect of a sale which had taken place in the village prior to the relinqui hment made to her by her mother *Sheo Narain v Hira I L R All* ... di tingui hed MUHAMMAD YUSUF ALI KHAN v DAL KUAR I L R 20 All 148

45 ———— Mortgage—*Covenant to g ve mortgagee preferential right to pre emption* An agreement by the mortgagor to give the mortgagee a preference of pre emption in case of ale is not con trary to public policy and may be enforced against a purcha er with notice of the covenant HARIS PAIK v JAHURUDDI GAZI 2 C W N 575

46 ———— Sale to a co sharer and stranger—*Specification of interest sol l to stran ger an l price—Right of pre emption of vendee co sharer* The principle of denying the right of pre emption except as to the whole of the property ...

tions which while contained in one deed cannot be broken up or separated It should be limited to such transactions and the reason of it does not ...

Ram v Bhyro Ram N W P S D A (1860) *p 5*. distinguished *Gune hee Lal v Ziaraut Ali N W* 343 and *Manna Singh v Ramadhin Singh I L R 4 All 25?* dissented from A co sharer in a village conveyed by deed of sale certain land to four person three of whom were co sharers in the same patti as the vendor The deed contain ed a specification of the interests purchased and the considerations paid by the co sharers and the stranger vendees respectively In a suit for pre emption by certain co sharers of the same patti as the vendor the lower Appellate Court hel l that although the co sharers vende s had a pre emptive right of the same degree as the plaintiffs neverthe less they having joined a stranger with them in purchasing the property had forfeited their right and could not resi t the claim even in respect of such portion as they had purchased under the sale deed *Held* that this view was erroneous and that inasmuch as the deed of sale contained an exact specification of the shares purchased by the co sharers vendees who had an equal right of purchase to that of the plaintiffs in respect of such shares and as the shares purchased and the consideration paid by the stranger vendee were also exactly speci fied the lower Court shoul l not have decreed the claim for pre emption as to that portion of the property which had been purchased by the co sharers SHEOBHAROS PAI v JIACH PAI I L R 8 All. 462

47 ———— *Effect of co-sharer vendee joining with himself in his purcha a stranger* When in the purchase of immoveable property in respect of which a right of pre-emption exists a vendee being a person entitled to purchase joins with himself in the purchase a strang r then, in the event of a suit for pre emption being brought, if the interest of the co sharer vendee can be separa ted from the interest of the stranger vendee the plaintiff pre emptor can succeed only as again t ...

both *Sheobharaos Rai v Jiach Pai I L R* ... *46?* approved *Sheo Dyal Ram v Bhyroo Ram* ... *A N W* (1860) *5 Guneshe Lal v Zi* ... *N W* 343 and *Manna Singh v Ramadh* ... *I L R 4 All 25?* referred to RAY ... BADRI NARAIN I L R 12 ...

See MUSHTAQ AHMAD v AMJAD A... I L R ...

BHUPAL SINGH v MOHAN SINGH I L R ...

48 ———— Time from ... takes effect—*Profits of pr ... purchase and transfer to pr ...* a share in a mehal on the ... 1287 Fasli) A sued B and ... right of pre emption a... (Chait 1289 Fasli) obtai... the right Sub equent ... mehal during 1288 Fa... dar of the mehal the ... Fa li *Held* that th... declared in the suit ... once established ex... have taken effect ...

PRE EMPTION—*contd*

2 RIGHT OF PRE EMPTION—*contd*

awarded sale to *B* took place and therefore ther

49 ———— Rights as to period before transfer—*Interest* Although a successful pre emptor becomes substituted for the original transferee and thus becomes entitled to the benefits of the transfer tho e benefits cannot be claimed by him for any period antecedent to such substitution itself and a pre emptor before his pre emption is actually enforced po es es no such right in the subject of pre emption as would entitle him to any benefits ari ing out of the property which he is entitled to tal e but has not yet tal en The original vendee cannot whilst he is in possession be regarded as a tre pas er who would have no right to enjoy the usufruct of the property which he has purchased *Uolan Singh* v *Muneri Khan 2 Sel Rep 85* dissented from *Manik Chand* v *Rameshur Rae* N W P S D A (1865) Vol II p 161 *Buldeo Persad* v *Mohun Agra Rev 30* and *Ajudhia* v *Baldeo Singh I L R 7 All 64* followed DEO DAT v RAM AUTAR I L R 8 All 502

50 ————Claim based upon custom—*Evidence afforded by obsolete wajib ul arz —Rules of the Board of Revenue for the settlement of the Gorakhpur and Basti districts (B E C 8—1 s 38)* The plaintiffs brought their suit in 1890 to pre empt certain property situated in the Gorakhpur district Their claim was based upon two

The period during which the wajib ul arz of 1860 was in force expired prior to the sale which gave rise to the right of pre emption sought to be enforced Subsequently to the expiration of that wajib ul arz certain rules had been framed with reference to the settlement of the Gorakhpur and Basti districts the material portions of which for the purpo es of the pre ent case were as follows A memorandum of the village customs will be appended to each khewat by the Assistant Settlement Officer when he verifies the jamabandi and it will take the place of the document hitherto known as the wajib ul arz

In regard to any custom or constitution peculiar to the mehal the following matters should be noticed [class (I s 25)] (a) Pre emption (as regards mehals which belong to other than Mahomedan proprietors) when the proprietors expressly demand that it may be noted and prove conclusively that the custom exists At the new settlement made in accordance with these rules no mention of the right of pre emption as obtaining in the mehal in question was recorded Upon these facts it was *held* by EDGE C J and BURKITT J that having regard to the rules above mentioned framed by the Board of Revenue for the settlement of the Gorakhpur and Basti districts the mere absence of any mention of the right of pre emption in the new memorandum of village customs was in itself no evidence that the custom of pre emption had ceased to exist and that the wajib ul arz of 1860 might be used as evidence of the existence of such a custom *Per* AIKMAN J —The absence from the new memorandum of village customs of any mention of the existence of a right of pre-emption was a circumstance which the Court would be entitled to take into consideration in any conflict of evidence as to whether or not the custom of pre emption did exist SADHU SAHU v RAJA RAM I L R 16 All 40

51 ———— Wajib ul arz—*Custom—Mahomedan Law—Immediate and confirmatory demands* The wajib ul arz of a village gave a right of pre emption according to the usage of the country In a suit for pre emption there was no

custom which absolved him from compliance with those requirements or that he was at any time willing to pay the actual contract price *Held* that in the absence of evidence of any special custom different from or not co extensive with the Mahomedan law of pre emption that law must be applied to the ca e and that under the circumstances above stated the suit failed and must be dismissed *Fakir Rawot* v *Imambakhsh B L R Sup Vol* *Choudhry Brij Lall* v *Goor Sahai Agra F B 128* and *Jai Kuar* v *Hira Lal 7 N W* referred to RAM PRASAD v ABDUL KARIM I L R 9 All 513

52 ———— *Pre-emptor out of possession of his share—His own share lost by him pending appeal* The plaintiff instituted this

tion arose The Court of first instance dismissed

out of which her claim to pre emption in the share sold arose was sold in execution of a decree in another suit Respondent contended that

PRE EMPTION—*contd*

2 RIGHT OF PRE EMPTION—*contd*

as since the appeal the share out of which plaintiff alleged that her right arose was sold she could not get any decree now in her favour *Held* that this Court as a Court of appeal has only got to see what was the decree which the Court of first instance should have passed and if the Court of first instance had wrongly dismissed the claim the plaintiff cannot be prejudiced by her share having been subsequently sold in execution in another suit such a sale could not have affected her right to maintain the decree if he had obtained a decree in her favour in the Court of first instance either on review or on appeal nor could it have been made the ground of appeal Further plaintiff being out of possession of her share at the time she instituted the suit for pre-emption was immaterial the Court should have ascertained whether the plaintiff was at the date of suit entitled in law to the share out of which her right of pre-emption was alleged to have arisen *Held* by MAHMOOD J that the passage from Hamilton s Hedaya by Grady p *562* means that in the pre emptive tenement the pre emptor should have a vested ownership and not a mere expectancy of inheritance or a reversionary or any kind of contingent right or any interest falling short of full ownership SAKINA BIBI v AMIRAN

I L R 10 All. 472

53 ———— *Plaintiff s title to sue for pre emption lost after suit but before decree —Dismissal of suit* Where a plaintiff who had filed a suit for pre emption based on the provisions of a wajib ul arz lost during the pendency of the [illegible] in [illegible] sed [illegible] it was *held* that the suit for pre emption should be dismissed *Sakina Bibi v Amiran I L R 10 All 472* distinguished PAM GOPAL v PIARI LAL

I L R 21 All 441

54 ———— Mortgagee by conditional sale —*Foreclosure—Reg XVII of 1806—Suit by mortgagee for possession—Compromise and decree thereon—Mortgagee accepting part of the property in suit—Suit for pre emption—Pre emptor not asserting or proving validity of foreclosure proceedings—Pre emptor s title referred to date of compromise and decree—Purchase money* The mortgagee under a deed of conditional sale executed in 1878 took foreclosure proceedings under Regulation XVII of 1806 and the year of grace having expired a foreclosure proceeding was recorded on the 18th September 1882 declaring the mortgage to have been foreclosed In August 1885 the mortgagee instituted a suit for possession of the mortgaged property On the 19th September 1885 the suit was [illegible]

[illegible]

brought against the mortgagor and mortgagee to enforce pre emption in respect of the alienation The plaintiff claimed to pre empt the whole of the property to which the deed of 1878 related including the portion relinquished by the conditional vendee under the compromise and decree of the 19th September 1885 *Held* that although upon the expiration of the year of grace the ownership of [illegible]

tional sale thus became absolute yet foreclosure proceedings under the Regulation being of a purely ministerial character were not conclusive or even *prima facie* evidence in a subsequent litigation against the conditional vendor that a valid foreclosure had been duly effected that strict observance of the requirements of the Regulation were conditions precedent to the right of foreclosure and that in the present case as the plaintiff had not asserted or attempted to prove that all those requirements had been fulfilled so as to result in an actual foreclo[illegible]

perty to which the compromise related and the price payable by the plaintiff was the amount specified in the compromise *Bhadu Mahomed v Radha Churn Bohia 4 B L R A C 219 Sheodeen v Sookit S D A N W (1864) 624* and *Tawal Kul Rai v Lachman Rai I L R 6 All 344* distinguished *Norender Narain Singh v Dwarka Lal Mundur L R 5 I A 18 Madho Prashad v Gajadhar L R 11 I A 186 Sitla Bakhsh v Lalta Prasad I L R 8 All 388* and *Jagat Singh v Ram Bakhsh All Weekly Notes (188) 233* referred to AJAIB NATH v MATHURA PRASAD

I L R 11 All. 164

55 ———— Right among co sharers of thoks—*Village divided into several mahals—Rights of pre emption given to co sharers in the village*—The *wajib ul arz* of a village gave a right of pre-emption to share holders in a patti then to those in a *mahal* and lastly to those in a village The village was divided into several *thok* One of the *thoks* [illegible] Jaraoli was subsequently sub divided [illegible]

of the *mahals* of *thok* Jaraoli sued for pre-emption *Held* that the vendee being a co sharer in the village the plaintiff had no preferential right of pre emption inasmuch as the old *pattis* and *thoks* had been done away with *Dalganjam Singh v Kalka Singh I L R 22 All 1* distinguished DARIA v HARKHIAL (1909) I L R 31 All. 274

56 ———— Grove land—*Wajib ul arz —Co sharer—Owner of plot of grove land* *Held* that a person who buys a plot of grove land in a village does not thereby become a co sharer in the village

PRE EMPTION—contd

2 RIGHT OF PRE EMPTION—contd

so as to entitle him to enforce a right of pre-emption under a wajib ul arz which confers such right upon co sharers *Dalhni Din v Pilmun nissa I L R 11 All 412* and *Ali Husain Khan v Tasadduq Husain Khan I L R 28 All 124* referred to MUHAMMAD ALI v HUKAM KUNWAR (1905) I L R 28 All 246

57 ———— Assignment of mortgagee s rights—*Wajib ul arz—Assignment of mortgagee s right by mortgagee in possession—Sale to stranger who before suit brought becomes a co sharer* Held that the assignment of mortgagee rights in a share in a village by a co sharer mortgagee in possession to a stranger is not a transfer of any part of the mortgagee s haqq yat in the village and will not give rise to any right of the nature of pre emption in the absence of express provisions relative to mortgagees in the village wajib ul-arz *Nand Lal v Bansi I L R 20 All 10* referred to Held also that if a stranger purchases a share in a village in respect of which a right of pre-emption subsists in favour of co sharers but subsequently to such purchase and before any suit for pre emption is brought in respect of such share becomes himself apart altogether from the purchase in dispute a co sharer in the village he cannot be ousted by any co sharer not having superior pre emptive rights to himself *Sheo Mal v Hukam Singh I L R 20 All 100* followed. *Ram Gopal v Piari Lal I L R 21 All 441* referred to BHAGWAN DAS v MOHAN LAL (1903) I L R 25 All 421

58 ———— Customary law of Hindus in Behar—*Pre emption—Claim by a non resident—Validity—Sham sale—Right of suit* Although there may be a custom of pre emption amongst the Hindus of Behar it cannot be availed of by persons who are neither natives of nor domiciled in the district in which the property is situate A native of Balia in the North Western Provinces cannot claim the right of pre emption in respect of properties situate in the district of Chapra Where the sale is not a *bona fide* one but a sham transaction no right of pre emption arise PARSASTIT NATH TEWARI v DHANAI OJHA AND DEWAKI NUNDAN MISSER (1905) 9 C W N 874

59 ———— Concurrent suits for pre emption brought by co sharers having equal rights—*Form of decree* Where pending a suit brought by one co sharer for pre emption another co sharer having equal rights with the first filed a similar suit for pre emption of the same sale it was *held* that the second plaintiff was entitled to a decree for pre emption in respect of one half of the property sold *Jai Ram v Mahab r Rai I L R 7 All 720* followed. *Man Khan v Mamur Khan All Weekly Notes (1886) 56* distinguished. SALIG RAM v KALI SHANKAR (1905) I L R 27 All 465

60 ———— Ceremonies—*Mahomedan law—Talab i ishtisl had—Reference to the previous talab i mawa ibat necessary* When in asserting a claim for pre emption under the Mahomedan law

PRE EMPTION—contd

2 RIGHT OF PRE EMPTION—contd

the making of the *talab i ishtishhad* is required it is absolutely necessary that at the time of making this demand reference should be made to the fact of the *talab i mawasibat* having been previously made and this necessity is not removed by the fact that the witnesses to both demands are the same *Abid Husain v Bashir Ahmad I L R 20 All 499* and *Rajjub Ali Chowdhry v Chundi Churn Bhadra I L R 17 Calc 543* followed *Chotu v Husain Bakhsh All Weekly Notes (1893) 101* referred to *Sahib ali v Alahi bux All Weekly Notes (1902) 14* and *Nundo Persad Thakur v Gopal Thakur I L R 10 Calc 1008* dissented from MUBARAK HUSAIN v KANIZ BANOO (1905) I L R 27 All 160

61 ———— Insolvency—*Refusal to purchase—Civil Procedure Code ss 331 and 352—Private sale by Collector in pursuance of orders of Civil Court exercising jurisdiction in insolvency* In order to debar a party entitled to pre empt a sale from exercising his right an opportunity to purchase must be given when a definite agreement to purchase at a fixed price has been entered into with a stranger It is not enough to offer property to a person ent tled to pre empt before an agreement to purchase

contract and not at public auction it was *held* that such a sale did not oust the pre emptive rights of such persons as were otherwise entitled to claim pre emption. *Baij Nath v Sital Singh I L R 13 All 224* referred to KANHAI LAL v KALKA PRASAD (1905) I L R 27 All 670

62 ———— Mahomedan law—Shafi i khalit—*Easement—Owner of dominant tenement* Under the Mahomedan law of pre emption the owner of the dominant tenement has in respect of a s[illegible] ht of pre emptio[illegible]
the ri[illegible]
gards
Kamr
Khan
to KARIM v PRIYO LAL BOSE (1905) I L R 28 All 127

63 ———— Two successive purchases by same vendee—*Claim to be a co sharer at date of suit on first purchase in virtue of the second purchase* Where in a suit for pre emption it appeared that the vendee had prior to the date of the suit made a second purchase in regard to which no suit had been filed prior to the date of the institution of the suit in regard to the first pur[illegible]

KALESHAR RAI v NABIBAN BIBI (1906) I L R 28 All 642

PRE EMPTION—contd

2 RIGHT OF PRE EMPTION—contd

64. ———— **Under proprietor**—*Act XVIII of 1876 (Oudh Laws Act) Part III Chapter II— Member of the village community —Right of under proprietor to pre empt a mahal sold by a proprietor* *Held* that under cl 3 of s 9 of the Oudh Laws Act 1876 a person holding an under proprietary interest in a *mahal* sold by the Court of Wards on behalf of the proprietor of the *mahal* was entitled to pre emption in respect of such *mahal* as against the vendor DRIG BIJAI SINGH v DEPUTY COMMISSIONER OF GONDA (F B 1902)

I L R 24 All. 420

65 ———— **Cause of action**—*Wajib ul arz—Acquisition by defendants to a pre emption suit of a title as co sharers—Suit dismissed* After an alleged cause of action for pre emption had arisen but before suit brought the defendants vendees acquired by the dismissal of another suit for pre emption brought against them by two of the plaintiffs on a different cause of action a title as co sharers in the village in which the property sought to be pre empted lay *Held* that the title so acquired was a good answer to the subsequent suit for pre emption. The principle laid down in *Janki Prasad v Ishar Das I L R 21 All 374* and *Ram Gopal v Piari Lal I L R 21 All 441* applied. RAM HIT SINGH v NARAIN RAI (1904)

I. L. R 26 All. 389

66 ———— **Pre emptive rights of manager of Hindu temple**—*Wajib ul arz* *Held* that the manager of a Hindu temple who as such manager holds zamindari property on behalf of the temple has the same rights of pre emption (or pre mortgage) under the village wajib ul arz as any other zamindar in the village may possess LEKHRAJ v GURDAT (1901) **I L R 26 All. 212**

67 ———— **Talab i mawasibat**—*Mahomedan Law—Power of general attorney to make the talab i mawasibat—Pleadings—Practice* Where the plaintiff in a pre emption suit alleged that the first [illegible]

record or at least have given the plaintiff an opportunity of filing the *mukhtarnama* or a copy *Held* further that the first demand or *talab i mawasibat* [illegible] *badi Begam* [illegible] *Hari Har* [illegible] *followed* [illegible] *41 W R* *1861 219* referred to MUNNA KHAN v CHHEDA SINGH (1906) **I L R 28 All. 691**

68 ———— **Owner of isolated plots in a village**—*Wajib ul-arz* *Held* that the owner of isolated plot of land in a village is a co sharer in the village and may as such possess rights of pre emption although he does not own a share in the zamindari of the village and his name is not recorded in the khewat *Safdat Ali v Dost Muhammad I L R 12 All 426* and *Dakhni Din v Rahim un nissa I L R 16 All 412* followed ALI HUSAIN KHAN v TASADDUQ HUSAIN KHAN (1905)

I L R 28 All 124

69 ———— **Contract for period of settlement**—*Wajib ul arz —Effect of expiry of period of settlement pending suit for pre emption* *Held* that in the case of a suit for pre emption based upon a contract embodied in the *wajib ul arz* the rights of the plaintiff remained unaffected by the fact that the period of the current settlement expired during the pendency of the suit *Janki Prasad v Ishar Das I L R 21 All 374* and *Ram Gopal v Piare Lal I L R 21 All 441* distinguished GOPAL PRASAD v BADAL SINGH (1908)

I L R. 31 All 111

70 ———— **Vendee stranger at date of sale**—*Subsequent acquisition of share by vendee—Cause of action—Lis pendens* Where a suit for pre emption was dismissed for deficiency of court fees in both the Courts below which decree was subsequently reversed by the High Court and the case remanded and the vendee in the meantime acquired the status of a co sharer —*Held* that the suit could not be dismissed the pre emptor having been entitled to a decree at the date of the institution of the suit *Held* further that even if the date of decree can be looked to that date must be [illegible]

3 CONSTRUCTION OF WAJIB UL ARZ

1 ———— **Presumption of compliance with conditions of law**—*Intention of parties* *Held* that where a pre emptive claim is based on the wajib ul arz it is not to be assumed that the claimant of pre emption complied with the peculiar conditions which under the Mahomedan law are essential to give validity to such a claim unless expressly provided by the wajib ul arz and the Court construing such contracts ought to consider the intention of the parties as expressed in those contracts and to give effect to them without alteration or addition. CHOWDHRY BRIJ LALL v GOOR SUHAI **Agra. F B 128 Ed. 1874 95**

2 ———— **Custom**—*Mahomedan law* In a suit for pre emption based on a wajib ul arz the material words of the wajib-ul arz under the heading of Custom for pre-emption were as follows [illegible]

PRE EMPTION—*contd*

3 CONSTRUCTION OF WAJIB UL-ARZ—*contd*

were intended to define a special custom of pre emption and did not merely mean that the custom of pre emption according to the Mahomedan law was to be followed. *Ram Prasad* v *Abdul Karim I L R 9 All 513* distinguished JASODA NAND v KANDHAIYA LALL I. L. R 13 All. 373

3 ———— Wajib ul arz not signed by lambardar or co-sharers Where a wajib ul arz was not signed by the lambardar or by any of the co sharers of the village for which it was framed but was found to have been in existence without having been questioned by any of the parties who might have been affected thereby for a period of some thirteen years —*Held* that the wajib ul arz might be taken as *primâ facie* evidence of the custom of the village for which it was framed The said wajib ul arz contained a clause relative to pre emptive rights to the following effect When any muafidar in the patti desires to transfer his share then first a shareholder in the patti takes it and if he does not take it then another man who desires to take it takes it *Held* that this clause was declaratory of the village custom and that it was not intended thereby to adopt the Mahomedan law of pre emption. RUSTOM ALI KHAN v ABBASI BEGAM I. L. R. 13 All. 407

4. ———— "Brethren —*Sharers in patti—Preferential right* Where the wajib ul arz provided that alienation should be first made to brethren of common ancestor and then to the other sharers of the patti —*Held* that the brethren in whose favour the first right of pre emption was secured must be construed to be brethren who were sharers in the patti HUR SAHAI v JAWALA 2 Agra 31

5 ———— Bhai band—*Suit to enforce the right of pre emption—Non-joinder of vendor—Mortgage* In a suit for pre-emption it was objected by the vendee in second appeal that the vendor had not been made a party *Held* that whether the omission to make the vendor a party in a suit to enforce the right of pre emption renders the suit unmaintainable or not as the vendee had not been prejudiced by such omission in this case the objection taken at such a late stage of the case could not be allowed *Held* also that the word bhai band in the wajib ul arz in this case meant the brotherhood of the village and not merely those persons who were related by blood *S A No 1054 of 1881* decided the 1st April 1882 referred to HIRA LAL v RAMJAS I. L. R. 6 All. 57

6 ———— Shikmi showkayan—*Preference to sharers in thoke—Sharers in village* *Held* by a Full Bench in concurrence with the lower Court that the proper construction of the words shikmi showkayan used in a clause of the administration paper was that they gave a preference to sharers in the thoke over those who were merely sharers in the village JEY MULL v KESREE Agra F B 171 Ed. 1874 128

7 ———— "Intiqual"—*Absolute transfer—Conditional sales and usufructuary mortgages—Alienation* *Held* on the construction of a wajib-ul arz that the word intiqual not only signifies an absolute transfer but also applies to conditional sales and usufructuary mortgage CHUTTUR MULL v CHUTTUR KISHORE LALL 3 Agra 396

8 ———— Co-sharers—*Members of joint Hindu family* The members of a joint and undivided Hindu family other than that member who is recorded in the Collector s book as a sharer in the mehal are co sharers for the purposes of pre emption in the sense of the wajib-ul arz. GANDHARP SINGH v SAHIB SINGH I. L. R. 7 All. 184

9 ———— Ek jaddi " The wajib ul arz of a village gave a right of pre emption in cases of sale to brothers and provided that on refusal by a brother there should be a right of pre emption in favour of co-sharers in the thoke who were related to the vendor by descent from a common ancestor (hissadaran ek jaddi thoke) It was also provide that in the event of any dispute arising as to price it should be settled by arbitration and that if the co sharers do not take at the amount fixed by the arbitrators the co sharers desiring to sell might make the transfer to a stranger *Held* that co sharers who were not of common descent from the vendor were entitled to pre-emption after own brothers and co-sharers *ek jaddi* and to have preference over strangers. *Gune kee Lal* v *Zaraut Ali 2 N W 343* followed. SABIR ALI v YAD RAM I. L. R. 9 All. 660

10 ———— Pattidars — *Chakdars* *Held* that the terms of a wajib ul arz conferring a right of pre empt on upon pattidars did not apply to a chakdar holding a share in the same chak as the vendor BALWANT SINGH v SUBHAN ALI I. L. R 10 All. 107

11 ———— "Karibi," meaning of. The word karibi used by itself in the pre emptive clause of a wajib ul arz to indicate shareholders near to the vendor is ambiguous and inadequate to express the intentions of the shareholders The pre emptive clause in the wajib ul arz of a village gave a right of pre-emption in cases of sale by shareholders first to bhai bakiki (own brothers) next to karibi (near) and next to co sharers in the same thoke as the vendor *Held* that although the word karibi must be read in connection with the preceding word bhai the words bhai karibi could not reasonably be confined to cousins but must be construed as meaning bhai buand or bhai log so as to include all near relative both male and female *Held* also that a vendor s father s brother s widow holding a share in the village absolutely and as heir of her deceased husband was entitled to pre emption in preference to the vendees who were only sharers in the same thoke as the vendor KHUMAN SINGH v HARDAI I. L. R. 11 All. 41

PRE EMPTION—*contd*

3 CONSTRUCTION OF WAJIB UL ARZ—*contd*

12. ——— **Express limitation of operation of wajib ul urz**—*Time limited by agreement for pre emption* When by the express terms of a wajib ul arz its operation is limited to the period of the settlement a right of pre emption created by it cannot be enforced after the expiry of that period unless a provision has been made for that purpose or the operation of the wajib ul arz has been extended by the agreement of the parties PUTTUN SINGH v OOMRAO SINGH 4 N W 13

13 ——— **Right of alienation**—*Express conditions* *Held* that the conditions of the wajib-ul arz do in no way confer on any person under disability a right of alienation which he does not otherwise enjoy RADHEY PANDEY v MUNSARAM 2 Agra 85

14 ——— *Condition that sharer s consent shall be obtained* *Held* on the construction of the wajib ul arz that the condition stipulating that alienations should be made with the consent of all the sharers did not stipulate for the existence of pre emption and that the claim based on that was untenable PAM PERSHAD SAHOO v PUMZANEE 2 Agra 37

GAYADEEN v RAMSAHAI 2 Agra Pt II 181

BUBBOO DOOBEY v ISHREF 3 Agra 74

15 ——— **Right of pre emption of co sharer**—*Holder of resumed muafi—N W P Land Revenue Act (XIX of 18 3) s 6—Rules of the Board of Revenue 1878 Department I Rules 30 and 51* The plaintiff a co sharer in the village of Deobarampur sued for pre emption of certain land being resumed revenue free land in the village which had been sold to a stranger The clause of the wajib ul arz under which pre emption was claimed was as follows When any co sharer (hissadar) is bent upon selling or mortgaging his right (haqqiyat) then first that co sharer who is

in respect of the land claimed by him the vendor not being within the meaning of the wajib ul arz a co sharer in the village by virtue of his possession of a portion of the resumed muafi KALLIAN MAL v MADAN MOHAN I L R 17 All 447

16 ——— **Procedure of co sharer who wishes to sell share** By the clause in a wajib ul arz which related to pre-emption it was provided as follows When any co sharer wishes to make a sale or mortgage of his share it is incumbent on him to do so first in favour of a near co sharer next in favour of a co sharer of his thoke and lastly in favour of a co sharer of another thoke at the rate of R20 per bigha of cultivated land and R5 per bigha of waste land. If none of these take it then he may transfer it to an outsider If any co sharer (i e any co sharer who wishes to sell or mortgage) fail to act as above directed another co sharer has

property to which this wajib ul arz applied there were only two stages contemplated by the wajib ul arz and not three The first stage was at or about the time of the execution of the deed of conditional sale and at that time pre emption might be had by a co sharer at the rate indicated in the wajib ul arz. The second stage was when the conditional vendee had brought his suit for foreclosure and at that time the pre emptor would have to pay the amount

emption was gone and extinguished. GYA BHARTHI v LAKHNATH RAI I L R 20 All 103

17 ——— **Co sharers**—*Co sharers in the Khalisa mahal distinguished from owners of separat plots of muafi lands in the mahal* The co sharers in a mahal and the owners of a separate plot of muafi land included in the area of the mahal have

I L R 20 All 419

18 ——— **Agreement to offer property to co sharers**—*Mode of offer* Where the terms of a wajib ul arz are that the property before sale to a stranger must be offered to the co sharers such offer must be made to each and every one of such co sharers. DOWLUT v NETRAM 3 N W 42

19 ——— **Preferential right of co sharers**—*Right of refusal* Where the terms of wajib ul arz recognize the right of each sharer to sell without the consent of the others but limit that right so far as to give preference or right of refusal to the co sharers, the sale to a stranger can only be good and valid on proof of offer being made and refused by the co sharers. PERMESHREE DOSS v RAIKOONDUN SINGH 3 Agra 3

20 ——— *Usufructuary lease construction of* Where the wajib-ul arz provided that in cases of transfer by sale etc the co-sharers would have a preferential right to the same —*Held* that the co sharers were entitled to claim by right of pre-emption to take over an

PRE EMPTION—contd

3 CONSTRUCTION OF WAJIB UL-ARZ—contd

usufructuary lease which was made for the term of eight years AHMED ALI KHAN v. AHMED

1 Agra 101

21. ——————— *Shareholder right of—Relatives right of—Stranger* One of the provisions in the wajib ul arz of a village was that when a shareholder was desirous of selling his share the right of purchase should lie first with the real brother of the shareholder secondly with the nearest relatives thirdly with the shareholders in the thoke and lastly with the shareholders in other thokes *Held* that if a person was a near relative he fulfilled all the conditions required and there was no necessity that he should belong to the same thoke as the vendor *Held* also where the parties were Mahomedans that the wife of the vendor must be regarded as a near relative within the meaning of the wajib ul arz and that though she was not a shareholder she could not be considered a stranger that is a person who had no interest whatever in the family MAHOMED TUKEE v. HUJJEE *alias* KHUJJAI **5 N W 142**

22 ——————— **Partition effect of—Co sharers— Village —Effect of perfect partition on covenants contained in the wajib ul-arz** The wajib ul arz of a village contained a covenant among the co sharers that in the event of any one of them selling his share a right of pre emption should be enforceable first by a near shareholder next by a partner in the thoke and thirdly by a partner in the village The village was subsequently divided into three separate mehals by means of a perfect partition under the N W P Land Revenue Act (XIX of 1873) *Held* that the agreement ... [illegible]

and does not necessarily imply a joint ownership of such land inasmuch as after partition there may remain some community of interest and things held and used in common by all the inhabitants Every one who lives in that area has a share in it and may therefore be regarded as a shareholder within the meaning of the wajib ul arz GOKAL SINGH v. MANNU LAL **I L R 7 All 772**

23 ——————— **Perfect partition of mehal —N W P Land Revenue Act (XIX of 1873) s 191—No new wajib ul arz framed on partition—Pre emption claimed under wajib ul arz of undivided mehal—Custom—Co sharers—Hissadar deh** Where on the perfect partition of a mehal under the N W P Land Revenue Act 1873 no new wajib ul arz has been framed for any of the new mehals the question whether or how far a contract or a custom of pre emption recorded in the wajib ul arz of the undivided mehal is still in force or who is entitled to claim the benefit of it is not capable of any absolute or invariable answer It depends in each case upon the proper construction of the terms of the particular contract or the proper interpretation of the particular custom recorded assuming that there is no evidence of any intention on the part of the co sharers at the time of partition to put an end to the contract or the custom. But there is a strong presumption against such claims for pre emption when made after perfect partition by persons who are no longer co sharers of the vendor and where the language of the wajib ul arz is ambiguous this presumption may be decisive The wajib ul arz of a village forming one undivided mehal recorded a right of pre emption by custom as existing in favour of 'hissadaran deh' in cases of transfer by a hissadar of his share or hissa to a stranger After a perfect partition on which no new wajib ul arz was framed and after a subsequent sale to a stranger of land in one of the new mehals a person who prior to the partition was a co sharer of the vendor in the undivided mehal but who since the partition owned a share only in another of the new mehal claimed pre emption under the old wajib ul arz as a hissadar deh. *Held* by the Full Bench upon the construction of the wajib ul arz that he was not entitled to pre emption DALGANJAN SINGH v. KALKA SINGH

I L R 22 All 1

24 ——————— Division of lands in village —Right of sharer in one division to right of pre emption of share in another division. The greater portion of the lands of a certain village were divided into *thoke* each *thoke* comprising a certain amount of land and the rest of the lands were held in common ... the co ... contained t ... t of pre emption ... Each sharer is by all means at liberty to transfer his right and share but first of all the transfer should be effected by him in favour of his own brothers and nephews who may be sharers and in case of their refusal in favour of the other owners of the *thoke* *Held* in a suit by a sharer in one *thoke* to enforce a right of pre emption under the wajib ul arz in respect of a share in another *thoke* that the fact that the plaintiff in common with all the sharers of the different *thokes* was a sharer in the common lands did not make her a sharer in the vendor s *thoke* and he had therefore no right of pre emption under the wajib ul arz. MAYA RAM v. LACHHO

I L R 2 All. 631

Affirmed on appeal to the Privy Council. LACHHO v. MAYA RAM **I L R 5 All 158**
L R 10 I A 1

25 ——————— **Nearer co sharer—*Mortgage by conditional sale—Limitation—Acquiescence—Equitable estoppel*** The two joint owners of a 2 annas 8 pies share in a village jointly executed two deeds of mortgage by conditional sale each for a share of 1 anna 4 pies in favour respectively of *R* and *A* co sharers in the village and related to the vendors. In 1875 the conditional sale in favour of *R* became absolute and he was recorded a proprietor of half the share of the vendor and obtained

PRE EMPTION—*contd*

3 CONSTRUCTION OF WAJIB UL ARZ—*contd*

possession thereof In 1882 *A* foreclosed his mortgage and obtained possession of the other half share *P* thereupon claimed the right to purchase the half share so acquired by *A* on the allegation that he had a right of pre emption in respect thereof having become the vendee in 1875 of the other half share and therefore being the nearer co sharer of the vendors within the meaning of the wajib ul arz and also being nearer in relationship to the vendor than *A* The wajib ul arz provided that each co sharer was competent to transfer his own share but that when making a transfer it was incumbent on him to notify the same to his near co sharer and on his refusal to other sharers in the village The lower Appellate Court held that the plaintiff was estopped from preferring a claim to pre emption on the ground that he had acquiesced in the conditional sale in favour of the defendant and also that he had no right to pre emption under the wajib ul arz *Held* that inasmuch as from 1875 to 1882 the only owners of the 2 annas 8 pie share were the plaintiff and the mortgagors they were the only co sharers in respect of this particular share although there were other co sharers in the village that the plaintiff must therefore be regarded as a nearer co sharer of the vendors than the defendant within the meaning of the wajib ul arz and that as such he was entitled to claim pre emption *Held* also that the right of pre emption which arose upon the sale was a new right and not the same as that which arose at the

the right claimed by him was not yet in existence and that consequently the claim was not barred PUP NARAIN *v* AWADH PRASAD

I L R 7 All 478

26 ———— Stranger —*Effect of joining tranger as co vendee* Under the terms of a wajib ul arz successive pre emptive rights were given first to own brothers secondly to near cousins thirdly to shareholders *Held*

Singh I L R 4 All 259 distinguished AMJAD ALI *v* MUSHTAQ AHMAD I L R 17 All 454

In the same case on appeal under the Letters Patent this decision was upheld by EDGE C J and KNOX J MUSHTAQ AHMED *v* AMZAD ALI

I L R 19 All 311

27 ———— Stipulated price— *Rights and interest — Qimat — Sale —Exchange* The wajib ul arz of a village gave a right of pre-emption by a clause providing that in case of transfer by any co sharer of his rights and interests (haqiyat) his partners should have a right to purchase at the same price (qimat) as the vendee had given One of the co sharers transferred to a

dered as a price (qimat) within the terms of the wajib ul arz *Per* MAHMOOD J that the word

in ss 54 and 118 of the Transfer of Property Act (IV of 1882) respectively NIAMAT ALI *v* ASMAT BIBI I L R 7 All 626

28 ———— Simple mortgage— *Transfer — Mortgage—Charge—Transfer of Property Act (IV of 1882) s 58* The wajib ul arz of a village gave a right of pre emption to co sharers on a transfer (intikal) by sale or mortgage (rahn) by a co sharer of rights and interests (hakkiyat)

MOOD J —The circumstance that possession had not been transferred to the mortgagee was one which had no bearing on the question whether a right of pre emption arose under the terms of the wajib ul arz in the case of a simple mortgage The word intikal as used in Hindustani has the broadest meaning in connection with alienation conveyance assignment or transfer of rights in immoveable property The word hakkiyat means rights and interests in the legal sense of the phrase The word rahn is a generic word indicating all that is included in the English word mortgage and is not limited to usufructuary mortgages but includes simple mortgages also When general words are used in a document they must be understood in a general sense unless they are accompanied by any expression limiting or restricting their ordinary meaning or unless such limitation or restriction arises from necessary implication The words intikal hakkiyat and rahn in the wajib ul arz could be understood only in the most general sense Mortgage as understood in Indian law includes simple mortgage as well as usufructuary and one is as much a transfer of an interest in specific immoveable property as the other A simple mortgage is a transfer being the transfer of the right of sale *Held* therefore by MAHMOOD J that a right of pre emption accrued under the terms of the wajib ul arz in the case of a simple mortgage by a co sharer of his share to a stranger *Per* BRODHURST J

PRE EMPTION—*cont'd*

3 CONSTRUCTION OF WAJIB UL-ARZ—*contd*

that one of the entries in a statement showing the transfers which had taken place in the village at or about the time the wajib ul arz was framed which statement was connected with the wajib ul arz

therefore a right of pre emption accrued under the terms of the wajib ul arz in the case of a simple mortgage. *Per* DUTHOIT J that a pre emptive right was raised by the terms of the wajib ul arz only upon the occurrence of a transfer of a share in the property of the mehal and a simple mortgage was not a transfer of property OLDFIELD J—The word transfer used in the wajib ul arz was not intended to refer to a simple mortgage but to mortgages where possession of the property passes to the mortgagee SHEORATAN KUAR v MAHIPAL KUAR I L R 7 All 258

29 ———— Mortgage by conditional sale— *Transfer —Transfer of Property Act (IV of 1882) s 58* A clause in the wajib ul arz of a village gave a right of pre-emption in respect of transfer by the sharers of their rights and interests by sale and mortgage *Held* that a deed of conditional sale of a share in the village which did not transfer possession was a transfer of an interest in the village and was sufficient to let in the right of pre emption. *Sheoratan Kuar v Mahipal Kuar I L R 7 All 258* followed AZIMAN BIBI v AMIR ALI I L R 7 All 343

30 ———— Conditional sale The pre emptional rights of the parties to a deed of conditional sale cannot be affected by a wajib ul arz prepared subsequently to the execution of the deed of conditional sale ...

absol

and

pre e

Raghubir Singh v Kanau Singh All Weekly Notes (1891) 134 distinguished. BECHAN RAI v NAND KISHORE RAI I L R 14 All 341

31 ———— Sale without registration of transfer—*Transfer of Property Act (IV of 1882) s 54—Fraudulent omission to transfer by*

of the co sharers entered into a transaction by which he transferred the possession of his share to a stranger for R300 and had mutation of names effected in the Revenue Department but in order to avoid the right of pre emption the parties omitted to execute or register a deed of sale in respect of the transfer *Held* by the Full Bench (MAHMOOD J dissenting) that the transaction gave rise to the right of pre emption within the meaning of the wajib ul arz. *Per* PETHERAM C J that the terms of the wajib ul arz meant that if any co sharer transferred his right wholly or partly the right of pre-emption should arise that although the legal interest in the share was never transferred, the effect of the transaction in question was to transfer absolutely the whole right of possession from the vendor to the vendee and that it was therefore such a transfer as let in the right of pre emption. *Per* STRAIGHT J that inasmuch as the defendants deliberately omitted to observe the necessary legal formality of a registered instrument ...

and BRODHURST JJ that the failure of the parties to the transfer to comply with the requirements of s 54 of the Transfer of Property Act (IV of 1882) as to the manner in which the transfer should be made did not alter the nature of the transaction or affect the fact that a sale had been made and could not affect a pre emptor s right in respect of it. *Per* MAHMOOD J that a valid and perfected sale was a condition precedent to the exercise of the pre-emptive right that in the present case nothing had happened which could properly be termed a sale within the meaning of the wajib ul arz that the application for mutation of names not having been registered the provisions of s. 54 of the Transfer of Property Act prevented it from taking effect as a sale or passing the ownership from the vendor to the vendee and that therefore under the wajib ul arz the right of pre-emption could not arise JANKI v GIRJADAT I L R 7 All 482

32. ———— Calculation of price mode of—*Proportionate share of purchase money* The wajib ul arz of a village contained this clause regard ...

sharers in the thoke and on their refusal sharers in other thokes will be entitled. S the proprietor of a 4 pies share in one thoke and of a 9 pies share in another thoke sold both shares together with a ...

factory claiming the right of pre emption under the wajib ul arz on payment of a proportionate part of the purchase money which they estimated at four thirteenths of that sum calculating the numbers of pies sold It was *held* (in accordance with the opinion of the Full Bench) that the plaintiffs were entitled to claim the right of pre emption in respect

pies

did not

tory

PRE EMPTION—*contd*

3 CONSTRUCTION OF WAJIB UL ARZ—*contd*

calculating the price payable for the property claimed, the lower Courts should have ascertained separately the value of the several properties sold SALIG RAM v DEBI PARSHAD 7 N W 38

33 ——— **Co sharer**—*Wajib ul ar —Sale to a stranger—P sale to a co sharer having a right of pre emption but subsequently to a suit brought by another such co sharer* Where property which is subject to a right of pre emption declared by the wajib ul arz is old to a stranger such stranger may defeat the claim of a co sharer having a right of pre emption by sale to a co sharer having a similar right but in order that the re sale may have such effect it mu t be completed before any suit for pre emption is brought by a co sharer entitled to pre empt *Serhmal* v *Hukam Singh I L R 20 All 100* distinguished. *Janki Prasad* v *Ishar Das All Weekly Notes (1899) 12* referred to NARAIN SINGH v PARBAT SINGH (1901)

I L R 23 All 247

34. ——— **Ekjaddi** —*Wajib ul ar — Interpretation of document—Meaning of the term ekjaddi Held* that the term *ekjaddi* used in the pre emption clause of a wajib ul arz signifies person descended from a common ancestor through the male line *Gunesh e Lal* v *Zaraut Ali N W P H C (1870) 343* referred to CHATAR SINGH v KALYAN SINGH (1900) I L R 23 All 32

35 ——— **Hissadar** —*Wajib ul arz— Interpretation of document* The clause in the wajib ul arz of a village relating to pre emption gave a right of pre emption against a stranger and at the price paid by the stranger firstly to a *hissadar ek jaddi* secondly to a *hissadar patti* and thirdly to a *hissadar deh* *Held* that in the absence of specific words to that effect the clause above referred to could not be construed so as to give a right of pre emption to a *hissadar* of a superior class upon a sale to a *hissadar* of an inferior class *Ilahi Jan* v *Pheku All Weekly Notes (1895) 9* and *Ilahi Bakhsh* v *Ghulam Abbas All Weekly Notes (1898) 15* referred to SHEOBALAK SINGH v LACHMIDHAR (1901) I L R 23 All 427

36 ——— **Hissadaran shikmi** — *Wajib ul arz—Construction of document—Meaning of the term hissadaran shikmi Held* that the expression *hissadaran shikmi* as used in the clauses of a wajib ul arz dealing with various classes of persons who were entitled to pre emption in preference to stranger did not necessarily imply any idea of

[illegible]

I L R 23 All 200

37 ——— **Mortgage**—*Mortgage by conditional sale* [illegible]

a sharer of any *patti* sell his share he will sell it first to subordinate sharers if they refuse to take it then to sharers in the *patti* and if they also do not take it then to proprietors of the *mahal* and in case of refusal by all the sharers before mentioned he shall have power to transfer it to a stranger While this wajib ul arz was in force namely in 1890 certain property to which its provisions applied was mortgaged by a deed of conditional sale In 1894 after partition of the *mahal* a new wajib ul arz was framed for the *mahal* in which the mortgaged property was situated which also contained a similar record of the custom of pre emption in the following terms — Should a sharer sell his share he will sell it first to his subordinate sharers afterwards to a sharer in the *mahal* and in case of refusal by the sharer in the *mahal* to a sharer in the old *mahal* *Held* that the record as to the right of pre emption being in both cases the record of a custom and the provisions of the latter wajib ul arz [illegible]

by conditional sale becoming an absolute sale in favour of a stranger *Alu Prasad* v *Sukhan I L R 3 All 610* followed. *Bechan Rai* v *Nand Kishore Rai I L R 14 All 341* and *Gaya Bharthi* v *Lakhnath Rai I L R 20 All 103* distinguished RAN BAHADUR RAI v PARMESHAR BHARTHI (1902) I L R 24 All 493

38 ——— **Construction of document** —*Wajib ul ar —Letters Patent ss 10 and 2 — Difference of opinion between members of Bench hearing an appeal from a single Judge of the Court— Civil Procedure Code s 575* Where the words of the pre emptive clause of a wajib ul arz ran in the form

If any co sharer desires to sell or mortgage etc *let him* sell first to so and so and then to so and so It was *held* by STANLEY C J that the use of the imperative mood did not indicate a fresh contract between the co sharers but was consistent with the clause being a record of pre existing custom Where there is nothing to show clearly that such a clause embodies a new contract as to pre-emption the rule of construction is that it is a record of a custom *Majidan Bibi* v *Hayatan All Weekly Notes (1891) 3* and *Ali Nasir Khan* v *Manik Chand I L R 25 All 90* followed *Per* BURKITT J (*contra*) —The language of the wajib ul arz indicates that what is recorded is a new contract between the co sharers *Held* also where an appeal under s. 10 of the Letters Patent is heard by a Bench consisting of two Judges and such Judges are divided in opinion as to the decision to be given on such appeal that the appeal will be decided according to the opinion of the senior Judge that is s 575 of the Code of Civil Procedure does not in respect of appeals under s 10 of the Letters Patent override s 27 of the Letters Patent LACHMAN SINGH v RAM LAGAN SINGH (1904)

I L R 26 All 10

PRE EMPTION—*contd*

3 CONSTRUCTION OF WAJIB UL ARZ—*contd*

39 ——— *Wajib ul arz—Interpretation of document—N W P Land Revenue Act (XIX of 1873) s 91—Regulation VII of 1822 s 9—Evidence Act (I of 1872) s 35—Parties to suit* *Held* that if the pre emptive clause of a wajib ul arz does not show and it is not otherwise proved that such clause is merely the embodiment of a new contract as to pre emption the proper con struction to be placed on such clause is that it is the recital of a pre existing custom *Ali Nasir Khan* v *Manik Chand I L R 25 All 90* referred to *Held* also that the entries in a wajib ul arz made prior to the coming into force of Act XIX of 1873 as to local usages connected with landed tenures are relevant evidence under s 35 of the Evidence Act *Kamta Prasad* v *Chaturbhuj Sahai All Weekly Notes (1904) 11* overruled *Muhammad Hasan* v *Munna Lal I L R 8 All 434* followed In a suit for pre emption the vendor is not a necessary party *Hira Lal* v *Ramjas I L R 6 All 5* and *Lok Singh* v *Balwant Singh All Weekly Notes (1903) 239* followed RAM SARUP v SITAL PRASAD (1904)

I L R 26 All 549

40 ——— *Wajib ul arz—Interpretation of document* The pre-emptive clause of a wajib ul arz described the right of pre empt on as existing in (i) a near co sharer in the same patti (ii) any other co sharer in the patti (iii) a near co sharer in another patti and (iv) co sharers in the mahal the price being whatever price is obtained from another *Held* that this did not mean that the right of pre emption arose only in the case of a sale to a stranger but that each class of pre emptors was to have a preferential right of pre emption as against persons belonging to the next following class if the latter happen to be the puchasers SUKHDEO SINGH v BAHADUR SINGH (1904) I L R 26 All 544

41 ——— *Wajib ul arz—Interpretation of document—Owner of an isolated plot of sir land* Lal Singh and Thakur Das joint owners of zamindari and *sir* land made a grant of the *sir* land to their step mother for maintenance during her life with a reversion to themselves after her death

could not give rise to a right of pre emption not being within the terms of the wajib ul arz a transfer by a shareholder in the village HUSAIN BAKHSH v DAMAR SINGH (1904) I L R 26 All 547

42 ——— *Wajib ul arz—*

to a co sharer of a superior class when the sale was to a co sharer of an inferior class but the right only came into existence when the sale was to a stranger *Sheo Balak Singh* v *Lachmidhar I L R 23 All 427* referred to *Sukhdeo Singh* v *Bahadur Singh All Weekly Notes (1904) 104* distinguished KHATUN BIBI v SAIYIDA BIBI (1905) I L R 27 All 457

43 ——— *Wajib ul arz—Construction of document—Evidence—Evidence Act (I of 1872) s 35—Effect of any of omission of an entry from a public document—Rules of the Board of Revenue for the settlement of Gorakhpur and Basti districts (Board s Circulars 1890 8—I s 38)—Meaning of the word nadarad* The plaintiff claimed a right of pre emption in respect of a share in a certain *mauza* situated in the district of Gorakhpur He relied principally on a wajib ul arz of the

that the right of pre emption whether by custom or contract no longer existed The wajib ul arz of 1866 contained the following provision as to the right of pre emption Every co sharer is entitled to transfer by sale or mortgage but the condition of his doing so is that he who wants to transfer do so firstly in favour of near co sharers secondly in favour of other co sharers of the *thok* and thirdly in favour of strangers The memorandum of village customs prepared at the Settlement of 1886 87 was prepared under rules framed by the Board of Revenue for the Settlement of the districts of Gorakhpur and Basti The portion of those rules material to the present case is as follows A memorandum

the document hitherto known as the wajib ul arz

In regard to any custom or constitution peculiar to the *mahal* the following matters should be noted [class (d) s 25] (a) pre emption

word *nadarad* *Held* that as regards ul arz of 1866 in the absence of any evidence showing that the right of pre emption arose by agreement or contract it must be taken that the right recorded was customary right *Majidan Bibi* v *Sheik Hayatan All Weekly Notes (1897) 3* *Isri Singh* v *Ganga I L R 2 All 876* and *Muhammad Hasan* v *Munna Lal I L R 8 All 434* referred to As to the effect which the entry in the later memorandum of village customs of the word *nadarad* was alleged to have as evidence

PRE EMPTION—*contd*

3 CONSTRUCTION OF WAJIB UL ARZ—*contd*

of the disuse or abrogation of the custom or contract of pre emption it was *held* that the word *nadarad* itself did not in the absence of any evidence showing that as a matter of fact the custom has ceased to exist mean that the custom of pre emption no longer subsisted but was of no more value than if the memorandum of village customs had been completely silent on the subject and it could not be inferred from such an entry

S A No 198 of 1900 decided 14th Dec 1900 and *Kodai Sahu* v *Mahabir S A No 34? of 1900 decided th Jan 1901* overruled Even if the word *nadarad* had the meaning contended for and signified that the right of pre emption no longer existed it was an entry which it was in excess of the duties prescribed for Settlement Officers in the district in question to make and therefore no eviden

63 were referred to in the judgment of KNOX J ALI NASIR KHAN v MANIK CHAND (F B 1902)
I. L R 25 All. 90

44. ———— *Wajib ul ar — Construction of document—Mahomedan law—Intiqal* Where in a wajib ul arz it was recorded merely that the custom of pre emption prevails it was *held* that in the absence of any special custom different from or not co extensive with the Mahomedan law of pre emption the Mahomedan law must be applied *Ram Prasad* v *Abdul Karim I L R 9 All 513* followed The term *intiqal*

45 ———— *Wajib ul ar — Construction of document—Partition of village into separate mahals* In a village which consisted of two

(ii) cousins who are co sharers (iii) co sharers in the patti and (iv) share holders in the village (*hissadaran deh*) The village was subsequently divided into more mahals but no new wajib ul arz was framed

v RAM PARTAB SINGH (1905)
I. L. R. 28 All. 286

PRE EMPTION—*contd*

3 CONSTRUCTION OF WAJIB UL ARZ—*contd*

46 ———— *Wajib ul ar — Construction of document— Qimat* *Held* that the word *qimat* as used in the pre emptive clause of a wajib ul arz is wide enough to include the consideration given for a usufructuary mortgage with possession as well as for a sale HULAS RAI v RAM PRASAD (1906) I. L R 28 All 454

47 ———— *Wajib ul ar — Construction of document—Retention of same wajib ul ar after division of village into mohals—Hissadaran deh and hissadaran patti on the same footing* Where a village was divided into three mahals and the new wajib ul arz which was prepared for one of them A M was copied verbatim from the wajib ul arz of the village before division and clearly put *hissadaran deh* and *hissadaran patti* on the same footing —*Held* that a co sharer in the mahal A M had no right of pre emption in regard to property sold in A M as against a co sharer who though he had no share in the mahal A M was a co sharer in one of the other mahals *Dalganjan Singh* v *Kalka Singh I L R 22 All 1* distinguished SARDAR SINGH v IJAZ HUSAIN KHAN (1906)
I. L. R 28 All. 614

48 ———— *Wajib ul ar — Construction of document* The pre emptive clause of a wajib ul arz was drawn up in the following terms — In case of great necessity each co sharer is entitled to transfer his property as recorded in the *khewat* and the near co sharers and the pattidars

49 ———— Custom—*Wajib ul ar —Construction of document—Custom or contract* In a suit for pre emption two wajib ul arz were relied upon The earlier wajib ul arz of the year 1864 provided that if a sharer desires to transfer his share the first right of pre-emption is possessed by his near brother next by the sharers in the patti and next by sharers in other patti and when all these have declined to take a transfer the sharer may sell to any one he likes The later wajib ul arz of the year 1884 under the head custom as to pre emption provided that no such case has as yet occurred but we acknowledge the right of pre emption *Held* that the wajib ul arz of 1864 was evidence of the existence of a right existing by custom and the provision in the latter was a recognition by

the earlier
I L R 27
(1906)

50 ———— *Wajib ul-arz— Construction—Custom or contract—Silence as to right of pre emption in wajib ul-arz of last settlement—Duties of Settlement Officer when preparing record of rights* Where in a suit for pre-emption the wajib

PRE EMPTION—*contd*

3 CONSTRUCTION OF WAJIB UL ARZ—*concld*

wajib ul arz prepared at the settlement of 1890 was silent as to any right of pre empt on existing in the village *Held* that the record of 1863 was one of custom and that the silence of the record of rights of the latest settlement in respect to pre emption was not a silence from which any inference oppo ed to the existence of the right of pre emption could be drawn inasmuch as the rules framed for the settle ment of the district under s 257 of Act No XIX of 1873 did not require the Settlement Officer to put on record any custom of pre emption *Tota v Sheo Narain F A F O No 13 of 1898 decided on June 15 1899* dissented for HARNAND v KALLU (1909) I L R 31 All. 533

4 PURCHASE MONEY

1 ———— **Apportionment of purcha e money illegality of** A person claiming to exer cise his right of pre emption must take the bargain as it was made Any apportionment of the purchase money is altogether illegal MADHUB CHUNDER NATH BISWAS v TOMEE BEWAH 7 W R. 210

2 ———— **Dispute as to price**— *Arrange ment between vendor and vendee* In a suit to establish a right of pre emption to property which had been sold in which the plaintiff alleged that the actual value was different from that which was recit ed in the deed of sale between the defendants the vendor and vendee —*Held* that plaintiff was enti tled to have the property at the price agreed upon between the vendor and the vendee but not to the benefit of an arrangement by which a portion of the price had been allowed to remain in the hands of the vendee that he might pay off a mortgage debt GOLAM AYHIA v JOY MUNGUL SINGH 13 W R 435

3 ———— **Rights of pre emptor**—*Sale contract—Deduction of amount recovered by vendee* A pre emptor is entitled to all the benefit which the vendee takes under the contract of sale *Held*, therefore where a certain sum was fixed as the price of the property and such sum was paid by the ven dee but it was subsequently agreed between him and the vendor as part of the sale contract that the vendee should recover for his own benefit certain moneys due to the vendor at the time of the sale and the vendee recovered such moneys that the pre emptor was entitled to a deduction of the amount of such moneys from the sum originally fixed as the price of the property TAJAMMUL HUSAIN v UDA I L R 3 All 668

4 ———— **Bad title of vendor as to part of property**—*Pre emptor and preferential pre emptor* Certain persons sold an 8 anna share of a village *G* sued the vendors and purchasers of the share to enforce his right of pre emption in respect

PRE EMPTION—*contd*

4 PURCHASE MONEY—*contd*

of the sale and obtained a decree *M* claiming 1 anna 4 pies of the share as his property sued the vendors and purchasers of the share and *G* for such 1 anna 4 pies and obtained a decree He then sued the same parties to enforce his right of pre-emption in respect of the remainder of the share that is 6 annas 8 pies claiming to pay only a proportionate amount of the price paid for the whole share *Held* that *M* was not bound to pay the price paid for the whole share but only the proportionate amount of such pr ce MUHAMMAD LATIF v GOBIND SINGH I. L. R. 5 All. 382

5 ———— **Amount of purchase money** —*Mortgage by conditional sale—Reg XVII of 1806 s 8—Foreclosure* *Held* that a proceeding under Regulation XVII of 1806 foreclosing a mort gage by conditional sale was not conclusive as to the amount of the mortgage money against persons subsequently claiming to enforce a ri ht of pre emption and raising the question as to the amount of the purchase money *Forbes v Ameeroonnissa Begum 10 Moo I A 340* referred to Also that

of pre-emption and raising a similar question. *Held* also that a person claiming a right of pre-emp tion in respect of a mortgage by conditional sale was

RAI TAWAKHUL RAI v SHEO GHULAM I. L. R 6 All 341

6 ———— **Arrangement between ven dor and vendee as to payment of purchase money**—*Right of pre emptor to stand in the posi*

but also the right to be put in the same po with reference to all the peculiar incidents of the payment of the purchase money as that arran ed between the vendor and purcha er NIHAL SINGH v KOKALE SINGH I. L. R. 8 All. 29

7 ———— **Concealment by vendor and vendee of actual price**—*Evidence—Market* where the Court has

same by their own evidence or their evidence be believed the Court should ascertain if possible what was the market price of the property in dispute

EMPTION—contd

4 PURCHASE MONEY—contd

the time of the sale and accept that market price the probable price agreed upon between the part . It is for the plaintiff either to show what was the actual contract price or to give substantial evidence on which the Court can act showing what was market value at the time of the sale AGAR SINGH v. RAGHURAJ SINGH I. L. R 9 All. 471

8 ———— Clause in wajib ul arz fixing ce in case of sale to a co sharer—*Vendor and purchaser—Sale to a stranger for higher price—Agreement running with land—Pre emptor entitled to take property on payment of price fixed in wajib ul arz—Purchaser entitled to recover purchase*

it to a stranger and further that in case of sale to er the price to be paid should be calculated in proportion to the price for which a particular share had been sold in 1860 One of the co sharers without first offering his share to the other co sharers sold it to a stranger for a price higher than that which would be payable according to the above mentioned provision A suit for pre-emption was brought by a co sharer against the vendor and the purchaser and the plaintiff claimed the benefit of the sale upon payment of a sum calculated according the condition of the wajib ul arz relating to sales between co sharers *Held* by the Full Bench that

before it could be sold to anyone else and in case of sale to a stranger could call on the vendor and the

KHAN v. TRULA BIBI I. L. R. 6 All. 102

9 — ———————— *Agreement running with the land—Pre emptor entitled to take property on payment of price fixed in wajib ul ar* The pre-emptive clause in the wajib ul arz of a village contained a provision that the right of pre emption could be enforced on payment of such sum as would represent the kimat i murav vajah

PRE EMPTION—contd

4 PURCHASE MONEY—contd

binding on the land and therefore binding on the stranger vendee UPMANI KUAR v. RAM DIN I. L. R 10 All. 621

10 ———— **Application for refund of money paid into Court by a successful plaintiff in a suit for pre emption the decree having been set aside on appeal**—*Civil Procedure Code 1882 s 583—Interest* A plaintiff in a pre emption suit obtained a decree and paid into Court the pre emptive price as stated in that decree and the money was drawn out of Court by the vendor Subsequently the decree was reversed on appeal and the plaintiff then applied under s 583 of the Code of Civil Procedure for a refund of the money paid into Court as above described with interest *Held* that the pre emptor was entitled to a refund of the money together with interest up to date of repayment *Rogers v Comptoir D Escompte de Paris L R 3 P C 4 5* followed *Jaswant Singh v Dip Singh I L R 7 All 4 ?* referred to *Hatti Prasad v Chattarpal Dubey All Weekly Notes (1888) 28* dissented from BHAGWAN SINGH v. UMMAT UL-HASNAIN I L R 18 All 262

11. — ——— **Decreed pre emptive price paid into Court by pre emptor**—*Subsequent partial withdrawal by a creditor of the decree holder of the money so paid in* The holder of a decree for pre emption paid the decreed pre emptive price into Court A creditor of the decree holder applied for attachment of the money so paid in and ultimately was allowed by the Court to withdraw a portion of it After the decree for pre-emption had been confirmed in appeal the pre emptor applied for possession of the pre empted property *Held* that the decree holder was entitled to obtain possession and that it was not competent to the Court to pay out to any one but the person entitled to it under the decree for pre emption any portion of the pre-emptive price so long as the decree for pre emption was not modified or reversed in appeal ABDUS SALAM v. WILAYAT ALI KHAN I L R. 19 All 256

12 ———— **Calculation of price**—*Covenant for pre emption Breach of—Suit to enforce*

co sharers One of the brothers having died his widow sold his share which she had inherited with

value to be greater (Rs R95) and set aside the sale without giving possession The lower Appellate Court made an order that if plaintiffs deposited R95 in Court their appeal would be decreed

PRE EMPTION—*contd*

4 PURCHASE MONEY—*contd*

Court to deposit the money was not binding on the plaintiffs who had no right under their contract to an election after the value had been ascertained whether they would purchase at that price or not *Quære* Can a perpetual covenant as to the disposition of land be enforced? TRIPOORA SOONDUREE *v* JUGGERNATH DUTT 24 W R 321

13 — — Conditional decree—*Appeal—Costs—Civil Procedure Code 1882 ss 214 583* A Court of first instance decreed a claim for pre emption conditionally on the pre emptor paying into Court R125 within a specified period and also awarded the pre emptor R39 9 0 as his costs in the suit Within the specified period the pre emptor paid into Court the R125 and subsequently executed his decree for costs by drawing out therefrom *the R39 9 0 After this the decree was modified on* appeal the Appellate Court raising the R125 payable as the condition of pre emption to R200 and reversing the first Court s order as to costs Within the period specified in the Appellate Court s decree the pre emptor paid into Court the further sum of R75 Subsequently the vendee defendant applied to the Court under s 583 of the Code of Civil Procedure to have the property in suit restored to him contending that the pre emptor had failed to pay the full R200 within the prescribed period *Held* by STRAIGHT *J* affirming the judgment of MAHMOOD *J* that this contention must fail that the payment of R125 due under the first Court s decree could not be said to have been reduced by the pre emptor subsequently executing against the amount so paid the order of that Court in his favour for costs and that the subsequent payment of R75 within the period prescribed by the Appellate Court satisfied the requirements of that Court s decree subject to the judgment debtor s right to recover the costs realized in execution of the first Court s decree *Held* by TYRRELL *J* (*contra*) that although the pre emptor had once made a payment which for a few days was a compliance with the first Court s decree such compliance became immaterial when that decree was modified on appeal and as he had never had in any Court a credit for R200 as required by the Appellate Court s decree which alone was the decree in the cause he had failed to fulfil the condition essential to pre emption and therefore the defendant s application should be allowed BALMUKAND *v* PANCHAM

I L R 10 All 400

14 ———— Mortgage—*Mortgage money fraudulently over stated—Claim of pre emptor decreed at a lower figure—Suit by mortgagees against mortgagor to recover the difference* Din Bandhu mortgaged to Sheodihal and others certain property and the mortgagor and the mortgagees for purposes of their own fraudulently agreed to overstate the consideration for the mortgage One Shuhrat Singh then brought a pre emption suit against the parties to the mortgage and obtained a decree which allowed him to take over the rights of the mortgagees upon payment of a sum much less than

PRE-EMPTION—*contd*

4 PURCHASE MONEY—*concld*

the consideration stated in the bond which was found by the Court to have been largely fictitious The mortgagees after the success of Shuhrat Singh s suit sued the representatives of the mortgagor to [illegible]

cent per annum and partly upon general grounds of equity *Held* that from no point of view were the plaintiffs entitled to succeed The stipulations in the bond above referred to enured to the benefit of the pre emptor and since the plaintiffs had joined with the defendants in misrepresenting the amount of the consideration for the mortgage *they could* not be allowed to take advantage of their own wrong BALBHADDAR NATH *v* SHEODIHAL (1902)

I L R 24 All 514

15 ———— Set off—*Decree in pre-emption suit—Payment into Court—Costs* A judgment dated the 24th September 1904 in favour of the pre emptors under a foreclosure decree directed payment within two months of R2 100 together with the costs if any incurred by the purchaser in obtaining the order absolute The corresponding decree contained the word together with the costs of the purchaser in the foreclosure case if any The decree also awarded the plaintiffs a sum of R117 4 0 as costs. The R2 100 was paid within the time fixed. On the 24th February 1905 the judgment debtors claimed that they were entitled to be restored to possession and that the suit must be deemed to have been dismissed inasmuch as the costs amounting to R25 12 0 of the proceedings relative to the order absolute had not been deposited *Held* following *Ishri v Gopal Saran I L R 6 All 351* that the R117 4 0 could be set off against the R25 12 0 that the R2 100 deposited was therefore in excess of the actual sum payable under the decree and that the judgment debtors claim failed *Jaggar Nath Pande v Joku Tewari I L R 18 All 223* referred to PARMANAND RAOT *v* GOBARDHAN SAHAI (1906) I L R 28 All 676

16 ———— Fictitious price—*Price stated in sale deed alleged to be fictitious—Burden of proof* When a plaintiff pre emptor comes into Court alleging that the price entered in the sale deed is fictitious it rests on him to give some *primá facie* evidence that this is the case But comparatively slight evidence is sufficient for such purpose and it will then be for the parties to the sale to show that the price alleged to have been paid was actually paid. *Bhagwan Singh v Mahabir Singh I L R 5 All 184 Sheo Pargash Dube v Dhanraj Dube I L R 9 All 22* and *Agar Singh v Raghuraj Singh I L R 29 All 41* referred to *O Conor v Ghulam Haidar I L R 8 All 217* not followed. ABDUL MAJID *v* AMOLAK (1907) I L R 29 All 618

PRE EMPTION—contd

5 PROFITS OF LAND

1. ——— Lambardar collecting rents for co sharer—*Right of suit by pre emptor to recover profits accruing between the date of his decree and the time when he obtained mutation of names—Principal and agent* Held that a pre emptor who had obtained a decree for pre emption in respect of a share in a pure zemindari village could not successfully maintain a suit against the judgment-debtor co sharer for the profits of the pre empted share accruing between the date of the original decree and the date of his obtaining mutation of name such profits having been collected by the lambardar but not paid over to the judgment debtor inasmuch as neither could the lambardar be considered as an agent of the co sharer whose possession of the profits was the possession of his principal nor was there any obligation on the co sharer to collect the profits and hold them to the use of the plaintiff SRI KISHEN LAL v ATMA RAM

I L R 19 All 261

2 ——— Annual profits—*One total price for ten villages—Ten separate conveyances having a separate price for each village—Government revenue—Amount to be paid on pre-emption* Where *A* agreed to buy from *B* ten villages for one total price but by subsequent agreement between *A* and *B* ten separate conveyances were executed showing ten separate prices —*Held* in a suit for pre emption that if it was proved that the consideration mentioned in the sale deeds had been paid and received the Court should not look further and ascertain the value of the property in suit by a consideration of the annual profits or of the amount of Government revenue O CONOR v GHULAM HAIDAR (1906) I L R 28 All 617

6 LOSS OR WAIVER OF RIGHT

1 ——— Refusal to purchase—*Conditional decree* Held that the plaintiff having refused to purchase at the sum actually given could not come into Court and ask for a conditional decree which is given in cases where a higher price than was actually paid has been alleged to have been paid to the prejudice of the pre emptor KUDHARA v KHUMAN SINGH 1 Agra 265

2 ——— *Bonâ fide belief that price stated is in excess of real price* A per

I L R 3 All 236

3 ——— Effect of imperfect partition on right of pre emption Where there is imperfect partition —*i e* where the land is divided but the joint liability to the Government remains and the property is not made into separate mehal — the right of pre-emption is not lost RAM PERSHAD v BULJEET SINGH 2 Agra 252

PRE EMPTION—contd

6 LOSS OR WAIVER OF RIGHT—contd

4 ——— Pre emptor opposing mutation of names—*Effect of such opposition on right of pre emption* Held that a pre emptor is

5 ——— Insertion of names of purchaser s sons in deed of sale effect of—*Absence of intention to defraud* Held that a preferential right to purchase is not lost merely by the inclusion of the names of the sons of the purchaser in the sale deed if it be proved that the actual purchaser was the father and the names of the sons were included in accordance with the prevailing usage without any intention to defraud the other co sharers DOWLUT SINGH v KEDAR SINGH

3 Agra 25

6 ——— Re sale—*Effect of re sale on right of pre emption* A re sale cannot destroy the right of pre emption in a property the sale of which is admitted by the vendor PUTOOARAM v SHAM LALL SAHOO 7 W R 206

7 ——— Acquiescence in mortgage by conditional sale—*Relinquishment* Acquiescence in a mortgage by conditional sale does not involve relinquishment of the right of pre emption upon the conditional sale eventually becoming absolute AJAIB NATH v MATHURA PRASAD

I L R 11 All 164

8 ——— Relinquishment of right—*Partition of property sold on application of vendee—Silence of pre emptor—Waiver—Estoppel* Subsequently to the sale of a one third share in a village the vendee applied for partition of the share A co sharer who had a right of pre emption in respect of the sale made no objection to this application and the partition was effected The co sharer afterwards set up a claim to pre emption

guished and dissented from and *Bhairon Singh v Lalman All Weekly Notes (1884) 216* referred to by MAHMOOD J THAMMAN SINGH v JAMAL UD DIN I L R 7 All 442

9 ——— *Transfer of property to stranger —Right of decree holder to possession* The holder of a decree enforcing a right of pre emption who subsequently to the date of the decree sells the property to a stranger and permits the latter to pay the purchase money decreed into Court does not by such conduct debar himself from obtaining possession of the property in execution of the decree *Pajjo v Lalman I L R 6 All 180* and *Sarju Prasad v Jamna Prasad* unreported distinguished RAM SAHAI v GAYA

I L R 7 All 107

10 ——— *Co-sharer joining relatives with him in claiming right—Effect on*

PRE-EMPTION—*contd*

6 LOSS OR WAIVER OF RIGHT—*contd*

co sharer s right—Stranger A co sharer of an e tate who has a right of pre emption does not merely by joining with himself members of his family who are not co sharers in such state in a suit to enforce such right defeat such right *Manna Singh v Ramadhin Singh I L R 4 All 252* distinguished BHUREY MAL v NAWAL SINGH

I L R. 4 All. 259

11 ———— Forfeiture of right—*Suit by pre emptor and stranger to enforce right—Effects on pre emptor s right— Justice equity and good con cience —Mahomedan law Held* applying the doctrine of the Mahomedan law of pre emption such doctrine being in accordance with ju tice equity and good conscience that a co sharer in a village who had under the wajib ul arz a right of pre emption in respect of the sale of a share who joined a stranger (that is a person who has not such right) with himself in suing to enforce such right thereby forfeited such right *Sheodyal Ram v Bhyro Ram N W P S D A (1860) 58 Guneshee Lal v Zaraut Ali 2 N W 343* and *Fakir Rawot v Emambaksh B L R Sup Vol 3* referred to BHAWANI PRASAD v DAMRU

I L R 5 All. 197

RAJJO v LALMAN I L R. 5 All. 180

12. ———— Effect on right of pre emption of breach on a former occasion of the provisions of the wajib ul urz relating to pre emption. *Semble* That a claimant for pre-emption under a wajib ul arz would not forfeit his right to pre emption if upon a former occa ion he had violated the provisions of the wajib ul arz by mortgaging his share to a stranger *Gokul Chand v Ram Prasad All Weekly Notes (1891) 127* followed *Rajjo v Lalman I L R 5 All 180* referred to UJAGAR LAL v JIA LAL

I L R 18 All. 382

13 ———— Effect on right of pre emption of joining a stranger in suit for pre emption—*Amendment of plaint—Striking out name of party* Where a plaintiff having a right to pre empt joins with himself in a suit for pre

[illegible]

Nath v Badri Narain I L R 19 All 148 and *Fida Ali v Mu affar Ali I L R 5 All 65* referred to BHUPAL SINGH v MOHAN SINGH

I L R 19 All. 324

14 ———— Sale to a stranger—*Wajib ul urz—Re ale before suit to a co sharer—Effect of such re sale* In cases of pre-emption based upon a wajib ul arz the right of pre emption does not survive if the land which is subject to pre-emption having been sold to a stranger is subsequently re sold by the stranger vendee before suit to a co sharer having equal rights with those seeking pre emp tion SEBH MAL v HUKAM SINGH

I L R. 20 All. 100

PRE EMPTION—*contd*

6 LOSS OR WAIVER OF RIGHT—*contd.*

15 ———— Non payment of price fixed by decree within the time limited by decree—*Effect of an appeal from a decree for pre emption on the time limited for paying in the pre emptive price—Limitation—Civil Procedure Code 1882 s 214* A decree was given in favour of the plaintiff in a suit for pre emption The plaintiff paid in a portion only of the pre-emptive price within the time limited by the decree The defendant appealed Long after the time pre scribed for payment by the original decree had expired the defendant s appeal was dismissed but the time for payment was not extended by the Appel late Court s decree The plaintiff then after the lapse of a period from the date of the appellate decree in excess of that which had been given him for payment by the decree of the first Court, paid in the balance of the pre emptive price which was accepted by the Court. On appeal by the defend ant from the Court s order directing the balance of the pre-emptive price to be received it was *held* that the order of the Court allowing the payment was without jurisdiction, the decree having on the expiration of the time limited without payment by the plaintiff become a decree in favour of the defendant and the plaintiff having therefore lost his right of pre-emption under it. JAGGAR NATH PANDE v JOKHU TEWARI I. L. R. 18 All. 293

16 ———— Contract running with the land—*Sale—Right of re purchase provided in a conveyance.* In a conveyance executed by plaint iffs in favour of defendant No 1 s father it was provided that in case he sold the property subse quently he would be bound to give preference to the plaintiffs *i e* his vendors to purchase the same for a certain sum and on their refusal to accept the offer he would be at liberty to sell the same to others After his father s death defend ant No 1 without offering to sell the land to the plaintiffs though they were willing to purchase it sold the same to defendants Nos 2 3 and 4 who had notice of the contract *Held* that the contract was not binding on defendant No 1 and therefore the sale to defendants Nos 2 3 and 4 was not liable to be set a ide NOBIN CHANDRA SOOT v NABAB ALI SARKAR (1900) 5 C W N 343

17 ———— Acquiescence—*Wajib ul-arz—Pre emptor accepting a lease of property in suit from the vendee* Where in a suit for pre-emption based upon a custom declared in the wajib ul arz it was found that the pre emptor had with knowledge of his right as pre-emptor accepted a lease of the land claimed from the vendee it was *held* that this amounted to such an acquiescence in the sale as would bar the plaintiff s righ of suit. KISHAN LAL v ISHRI (1905) I L R 28 All. 237

7 CUSTOM.

1. ———— Evidence of custom—*Custom need not be immemorial* In order that a custom of pre-emption may be held to be established it is not neces ary to show that the custom is immemorial

PRE EMPTION—*contd*

7 CUSTOM—*contd*

in the sense of the English common law Hence where in a village which came into existence after 1846 there was found in 1869 evidence of a custom of pre-emption amongst the co sharers and further

I L R 26 All 454

2 ——— Local custom—*Finding by lower Court regarding existence of alleged custom—Second appeal.* Where on a question as to the

3 ——— Wajib ul arz—*Inference of cus*

tion —No pre emption suit has been instituted but the custom of pre emption is accepted. But the wajib ul arz of the same village prepared in 1864 was more explicit It ran as follows — Mention of the right of pre emption —When it is desired to transfer a share the heirs and near

producing—the custom of pre-emption that prevailed in 1864 that therefore the provisions of the Mahomedan law were not applicable POKHAR SINGH v HUSAIN KHAN (1906)

I L R. 28 All. 679

4. ——— *Wajib ul-arz—Custom—Effect of perfect partition no new wajib ul ar es for the new mahals being framed* Where a village in which according to the wajib ul arz a custom of pre emption existed amongst the co sharers was divided by perfect partition into three mahals but no fresh wajib ul arzes were framed for the new mahals it was *held* that the custom was either abrogated in its entirety or remained applic

PRE EMPTION—*contd*

7 CUSTOM—*concld*

able in its entirety to the co sharers in the various new mahals *inter se.* *Badri Prasad* v *Hashmat Ali* *I L R 29 All 299* discussed *Dalganjan Singh* v *Kalka Singh I L R 22 All 1* referred to GOBIND RAM v MASIHULLAH KHAN (1907)

I L R 29 All. 295

5 ——— *Wajib ul ar — Custom of contract—Interpretation of document—Exchange—Variation in terms of* wajib ul arz An exchange gives rise to a right of pre emption when such right arises on a sale Where there has been a variation in the terms of the wajib ul arzes prepared respectively at two settlements and the previous wajib ul arz recorded a custom *Held* that the variation in the terms of the later wajib ul arz did not necessarily affect the custom *Gulab Singh* v *Jag Ram 3 All L J P 646* distinguished. DARYAO SINGH v JAHAN SINGH (1909)

I L. R 31 All. 539

8 MISCELLANEOUS CASES

1. ——— Suit for pre emption—*Cus*

2 ——— Pleading right of pre emption—*Right pleaded in defence to suit for possession by purchaser of co sharer s rights and interests* A co sharer of a village who is in possession cannot plead the existence of a right of pre emption in defence to a suit for possession by the purchaser of the rights and interests of another co sharer AJUDHIA BAKHSH SINGH v ARAB ALI KHAN

I L R 7 All. 892

3 ——— Want of opportunity to exercise right—*Conditions essential before alienation Held* that the plaintiff who had a pre-

1 Agra 274

4. ——— Hindus—*How far Mahomedan law of pre emption applicable amongst Hindus—Statement of claim—Meaning and form of statement to be considered. Held* that in the

67 Vol I p. 128 and *Jai Kuar* v *Heera Lal All. H C (1875) 1* referred to Further where the words used were I have a claim for pre-emption on this house If any one else purchases it I shall be put to inconvenience. Go at this very moment and take the money from Sho bi Bhusan Sircar and tell Ram Charan and Chakauri Devi to return the

PRE EMPTION—contd

8 MISCELLANEOUS CASES—contd

house by taking the money *Held* that this was sufficient claim the concluding portion evincing a desire on the part of the plaintiff to avail herself of her right. If he had merely stated that she had a claim that would not have been sufficient CHAKAURI DEVI v SUNDARI DEVI (1905)
I L R 28 All. 590

5 ——— Sale of land by Government—*Wajib ul urz* When Government has acquired land permanently it does not become a co s originally ε provisions c hich deal τ are not applicable GAYA SINGH v PAM SINGH (1905)
I L R 28 All. 235

6 ——— Attachment of price—*Civil Procedure Code 1882 s 266 (1)—Execution of decree—Attachment—Contingent right—Right of pre emption under a conditional decree for pre emption* *Held* that the interest in the pre empted property of a successful pre emptor who has not yet paid the pre emptive price fixed by his decree is an interest the attachment of which is prohibited by s 266 (1) of the Code of Civil Procedure GORAKH SINGH v SIDH GOPAL (1906) I L R 28 All. 383

7 ——— Right of heir to maintain suit—*Wajib ul arz—Devolution of pre emptor's interest before suit brought—Plaintiff pre emptor joining as co plaintiff the heir of a deceased co sharer*

of his co plaintiff So held by RICHARDS and ... BALI JJ (*dissentiente* BANERJI J) *Muhammad Yusuf Ali Khan* v *Dal Kuar I L R 20 All 148* and *Kunwilla Kunwar* v *Gopal Prasad I L R 28 All 424* followed *Sheo Narain* v *Hira I L R 7 All 535* distinguished *Kedar Nath* v *Chunni Lal S A No 1123 of 1904* decided 10th January 1907 unreported *Fida Ali* v *Muzaffar Ali I L R 5 All 65* *Bhawani Prasad* v *Damru I L R 5 All 197* *Bhupal Singh* v *Mohan Singh I L R 19 All 324* and *Chotu* v *Husain Bakhsh All Weekly Notes (1893) 25* referred to Per BANERJI J — The right of pre emption being a right of substitution the heir of ...

PRE EMPTION—concld

8 MISCELLANEOUS CASES—concld

20 All 148 Kedar Nath v *Chunni Lal* decided 10th January 1907, unreported *Bhawani Prasad* v *Damru I L R 5 All 65* *Bhupal Singh* v *Mohan Singh I L R 19 All 324* and *Chotu* v *Husain Bakhsh All Weekly Notes (1893) 25* referred to WAJID ALI v SHABAN (1909) I L R 31 All 623

PREFERENTIAL HEIR

See HINDU LAW I L R 36 Calc 86

PREJUDICE

See CONVICTION 5 C W N 567

See POSSESSION ORDER OF CRIMINAL COURT AS TO—EVIDENCE MODE OF TAKING ETC 5 C W N 544

See RIOTING I. L. R 33 Calc 295

PRELIMINARY DECREE

See APPEAL 13 C W N 142

See PARTITION I L R 36 Calc 762

——— for partition—

See PARTITION 13 C W N 690

PRELIMINARY INQUIRY

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL 6 C W N 295

See CRIMINAL PROCEDURE CODE s 301 (1872 s 104 1861 69 s 206) 14 W R Cr 20

See CRIMINAL PROCEEDINGS 9 W R Cr 54

See EVIDENCE I L R 35 Calc 751

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT 8 W R Cr 61
3 B L R A Cr 47

See PRESIDENCY MAGISTRATE I L R 16 Bom 159

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES I L R 20 Calc 349

See SANCTION FOR PROSECUTION—NATURE FORM AND SUFFICIENCY OF SANCTION I L R 6 All 98 101
I L R 20 Calc 474
I L R 15 All. 392

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION I L R 19 Calc 345
I L R 23 Calc 583

PRELIMINARY ORDER OR DECREE

See APPEAL—OMISSION FOR APPEAL IN TIME AGAINST PRELIMINARY ORDER OR DECREE.

PREROGATIVE OF THE CROWN

See ADVOCATE GENERAL.
I L R 30 Bom 174

See CIVIL PROCEDURE CODE 1882 s 411
I L R 33 Calc 1040

——— power of Indian Legislature to affect—

See MADRAS CITY MUNICIPAL ACT s 341
I L R 25 Mad. 457

——— statute limiting—

See SUPREME COURT BOMBAY
3 Moo I A 463 488

——— to discontinue prosecution—

See RIOTING 7 C W N 301

——— *Crown—Express words* The prerogative of the Crown cannot be taken away except by express words *In the matter of the will of* WI MATUA (1908)
12 C W N 1081

PRESCRIPTION

See ADVERSE POSSESSION
I L R 30 Mad 145

See EASEMENT

See LANDLORD AND TENANT
9 C W N 858

See LIMITATION ACT 1877 s 26 (1871 s 27)

See RIPARIAN OWNER
I L R 35 Calc 851

See SPECIFIC RELIEF ACT s 5?
8 C W N 710

——— easements—

See EASEMENT I L R 29 Calc 363
8 C W N 244

See RIGHT OF WAY 6 C W N 197

See RIGHT TO USE OF WATER.
I L R 29 Calc 100
I L R 30 Calc 281

PRESCRIPTION—*contd*

1 CLAIM TO PRESCRIPTION

1 ——— Assertion of right form of—*Election in alternative case.* The right asserted in a claim founded on prescription should be strictly and clearly defined and cannot be based on rights which are inconsistent When a party is called

See DHUNPUT SINGH BAHADOOR v NARAIN PERSHAD SINGH 20 W R 94

2 EASEMENTS

(a) GENERALLY

2 ——— Prescription Act—*Law of mofussil of India* The English Prescription Act does not apply to the mofussil of India BIJOY PROKASH SINGH v AMEER ALLY 9 W R 91

3 ——— Easements law of applicability of to British subjects in India—*Civil law* The law of easements in England being derived from the civil law has no peculiarities to debar its being applied to British subjects in India CULLIANDOSS KIRPARAM v CLEVELAND
2 Ind Jur O S 15

4. ——— Foundation of prescriptive rights—*Presumption of grant* Prescriptive rights are founded on the presumption of a grant from long continued uninterrupted user and enjoyment as of right. CHUNDER JALPAH v PANCHURN MOOKERJEE 15 W R 212

5 ——— Easements how created—*User—Easement creating damage to servient tenement* A grant either express or implied in prescription is necessary to establish an easement Conclusive evidence is required to prove an easement the result of which is great damage to the servient tenement Without an uninterrupted user there can be no claim to an easement ZUMEER ALI v DOORGABUN 1 W R 230

6 ——— Long possession—*User—Presumption of title.* Long and undisturbed user or possession confers title by prescription because it is presumed to be founded on title. GOOROO PERSHAD ROY v BYKUNTO CHUNDER ROY
6 W R 82

7 ——— Permissive possession To constitute a right by prescription the possession

8 ——— Right of user—*Ancient and*

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*a*) GENERALLY—*concld*

of right and has not been interrupted MALLIK JAWAD UL HUQ *v* RAM PRASAD DAS

3 B L R A C 281

9 ———— **Period creating right**—*User as creating prescriptive title* It was formerly held tha no fixed period had been laid down to create a right by prescription KRISHNA MOHAN MOOKERJEE *v* JAGANNATH POY JUGI

2 B L R A C 323

RUPCHANDRA GHOSE *v* RUPMANJARI DASI

3 B L R A C 325 12 W R 274

DOORGA CHURN PAUL *v* PEAREE MOHUN

9 W R 283

BIJOY KESHUB ROY *v* OBHOY CHURN GHOSE

16 W R 198

10 ———— *Uninterrupted enjoyment—Bom Reg V of 18 , s 1 cl 1 Held* that uninterrupted enjoyment for a period of more than thirty years was necessary in order to acquire a title by prescription to an easement in the mofu sil of the Bombay Presidency the law applicable

RAMBHAU BAPUSHET *v* BHAI BAPUSHET

2 Bom 352 2nd Ed. 333

11. ———— *User—Cases prior to Limitation Act 1871* Prior to the passing of the Limitation Act 1871 in order to give rise to an easement by prescription over immoveable pro perty in the island of Bombay it was necessary for a plaintiff claiming such an easement to prove twenty years uninterrupted user of it NAROTAM BAPU *v* GANPATRAV PANDURANG

8 Bom O C 69

The period was fixed by the Limitatiom Act 1871 s 27 at twenty years and that provision has been continued in the pre ent Limitation Act s. 26

12 ———— **Alterations in property**—*Severance of tenements—Continuance of easement without grant* If the alterations which a man makes in his property before alienation of any part of it are palpable and manifest and in their nature permanent changes in the disposition of the pro perty so that one part thereof becomes dependent on another the purcha er of either part must take the land either burdened or benefited as the case may be by the qualities thus attached thereto On a severance of tenements an easement in its nature continuous would pass by implication of law without any words of grant AMUTOOL RUSSOOL *v* JHOOMUCK SINGH

24 W R 345

(*b*) HOUSES AND OTHER BUILDINGS

13 ———— **Loss of easements**—*Di con tinuance of user—Pulling down house* Where the hou e the right of easement to which was claimed was not and had not been in existence for several years nor was the intention hown of rebuilding it within a reasonable time —*Held* that the ri ht of easement which is acquired by prescription and en joy ment and continues so long as the per on enjoy ing it continues the enjoyment and shows an inten tion to continue it had thus been lost by disconti nuance and that by the destruction of the tene

SHAD

KALEE DASS BANERJEE *v* BHOOBUN MOHUN DOSS

20 W R 185

14 ———— **Long continued user of house as house of prayer**—*Public right* A thatched hou e which has been u ed by the pro prietor of the land whereon it stood as a house of prayer for himself family neighbours and the public having been blown down, a brick built one was erected in its stead by public subscription and maintained for the same purpose After the pro prietor s demise his heirs claimed the right and title to the house *Held* that the con ent of the proprietor added to the long use of the house by the public entitled the public by way of implied grant to the occupation of the same as a house for prayer and the plaintiffs could not succeed. SUTROO SHAIKH DURJEE *v* FUTTEH SHAIKH DURJEE

15 W R 505

15 ———— **Wall**—*Adjoining building—Side wall* A built a house in the rear of B s house There was a passage between the houses Over the passage A built a room connecting the two houses This room corresponded with B s first floor and had an open terrace on the top of it The structure by which A connected the two houses was quite indepen lent of B s house It was up ported throughout by wooden pillars adjoining B s wall which the cross beams did not penetrate or touch. But the structure was built so clo e to B s wall that the latter served as a side wall to the room This state of things had existed for upwards of twenty years *Held* that A did not acquire any easement over B's wall by merely building on his ... even though A had ... t trusted to ... s) hou e on ... CHOTALAL HARGOVAN

I. L. R. 13 Bom. 79

16 ———— **Projection**—*Beneficial enjoy ment of the dominant owner—Cornice projected over another s land as ornamentation—Indian Easements Act (V of 1882)* There can be no pre criptive right to a projection which has been erected merely for the purpose of ornamentation. *John George Bagram v Khettranath Karformah 3 B L R (O C) 18 47* ref rred to NRITYA KUMARI DASSI *v* PUDDOMONI BEWAH (1903)

I L R 30 Calc 503

s c 7 C W N 649

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(b) HOUSES AND OTHER BUILDINGS—*contd*

17 ———————— *Right to cornice acquired by after twelve years enjoyment* Where a man erects a building overhanging the land of an other he commit a trespass for which an action will lie against him and he will by pre cription ac quire a right to the pace occupied by such projec tion and the right to maintain it in its position. A cornice overhanging a neighbour s land cannot be removed by such neighbour if it has been in exist ence for more than twelve years *Mohonlal Jechand v Amrallal Bechardas I L R 3 Bom 174* re ferred to and followed PATHINAVELU MUDALIAR v KOLANDAVELU PILLAI (1906)
I L R 29 Mad 511

(c) LAND

18 ———— **Title by prescription**—*Ad verse possession Quære* Whether a title to land can be gained by prescription without adverse pos ses ion. RAJ NARAIN DUTT v GOURMONEE DOSSEE
6 W R 215

19 ———— **Immemorial use of land for burial ground**—*Right of zamindar* Where a piece of land has been u ed from time immemorial by the inhabitants of a mohalla for the purpo e of burying their dead such use excludes any claim to exclusive po session by the zamindar which inter feres with that use MOHUN LALL v NOOR AHMUD
1 N W Ed. 1873 202

20 ———— **Right to land for stall in market** In a suit to recover possession of a piece of land on which defendant had erected a stall for the sale of commodities on market days it was held

11 W R 112

DHAVRAV v ABAJI 1 Bom. 64

22 ———— **Right to watan**—*Bom Reg I of 1827 s 1 cl 1—Uninterrupted possession*

1845 In 1846 it was restored to the defendants

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(c) LAND—*contd*

Held that the defendants had uninterrupted posses sion for more than thirty years under cl 1 of s 1 of Regulation V of 1827 LADO LAKSHUMAN v KRISHNAJI SADASHIV **6 Bom A C 41**

23 ———— **Right to place tazias on certain plot of land during Moharram**—*Easements Act (V of 1882) ss 4 and 18—Customary right*

cus

of

of

of a chabutra thereon The defendants denied the plaintiff s title and alleged that they always used the chabutra as a sitting place and that during the Moharram the tazias and alums were exhibited upon the chabutra and a takht was placed upon it The Court of first instance found that the

connexion with each other is not established have

and BANERJI J that this finding of fact did not necessarily in law lead to the conclusion that there was a local custom by virtue of which the easement now claimed by the defendants was acquired Where a local custom excluding or limiting the general rules of law is set up a Court should not decide that it exists unless such Court is satisfied of its reasonableness and its certainty as to extent and application and is further satisfied by the evidence that the enjoyment of the right was not by leave granted or by stealth or by force and that it had been openly enjoyed for such a length

I L R 17 All. 87

rever ing on appeal under the Letters Patent MAM MAN v KUAR SEN **I L R 18 All 178**

24 ———— **Permanent tenancy ac quisition of by farmer**—*Pre cription—Land lord and tenant—Decree for Has possession*

ome of the land as *jotdar* and the rest as *ijaradar* under the plaintiff and a decree was made in plaint

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(c) LAND—*concld*

iff s favour for *khas* possession of such lands only as *B* held as *ijaradar* But although symbolical po e sion of the lands decreed was delivered to the plaintiff *B* continued to hold possession of all the lands in suit for more than twelve years On

nent tenant but that the sub soil in respect of which no prescriptive right had been made out by *B* remained with the landlord. It was to be pre sumed that after symbolical possession was de livered to the plaintiff *B* continued to hold the lands as on the title which he had already asserted in the suit and limitation ran from that date and not from the date or dates on which *B* subsequently made a ertions of permanent title to the know

Seshamma Shettati v *Chickaya Hegade I L R 25 Mad 507* and *Rajundar Kishwar Singh* v *Sheo Pursun Misser 10 Moo I A 438* referred to BAGDU MAJHI *v* DURGA PROSAD SINGH (1905)
9 C W N 292

(d) LIGHT AND AIR.

25 ———— New windows—*Injunction—Alteration of easement—New windows higher than the old ones—New easement—Indian Easements Act (V of 1882) s 23* Plaintiff had two windows in the rear wall of his house In 1886 he rebuilt his house and opened new windows which were of nearly the same size but were a little higher than the old ones. In 1899 defendant built his house and blocked up these two new windows The

as their position was higher than that of the old windows the burden on the ervient tenement was rather less than before On second appeal —*Held* reversing the decree and dismissing the suit that the ea ement claimed in respect of the new windows which did not receive the same cones of light as were enjoyed through the old ones was

I L R 26 Bom 514

26 ———— Light and air right to—*Easements to dwelling house—Use as a dwelling*

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(d) LIGHT AND AIR—*contd*

of light and air from arising in respect of such windows to take steps to challenge and hinder the acquisition of such right PRANJIVAN DAS HARJIVAN DAS *v* MAYARAM SAMAL DAS
1 Bom. 148

27 ———— *Ancient lights*

of his premises is immaterial PURUN MUDDUCK *v* OODAY CHAND MALLICK 3 W R. 29

MAHOMED HOSSEIN *v* JAFUR ALI 4 W R. 23

28 ———— *Right to have building removed—Sufficient light right to access of* An easement of light to a window only gives a right to have buildings that obstruct it removed so as to allow the access of sufficient light to the window BALA *v* MAHARU
I L R 20 Bom. 788

29 ———— *Right to have windows closed—Invasion of privacy comfort and*

30 ———— *Presumption of lost grant—Positive and negative servitudes—Obstructions—2 & 3 Will IV c. 71* In a suit to remove an obstruction to the enjoyment of light and air and for damages —*Held* by MARKBY J that in cases where English law is applicable the law of prescription is that existing in England prior to the passing of the Prescription Act Although the enjoyment of light and air as of right for upwards of thirty years is evidence from which an enjoyment from time immemorial may be presumed yet inasmuch as the period of legal memory is about 700 years the claim by prescription in this country is defeated by the fact that English law has only been introduced here for about 200 years Where an easement has been enjoyed for upwards of twenty years the presumption of a grant is a

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*d*) LIGHT AND AIR—*contd*

question of fact and not of law Distinction drawn between positive and negative servitudes *Held* by PEACOCK C J—A right to air may be acquired by express grant but it cannot be acquired merely by presumption arising from user whether the presumption is a presumption of prescription or not The only amount of light which can be claimed by prescription or by length of enjoyment

e ced in by the owner of the servient tenement raise a presumption of right which in the absence of any evidence to rebut it ought to be acted upon by those who have to determine the facts Such presumption is one of law and not of fact *Held*

By analogy to the law of limitation an adverse and uninterrupted use of an easement for twenty years

31. ——————— *Knowledge and acquiescence—2 & 3 Will IV c 71* In a suit for enforcing the removal of an obstruction to the alleged right of the plaintiffs to the light and air

the windows in question were had been subsequently commenced in 1849 and the Judge of the Court below found on the evidence that the room and windows had been completed and in use for a period of twenty years prior to the date of suit May 18th 1870 that the plaintiffs had enjoyed the light and air through the windows for a period of twenty years without any interruption by the defendants and it being proved that the defendants had by buildings obstructed the light and air coming to the plaintiff s windows he granted an injunction commanding the defendants to take down so much of the wall as rose to the height of

English law before the Prescription Act (which is the law governing the case) the presumption of a grant in the case of a claim to the access and use of light for a building was a presumption of fact

the presumption being founded on the consent or acquiescence of the owner of the servient tenement Acquiescence implies knowledge and knowledge may be presumed where the owner is in possession There must be knowledge for twenty years at any rate if the knowledge were for a less period whether there was a grant would be a question of fact and no presumption could arise The question of whether or not there was knowledge is one preliminary to the consideration whether or not a grant is to be presumed *Held* on the evidence that there had been no knowledge on the part of the defendants during the whole time and therefore there had not been a twenty years enjoyment of the light and air with their acquiescence *Held per* MARKBY J—The presumption of a lost grant is one of fact An uninterrupted user for twenty years would be evidence from which taken with other circumstances it might be inferred that a grant had existed No patientia or submission on the part of the defendants being shown so as to constitute an acknowledgment of the existence of the right of the plaintiffs to the light and air the defendants were entitled to succeed
BHUBAN MOHAN BANERJEE *v* ELLIOTT
6 B L R 85

of the servient tenement must be shown In a

plaintiffs received notice from the defendants of

it was not actually raised to such a height as to amount to an obstruction until some days after the twenty years had elapsed *Held* that there was not an enjoyment for twenty years with the acquiescence of the defendants such as entitled the plaintiffs to maintain the suit *Quære* Whether

L R I A Sup Vol 175

32. ——————— *Act IX of 1871 s — —Enjoyment as of right —Unity of possession —The English Prescription Act (2 & 3 Will IV c 71) s 3—Grant independent of user* In a suit to restrain the defendant from obstructing the access of light and air through certain windows of

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*d*) LIGHT AND AIR—*contd*

the plaintiff s house it appeared that both the tene ments had formerly constituted the joint prope ty of a Hindu family and that in 1835 a partition took place among the various members composing it by which the tenement in the occupation of the plaint iff became separated from that occupied by the defendant and that the latter property was in 1860 purchased by the plaintiff jointly with one *G* but under the purchase the plaintiff took sole pos session thereof that in 1867 however he relin quished it in favour of *C* in pursuance of an award wherein it was found the plaintiff had no right or title thereto and that in 1870 it was purchased by the defendant who in 1871 and 1872 erected the obstructions complained of by the plaintiff *Held* that though in the interval between 1860 and 1867 the plaintiff had not such an estate in the servient tenement as to constitute unity of title in him to the two tenements and thereby extinguish all ease ments between them yet the unity of possession in the plaintiff during that period excluded the oper ation of s 27 of Act IX of 1871 as the enjoyment during that time was not of right *Semble* In order that the enjoyment should be of right there must be an adverse exerci e of it as against the servient holder Act IX of 1871 does not exclude other modes than therein provided of ac *quiring an easement by enjoyment In this case*

[illegible]

the access of light or air should be so diminished as with respect to air to prove a nuisance or injurious to health, and with respect to light to render the house unfit for comfortable habitation MODHOO SOODUN DEY *v* BISSONATH DEY

15 B L R 361

33 ——————— *Ancient lights—Enlargement of window—Obstruction—Notice—Delay—Mandatory injunction* Where a person who has a right to light from a certa n window opens a

[illegible]

structing the old but if he cannot obstruct the new without obstructing the old he must submit to the burden A plaintiff entitled as of right to light and air through a certain window subse quently enlarged it and on the light thereto being interfered with by the defendant gave him notice to remove the obstruction two days after it had been completed. *Held* that he had been guilty of no delay in taking steps to prevent the obstruction and that he was entitled to a mandatory injunction requiring the defendant to remove it PROVA BUTTY DABEE *v* MOHENDRO LALL BOSE

I L R 7 Calc 453

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*d*) LIGHT AND AIR—*contd*

34. ——————— *Obstruction—Substantial injury—Injunction—Damages—Acquiescence* Any act by which the control of light and air are taken off the hands of the person en titled to them or by which the access of light and air to the window of a dwelling house is interfered with is *prima facie* an injury of a serious character Where the defendant without leave or license took possession of the plaintiff's window as completely as if he had blocked it up altogether —*Held* that no precedent warranted the substitution of damages for an injunction in such a case against the plaint iff s will The defendant s building which ob structed the access of light and air to the plaintiff s window began in May and the plaintiff instituted his suit in July *Held* that *prima facie* the plaint iff was entitled to the removal of the obstruction and that it was for the defendant to show that the right had been lost by acquiescence NAND KISHOR BALGOVAN *v* BHAGUBHAI PRANVALUBHDAS

I L R, 8 Bom 95

35 ——————— *User—Adjoining houses with party wall* The plaintiff and defend ant being owners of two adjoining houses with a common party wall between them the former placed a window frame in an aperture in an upward extension of his part of the wall which he had erected eight years before suit and the latter thereupon raised the wall on her side so as to cut off the supply of light and air which the plaintiff used to receive before and after the placing of the window frame *Held* that there had been no ap propriation of the light and air by the plaintiff for the statutory period (twenty years) creating in him a right of easement and entitling him to relief against the inconvenience sustained by him SARUBAI *v* BAPU NARHAR I L R 2 Bom 660

36 ——————— *Injunction—Damages—Specific Relief Act (I of 1877) s 54 cl (c)—Limitation Act (XV of 1877) s 26—Manda*

[illegible]

granted the injunction as prayed The defendants appealed to the Joint Judge who amended the lower Court s decree by ordering the removal of the injunction and directing in its stead a new window to be opened in the plaintiff s house to the east of the window in question On appeal by the plaintiff to the High Court —*Held* reversing the decree of the lower Appellate Court that the plaint iff had an absolute and indefeasible right to the easement he had acquired and the only possible question was whether injunction or damage was the appropriate remedy under the circumstances of

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*d*) LIGHT AND AIR—*contd*

the particular ca e *Held* al o that as the evidence e tabli hed that after defendants wall was built plaintiff s room would not remain substantially as useful to him as before the plaintiff was entitled to an injunction *Holland* v *Worley* *L R* 26 *Ch D* 578 di tingui hed The High Court also directed a mandatory injunction to issue to the defendants to remove the wall they had raised after the lower Appellate Court had pas ed the decree in their favour and pending the plaintiff s appeal to the High Court KADARBHAI v RAHIMBHAI

I L R 13 Bom 674

37 —————— *New house erected on the site of ol l hou e* The mere fact of a hou e having been taken down or having fallen

servient tenement *Fowlers* v *Walker* *L J* 49 *Ch* 598 *L J* 51 *Ch* 44 and *Penl rnes* v *Monro* *L R* 1 *Ch* 61 followed A CASPERSZ v RAJ KUMAR SARKAR 3 C W N 28

38 —————— *Obstruction of right to l ght and air—Su t for injunction or damage —Sp cific Relief Act (I of 1877) s 54* The plaint

windows and on the first floor two windows all

old one woul l completely b o k up hi an ient windows and cause him material damage there being no other window in his hou e on the side next the defendant The defendant in his written tate ment denied that his new house would cause

he had widened the gully so that light to the plainti...

ished

widene

of ligh

other

six wi

fendan

prejud

the second floor The rule was subsequently dis charged the defendant consenting that the cause should be argued at the hearing as if the new house was then in the same condition The defendant however subsequently continued to build and at the date of hearing it was practically complete The lower Court (STARLING J) found that prior to the building of the new house direct light came to the plaintiff s windows to the extent at all events of 5 inches and in addition to this a con iderable amount of lateral light came to the windows over the defendant s roof The Court held that as the plaintiff had a right to this light by prescription he was absolutely entitled to the whole of it that the d fendant had by his new building cut off all the direct light and that practically all the light left to the plaintiff was reflected light the amount of which depended on the condition in which the defendant might choose to keep the walls of his house Under the e circumstance the lower Court looking at the hou e as if it was still in the condition in which it was at the time the injunc tion was discharged held that the plaintiff was en titled to a mandatory injunction and directed the defendant to remove the upper portion of the house which had been built since that time On appeal —*Held* that although the plaintiff s light had been en ibly diminished by the defendant s new building there had not been such a large material and sub tantial damage as to require in terference by injunction or that the plaintiff s room had been rendered unfit for the purpose for which it might reasonably be expected to be u ed. The Appeal Court therefore varied the decree of STARLING J and refuse l an injunction but ordered the defendant to pay the plaintiff R500 as damages CHANA HAM NILKANT NADKARNI v MOROBA RAMCHANDRA PAI

I L R 18 Bom. 474

39 —————— *Access of light and air to windows—Agreement preventing the ac qu rement of an easement—Easements Act (V of 1882) s 15 expl —Specific Relief Act (I of 1877) s 54* A promise was made regarding the access of light and air by the plaintiff's predecessor in title to windows placed by him in the upper part of his house which was separated by a narrow space from a building oppo ite belonging then to the defend

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*d*) LIGHT AND AIR—*contd*

ant s predecessor This promise was that the owner of the house would make no objection to the blocking up of the windows in question when the owner of the building opposite should rebuild it and raise it to a higher elevation. The owner of the windows accepted this promise After the lapse of twenty years the defendant having given notice proceeded to higher than of which the High Court (FARRAN J) in its Original Jurisdiction decided that the case was not one for an injunction but for dama as co of th *held* right to light and air and the cases of *Dhanjibhoy v Lisboa I L P 13 Bom 252* and *Ghanasham Nilkant Nadkarni v Moroba Ramchandra Pai I L R 18 Bom 474* followed and approved as to

I L R 20 Bom 704

Held on appeal to the Privy Council that there

From the agreement it was apparent that the enjoyment of light and air had not been granted as an easement. SULTAN NAWAZ JUNG v RUSTOMJI NANABHOY BYRAMJI JIJIBHOY

I L R 24 Bom 156
L R 26 I A 184

40 ———— Air, right to—*Right to uninterrupted passage of air* The owner of a house cannot by prescription claim to be entitled to the free and uninterrupted passage of a current of wind He can claim no more air than what is sufficient for sanitary purposes BARROW v ARCHER 2 Hyde 125

41 ———— *South breeze—Limitation Acts (IX of 1871) s 27 (XV of 1877) s 26—English Prescription Act (2 & 3 Will IV) c 71—Limitation Act effect of on the pre existing law as to nature and extent of the right to light or air* The Indian Limitation Act unlike the English Prescription Act places light and air on the same footing and the object of the Prescription Act and of the provisions of the Indian Limitation Act is not to enlarge the extent and operation of the easement but to provide another and more convenient way of acquiring such easements—a mode independent of legal fiction and capable of easy proof in a Court of law these Acts do not therefore alter in any way the pre existing law as to the nature and extent of the right. The only amount of light for a dwelling house which can be claimed by prescription or by length of time (whether prior or subsequently to the Limitation Act of 1871) with

followed The right of air is co extensive with the right to light To give a right of action, either prior or subsequently to the Limitation Act of 1871 in a case (where there is no express contract on the of air land, what is technically called a nuisance to the house in other words to render the house unfit for the ordinary purposes of habitation or business There is no such right as a right to the uninterrupted flow of south breeze as such The 45 degree rule is not a positive rule of law but is a circumstance which the Court may take into consideration, and is especially valuable when the proof of the obscuration is not definite or satisfactory DELHI AND LONDON BANK v HEM LAL DUTT

I L R 14 Calc 839

42 ———— *Partition of a joint family house—Effect of partition by a consent decree where the decree does not reserve any right to the use of light and air—Implied grant of easement upon severance of tenement* On partition of a family dwelling house by a consent decree the plaintiff claimed a right to the passage of light and air necessary for the enjoyment of his share of the building in the way in which it was enjoyed at the time of the partition though no such right was expressly reserved in the decree The defence was that the principle of an implied grant of easement upon severance of the tenement should not be applied to the case but that the rights of the parties should be determined solely with reference to the decree made in the partition suit *Held* that the principles of justice equity and good conscience should be applied to the case and that the plaintiff was entitled to the right claimed, even in the absence of any express provision in the decree reserving such right *Quære* Whether the principle of an implied grant of easement in severance of tenements would apply in a case where the partition was effected by a decree of the Court in a contested suit and not by a consent of parties. KADAMBINI DEBI v KALI KUMAR HALDAR

I L R 26 Calc 516
3 C W N 409

43 ———— Partition decree for of family dwelling house—*Implied grant of easement—Easements Act (V of 1882)* In a partition suit between brothers with respect to a family dwelling house the plaintiff was given certain rooms with windows. No easements were claimed in respect of the windows in that suit and the decree made no mention of it. The windows being ancient lights it was held that the partition decree must be taken to have made an implied grant of

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*d*) LIGHT AND AIR—*concld*

such easements DWARKA NATH PAUL *v* SUNDER LALL SEAL 3 C W N 407

(*e*) MONEY ALLOWANCE

44 ——— Allowance attached to hereditary office—*Bom Reg V of 182 —Immoveable property* An annual allowance for palkihaq to the holder of the hereditary office of desai paid by Government out of the land revenue of a particular pergunnah to successive desais for upwards of thirty years was *held* not to create a prescriptive title as such money payment was not immoveable property within the meaning of Bombay Regulation V of 1827 I cl 1 GOVERNMENT OF BOMBAY *v* DESAI KULLIANRAI HAKOOMUTRAI 14 Moo I A 551

45 ——— Annual allowance—*Presumed grant* For upwards of a century the holders of an inam had paid an annual allowance to the parties represented by the appellants plaintiffs below *Held* (TUCKER J *dissentiente*) that the recipients had acquired a good title to allowance by prescription and that an original grant for a sufficient consideration must be presumed BHAVANI *v* HASAN MIYA 1 Bom 45

46 ——— Continued voluntary payment—*Bom Reg V of 1827 s 1—Chirda haqs—Acquisitive prescription* A prescriptive right to have a yearly payment made by Government to a private individual cannot be acquired by reason of a continued series of voluntary payments made to him by Government extending over a period of more than thirty years Thus where Government paid a yearly sum of R32 4 6 to a chirda haqdar by whom no services in return were rendered from the year 1818 to 1860 and then discontinued such payment to the heir of the last holder it was *held* that such yearly payments gave the haqdar no prescriptive rights against Government COLLECTOR OF SURAT *v* DAJI JOGI 8 Bom A C 166

47 ——— Allowance not incidental to hereditary office—*Bom Reg V of 182 1 cl 1* In considering with reference to prescrip[illegible]

allowance by Government was neither incidental to [illegible]

48 ——— Fixed permanent allowance—*Grant—Immoveable property—Nibandha—Hindu law* The right to receive annually a fixed permanent allowance payable out of the revenues of a temple is nibandha and must be regarded as immoveable property under the Hindu law but this rule could not enable the right to be acquired by prescription LAKSHMANDAS BHAGAT RAMJI *v* MANOHAR GANESH TAMBEKAR I L R 10 Bom 149

(*f*) OFFICE

49 ——— Religious office held by successive appointees—*Bom Reg V of 182* [illegible] no proprietary right could be acquired by such gurus in the office or lands against the patron or owner by prescription as such a case did not come within the meaning of cl 1 of s 1 of Regulation V of 1827 NATVAR SVAMI *v* ANDANYA CHARANTI 6 Bom A C 132

(*g*) COLLECTION OF REVENUE

50 ——— Joint kabuliatdars—*Exclusive collection by one kabuliatdar for more than thirty years* Where a kabuliatdar collected Government revenue for more than thirty years the kabuliat being signed each year by his co kabuliatdar as well as by himself it was held that by so doing he had not under the circumstances acquired a prescriptive right to collect the revenue to the exclusion of his co kabuliatdar BAPU RAM PARBHU *v* VISAJI CHANDO SAKTANEKAR 8 Bom A C 182

(*h*) PRIVACY

51 ——— Customary easement—*Right to have windows closed—Custom* Case in which it was found that the plaintiff was by local custom entitled to an easement of privacy and in which the Court granted a mandatory order compelling the defendant to permanently close the door or window complained of LACHMAN PRASAD *v* JAMNA PRASAD I L R 10 All 162

52 ——— Custom—Right [illegible]

non laeda and *aed ficare in suo proprio solo non licet quod alter noc at* A substantial interference with such a right where it exist if without the con[illegible]

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*h*) PRIVACY—*concld*

joyed If this is answered in the negative no further question arises If in the affirmative the next question is whether the privacy has been sub stantially interfered with by acts done by the de

53 —————— *Custom—Right of privacy* The customary right of privacy which prevails in various parts of the North Western Province is a right which attaches to property and is not dependent on the religion of the owner of such property ABDUL RAHMAN *v* EMILE EMILE *v* ABDUL RAHMAN **I L R 16 All 69**

54 ———— **Usage proof of**—*Right of privacy—Suit to prevent opening of windows* In a suit for closing the window on the wall of the defendant and for the issue of a permanent in junction restraining the defendant from opening any windows in future in that wall on the ground that the privacy of the plaintiff had been interfered with it was proved that it had not been usual for

from opening windows in such a manner *Held* that the usage as to the right of privacy was not proved *Held* also that the fact that the defend

NATH CHOWDHRY (1900) **5 C W N 147**

(*i*) RIGHT OF WAY

55 ———— **Path across land**—*Implied grant—Modes of acquiring easements—Limitation Act (XV of 1877) s 26* In a suit for an injunction to restrain the defendant from using a path on the plaintiff s land it appeared that the land held by the plaintiff and defendant had originally belonged to one owner and that the plaintiff and the defend ant had obtained their respective tenement more than twenty years previously The path had been admittedly made by the original owner but the plaintiff contended that when he purchased the land he had closed the path This the Munsif dis believed and refused the injunction The District Judge treating the case as if it fell under s 26 of the Limitation Act and being of opinion that the defendant had not proved twenty years peaceable open and uninterrupted exercise of the right of way gave the plaintiff a decree *Held* that the mode of acquiring an easement provided by s. 26 of the Limitation Act is not the only way in which an easement may be acquired but an easement may also be acquired by implied grant In the present case the use of the path might be absolutely necessary to the enjoyment of the defendant s tene ment in which case there would be an easement of necessity or the use of the path though not ab solutely necessary to the enjoyment of the defend ant tenement might be necessary for its enjoy ment in the state in which it was at the time of severance and in this case if the easement were apparent and continuous there would be a pre sumption that it passed with the defendant s tene ment CHARU SURNOKAR *v* DOKOURI CHUNDER THAKOOR

I L R 8 Calc 956 10 C L R 577

56 ———— **Right of way**—*Implied grant—Easement upon the severance of a heritage by its*

ance of a tenement may extend to a way but that is so only where there has been some perma nence in the adaptation of the tenement from which continuity could be inferred *Charu Sur nokar* v *Dokouri Chunder Thakoor I L R 8 Calc 956* distinguished RAM NARAIN SHAHA *v* KAMALA KANTA SHAHA **I L R 26 Calc 311**

57 ———— **Lane from public road to house**—*User—Limitation Act (XV of 1871) s 27* In a suit for declaration of the plaintiff s right of way over a lane leading from a public road to a door in the plaintiff s house which lane the defend ant who resided at the end of the lane had ob structed so as to prevent access to the plaintiff s house it appeared that the house in respect of which the easement was claimed belonged in 1855 to one *H C* during the time of whose occupation there was user of the right of way over the lane to the door until he had the door bricked up In April 1865 the house was sold by *H C* and in June 1867 was conveyed by the purchaser to the plaint iff From the blocking up of the door until the *plaintiff s purchase no user* was proved The suit was brought in June 1875 about a month after the erection by the defendant of the obstruction com plained of *Held* both in the Court below and on appeal that the owner of the dominant tenement having with the intention of preventing the use of the way created an obstruction of a permanent nature which rendered such use impossible the way could not be said during the continuance of such obstruction to have been openly enjoyed ... and

I L R 1 Calc 422 ...

58 ———— **Right of passage**—*Unity of possession—Severance—Nuisance arising from acts of several persons* The words appurtenant or belonging will ordinarily carry only actual

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(i) RIGHT OF WAY—*contd*

existing easement and therefore will carry no right of way over the land of the grantor though under certain circumstances even the e words will have a wider construction Where further words are used such as therewith held or used such words will carry a way formerly enjoyed as an easement but as to which the right has been suspended by unity of possession But such words will not carry a way made by the owner of both properties during the unity of possession for his own greater convenience in the use of the two properties jointly But where during the unity of possession a way which has never existed as an easement is in fact used for the convenience of one of the tenements afterwards severed the authorities show that the words in question are large enough to carry it One who has a right of passage over any place must not any more than the owner of the soil might use it in an excessive or improper manner so as to obstruct the exercise by others of their rights The acts of several persons may together constitute a nuisance though the damage occasioned by the acts of any one if taken alone would not be appreciable CHUNDER KOOMAR MOOKERJI *v* KOYLASH CHUNDER SEIT **I L R 7 Calc 665**

Substantially confirmed on appeal *see* SHAMA CHURN DEY *v* CHUNDER COOMAR MOOKERJEE CHUNDER COOMAR MOOKERJEE *v* KOYLASH CHUNDER SETT **I L R 8 Calc 677**

59 ——————— *Change of use—Easements Act (V of 1882) s 23—Increase of servitude* Under s. 23 of the Indian Easements Act (V of 1882) a right of way enjoyed for agricultural purposes may be used for the purposes of a factory provided no additional burden is thereby imposed on the servient heritage JESANG *v* WHITTLE **I L R 23 Bom 595**

60 ——————— **Right of passage for boats in the rainy season**—*Water* A right of passage for boats in the rainy season over a channel wholly in another man s land is in respect of extent analogous to an ordinary right of way and the dominant owner cannot complain of the servient owner s narrowing the channel so long as the latter by so doing does not prevent the former from passing and repassing as conveniently as he has always been accustomed to do A right of passage for boats in the rainy season over another person s tank must be claimed in a particular direction in order to be valid DOORGA CHURN DHUR *v* KALLY COOMAR SEN **I L R 7 Calc 145 8 C L R 375**

61 ——————— **Right of private ferry**—*User for twenty years Per* CARTH C J and WHITE J —Twenty years is the shortest period within which such a right of ferry can be established by user *Per* MITTER J —Where the existence of a private right of ferry plying between the lands of *A* and *B* is admitted by *B* no question of user arises the issue that is raised between the parties is not whether a private ferry exists but whether the recognized private ferry which is in existence is the property of *A* or *B* but *semble* Supposing such question of user to arise a right of private ferry cannot be established as an indefeasible right by long user PARMESHARI PROSAD NARAIN SINGH *v* MAHOMED SYUD **I L R 6 Calc 608 7 C L R 504**

62 ——————— **Landlord and tenant**—*Easements Act (V of 1882)—Act VIII of 1891—Application of Act—Suit before Act VIII of 1891 came into force* There is nothing in Act VIII of 1891 which extended the Easements Act to the North Western Provinces to compel the Court to apply the Easements Act (V of 1882) to a suit commenced before Act VIII of 1891 came into force A tenant cannot as against his landlord acquire by prescription an easement of way in favour of the land occu[illegible]

[illegible]

I L R 14 All 185

63 ——————— **Easement of necessity**—*Landlord and tenant* A tenant cannot as against his landlord acquire by prescription an easement of way in favour of the land occupied by him [illegible]

Quære Whether one tenant can acquire a prescriptive right of easement against other tenant under the same landlord JEENAB ALI *v* ALLABUDDIN **1 C W N 151**

64 ——————— **Prescriptive right of the defendant to have branches of his trees overhanging the plaintiff's land**—*Right of the defendant to go on to the plaintiff's land to collect the fruit of the trees distinct from and not accessory to the right to have the branches overhanging* The defendant having acquired a prescriptive right to have the branches of his trees overhanging the plaintiff s land the lower Courts held that he had a [illegible]

it an accessory right to enjoy the profits of the branches in the best way possible *Held* (reversing the lower Court s decree) that the right to go on the plaintiff s land to pick the fruit off the branches was perfectly distinct from the prescriptive right to have the branches overhanging the land and could not be said to be accessory to the latter right in the sense of being within the limits of that right PARSOTAM GHELA *v* GANDRAP FATELAL GOKULDAS **I L R 17 Bom 745**

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*h*) PRIVACY—*concld*

joyed If this is answered in the negative no further question arises If in the affirmative the next question is whether the privacy has been sub stantially interfered with by acts done by the de

53 ———— *Cu tom—Right of privacy* The customary right of privacy which prevails in various parts of the North Western Pro vince is a right which attaches to property and is not dependent on the religion of the owner of uch property ABDUL RAHMAN v EMILE EMILE v ABDUL RAHMAN I L R 16 All 69

54 ———— **Usage proof of**—*Right of privacy—Suit to prevent opening of windows* In a suit for closing the window on the wall of the defendant and for the issue of a permanent in junction restraining the defendant from opening any windows in future in that wall on the ground that the privacy of the plaintiff had been interfered with it was proved that it had not been usual for

from opening windows in such a manner *Held* that the u age as to the right of privacy was not proved *Held* also that the fact that the defend

NATH CHOWDHRY (1900) 5 C W N 147

(*i*) RIGHT OF WAY

55 ———— **Path across land**—*Implied grant—Modes of acquiring easements—Limitation Act (XV of 1877) s 26* In a suit for an injunction

ant had obtained their respective tenements more than twenty years previously The path had been admittedly made by the original owner but the plaintiff contended that when he purchased the land he had clo ed the path This the Munsif dis believed and refu ed the injunction The District Judge treating the case as if it fell under s 26 of the Limitation Act and being of opinion that the defendant had not proved twenty years peaceable open and uninterrupted exercise of the right of way gave the plaintiff a decree. *Held* that the mode of acquiring an ea ement provided by s 26 of the Limitation Act is not the only way in which an easement may be acquired but an easement may also be acquired by implied grant In the

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*i*) RIGHT OF WAY—*contd*

present case the use of the path might be absolutely necessary to the enjoyment of the defendant s tene ment in which case there would be an easement of necessity or the u e of the path though not ab solutely nece sary to the enjoyment of the defend ant tenement might be necessary for its enjoy ment in the state in which it was at the time of everance and in this case if the easement were apparent and continuous there would be a pre sumption that it passed with the defendant s tene ment CHARU SURNOKAR v DOKOURI CHUNDER THAKOOR

I L R 8 Calc 956 10 C L R 577

56 ———— **Right of way**—*Implied grant—Easement upon the severance of a heritage by its*

ance of a tenement may extend to a way but that is o only where there has been ome perma nence in the adaptation of the tenement from which continuity could be inferred *Charu Sor nokar* v *Dokouri Chunder Thakoor I L R 8 Calc. 956* distingui hed RAM NARAIN SHAHA v KAMALA KANTA SHAHA I L R 26 Calc 311

57 ———— **Lane from public road to house**—*User—Limitation Act (XV of 1871) s 27* In a suit for declaration of the plaintiff s right of way over a lane leading from a public road to a door in the plaintiff s house which lane the defend ant who resided at the end of the lane had ob structed so as to prevent acce s to the plaintiff s house it appeared that the house in re pect of which the easement was claimed belonged in 1855 to one *H C* during the time of whose occupation there was user of the right of way over the lane to the door until he had the door bricked up In April 1865 the hou e was sold by *H C* and in June 1867 was conveyed by the purchaser to the plaint iff From the blocking up of the door until the plaintiff s purcha e no user was proved The suit was brought in June 1875 about a month after the erection by the defendant of the obstruction com plained of *Held* both in the Court below and on appeal that the owner of the dominant tenement having with the intention of preventing the use of the way created an obstruction of a permanent nature which rendered such use impossible the way could not be said during the continuance of such obstruction to have been openly enjoyed within the meaning of s 27 of Act IX of 1871 and that accordingly though there had been no inter

Act
228

58 ———— **Right of passage**—*Unity of posse sion—Severance—Nui ance arising from acts of several persons* The words appurtenant or belonging will ordinarily carry only actual

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(i) RIGHT OF WAY—*contd*

existing easement and therefore will carry no right of way over the land of the grantor though under certain circumstances even these words will have a wider construction Where further words are used such as therewith held or used such words will carry a way formerly enjoyed as an easement but as to which the right has been suspended by unity of possession But such words will not carry a way made by the owner of both properties during the unity of possession for his own greater convenience in the use of the two properties jointly But where during the unity of possession a way which has never existed as an easement is in fact used for the convenience of one of the tenements afterwards severed the authorities show that the words in question are large enough to carry it One who has a right of passage over any place must not any more than the owner of the soil might use it in an excessive or improper manner so as to obstruct the exercise by others of their right The acts of several persons may together constitute a nuisance though the damage occasioned by the acts of any one if taken alone would not be appreciable CHUNDER KOOMAR MOOKERJI *v* KOYLASH CHUNDER SETT I L R 7 Calc 665

Substantially confirmed on appeal *see* SHAMA CHURN DEY *v* CHUNDER COOMAR MOOKERJEE CHUNDER COOMAR MOOKERJEE *v* KOYLASH CHUNDER SETT I L R 8 Calc 677

59 ———— *Change of use—Easements Act (V of 1882) s 23—Increase of servitude* Under s 23 of the Indian Easements Act (V of 1882) a right of way enjoyed for agricultural purposes may be used for the purposes of a factory provided no additional burden is thereby imposed on the servient heritage JESANG *v* WHITTLE I L R 23 Bom 595

60 ———— Right of passage for boats in the rainy season—*Water* A right of passage for boats in the rainy season over a channel wholly in another man s land is in respect of extent analogous to an ordinary right of way and the dominant owner cannot complain of the servient owner s narrowing the channel so long as the latter by so doing does not prevent the former from passing and re passing as conveniently as he has always been accustomed to do A right of passage for boats in the rainy season over another person s tank must be claimed in a particular direction in order to be valid. DOORGA CHURN DHUR *v* KALLY COOMAR SEN
I L R 7 Calc 145 8 C L R 375

61 ———— Right of private ferry—*User for twenty years* Per GARTH C J and WHITE J—Twenty years is the shortest period [illegible]

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(i) RIGHT OF WAY—*concld*

parties is not whether a private ferry exists but whether the recognized private ferry which is in existence is the property of *A* or *B* but *semble* Supposing such question of user to arise a right of private ferry cannot be established as an indefeasible right by long user PARMESHARI PROSAD NARAIN SINGH *v* MAHOMED SYUD
I L R 6 Calc 608 7 C L R 504

62 ———— Landlord and tenant—*Easements Act (V of 1882)—Act VIII of 1891—Application of Act—Suit before Act VIII of 1891 came into force* There is nothing in Act VIII of 1891 which extended the Easements Act to the North Western Provinces to compel the Court to apply the Easements Act (V of 1882) to a suit commenced before Act VIII of 1891 came into force A tenant cannot as against his landlord acquire by prescription an easement of way in favour of the land [illegible] belong [illegible] Bench [illegible] referred

I L R 14 All 185

63 ———— Easement of necessity—*Landlord and tenant* A tenant cannot as against his landlord acquire by prescription an easement of way in favour of the land occupied by him as tenant over other land belonging to his landlord But a tenant is entitled to a way of necessity over [illegible]

1 C W N 151

64. ———— Prescriptive right of the defendant to have branches of his trees overhanging the plaintiff s land—*Right of the defendant to go on to the plaintiff s land to collect the fruit of the trees distinct from and not accessory to the right to have the branches overhanging* The defendant having acquired a prescriptive right to have the branches of his trees overhanging the plaintiff s land the lower Courts held that he had a [illegible]

it an accessory right to enjoy the profits of the branches in the best way possible *Held* (reversing the lower Court s decree) that the right to go on the plaintiff s land to pick the fruit off the branches was perfectly distinct from the prescriptive right to have the branches overhanging the land and could [illegible]

I L R 17 Bom 745

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*g*) RIGHT CONCERNING WATER.

65 ———— **Right to flow of water**—*Obstruction to flow of water—Continual user* The plaintiff brought a suit to establish his right to an uninterrupted flow of water through a channel which ran into a tank in a village which was the plaintiff s property and to compel the removal of sluices erected across the said channel by the first defendant s predeces or in office and used for the purpose of diverting the flow of the water *Held* that acquescence in the ense of mere submission to the interruption of the enjoyment does not de stroy or impair an ea ement To be effectual for that purpose it must be attributable to an inten tion on the part of the owner to abandon the bene fit before enjoyed *Held* also that the diversion of the water was a continuing injury down to the time of the institution of the suit and that the plaintiff's suit was not barred *Held* al o that it must appear from the circumstances in evidence in uch ca e that the interference or obstruction complained of is not a trivial but a substantial injury in order to warrant relief by way of injunction *Held* also

an easement may be presumed from mere continued user of the privilege openly enjoyed by the occu piers of the dominant tenement as of right through out any long period of time without interrup ion on the part of the proprietor of the ervient tene ment but with this qualification that the u er should be for at least the period of adverse po es sion which is prescribed by s 1 cl 12 of the Act of Limitations as a bar to the enforcing of title to corporeal property *Per* INNES J —That no preci e period of uninterrupted enjoyment can be fixed as ufficient of it elf to establish a right to an ea ement PONNUSAWMI TEVAR *v* COLLECTOR OF MADURA 5 Mad. 6

66 ———— *Presumption from long user—Limitation Act 1877 s 27* A right to the uninterrupted flow of water along a defined channel over the lands of others may exist independently of the provisions of s 27 of the Limitation Act 1871 When such a right is claim ed as a hereditary and cu tomary right and evi dence is given n support of long user such evidence may be sufficient to ju tify the Court in presuming a grant of the easement and a Court is not justified in dismissing the suit on the ground that there had been no user by the plaintiff within two years prior to suit SRINIVASA RAU SAHEB (JAGIRDAR OF ARNI) *v* SECRETARY OF STATE FOR INDIA I. L. R 5 Mad. 226

67 ———— *Permission to erect dam—Grant—Relief against injury done by permissive act* When a tenant by his lessor s per mi ion erected a dam upon his holding and there by obstructed the natural flow of the water to other

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(*g*) RIGHT CONCERNING WATER—*contd*

lands of the lessor —*Held* that the mere permission

of the landlord paying to the tenant the expenses which that permission had led him to incur Even when the dominant and servient tenements are the property of different persons a man may license an act in its inception and yet be entitled to relief when the act is found to have injurious conse quences which he could not have contemplated at the time of the license KESAVA PILLAI *v* PEDDU REDD 1 Mad. 258

68 ———— *Exclusive right to u e of water* The plaintiffs as shareholders in and heads of the villages of Arivur and Kuruni kudi sued for an injunction directing the defend ants to close an irrigation channel which was opened in 1869 and to remove the sluice It ap peared that a channel called Kaduvai had by means of a branch for very many years supplied the plaintiff s village with water The village of Partical of which the first defendant was mirasidar up to the date of the opening of the new channel

diverted into the new channel at a point above the point of divergence of the branch channel from the Kaduvai to the plaintiff's village The relief was prayed for in the Court of first instance on the ground that the supply by the Kaduvai had never been sufficient for the wants of the village and that the new channel must necessarily cause a still fur ther deficiency The Civil Judge found that the plaintiffs had sustained no loss by the opening of the new channel and dismissed the uit *On ap peal* it was contended first that plaintiffs had an absolute right to the uninterrupted flo v of all the water in the Kaduvai channel without subtraction or diminution by the defendants or by the Govern ment represented by the second defendant and that

loss at some future time arising from a

clusive right to the water contended for by them but that their right was limited to the benefi ial

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(j) RIGHT CONCERNING WATER—*contd*

enjoyment of the water for the irrigation and other necessary purpose of their tenancies as heretofore enjoyed Also that the Government as proprietor of the Kaduvai channel and water in it had subject to the above limited use by the plaintiffs and [illegible]

[illegible]

guished KRISTNA AYYAN v VENKATACHELLA MUDALI 7 Mad 60

69 ———— *Suit to restrain interference with water rights—Damages—Right of* [illegible] The plaintiffs who [illegible]

as to diminish the quantity of water which the [illegible]

[illegible]

ground upon which the plaintiff s claim was put was that they had received the water for a long time The District Court held that the Government [illegible] of wat[illegible] *per* H[illegible] by the plaintiffs which could have been violated by the defendants and that if such right were established there was nothing to show that a decree for damages would not have been the proper remedy *Per* INNES J—That the evidence did not show any diminution of the supply of water below the quantity to which the plaintiffs were entitled VENKATA REDDY v LISTER 7 Mad 342

70 ———— *Interruption—Abandonment* The plaintiff claimed a prescriptive right to the flow of the surface drainage water from the land of the defendant on to his land *Held* that such an easement can be acquired only [illegible] the water flows in a definite channel [illegible]

quired would not necessarily be lost by the interruption but that if the plaintiff acquiesced during that time in the interruption it might be some evidence of an abandonment of the right KENA MAHOMED v BOHATOO SIRCAR Marsh 506

LUCHMEE PERSHAD v FUZEELUTOONISSA BIBEE 7 W R 367

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(j) RIGHT CONCERNING WATER—*contd*

the plaintiff [illegible]

the removal of the obstruction *Held* that though under the circumstances the plaintiff had failed to prove a title acquired under s 26 of Act XV of 1877 [illegible]

the cause of action was renewed *de die in diem* the plaintiff s claim was not barred by any provision of the Act but on the contrary was saved by the express provision of s 23 PUNJA KUVARJI v BAI KUVAR I L R 6 Bom 20

SOOJAN BIBI v SHAMED ALI 1 C W N 96

72 ———— *Easement apparent and continuous—Easements of necessity—Implied grant* A and B [illegible] session of cert[illegible] 1865 and ter[illegible] pense a partiti[illegible] tions leading [illegible] water from A [illegible] In 1885 B stopped the flow of water by this drain A thereupon sued for an injunction to restrain B from causing the obstruction. The Court of first instance decreed the claim. The Appellate Court rejected the claim [illegible]

it was enjoyed when the partition took effect PURSHOTAM SAKHARAM v DURGOJI TUKARAM I L R 14 Bom. 452

73 ———— *Water in defined channel* From time immemorial a certain "al" formed the boundary of two pieces of land belonging to the plaintiffs and the defendants [illegible] The plaintiffs land was in a higher level than [illegible] of the defendants, and from time immemorial [illegible] surplus water used to flow from the plaintiffs [illegible] through certain passages in the al [illegible] the defendants land. The defendants [illegible] the passages and increased the height [illegible] *Held* that it having been established [illegible] series of years the waters from the [illegible] had been accustomed to escape [illegible] direction and by certain [illegible] the defendants land the defendants [illegible] anything which would interfere [illegible] rights in this respect. IMAM [illegible] DUL I L R 8 Calc 423 10 C L R 22

74. ———— *Right to use of water—Irrigation—License creating right* [illegible]

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(j) RIGHT CONCERNING WATER—*contd*

tion of agreement to use water In a suit to establish a right of water and for damages for interruption of the same the facts were as follows Plaintiff and defendant by agreement between them constructed a dam across a main channel and from thence a smaller channel was made through the land of the defendant to the plaintiff's land by means of which it was agreed that the plaintiff should be at liberty to irrigate the fields The agreement was acted upon for a long course of years *Held* that the agreement was not a mere parol license revocable at the pleasure of the defendant but an agreement which created a right of easement unlimited in point of time to the use of the water by the plaintiff and imposed upon the defendant the corresponding duty of allowing the accustomed supply to flow A mere licen e differs in its effects from a license coupled with the creation of an interest The former is revocable but the latter is subject to the same incidents and is as binding and irrevocable as any other contract gift or grant KRISHNA *v* RAYAPPA SHANBHAGA

4 Mad. 98

75 ———— **Artificial water course** The right to water flowing to a man s land through an artificial water course constructed on a neighbour s land must rest on some grant or arrangement proved or presumed from or with the owner of the land from which the water is artificially brought or on some other legal origin. Such a right may be presumed from the time manner and circumstances under which the easement has been enjoyed RAMESSUR PERSAD NARAIN SING *v* KOONJ BEHARI PATTUK

I L R 4 Calc 633 L R 6 I A 33

76 ———————— *User—Artificial water course* In 1860 *R* whom the plaintiff in this suit represented agreed with Government for the lea e of a plot of ground called the D estate and got po session In 1865 *P* took a lea e of the estate from Government for 999 years to enure as a lease from 1860 the time at which he entered upon possession The defendant s estate adjoined plaintiff s Defendant s title also derived from Government dated from 1869 A formal lea e was granted to his predecessor in 1874 in similar terms to that to plaintiff In 1864 *R* opened an artificial channel for the conveyance of water for the use of his estate This channel was taken off from a ravine in Government waste land and before reaching the plaintiff s estate pas ed through land which in 1864 belonged to Government but which sub equently formed portion of the defendant s estate When the lea e under which the defendant claimed was made in 1874 the flow of water through the channel was enjoyed by the plaintiff The plaintiff sued to restrain the defendant from interfering with and diverting the flow of water in this channel and for damages *Held* that the flow of water in the channel having existed as an apparent and continuous easement in fact at the time of the execution of the lease in 1865 a right to it passed by implication under that lease and that the plaintiff was accordingly entitled to it that the defendant whose lea e was subject to that right was not entitled to interfere with the flow but

I L R 2 Mad 36

77 ———— **Obstructing water course** —*Presumption of title founded on user—Limitation Act 1871 s 27 and Art 31—Continuing act of wrong* More than twenty years and possibly fifty or sixty before suit the plaintiff s ancestors and predecessors in estate had constructed and used a *pain* or artificial water course on the defendants land making compensation to them. The *pain* by a channel at one part of its course contributed to the water in a tal or reservoir belonging to the defendants and by a channel at another part took the water which overflowed from the tál after the defendants had used as much of the water therein as they required. Less than twenty years before the suit the defendants, without authority obstructed the flow of water along the *pain* in several places. The Courts below differed as to whether some of these obstructions had not been made more than two years before the suit the rest having been made within ... of Act IX

within two years of suit under the conditions prescribed to give without more a title did not prevent proof of an easement founded on another title independently of the Act Such a long enjoyment as the plaintiff had proved should be referred to a legal origin and the long user of the *pain* and of the superfluous water of the tál afforded evidence giving rise to a presumption that a grant or an agreement had been made creating an easement Although on the assumption that some of the obstructions in question had existed for more than two years before the suit the plaintiff might not have shown a right under Act IX of 1871 s 27 yet he did not require its aid. *Held* ... act ... ie is ... ixing ... the period of limitation for obstructing a water cour e did not preclude a suit complaining of ob tructions though made more than two years preceding the date of the commencement of the suit RAJRUP KOER *v* ABUL HOSSEIN

I L R 6 Calc 394 L R 7 I A 240
7 C L R 529

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(j) RIGHT CONCERNING WATER—*contd*

78 ——— **Right to discharge surplus water on another s land**—*Servitudes—Servient and dominant owners* Where A has a right to discharge the surplus rainfall from his land on to the land of *B* no length of time will give *B* a right to compel *A* to send the water on provided that A does not interfere with any portion of the water which flows from his land to that of *B* in a natural and defined channel The servient owner cannot prevent the dominant owner from putting an end to the servitude at any time he may think proper KHOORSHED HOSSEIN v TEKNARAIN SING

2 C L R 141

79 ——— **Right to have water carried off over neighbour s land**—*How far it interferes with right of erecting building* A right to have water carried away over the adjoining land does not give its owner any power to prevent the erection of buildings on the adjoining ground so long as the arrangements necessary to the preservation of his right are made BALA v MAHARU

I L R 20 Bom 788

80 ——— **Right to use of water drain**—*Proof of enjoyment of easement for term sufficient to give right to it* In a suit for the recovery of a

the plaintiff a decree which was upheld by the Judge —*Held* that the real issue to be tried was whether the plaintiff had enjoyed the easement for the time (twenty years) and in the manner laid down in the law RAMESSUR MISSER v BROJO BHOOKUN MISSER 25 W R 271

81 ——— **Right to divert flow of water**—*Presumption of grant—User* A right to

1871 ZAMINDAR OF KURUPAM v ZAMINDAR OF MERANGI VERICHERLA SURYA NARAYANA RAJU v SATRACHERLA JAGANADA RAJU

I L R 5 Mad 253

82 ——— **Right to water of river**—*Relative rights of riparian proprietors and occupiers to the water of river—Diversion—User—Rights of the Government—Khal a or raiyatvadi land* A dam had been in existence across a river for upwards of 280 years and during all that time the villages of D and P had received an equal supply of water from separate sluices in the dam The Government authorities being of opinion that D required less water than P reduced the size of the D sluice and consequently the amount of water flowing to the D village The village of D was khalsa or raiyatvadi i e was held immediately of Government. The inhabitants of D appealed against the action of Government *Held* that the Government had no such right of interference neither (i) as riparian proprietors (supposing them to be such) since the right to the enjoyment of the water of a river belongs to the occupant of the river bank whatever the nature of his tenancy nor (ii) by any other imaginable rights existing in the Government as such since if any such rights ever existed the long user for upwards of 280 years of the water from the dam by the village of D would be amply sufficient to justify a presumption of an original *animus dedicandi* in the Government COLLECTOR OF NASIK v SHAMJI DASRATH PATIL

I L R 7 Bom 209

83 ——— **Natural streams**—*Easements Act (V of 188) ss 6 7 17—Surface water—Rights of riparian owners* The owners of a tank fed by natural streams which depended for their supply on natural rainfall and surface water sued for an injunction to restrain superior riparian owners from damming the streams or interfering with the supply of water over which the plaintiffs claimed a right of easement The issue as to the ownership of the land on which the streams rose was undecided *Held* (i) The Easement Act only declared the existing law as to easements over water (ii) An easement can therefore be acquired in regard to the water of the rainfall But surface water not flowing in a stream and not permanently collected in a pool tank or otherwise is not a subject of easement by prescription though it may be the subject of an express grant or contract (iii) It is the natural right of every owner of land to collect or dispose of all water on the surface which does not pass in a defined channel (iv) Riparian

easement if any (v) It was therefore necessary to ascertain where the streams rose and the course source and length of their tributaries PERUMAL v RAMASAMI I L R 11 Mad 16

84 ——— **Easement over a well**—*Easements Act (V of 1882) s 2 (b)—Customary right to use the well* No fixed period of enjoyment is laid down by law as necessary to establish a customary right and a customary right to use a well may exist apart from a dominant heritage PALANIANDI TEVAN v PUTHIRANGONDA NADAN

I L R 20 Mad 389

85 ——— **Water-course**—*Riparian owners right of—Mamlatdar jurisdiction of—Easements Act (V of 1882) s 7* The law as to

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(j) *Right concerning Water—contd*

riparian owners is the same in India as in England
7 of the Ease
roprietor has a
ter as it pas es
his land but in the absence of some special custom he has no right to dam it back or exhaust it so as to deprive other riparian owners of like use What would constitute an unreasonable diversion of water such as to disturb the use of the lower riparian owners is a question of fact which the Legislature has given a Mamlatdar jurisdiction to decide NARAYAN HARI DEVAL *v* KESHAV SHIVRAM DEVAL **I L R 23 Bom 506**

86 ——— **Right to throw back water on another s land**—*Right of other person to relieve himself from inconvenience* The tank used for the irrigation of the plaintiff s village was supplied in part by rain water falling on the lands of the village occupied by defendants 9 to 17 and the bund of the tank used formerly to throw back the

back their land. A channel was also constructed for conducting a supply of water to the plaintiff s tank Plaintiffs however claimed to have the former state of things restored on the ground that they had a prescriptive right to throw back the

GAUNDAN *v* AYYA KRISHNAMA CHARIYAR **7 Mad 37**

87 ——— **Right to discharge water from roof on another s land**—*Purchaser right of* If a party has ancient right to the discharge of water from his roof on a certain piece of land it is not competent for a purchaser of the land to exercise his right thereto in such a manner as to interfere with the easement and impose the trouble and expense on the owner of the easement of procuring some new mode of discharge SHEO NAUTH SINGH *v* BISHONATH SINGH **2 Agra Pt II, 191**

88 ——— *Suit for removal of wall* In a suit for the removal of a wall on which plaintiff had been allowed by defendants for a number of years to rest the thatch of a hut and which wall and thatch after having been thrown down by a cyclone had been rebuilt by plaintiff though the thatched roof had been again blown down and there was no thatch at the time of the suit —*Held* that under these circumstances the plaintiff could not have acquired a prescriptive right that the water from the thatch should pass over defendant s lands and was not entitled to restrain him building up the wall LALL MONEE DOSSEE *v* JOYNARAIN SHAHA **11 W R 508**

89 ——— **Right to discharge water from roof on house of another**—*Limitation —User* The plaintiff and the defendant were owners respectively of two adjoining houses having a space between them belonging to the plaintiff. The roof of the defendant s house built more than thirty years previously projected over a part of this space The plaintiff built a new storey to his house with a roof overhanging the roof of the defendant s house and under an alleged custom of the country (Ahmedabad) claimed a right to re

flowed from the newly erected roof of the plaintiff. *Held* with regard to the former claim that if the enjoyment by the defendant were considered as possession by him of the space occupied by his projecting roof the Limitation Act extinguished the plaintiff s right to sue and if such enjoyment were to be regarded as a mere easement then to the

an easement that the plaintiff could ... acquired such easement either by contract or prescription on neither of which did he rely No custom can be admitted to override the provisions of the Limitation Act MOHANLAL JECHAND *v* AMRATLAL BECHERDAS **I L R 3 Bom 174**

90 ——— **Rights accessory to an easement**—*Easements Act (V of 1882) s 24* The plaintiff having in a previous suit obtained a decree declaring his right of having the roof of his house projecting over the defendant s land and discharging water thereon now sued for a declaration of his right to go upon the defendants land for the purpose of repairing the roof *Held* that the plaintiff was entitled to the right claimed as being accessory to the easement already established, but that it should be exercised only once a year and after notice to the defendants HAYAGREEVA *v* SAMI **I L R 15 Mad 288**

(k) TREES

91 ——— **Trees overhanging neighbour s land**—*Right to take branches of trees cut —Nuisance—Easements Act (V of 1882)* Plaintiff sued for an injunction restraining the defendant allowing the branches of a tree belonging to him to overhang plaintiff s land and for an order directing him to cut off the branches Defendant pleaded that the branches of his tree had projected over plaintiff s land for forty years and contended he had therefore acquired a prescriptive right of the nature of an easement over plaintiff's land *Held*

PRESCRIPTION—*concld*

2 EASEMENTS—*concld*

(*l*) TREES—*concld*

that the plaintiff was entitled to cut away the branches which overhang his land though they had done so for more than forty years HARI KRISHNA JOSHI v SHANKAR VITHAL
I L R 19 Bom 420

PRESIDENCY BANKS ACT (XI OF 1876)

———— s 4—*Certificate of administration—Act XXVII of 1860—Registration of guardian as proprietor of shares—Power to negotiate* A the mother and guardian of a minor obtained a certificate under Act XXVII of 1860 Part of the property of the minor consisted of shares in the Bank of Bengal A obtained power under her certificate to draw the dividends due upon the shares After the passing of the Presidency Banks Act 1876 A applied under s 4 of that Act to be registered as proprietor of the shares The Bank refused to register her name as proprietor and A then applied to have her certificate amended by empowering her to negotiate the shares *Held* that she was not entitled to have such a power inserted in the certificate *In the matter of the petition of* PADHABULLUBH SIL
I L R 8 Calc 300 11 C L R 274

———— ss 20 22 23—*Bank of Bombay—Registration and transfer of shares—Rights of surviving co-parceners—Necessity of probate or letters of administration* Thirteen shares of the Bank of Bombay stood in the name of one Sarabhai who died in March 1895 The plaintiff who was the minor son of Sarabhai and joint and undivided with him applied to the Bank to have the shares transferred to his name as the sole surviving co parcener of Sarabhai The Bank contended they

in their contention For a share in the Bank for the purposes of devolution or survivorship must deemed as far as the Bank was concerned the ex

co parcener BANK OF BOMBAY v AMBALAL SARABHAI
I L R 24 Bom 350

———— ss 36 37—*Bank of Bombay—Power of Directors to lend money on equitable mortgage* The Directors of the Bank of Bombay discounted at different times promissory notes for sums amounting in all to about R60 000 drawn by the firm of Fezulbhoy Meheralli Chinoy in favour of one Meheralli Mahomed Chinoy who it subsequently appeared was a partner in the firm but was not

PRESIDENCY BANKS ACT (XI OF 1876)—*contd*

———— ss 36 37—*concld*

known to be so at the time of the said transactions Before discounting the later notes the Directors of the Bank obtained from Meheralli an equitable mortgage by deposit of title deeds on certain immoveable properties situate in Bombay and Mahabaleshvar as security for the then existing and future indebtedness of the said firm or Meheralli to the Bank The notes became due and were dishonoured the firm having in the meanwhile become insolvent The Bank thereupon sued the Official Assignee as assignee of the firm s estate to recover the sums due on the notes and for a

Act the Bank was entitled to realize the securities *Held* also that the provisions of s 37 of the Act did not invalidate a charge on immoveable property created as a security for a *bona fide* liability already in existence The words of s 37 impose a restriction on making a loan on mortgage of immoveable property not upon the Bank but upon the Directors As between the Directors and the Bank the Directors would be liable for any loss resulting from the breach of the provisions of the sections but the mortgagors could not repudiate

1 ———— s 50—*Bank of Bombay—Right of a shareholder to inspect the register of shareholders of the Bank—Object of such inspection—Common law right of a member of a corporation to inspect books of the corporation* Every member of a corporation has a right under common law to inspect its books and records and such right does not cease merely because a corporation is created by a statute which does not confer the right unless the statute expressly excludes it The member of a corporation as such is entitled to the inspection of any of its documents if he satisfies the Court that he is seeking inspection not from mere idle curiosity or for some speculative purpose but that he had some reasonable and definite object in which he is interested and for which the inspection is required whether that definite object concerns or not any subject then in controversy or discussion *Rex* v *The Fraternity of Hostmen* 2 *Stra* 1223 and *Rex* v *The Merchant Tailors Company* 2 *B & Ad* 115 followed It is but reasonable that a shareholder of a Bank should desire from time to time to consult other shareholders and discuss with them the affairs of the Bank for the purpose of taking concerted action where and when necessary apart from any question of any irregularity existing in the management of the Bank And for that purpose inspection of the register of shareholders

PRESCRIPTION—*contd*

2 EASEMENTS—*contd*

(j) RIGHT CONCERNING WATER—*contd*

riparian owners is the same in India as in England and is stated in illustration (h) of s 7 of the Easements Act (V of 1882) Each proprietor has a right to a reasonable use of the water as it passes his land but in the absence of some special custom he has no right to dam it back or exhaust it so as to deprive other riparian owners of like use What would constitute an unreasonable diversion of water such as to disturb the use of the lower riparian owners is a question of fact which the Legislature has given a Mamlatdar jurisdiction to decide NARAYAN HARI DEVAL v KESHAV SHIVRAM DEVAL I L R 23 Bom 506

86 ——— **Right to throw back water on another s land**—*Right of other person to relieve himself from inconvenience* The tank used for the irrigation of the plaintiff s village was supplied in part by rain water falling on the lands of the village occupied by defendants 9 to 17 and the bund of the tank used formerly to throw back the [illegible] 17 through the agency of the Government relieved them elves of this inconvenience by making a work for draining off the water so periodically thrown back their land. A channel was also constructed for conducting a supply of water to the plaintiff s tank. Plaintiffs however claimed to have the former state of things restored on the ground that they had a pre criptive right to throw back the water on the defendant s lands and to keep it there till required for use *Held* that there was here no object over which a right could be acquired. ROBINSON (COLLECTOR OF NORTH ARCOT) v AYYA KRISHNAMA CHARIYAR. MANIYAM NARASIMMA GAUNDAN v AYYA KRISHNAMA CHARIYAR 7 Mad 37

87 ——— **Right to discharge water from roof on another s land**—*Purchaser right of* If a party has ancient right to the discharge of water from his roof on a certain piece of land it is not competent for a purcha er of the land to exercise his right thereto in such a manner as to interfere with the ea ement and impose the trouble and expense on the owner of the easement of procuring some new mode of discharge SHEO NAUTH SINGH v BISHONATH SINGH 2 Agra Pt II 191

88 ——— *Suit for removal of wall* In a suit for the removal of a wall on which plaintiff had been allowed by defendants for a number of years to rest the thatch of a hut and which wall and thatch after having been thrown down by a cyclone had been rebuilt by plaintiff though the thatched roof had been again blown down and there was no thatch at the time of the suit —*Held* that under the e circumstances the plaintiff could not have acquired a prescriptive right that the water from the thatch should pass over defendant s lands and was not entitled to restrain him building up the wall LALL MONEE DOSSEE v JOYNARAIN SHAHA 11 W R 508

89 ——— **Right to discharge water from roof on house of another**—*Limitation —User* The plaintiff and the defendant were owners respectively of two adjoining houses having a pace between them belonging to the plaintiff The roof of the defendant s house built more than thirty years previou ly projected over a part of this space The plaintiff built a new storey to his house with a roof overhanging the roof of the defendant s house and under an alleged custom of the country (Ahmedabad) claimed a right to re [illegible]

flowed from the newly erected roof of the plaintiff *Held* with regard to the former claim that if the enjoyment by the defendant were considered as pos ession by him of the space occupied by his projecting roof the Limitation Act extinguished [illegible]

acquired such easement either by contract or prescription on neither of which did he rely No custom can be admitted to override the provisions of the Limitation Act. MOHANLAL JECHAND v AMRATLAL BECHERDAS I L R 3 Bom. 174

90 ——— **Rights accessory to an ease** [illegible] The plaint [illegible] ecree [illegible] ouse [illegible] har [illegible] ing water thereon now sued for a declaration of his [illegible] land for the pur [illegible] plaintiff [illegible] accessory [illegible] that it [illegible] nd after [illegible] SAMI [illegible] I L R 16 Mad. 286

(k) TREES

91. ——— **Trees overhanging neighbour s land**—*Right to have branches of trees cut —Nuisance—Ea ements Act (V of 1882)* Plaintiff sued for an injunction restraining the defendant allowing the branches of a tree belonging to him to overhang plaintiff s land and for an order directing him to cut off the branches Defendant pleaded that the branches of his tree had projected over plaintiff s land for forty years and contended he had therefore acquired a prescriptive right of the nature of an ea ement over plaintiff's land *Held*

PRESIDENCY MAGISTRATE—*contd.*

——— reference to High Court by—

See RIGHT TO BEGIN
I L R 19 Calc 380

——— rules framed by—

See CRIMINAL PROCEDURE CODE s 21
8 C W N 862

——— statement made to—

See CONFESSION—CONFESSIONS TO MAGISTRATE I L R 15 Calc 595
I L R 21 Bom 495

1. ——— Jurisdiction—*Coroners Act (IV of 1871) s 25—Committal to the High Court by a Coroner—Presidency Magistrate's power to inquire into a case committed by the Coroner* A Presidency Magistrate is competent to hold a preli

I L R 6 Bom. 159

2 ——— *Criminal Procedure Code (Act X of 1882) s 195—Penal Code (Act XLV of 1860) ss 116 193—Abetment—Instigating person to give false evidence* B without having obtained sanction under s 195 of the Criminal Procedure Code charged C before the Chief Presidency Magistrate with instigating her to give false evidence in a certain divorce suit in which C was respondent *Held* that the Chief Presidency Magistrate had no jurisdiction to try the case without the sanction of the Court before which the divorce proceedings were pending as the offence charged was alleged to have been committed in relation to those proceedings CHANDRA MOHAN BANERJEE v. BALFOUR I L R 26 Calc 359

3 ——— *Magistrate of Police —Act XIII of 1859 ss 1 4—Criminal breach of contract—Criminal Procedure Code (Act X of 1882) s 3* A Presidency Magistrate of Calcutta may lawfully take cognizance under s 1 of Act XIII of 1859 of a complaint in respect of a contract made in Calcutta the breach of which has been committed beyond the local jurisdiction of his Court The expression Magistrate of Police in s 1 Act XIII of 1859 means Presidency Magistrate LAL MOHAN CHOWBEY v HARI CHARAN DAS BAIRAGI I L R 25 Calc 637

4. ——— Summary trial—*Conviction in non appealable case—Code of Criminal Procedure s 370* In every case which is not appealable to the High Court a Presidency Magistrate should state his reasons for convicting the prisoner so that the High Court may judge as to whether there were sufficient materials before the Magistrate to support the conviction. *In the matter of the petition of* YACOOB YACOOB v ADAMSON
I L R 13 Calc 272

5 ——— Reasons for conviction—*Criminal Procedure Code 1898 s 370* In the trial of a case under Act XIII of 1859 the record need not be framed in accordance with s. 370 of the Code of Criminal Procedure AVERAM DAS MOCHI v ABDUL RAHIM I L R 27 Calc 131
4 C W N 201

6 ——— *Sentence of imprisonment—Reasons for conviction to be recorded—Code of Criminal Procedure (Act V of 1898) s 370 cl (i)—Penal Code (Act XLV of 1860) s 408* S 370 of the Code of Criminal Procedure requires that in a case in which the accused is sentenced to imprisonment a Presidency Magistrate shall record a brief statement of the reasons for the conviction It is not sufficient for him to record that the offence is proved for that may ne

4 C W N 467

7 ——— *Judgment—Record of reasons for conviction—Evidence—Sentence*

ment for a term exceeding six months shall be

8 ——— *Presidency Magistrate—Judgment recording of—Evidence taking down of—Reason for conviction recording of* Although s 370 of the Criminal Procedure Code empowers a Presidency Magistrate to record a brief statement of his reasons for his conviction instead of a judgment this must be done in such a manner that the High Court in revision may be in a position to judge whether there were sufficient materials before him to support the conviction. Where a Presidency Magistrate convicted and sentenced the accused to a term of imprisonment under ss. 61 and 74 of Bengal Act VII of 1878 but did not in his judgment give either the substance or a summary of the evidence and there was nothing on the record to show that the accused had been previously convicted, the High Court set aside the conviction on the ground that the judgment was defective TOOLSEY KAHARIN v EMPEROR (1904)
8 C W N 587

9 ——— Law as to recording of evidence—*Presidency Magistrate recording of reasons for conviction by—Appealable and non-appealable cases difference in procedure in—Revision, adequate materials for* In a case in which the Chief Presidency Magistrate convicted certain persons and

PRESIDENCY MAGISTRATE—*concld*

sentenced them each to 21 days rigorous imprisonment he recorded evidence very meagrely *Held* that under s 262 of the Criminal Procedure Code it was not obligatory on the Magistrate to record evidence in this case that the brief statement *of reasons for conviction recorded by the Magistrate* under s 370 (i) of the Criminal Procedure Code was sufficient in this case to satisfy a Court of Revision that there were materials before the Magistrate to support the conviction EMAMDU *v* KING EMPEROR (1904) **8 C W N 839**

10 ——— **Appointment of a pleader to act as Presidency Magistrate**—*Criminal Procedure Code* (*Act V of 1898*) *s 557* The appointment of a pleader to act as a Magistrate is not forbidden by s 557 or any other provisions of the Code of Criminal Procedure (Act V of 1898) After the Criminal Procedure Code of 1898 had come into force a practising pleader was appointed to act as a Presidency Magistrate On his appointment he gave up practising and was not practising at the time the accused was tried and convicted by him of theft The accused applied to the High Court in revision to quash the conviction on the ground that the appointment of the Magistrate contravened the provisions of s 557 of the Code of Criminal Procedure *Held* that 557 of the Code *does not deal with appointments and had no application* to the present case as the Magistrate was not practising at the time the accused was tried and convicted *In re* JIVANJI ADAMJI

I L R 23 Bom 490

PRESIDENCY MAGISTRATES ACT (IV OF 1877)

——— **s 39 (Criminal Procedure Code 1882 s 197)**—

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
I L R 3 Calc 758 2 C L R 520

——— **s 41 (Criminal Procedure Code, 1882 s 195)**—

See APPEAL IN CRIMINAL CASES—ACTS—PRESIDENCY MAGISTRATES ACT
I L R 2 Calc 466

——— **s 87 (Criminal Procedure Code 1882 s 209)**—

See MALICIOUS PROSECUTION
I L R 6 Bom 376

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—GENERALLY
I L R 5 Calc 121 4 C L R 505

——— **s 124 (Criminal Procedure Code 1882 ss 92 344)**—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL
I L R 6 Calc 523

PRESIDENCY MAGISTRATES ACT (IV OF 1877)—*concld*

——— **s 129 (Criminal Procedure Code 1882 s 495)**—

See COUNSEL
I L R 6 Calc 59 6 C L R 374

——— **s 167 (Criminal Procedure Code 1882 ss 411 412)**—

See APPEAL IN CRIMINAL CASE —ACTS—PRESIDENCY MAGISTRATES ACT
I L R 5 Bom 85

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE
I L R 2 Mad 30

——— **s 168 (Criminal Procedure Code 1882 ss 417 427)**—

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15—CRIMINAL CASES
I L R 7 Calc 447

——— **s 170**—

See CRIMINAL PROCEDURE CODE s 518
I L R 8 Calc 166
10 C L R 190

——— **s 181 (Criminal Procedure Code s 526)**—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES **I L R 2 Calc 290**

This Act was repealed and its provisions were incorporated into the Criminal Procedure Codes (Act X of 1882 and Act V of 1898)

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 622 **I L R 31 Mad 490**

See SMALL CAUSE COURT PRESIDENCY TOWNS

——— s 9—*Civil Procedure Code* (*Act XIV of 1882*) *s 622*—*Regulation XXVII of 18*[illegible] *s 5*—*Decree of Presidency Small Cause Court*—*High Court s power of superintendence and revision*—*Grave and irreparable injustice*—*Receiver*—*Rent*—[illegible] a certain [illegible]

tract by way of lease with the plaintiff [illegible] quently the mortgagee brought a suit in the High Court upon his mortgage and under the Court s order the Official Receiver took possession of the machinery and stock on the plaintiff s premises Before the suit in the High Court the plaintiff had given to the tenant a notice to quit Later on he gave another notice to the Receiver that he was going to charge him rent from a particular date On failure of the Receiver to pay rent the plaintiff with the permission of the High Court brought a *suit against him in the* Court of Small Causes Bombay for the recovery of the rent or in the

PRESIDENCY SMALL CAUSE COURT ACT (XV OF 1882)—*contd*

——— s 9—*concld*

alternative for compensation for use and occupation. The suit was dismissed by the Court on the ground that there was no relationship of landlord and tenant between the plaintiff and defendant who as Receiver was merely a custodian appointed by the Court and that his appointment did not affect the rights of the contracting parties. *Against the said decision* the plaintiff applied to the High Court under the extraordinary jurisdiction and obtained a *rule nisi* requiring the defendant to show cause why the decision should not be reversed *Held* discharging the rule that the plaintiff could not succeed in the suit *Per* BEAMAN *J* —Courts in the

——— ss 9 19 28—

See TITLE I L R 34 Calc 823

——— s 17—

See NEW TRIAL APPLICATION FOR
I L R 32 Calc 339

——— s 19(k)—*Annuity payable under a will —Assent of executors—Suits to recover arrear —Presidency Small Cause Court—Jurisdiction* A suit to recover arrears of an annuity payable under a will and assented to by executors is cognizable by the Presidency Small Cause Court Such a suit is a suit for money had and received by the defendant for the use of the plaintiff and it does not fall under s 19 (*k*) of the Presidency Small Cause Court Act (XV of 1882) DOSSIBAI *v* COOVERBAI (1908) I L R 32 Bom. 575

——— s 22—

See COSTS—SPECIAL CASES—SMALL CAUSE COURT SUITS I. L R. 24 Calc 399
I L R 21 Bom 779

——— s 23—

See CLAIM TO ATTACHED PROPERTY
I L R. 18 Calc 296

——— s 37—

See CIVIL PROCEDURE CODE 1882 s 108
I. L R 21 Calc 269
I L R. 20 Bom 380

See CLAIM TO ATTACHED PROPERTY
I L R. 18 Calc. 296
I L R 26 Calc 778

See LIMITATION ACT 1877 SCH II ART 164 I. L. R. 17 Bom. 507

——— s 38—

See WITHDRAWAL OF SUIT
I L R. 29 Calc 239

——— s 38 Chap VII—*Proceedings in ejectment—Order—Decree* The plaintiff instituted proceedings in ejectment against the defendant

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—*contd*

——— s 38—*concld*

under Chapter VII of the Presidency Small Cause Courts Act (XV of 1882) the Judge passed an order

a *rule nisi* requiring the plaintiff to show cause why the order should not be set aside *Held* discharging the rule that an application under Chapter VII of the Presidency Small Cause Courts Act (XV of

Cause Court can interfere under s 38 does not arise in a proceeding under Chapter VII of the Act. RAMKRISHNA *v* HAJI DAWOOD (1907)
I L. R 31 Bom. 259

——— ss 41—49 (Chap VII)—*Civil Procedure Code (Act XIV of 1882) s 108—Presidency Small Cause Court—Proceedings in ejectment—Ex parte order—Power to set aside* The Small Cause Court has an inherent power to deal with an application to set aside an order made *ex parte* and to set it aside upon a proper cause being substantiated. *Per* JENKINS *C J* —It is erroneous to suppose that s 108 of the Code of Civil Procedure has no application to proceedings under Chapter VII of the Presidency Small Cause Courts Act It is quite

nor
cree

I L R 31 Bom 45

——— s 69—*Negotiable Instruments Act s 84 (2)—Question whether cheque was presented within a reasonable time is a question of fact and*

of fact and not of law and is not one which can be referred to the High Court under s. 69 of the Presidency Small Cause Courts Act. EAST INDIAN AND ANGLO INDIAN DEPOSIT AND LOAN SOCIETY *v* T MCNAIR (1908) I. L. R. 31 Mad 384

Act to exempt Presidency Courts of Small Causes from the revisional powers of the High Court under

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—*concld*

——— s 69—*concld*

s 622 of the Civil Procedure Code Where the Judges of such Court sitting together in Full Bench to dispose of a suit take different views on a point affecting the merits of the case they are bound under s 69 of the Act to refer the matter for the opinion of the High Court and ought to deal with the matter finally Where the order of the Full Bench on the application of the party for a retrial fully deals with all the points arising for decision in the suit itself without granting a formal order for retrial the absence of such formal order is immaterial and the Judge must be considered to have sat together in the suit within the meaning of s 6 The substantial effect of the order and not its mere form must be considered *Seshammal v Munusamy Mudali I L R 20 Mad 358* referred to PANGIAH NAIDU *v* PANGIAH (1908) I L R 31 Mad 490

——— ss 69 70—

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE
I L R 28 Calc 260

PRESIDENCY SMALL CAUSE COURTS ACT (I OF 1895)

See SMALL CAUSE COURT PRESIDENCY TOWNS

——— s 11—

See COSTS—SPECIAL CASES—SMALL CAUSE COURT SUITS I L R 24 Calc 399
I L R 21 Bom 779

PRESS AND REGISTRATION OF BOOKS ACT (XXV OF 1867)

——— s 18—

See COPYRIGHT ACT (XX OF 1847)
I L R 33 Calc 571

PRESSING FACTORY

See STAMP ACT (II OF 1899)
I L R 32 Bom 505

PRESUMPTION

See AGRA TENANCY ACT (II OF 1901)
I L R 30 All 58
I L R 31 All 253 257

See BENGAL TENANCY ACT s 50
13 C W N 1149

See BENGAL TENANCY ACT s 51
6 C W N 589

See BENGAL TENANCY ACT ss 103 103B
10 C W N 908
13 C W N 111

See CHAUKIDARI CHAKRAN LAND SETTLEMENT OF I L R 32 Calc 1107

See CHOTA NAGPUR TENANCY ACT s 169
13 C W N 111

See COMPROMISE—MINOR
13 C W N 163

PRESUMPTION—*contd*

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT AND PRESUMPTION

See EVIDENCE I L R 35 Calc 751

See EVIDENCE—CIVIL CASES—MAPS
7 C W N 849

See EVIDENCE ACT (I OF 1872) s 114
I L R 29 All 138

See GAMBLING 5 C W N 503

See HINDU LAW—

INHERITANCE—MIGRATING FAMILIES
I L R 29 Cal 433

JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY

PRESUMPTION OF DEATH

WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION
I L R 25 Mad 351
I L R 35 Calc 1088

See HUNDI—ACCEPTANCE
I L R 26 Mad 598

See LANDLORD AND TENANT—NATURE OF TENANCY

See LETTERS OF ADMINISTRATION
10 C W N 432

See MAHOMEDAN LAW—LEGITIMACY
I L R 26 All 295

See MAHOMEDAN LAW—PRESUMPTION OF DEATH

See OWNERSHIP I L R 33 Bom 712

See OWNERSHIP PRESUMPTION OF

See PARDANASHIN WOMEN
5 C W N 505

See POSSESSION 12 C W N 273

See RECORD OF RIGHTS
I L R 32 Calc 338

See RES JUDICATA—ESTOPPEL BY JUDGMENT I L R 28 Calc 109

See REVENUE SALE LAW s 37
10 C W N 503

See RIGHT TO USE OF WATER
I L R 30 Calc 281

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY
I L R 30 Calc 1

See WILL I L R 29 All 63

——— as to ancient document—

See EVIDENCE ACT (I OF 1872) s 90
I L R 29 Calc 740
I L R 27 Bom 453

——— as to client's consent to compromise—

See COUNSEL 6 C W N 83

PRESUMPTION—*contd*

——— as to nature of tenancy—

See LANDLORD AND TENANT—NATURE OF TENANCY

——— as to tenancy being a tenure —

See BENGAL TENANCY ACT (VIII OF 1885) s 5 (5) 6 C W N 825

———from non-denial in written statement of allegation made against defendant—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY I L R 26 Bom 735

——— as to legality of distraint—

See PENAL CODE s 424 I L R 25 Mad 729

——— of correctness—

See APPELLATE COURT I L R 30 Calc 833

——— of death—

See EVIDENCE I L R 35 Calc 25

See PRESUMTPION I L R 33 Calc 173

——— of existence of certain facts—

See WARRANT OF ARREST—CIVIL CASES 6 C W N 845

——— of holding at fixed rent from time of Permanent Settlement—

See BENGAL TENANCY ACT s 50 5 C W N 60

——— of legitimacy—

See ONUS OF PROOF—LEGITIMACY I L R 25 All 403

——— of lost grant—

See PRESCRIPTION—EASEMENTS—GENERALLY 15 W R 212

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR 3 B L R O C 18
6 B L R 85

s.c on appeal 12 B L R 406
L R I A Sup Vol 175

——— of marriage—

See MARRIAGE I L R 35 Calc 232

——— of ownership—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND I L R 23 All 126

——— of payment—

See PROMISSORY NOTES—ASSIGNMENT OF AND SUITS ON PROMISSORY NOTES. I L R 29 Calc 334

PRESUMPTION—*concld*

——— rebuttal of—

See SUCCESSION ACT s 128 I L R 15 Calc 83

——— under Evidence Act 1872 s 114 Ill (g)—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD CESS PAPERS I L R 30 Calc 1033

——— when one co parcener separates from others—

See HINDU LAW—PARTITION—EFFECT OF PARTITION I L R 30 Calc 725

1 ——— Presumption of intention to bring about a certain result There is no presumption that a person intends what is merely a possible result of his action or a result which though reasonably certain is not known to him to be so but it must be presumed that when a man

[illegible]

[illegible] *466 Freeman* v *Pope L R 5 Ch 538 Ex parte Mercer in re Wise 17 Q B D 290* referred to EMPEROR v LAKSHMAN RAGHUNATH (1902)
I L R 26 Bom 558

2 ——— Presumption of death—*Evidence Act (I of 1872) ss 107 108—Disappearance of heir in distribution of estate of Mahomedan—Claim by son of missing man to share in estate of grandfather—Onus of proof—Matter of distribution of shares in estate referred by heirs to arbitration—Effect of arbitrator s award—Mahomedan law* The appellant through his father one of the children of a Mahomedan claimed a share in the property of his grandfather who died in 1884. It appeared that the father disappeared in 1870 and had not [illegible]

[illegible]

sion on the part of the other heirs nor as a finding by the arbitrator that he was then alive the reservation of a share for a missing man being only in accordance with Mahomedan law MOOLLA CASSIM v MOOLLA ABDUL RAHIM (1905)
I L R 33 Calc 173

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)

——— ss 2 and 3—*Crabs—Animals—Cruelty to animals* The provisions of Act XI of 1890 apply to cruelty exercised towards any animal which

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)—*concld*

——— ss 2 and 3—*concld*

is either domestic or which being *feræ naturæ* has been captured' and is in captivity Crabs are animals within the definition of s. 2 of Act XI of 1890 If a person exposes them for sale at a public place with their legs broken and with their shells crushed in so as necessarily to cause them pain he incurs the penalty prescribed by s 3 of the Act TULSI BEWAH v SWEENEY

I L R 24 Calc 881

In the matter of TULSI BEWA 1 C W N 642

——— s 3—*Animals—Cruelty to animals—Police Bombay Town—Act XLVIII of 1860 s 21 Railway Company—Master and servant—Criminal liability of master for his servant s acts—Goods yards of a railway—Public place* The Great Indian Peninsula Railway Company carried twenty seven head of cattle from Talegaon to Bombay These cattle were put in one truck by their owner under the supervision of the Company s goods clerk at Talegaon and were so allowed to be put by the Company s servants at Talegaon in spite of a circular issued to them by the Traffic Manager to prevent the overcrowding of cattle When the cattle were detrained at the goods yard of the Company at Wadi Bundar they were found suffering from the effects of overcrowding The Bombay Society for the Prevention of Cruelty to Animals prosecuted the Railway Company under s 21 of Act XLVIII of 1860 and s 3 (*b*) of the Act for the Prevention of Cruelty to Animals (Act XI of 1890) The Presidency Magistrate who tried the case referred to the High Court the following two questions —(i) Is the Company liable under the above circumstances for the acts of the owner of the cattle and [illegible]

business alone should be admitted there? The High Court answered the first question in the negative and the second in the affirmative Act XI of 1890 is aimed at the individual who actually practises the cruelty and it was not intended by the Legislature to make a master penally liable for the act of his servant done in the course of the servant s employment and certainly not when the act is done contrary to the orders of the master CAWASJI MERWANJI SHROFF v GREAT INDIAN PENINSULA RAILWAY COMPANY (1902)

I L R 26 Bom 609

——— s 6 (1)—*Meaning of the word permit* *Held* that the word permits as used in s. 6 cl. (1) of Act XI of 1890 implies knowledge of that which is permitted. QUEEN EMPRESS v LALTA PRASAD I L R 20 All. 186

PREVIOUS ACQUITTAL

See CRIMINAL PROCEDURE CODE s. 403
I. L. R. 24 Mad. 641

PREVIOUS ACQUITTAL—*concld*

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.
I L. R. 28 Calc 689

See SECURITY FOR GOOD BEHAVIOUR.
5 C W N 28

See WHIPPING I L R 25 Bom. 712

PREVIOUS CONVICTION

See CHARGE—FORM OF CHARGE—GENERAL CASES
19 W R. Cr 41
21 W R Cr 40
22 W R Cr 39
4 Mad Ap 11

See CRIMINAL PROCEDURE CODE ss 307 310 I L R 30 Mad. 134

See CRIMINAL PROCEDURE CODE s 310
12 C L. R. 555

See CRIMINAL PROCEDURE CODE s 403
I L R. 28 All. 313

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS

See GAMBLING I. L. R 28 Bom. 129

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION

——— evidence of in bad livelihood case—

See CRIMINAL PROCEDURE CODE s 1?3
13 C W N 318

PRICE OF GOODS SUIT FOR

See CONTRACT I L R. 36 Calc 736

PRIEST, APPOINTMENT OF

See CHURCH I L R 17 Mad. 447

PRIMOGENITURE

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—WAJIB UL ARZ
I L R. 16 All. 147

See HINDU LAW—CUSTOM—IMPARTIBILITY
I L. R. 19 All. 1
L. R. 23 I. A. 147
I L. R. 36 Calc 590

See HINDU LAW—CUSTOM—PRIMOGENITURE.

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT
I L. R. 17 Calc 3
L. R. 16 I A. 137

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY
5 Bom A. C 161
6 Mad. 93
I. L R. 5 All. 542
I. L R. 2 Mad. 286
I L. R 4 Mad 250
I. L. R. 13 Mad. 406
L. R. 17 I A. 134
I. L. R. 19 All. 1
L. R. 23 I. A. 147

PRIMOGENITURE—*contd*

See MAHOMEDAN LAW—ENDOWMENT
I L R 13 Bom. 555

See OUDE ESTATES ACT s 8
I L R 10 Calc 515 792
L R 11 I A. 51 135
I L R 20 Calc 649
L R 20 I A 77

See OUDE ESTATES ACT s 23
I L R 21 Calc 997
L R 21 I A. 163

See SALSETTE LAW APPLICABLE IN
I L R 19 Bom 680

See SUCCESSION L R 30 I A. 190

——— family custom—Chiefship of Tank—

See INHERITANCE 8 C W N 81

PRINCIPAL AND AGENT

See ACCOUNT SUIT FOR.
I L R 6 Calc 754
I L R 7 Calc 654
2 Ind. Jur N S 333
15 W R 260
22 W R 191
I L R 14 Calc 147
L R 13 I A. 123
I L R 35 Calc 298

See BENGAL RENT ACT 1869 s 30

See BROKER I L R 30 Calc 202

See CHARTER PARTY 8 B L R 544
I L R 7 Bom. 51

See CHEQUE I L R 31 Calc 249

See CIVIL PROCEDURE CODE 1882 s 215A I L R 27 All. 374

See COMPANY—POWERS DUTIES AND LIABILITIES OF DIRECTORS
5 B L R 195
I L R 6 Bom. 326

See CONTRACT I L R 30 Bom. 1

See CONTRACT—WAGERING CONTRACTS
I L R 23 All 165
I L R 25 All. 639

See CONTRACT ACT s 231
I L R 32 Bom 356

See EASEMENT I L R 26 Mad. 66

PRINCIPAL AND AGENT—*contd*

See GUARDIAN AND WARD
I L R 34 Calc 892

See INTEREST—MISCELLANEOUS CASES—PRINCIPAL AND AGENT 23 W R 325

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING CARRYING ON BUSINESS OR WORKING FOR GAIN
I L R 12 Bom 502
I L R 17 Bom. 662
I L R 23 Mad. 458

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT I L R 26 Bom 410

See LIMITATION ACT 1877 SCH II ARTS 2 28 I L R 26 All 482

See LIMITATION ACT 1877 ART 36
I L R 22 Mad 342

See LIMITATION ACT 1877 SCH II ART 57 I L R 31 All 429

See LIMITATION ACT 1877 SCH II ART 89 I L R 24 All 27
8 C W N 113

See MASTER AND SERVANT

See MASTER AND SERVANT
I L R 36 Calc 647
13 C W N 619

See ONUS OF PROOF—PRINCIPAL AND AGENT I L R 20 Calc 347
L R 20 I A. 95

See PARTIES—PARTIES TO SUITS—AGENTS

See PARTIES—PARTIES TO SUITS—PRINCIPAL AND AGENT 3 Agra 131
I L R 5 Bom. 208

See POWER OF ATTORNEY

See RIGHT OF SUIT—MISREPRESENTATION
I L R 24 Bom. 166

See SECRETARY OF STATE
I L R 28 Bom. 314

See TEZI MANDI CHITTIS
8 B L R 412 415 note

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss. 83 84
I L R 36 Calc 840

——— application of rule that notice to agents binds principal—

See DECLARATORY DECREE SUIT FOR—SUITS CONCERNING DOCUMENTS
L R 29 I A. 203

——— authority of agent—

See CROWN LANDS
I L R 26 Mad. 268

See EASEMENT I L R 26 Mad. 51

PRINCIPAL AND AGENT—*contd*

——— liability of principal—

See RIOTING I L R 28 Calc 504

——— undisclosed principal—

See CONTRACT ACT (IX OF 1872) s 231
I L R 32 Bom 356

1 AUTHORITY OF AGENTS

1 ——— Proof of authority—*Agent acting out of scope of authority* To hold a person bound by the acts of his agent it must be shown that the agent acted within the scope of his authority MUNOHUR DASS *v* DEEN DYAL
3 N W 179

BEER KISHORE SAHOY *v* GOVERNMENT OF BENGAL 17 W R 497

2 ——— Effect of act done without authority—*Signing document by unauthorized agent* The signature by an agent of a wajib ul arz from which the record of an important interest in property was omitted cannot be considered as a waiver of the right or claim unless he was properly authorized to sign it IMAMBUNDEE *v* BHUGWAN DASS I N W 41 Ed 1873 38

3 ——— *Suit against agent for account—Payments or advances to third parties—Proof of authority of agent* As a general rule an agent or collector ...

... BANERJEE 7 W R 452

4. ——— Implied authority of agent—*Liability of Principal* ...

... within the proper limits of the manager s authority and be for the benefit of the estate KOORA *v* ROBINSON 2 Agra Mis 2

5 ——— Holding out by the principal, of the agent s authority *The right of* a third party against the principal on the contract of his agent though made *in excess of* the agent s actual authority was nevertheless enforced where the evidence showed that the ...
been led in
authority
PERTAB *v*

6 ——— Evidence of authority—*Policy of insurance.* To prove the authority of an agent who underwrites a policy of insurance it is not necessary in order to ...
the ins
duced
underw
latter ...

PRINCIPAL AND AGENT—*contd*

1 AUTHORITY OF AGENTS—*contd*

policies so subscribed. MULCHAND CHUTUMAL *v* SUNDARJI NARANJI 7 Bom. O C 39

7 ——— *General or special power of agent—Evidence of agency* Where the evidence goes to show that a particular person said to be the agent of the defendant was really his general agent and did transact business of various kinds for his principal it is unnecessary to prove any special power enabling him to enter into a particular contract of bargain and sale *Per* MACPHERSON *J*—The extent and nature of the powers vested in an agent are not so much matter of law as matter of fact If it be proved that a person acted ordinarily as an agent for the defendant in buying and selling articles of merchandise the fact of his not being proved to have previously purchased a particular kind of article would not necessarily operate against the plaintiff s case The Court in deciding the question of agency must look to the general evidence on the record RAM BAKS LAL *v* KISHORI MOHUN SHAHA
3 B L R A C 273 12 W R 130

8 ——— *Factors shipments by—Consignees—Custom of Calcutta* Factors having an interest by reason of their advances in their principal s goods are justified in shipping those goods for sale either on account of those concerned or ' on account of themselves unless their general authority was controlled by instructions from their principal or by contract. The evidence failing to show that any particular usage or custom qualifying the law of England as between principal and factor prevails in Calcutta *Held* that the powers and duties of the factors in making ...

... pledgees but did not alter the character of the transaction which was one whereby the factors had pledged the goods for the payment of bills on which they (and not the principal) were liable as drawers for an amount exceeding the value of the goods In such a case no privity exists between the consignees and the undisclosed principal. *Held* therefore that a loss having occurred on the shipments the principal was liable to the factors estate for the full amount of re drafts representing that loss, although the factors had become insolvents and had in fact paid only a small dividend on the redrafts. MRITUNJOY CHUCKERBUTTY *v* COCHRANE
4 W R P C 1 10 Moo I A 229

9 ——— Pledge by agent without authority—*Stat 5 and 6 Vict c 39 ss 1 and 3—Factors Act (XX of 1844)—Notice of agent mala fides* Where an agent entrusted with a document of title to goods pledged it *mala fide* or with

PRINCIPAL AND AGENT—*contd*

1 AUTHORITY OF AGENTS—*contd*

out authority it was necessary in order to deprive the transaction of the protection given by the 1st section of 5 & 6 Vict c 39 and to bring it [illegible]

circumstances attending the transaction were such as that a rea onable man and a man of business applying his understanding to them would certainly infer that the agent had not authority to make the pledge or that he was acting *mala fide* in respect thereof against his principals GOBIND CHUNDER SEN v ADMINISTRATOR GENERAL OF BENGAL

1 Ind Jur O S 17
1 W R P C 43 9 Moo I A 140

10 ———— **Banian**—*Del credere agent—Dealings between Native and European firm* *G S & Co* employed *P* to make purchases for them in the bazar upon orders which were in force for two day and they impo ed restrictions on *R* s authority to pledge their credit which were not made known to tho e with whom he dealt His remuneration was to be certain dustooree on the pur cha es and he paid and gave receipts for the jute as agents for *G S & Co* He furnished accounts [illegible]

were debited with the amount paid for the goods *R* retaining no interest in or profit out of it *J S* one of the vendors to *R* sued *G S & Co* for the price of some of the goods so purchased by *R* *Held* that a general authority implies all powers necessary or usual or proper as means to effectuate the purposes for which it was created A banian is a *del credere* agent with regard to his employer in making purcha es and is a principal with reference to third persons *Held* also that a person who has been allowed to represent himself as agent of a merchant under a general authority is not as such a banian that when a native dealer makes purchases for a European house the presumption is that the vendor gave credit to the native dealer and that goods having been purchased for an employer and entered to his debit and receipts given for them in his name raises no presumption that the buyer was a banian GRANT SMITH & Co v JUGGOBUNDOO SHAW **Bourke A O C 17 2 Hyde 301**

Held in the same case in the Court below —In the absence of a specific contract a European firm in Calcutta is not bound by a contract made by third parties with their banian. JUGGOBUNDOO SHAW v GRANT SMITH & Co

2 Hyde 129 Cor 47

11. ———— **Agent exceeding authority**—*Variation in time for delivery* Where a principal instructed his agent to enter into a contract for the delivery of cotton at the end of Kartik, but the agent entered into a contract for the delivery thereof by the middle of that month it was *held* that the agent exceeded his authority in such a manner as to exempt the principal from liability upon the contract Though the objection assigned by a principal for repudiating a contract at the time of such repudiation be unfounded he is not precluded from subsequently availing himself of other valid objections ARLAPA NAYAK v NARSI KESHAVJI & Co

8 Bom. A C 19

12 ———————— *Taking advances* A native lady possessing an estate in a district in which she did not reside opened an account with a banker through her son as agent to provide for the punctual payment of Government revenue and to meet current expenses *Held* that such a course of dealing did not of itself warrant the banker in advancing to the son as the accredited agent of his mother large sums of money on bonds MISRAIN v GOPAL LALL DOSS

10 W R 376

13 ———— **General agent power of**—*Universal agents* A general agent has not ordinarily powers co extensive with those possessed by a universal agent A general agent therefore employed to carry on a trading bu iness has no authority to deal with immoveable property by sale DOORGA CHURN v KOONJBEHAREE PANDEY

3 Agra 23

14 ———————— *Power of agent to borrow—Evidence of authority* Although a general agent may not have power to borrow money for his principal yet the authority to borrow in a particular case may be shown by a previou author ity either express or implied or by sub equent ratification BUNWAREELAL SAHOO v MOHESHUR SINGH **Marsh 544 2 Hay 644**

15 ———— **General agent**—*Power to purchase—Authority to sell* An authority granted to [illegible]

GOLUCK CHUNDER CHOWDHRY v KANTO PERSHAD HAZAREE **15 W R. 317**

16 ———— **Government officers**— [illegible]

JOHNSON v SECRETARY OF STATE **2 Hyde 153**

17 ———— **Master and servant**—*Buying goods on credit Semble* If a master usually instructed his servant to buy goods upon credit he will be bound by his acts even when he has prohibited him specially from buying upon credit NARAINEE KOONWAREE v JOOGUL KISHORE ROY

6 W R. 309

18 ———— **Agent employed to make wagering contract**—*Money paid on account of wagering contract liability for—Act XXI of 1848* An agent employed to effect a wagering contract

PRINCIPAL AND AGENT—*contd*

1 AUTHORITY OF AGENTS—*contd*

is entitled to recover from his principal money paid on his account in respect thereof his author ity not having been revoked The claim is not affected by Act XXI of 1848 TRIBHUVANDAS JAGJIVANDAS v MOTILALL RAMDAS 1 Bom 34

19 ——— **Agent sent to bid at auction** —*Contract Act s 237* The sending a man to bid at an auction cannot be considered as conduct calculated in the language of the Contract Act (s 237) to induce third person to believe he had general authority to buy MACKENZIE LYALL & Co v MOSES 22 W R 156

20 ——— *Agreement by agent with third party* When a principal merely authorizes an agent to bid at an auction he is not liable for an agreement entered into by the agent with a third party pledging him to pay to such party a certain sum in consideration that he should abstain from bidding ESHAN CHUNDER SINGH v SHAMA CHURN BHUTTO

2 Ind. Jur N S 87 6 W R P C 57
11 Moo I A 7

21 ——— **Husband and wife**—*Mortgage by wife* When a man allowed his wife to have control over certain property and to mortgage it —*Held* that she acted as his agent and that he was bound by her act MOORADEE BEBEE v SYEFOOLLAH W R 1864 318

22 ——— *Suit for goods sold and delivered to wife after separation* It is not necessary that knowledge of a separation between husband and wife should be brought home to the plaintiff in an action for goods sold and delivered to the wife after separation where plaintiff has long dealt with the wife as the husband s agent SHAM CHUND DASS v COX Cor 82

23 ——— *Right of agent to sue—Suit by wife s constituted attorney—Lunatic—Act XXXV of 1858* D sued in the Mamlatdar s Court as A s constituted attorney for an injunction restraining the defendants from causing any obstruction to his possession of certain lands The land belonged to A s husband who was alleged to be a lunatic but there was no adjudication of his lunacy nor was A appointed a manager of his estate under Act XXXV of 1858 *Held* that D had no right to sue A not having been appointed a manager of her husband s estate had herself no right to sue in respect of a disturbance of her husband s possession She could not therefore authorize her agent to sue on her behalf NEMAVA v DEVANDRAPPA I L R 15 Bom 177

24 ——— **Gomashta power of**—*Contract through broker* N sued *J S & Co* for damages occasioned by the inferiority of certain goods which he alleged that he bought of them on a verbal contract made by his gomashta *M* through his broker *F* The defendants case was that the contract was a written one and contained a stipulation exempting them from liability on certain conditions which had not been complied with and was made by *K* one of the plaintiffs gomashtas by the pen of *J* one of their brokers whom *R* had authorized to sign the contract The Court below found that *K* was *N* s gomashta but could not as such depute a third party to sign a contract for N and judgment was given for the plaintiffs On appeal —*Held* that a gomashta has a general authority to manage his employer s business not as a mere agent but with power to do all acts necessary for carrying it on and to authorize brokers to make contract A broker authorized to sign a particular contract is not authorized to sign it if it contain a stipulation unknown to his employer and vice versa JARDINE SKINNER & Co v NATHORAM

Bourke A O C 43

25 ——— *Gomashta employed to collect rents—Power to distrain—Ratification* A gomashta employed to collect rents is not authorized to distrain unless he has been expressly authorized by power of attorney Therefore if a gomashta without such express authority distrain for rent due or pretended to be due to his principal his principal is not bound by his acts unless he ratify them as for example by receiving the proceeds of the distress knowing they had been obtained by distress RAMJOY MUNDUL v KALLYMOHUN ROY CHOWDHRY Marsh 282

s c KALLYMOHUN ROY CHOWDHRY v RAMJOY MUNDUL 2 Hay 289

26 ——— *Authority to sue for principal without special power* A suit for rent under Act X of 1859 may be instituted by a gomashta employed in the collection of rents or [illegible] his principal by warrant

[illegible] 2 Hay 426

27 ——— *Authority to sue on behalf of principal* In a suit under Act X of 1859 where plaintiff sues as a gomashta of the zamindar it is not necessary that a power of attorney or any other formal document conferring a special power on the plaintiff should be produced if it is proved from the evidence that he filled that character MADHO SINGH v GUNESHEE LALL

2 Agra 275

28 ——— **Tahsildar power of**—*Act* [illegible] tahsildar [illegible]

time and may take advantage of s 69 Act X of 1859 in respect of one as well as the other *Held* (by MARKBY J) that no one can be plaintiff in a suit for rent except the person who has the right to recover the only effect of s 69 being to enable the person who is employed in the collection of rents to sue as agent *Held* also (by MARKBY J) that though it has been decided that a general authority to collect rents and to sue for them must

PRINCIPAL AND AGENT—*contd*

I AUTHORITY OF AGENTS—*contd*

be stamped if in writing it has not yet been decided whether such authority must be in writing MODHOO SOODUN SINGH v MORAN & Co

11 W R 43

29 ———— Naib power of—*Power of mofussil naib to grant pottahs at fixed rent* As it does not fall within the ordinary scope of the duties of a mofussil naib to grant pottahs for fixed rents it is requisite in such cases that express authority should be proved to make the grant valid GOLUCKMONEE DABEA v ASIMOODEEN

1 W R 56

OOMA TARA DEBIA v PEENA BIBEE

2 W R 155

PUNCHANUN BOSE v PEARY MOHUN DEB

2 W R 225

KALEE COOMAR DOSS v ANEES

3 W R Act X 1

30 ———— *Power to grant mokurari lease* The grant of a mokurari lease is beyond the scope of a naib s general authority To enable him to give such a lease his principal s special consent or approval is necessary UNNODA PERSHAD BANERJEE v CHUNDER SEKHUR DEB

7 W R 394

31. ———— Agent of lessor—*Power to grant lease—Stipulation for recovery of costs of liti*

from the lessor but from the agent KENNY v MOOKTA SOONDEREE DABEE 7 W R 419

32 ———— Agent of inamdar—*Power to lease on permanent tenure* An inamdar s agent cannot grant lands on suti or other permanent tenure without express authority from his principal. NASARVANJI HORMASJI v NARAYAN TRIMBAK PATIL 4 Bom. A C 125

33 ———— Manager—*Agent granting lease on pretended title afterwards set aside—Right of lessees to possession* Where a manager has conveyed certain property to himself by a pretended deed of gift and under such pretended title granted a darmokurari lease and his title is set aside by a decree of Court the lessees cannot be allowed to maintain possession at any rate where the lease granted is beyond the powers of the manager as agent SHEO SHUNKUR LALL v DHURM JOY POOREE 8 W R 360

34. ———— Agent of zamindar—*Power to authorize transfer of lease* Without special powers the ordinary agent of a zamindar who cannot grant a lease cannot authorize the *quasi* transfer of a lease by a tenant to some other party RAI MOORABEE DOSS v BUCHA SINGH 4 N W 122

PRINCIPAL AND AGENT—*contd*

I AUTHORITY OF AGENTS—*contd*

35 ———— Agent of owner of estate—*Lease by agent—Fraud and collusion—Ratification* In a suit to set aside a lease as granted without authority by an agent to the defendant who was

defendant without good grounds for such imputation and on the withdrawal of such charge at the hearing if there were grounds for it and agreed with the Subordinate Judge in thinking that the owner of the estate in issue must be presumed to know what was being done on her behalf by her agent The presumption is that a man acts rightly and not fraudulently The mere circumstance that the rents were low does not give rise to the presumption that there had been fraudulent conduct on the part of the naib or that he did not state the circumstance to the agent before obtaining the lease from him There is also this difference between this case and other cases in

report to the owner in England Even supposing the original transaction liable to be set aside the ratification by a person having authority from the owner to make inquiries and ratify what had been done would render it invalid ANUND CHUNDER BOSE v BROUGHTON 17 W R 301

Affirmed by Privy Council ADMINISTRATOR GENERAL OF BENGAL v ANUNDO CHUNDER BOSE

21 W R 425

36 ———— Agent for receipt of rent—*Notice of renewal to* A lessor s agent for the receipt of rent is not necessarily his agent to receive the lessee a notice of option to renew the lease but if he has received such notice and given it to the lessor within time the notice is sufficient BARNET v SKINNER 2 W R. 208

37 ———— Agent to give lease—*Notice of prior claim Semble per* NORMAN J that a person who has authority to conduct the negotiation respecting a lease is such an agent that a notice to him may be notice to his principal NUDDEAR CHAND SEIN v KISHOREE LAL CHUCKERBUTTY

7 W R 463

38 ———— Headman of village—*Acts of to bind co sharers Held* that to make the acts of the headmen of a village in boundary disputes and other matters binding on the co sharers it is not necessary that there should be specific authority by power of attorney or otherwise or subsequent ex

PRINCIPAL AND AGENT—*contd*

I AUTHORITY OF AGENTS—*contd*

Held also that agency in every case can only be created by the will of the principal and his will may be manifested in writing or orally or simply by placing another in a position so as to be understood according to ordinary rules and usages to represent and act for one who has placed him GUNGAPERSHAD v AJOODHIA PERSHAD GUNGAPERSHAD v RAMPERSHAD Agra F B 31 Ed. 1874 23

39 ———— **Agent in survey of land**—*Thakbust map—Act of agent—Endorsement—Evidence.* In a suit for possession of certain lands for rectification of a thakbust map and reversal of an Act X decision the plaintiffs obtained a decree in the Court of first instance the lower Appellate Court and subsequently in the High Court on ap

There was an endorsement on the back which did not appear on the copies originally before the Court to the effect that the lands in dispute were pointed out by one *T C* acting as agent for the plaintiff to be measured as belonging to the defendant s talukh

MOHAN BOSE 3 B L R A. C 377

40 ———— **Power to appear in suit**—*Manager* The manager of an estate under a safunamah on behalf of *B* cannot without special authority from *B* represent him in any suit or charge him with the costs of the defence of an action brought against him. BHOLANATH SANDYAL v GOUREE PERSHAD MOITRO 16 W R 310

41 ———— *Power of attorney—Option of agent to accept service of summons* A person holding a power of attorney even if authorized by the power to appear and defend suits on behalf of his principal is at liberty to refuse to accept service of summons and appear in a suit brought against his principal but may either act upon the power or not as he may think proper *In the matter of the petition of* LUCHMEE CHUND I. L. R 8 Calc 317

42 ———— **Power to carry on suits**—*Assent to be bound by evidence* An agent s assent to be bound by the statement of a particular witness is not an assent to arbitration but is an act entirely within the scope of his general authority as agent to carry on his principal s suits and to do all acts necessary to that end RAJENDER CHUNDER NEWOGEE v MAHOMED AYNOODEEN W R. 1864 143

43 ———— **Mooktear power of**—*Admission of title by mooktear—Authority of mooktear to bind mortgagee* Where a mortgagee signed a mooktearnama in which he stated that he would

. . . S C in Court below 12 W R. 443

See SUNDER DAS v FATIMULUN NISSA 1 C W N 513

44 ———— *Mooktear appointed by several co sharers—Authority of agent—Evidence of general authority* Where a general mooktear empowered to act on behalf of co sharers does formal acts to enforce the rights of his principals (the zamindars) it is not necessary to trace back his authority in each case to the explicit sanction of every single member of the family Mooktears must be considered to have a certain discretion and unless the contrary is shown, to do such acts as come within the ordinary scope of their duty with authority HURRY KISTO ROY v MOTEE LALL NUNDEE 14 W R 36

45 ———— *Authority to sign deed of sale—Proof of authority of agent* Where a man resists liability for a deed of sale executed by his am mooktear it is necessary for the purchaser claiming under that deed to show that the mooktear had authority either by virtue of a general or special power of attorney to execute that deed and to bind his principal by executing that deed MOHAN KOOER v AJOODHYA DOSS 20 W R 119

46 ———— *Pardanashin woman—Account stated* A mookternama executed by a pardanashin woman appointed her husband to be her general mooktear and declared that all acts done by the said mooktear such as giving and taking loans to and from others executing on my behalf getting executed in my favour deeds of absolute sale and so on shall be accepted by me It was sought to render the principal liable on an account stated by her husband as her mooktear so empowered for a debt without proof that the money constituting it had been borrowed on her account *Held* on the construction of the mooktearnama that the mooktear had no authority to bind her by such a statement of account whatever authority he might have had to bind her by an actual borrowing of money on her behalf No implication of authority in the mooktear to bind the woman by his stated account had arisen from the carrying on of a course of business. Accordingly when the evidence of express authority failed the statement of account by the mooktear was insufficient to render the principal liable No

PRINCIPAL AND AGENT—*contd*

1 AUTHORITY OF AGENTS—*contd*

evidence was given of the items lent so as to establi h an indebtedne s independently of the account tated SUDISHT LALL *v* SHEOBARAT KOER I L R 7 Calc 245
L R 8 I A 39

47 —— —— Manager of firm—*Power of manager to bind partners in concern* The partners of a concern are bound by the acknowledgments of their manager as their avowed agent MASSEYK *v* GRISH CHUNDER CHUCKERBUTTY 24 W R 34

48 ———— Partner of firm—*Knowledge of person dealing with partner—Contract in apable of divis on* A firm of carriers authorized one of

was limited to a particular sum but al o knew that two of his bills for R300 each had been previously accepted by the firm In an action on the notes —*Held fir t* that the firm was not liable for the whole amount drawn and *secondly* that the contract whereon the action was founded was not capable of division and therefore the firm was not liable to the extent of R200 PREMABHAI HEMABHAI *v* BROWN
10 Bom 319

49 ———— Partnership in tea garden —*Liability of partner for acts of managing partner —Authority of agent* By an agreement made on 22nd July 1862 between *C* and *T* (since deceased) and the defendants *P* and *S* *C* agreed to sell and *T* *P* and *S* to purcha e a half share in the lands plantation and e tate belonging to *C* known as the Laojan Tea Estates and Grants The agree ment provided that *C* was to conduct and manage all matters and affairs of the e tates but nothing was said a to its being done in his own name or in that of the partners of any firm Money to carry on the business was provided by means of bills

brought to recover a balance due in respect of moneys alleged to have been advanced by the plaintiffs on the tea to be manufactured in the sea on 1872 the plaintiffs being tea brokers who made the advances on the security of tea invoices and bills of lading The terms on which the required advances were to be made were arranged by an agreement dated 9th February 187? between *C* and the plaintiffs who were under the belief that *C* was the proprietor of the Laojan concern and not merely manager By reason of *C* s death and the non delivery of a por tion of the season s tea the plaintiffs were unable to reimbur e themselves for their later advances and brought the present suit against the defendants who they contended were bound by all *C* s acts and dealings *Held* by COUCH C J that assum

by his partners to appear to have in managing and conducting the affairs and business of the partner ship It was a question of actual or apparent authority and whether the transaction was one which the owner of a tea garden carrying on the cultivation of it would in the ordinary course of business enter into *Held* further that the trans action would have been according to usage if *C* had been the sole owner of the gardens and the de fendants by allowing him to manage ostensibly

21 W R 101

50 ——
agent to in
authority
power a me
and notes but the authority may be implied from circumstances PESTONJEE NESSERWANJEE *v* GOOL MAHOMED SAHIB 7 Mad 369

51 ———— Managing agent—*Liability of principal—Banker and customer—Bills of exchang —Indorser and acceptor* N & Co the managing agents of the Baree Tea Company had a general banking account with the Oriental Bank Corpora tion which account they were allowed to over draw on having the overdraft properly secured Under the articles of association of the Baree Tea Company N & Co had power to draw accept indorse and negotiate on behalf of the company

was drawn out by cheques drawn by N & Co personally without reference to the Baree Tea Company and there was no proof that the money

PRINCIPAL AND AGENT—*contd*

1 AUTHORITY OF AGENTS—*contd*

had been applied for the purposes of the Baree Tea Company *Held* in an action by the Oriental Bank against the Baree Tea Company that the latter were not liable on the bills as acceptors ORIENTAL BANK CORPORATION *v* BAREE TEA COMPANY I L R 9 Calc 880 13 C L R 412

52 ———— **Agent acting contrary to authority**—*Liability of agent* An agent who acts contrary to the authority given him by his principal is himself liable on the transaction in which he has so acted GOMANEE LALL *v* JEEWUN RAM 2 Agra 33

53 ———— **Agent acting out of scope of authority**—*Liability of principal* *Held* that an agent who is appointed for the general management and conduct of business cannot bind his principal by an unusual contract not strictly relating to the conduct of the business unless he has express or implied authority for the same The fact that a consignor dealt in good faith with the agent who exceeded his authority is not sufficient to bind the principal The consignor dealing with the agent ought to satisfy himself of the agent s authority The defendant not having ratified his agent s act by receiving the benefit of the contract cannot be bound by the acts of his agent and liable to make good the losses. MUDAREE LALL *v* GILMORE 3 Agra 196

54. ———— **Payment to agent in belief he was principal**—*Liability of purchaser* Where a party purchased cotton from a person both banker and broker upon the just belief authorized by the facts that he (the seller to him) was the principal and not merely a broker and paid him in good faith the price of the article purchased he cannot be held liable to the real principal s claim such payment protecting him from further liability PETUMBER BHUGUTT *v* MUTHOORA DASS 1 Agra 121

55 ———— **Suit brought by agent for principal**—*Dismissal of suit brought by agent in his principal s name—Amendment of plaint—Court power of* A Court in which a suit is brought on behalf of one person through the agency of another is entitled to inquire as to the agent s authority A suit for arrears of rent was brought by an agent professing to act under authority from his principal. The plaintiff after instituting the suit in his own name as agent obtained an order from the Court granting him leave to amend the plaint by substituting the name of his principal as plaintiff suing through him an amendment which the defendant resisted disputing the authority of the agent. *Held* that the Court in allowing it did not decide that the agent had authority that remained to be proved and as it was not proved the suit failed. RAM NARAIN SINGH *v* RAGHU NATH SAHAI I L R 19 Calc 678 L R 19 I A 135

56 ———— **Suit by agent in his own name**—*Contract Act (IX of 18) s 230—Agency coupled with an interest—Suit by agent in his own name on contract not entered into by him as agent—Maintainability of suit* A document was executed in favour of plaintiff by the Members of a Malawar *devasom* whereby in consideration of advances made by plaintiff all the properties of the *devasom* were given over to him on lease for eighteen years. Plaintiff was given authority to sign conduct suits and do other acts on behalf of the executants and the document was held to be an authority coupled with an interest and irrevocable Plaintiff now sued in his own name to [illegible] brought in one made by the agent he has no cause of [illegible] SUBRAHMANIA [illegible] I L R [illegible] Mad. 130

57 ———— **Tenant suit by**—*Suit for damages* Because a person is the sole recorded tenant in the landlord s *sherista* he is not therefore alone entitled to sue third parties for damages done to the tenure if other persons are also interested in and have a right to the same ISWAR CHUNDER SANTRA *v* SATISH CHUNDER GIRI (190) I L R. 30 Calc 207 s c 7 C W N 126

58 ———— **Authority of agent to borrow**—*Implied authority—Liability of principal—Contract Act (IX of 1872) ss 187 188* The general provisions of ss. 187 and 188 of the Contract Act would no doubt authorize an agent to borrow money if necessary but such provisions are subject to modifications in particular cases specially where the transactions do not prove anything in favour of an implied authority to borrow FERGUSON *v* UM CHAND BOID (1905) I L R 33 Calc 343

2 RATIFICATION

1. ———— **Effect of ratification**—*Act of principal* Where the act of the agent has been communicated to and ratified by the principal it becomes the act of the principal in point of law PESTONJEE NESSERWANJEE *v* GOOL MAHOMED SAHIB 7 Mad. 369

2 ———— **Promise to redeem mortgage**—*Consideration—Contract made by agent on* [illegible] the defendant on [illegible] tended that the mortgages had become effectual as [illegible] his own detriment by paying maintenance to the

PRINCIPAL AND AGENT—*contd*

2 RATIFICATION—*contd*

defendant s adoptive mothers, and by paying off certain mortgages which had been created by them previously to the adoption of the defendant *Held* that the defendant was not liable upon the mortgage His promise to redeem the mortgages was not made to the plaintiff but to his adoptive mothers and there was no consideration for such promise as he made Nor could the promise have the effect of ratification for the ratification of the authorized contract of an agent can only be effectual when the contract has been made by the agent avowedly for or on account of the principal and not when it has been made on account of the agent him self SHIDDE HVAP v RAMCHANDRAPAV

I L R 6 Bom 463

3 ——— Acquiescence by co sharers —*Mortgage by lambardar—Acquiescence in acts of agent* Where a mortgage was made by a lambardar of his own share and shares of his co sharers as agent on their part in order to raise a sum required to pay the Government revenue —*Held* that the co sharers being aware of the fact of mortgage and not having at the time repudiated it and moreover having acquiesced in the decree of the Court of first instance which awarded their shares on payment of their quota of the mortgage debt and interest must be taken to have thereby consented to the act of the lambardar which was done on their behalf PUNCHUM SINGH *v* MUNGLE SINGH

2 Agra Pt II, 207

4 ——— Acquiescence by mortgagor

party then in possession not as authorized agent on

way in which his consent was given BHAGEERUTH *v* MOHUN 2 Agra 129

But *see* MISAJOOLNISSA *v* BUNSEEDHUR

1 N W 193 Ed 1873 277

5 ——— Government officers—*Government—Scope of authority* The plaintiff sued the Secretary of State (defendant 1) and one Malan Haribhai (defendant 2) who was an overseer in the Government Local Fund Department in the Surat district for the price of bamboos sold to the second defendant for the purpose of erecting sheds during an epidemic of plague in

denied that Government had ever authorised the purchase of the bamboos and the second defendant denied that he had made the alleged representation The lower Court passed a decree against the first defendant On appeal to the High Court *Held* (reversing the decree) that there was no evidence to show that the second defendant was authorised by the Government to purchase the bamboos and to pledge the credit of the Government for payment or that the acts of the second defendant had ever been ratified by the Government or by any officer of the Government duly authorised in that behalf SECRETARY OF STATE FOR INDIA *v* SULEMANJI MOOSAJI (1902) I L R 26 Bom 801

6 ——— Ratification—*Contract Act (IX of 1872) s 196 211 216—Suit for adjustment of accounts* The defendants as agents for the plaintiff entered into certain contracts for the sale of grain for future delivery The defendants discharged these contracts by means of goods of their own and when subsequently the plaintiff sent on grain to the defendants to meet these contracts the defendants sold the plaintiff s grain at a profit The defendants did not inform the plaintiff either that they had fulfilled the contracts with their own grain or that they had resold the plaintiff s grain at a profit *Held* that the plaintiff was entitled to whatever profit was realized by the defendants on this latter transaction *Held* also that where on a direction by the principal to his agents to purchase grain for him the agent sold to him their own grain at a price higher than the prevailing market rate the principal was entitled to repudiate the transaction and could not be alleged to have ratified it in the absence of knowledge that the agents were selling their own property and were charging him in excess of the market rate DAMODAR DAS *v* SHEORAM DAS (1907) I L R 29 All 730

3 REVOCATION

1 ——— Agency of manager—*Revocation by one of several shareholders* A principal can determine the authority given to an agent

2 ——— Agent to sell property—

on the sale The defendant subsequently revoked this authority and the plaintiff shortly afterwards found a purchaser whose offer the defendant did not accept *Held* that the plaintiff could not recover on the agreement which had not been

for work done as broker or for commission the nature of the agreement being that the plaintiff

PRINCIPAL AND AGENT—*contd*

3 REVOCATION—*contd*

took the risk of the authority being revoked HURST v WATSON 2 Bom 423 2nd Ed 400

3 ———— **Hereditary agency**—*Contract —Consideration—Specific performance—Contract Act (IX of 1872) ss 202 205* The defendant by an agreement in the nature of a letter of attorney constituted the plaintiff and his descendants the hereditary agents of the defendant gave him authority to collect the rents of his share in an inam village and promised to pay him an annual salary out of the rents *Held* that as between the parties and during their lifetime the appointment was valid and binding whether or not any valuable consideration passed the mere acceptance of the office by the plaintiff being a sufficient consideration for the appointment But independently of the term of the agreement and whether or not the agency had been created for valuable consideration the defendant had under the general provisions of s 203 of the Contract Act (IX of 1872) a right to revoke the authority as the mere arrangement that the plaintiff s salary should be paid out of the rents could not be regarded as giving to the plaintiff an interest in the property the subject matter of the agency within the meaning of s 202 If the defendant had revoked the agency improperly the remedy lay under ordinary circumstances in a suit by the plaintiff for damages for breach of contract Where however the plaintiff chose to sue for specific performance and demanded arrears of salary —*Held* that without a valuable consideration for the defendant s promise the agreement passed by him to the plaintiff would be *nudum pactum* and the plaintiff would not be entitled to recover except for work and service actually rendered VISHNUCHARYA v RAMCHANDRA

I L R 5 Bom 253

4 ———— **Revocation of authority**—*Contract Act (IX of 1872) ss 201 202 205—Agent —Interest of agent in property—Exercise of authority so as to bind principal* The plaintiff received instructions by letter from the defendants to purchase cotton on their behalf This letter was received by the plaintiff before a telegram sent by the defendants the next day revoking the order reached him The plaintiff replied by letter stating that the telegram had arrived too late and that the purchase had already been made In fact the plaintiff had merely appropriated to the defendants a contract entered into by himself with a third party the day before the defendants order reached him *Held* that the telegram was a revocation of the order contained in the letter of the previous day *Held* further that the plaintiff had no such interest in the subject matter of the agency as to prevent its termination nor had he exercised his authority so as to bind his principal no contractual relation with any third person having been created before the receipt of the telegram LAKHMICHAND RAMCHAND v CHOTOORAM MOTIRAM

I L R 24 Bom 403

5 ———— **Registration**—*Contract Act (IX of 1872) 208* If the authority of the agent to admit execution of a document is revoked before registration but such revocation is not known either to the grantee of the document or the registering officer the document is not invalidated although it is registered by the agent after the revocation of his authority *Mujibunnissa v Abdur Rahim I L R 23 All 233* distinguished MOHENDRA NATH MOOKERJEE v KALI PROSAD JOHURI (1902) I L R 30 Calc 265

s c 7 C W N 229

4 DUTY OF AGENTS TO ACCOUNT

1 ———— **Form of account**—*Right to inspect book* Per FIELD J—It is the duty of an agent to render proper accounts to his employer irrespective of any contract to that effect And he does not discharge that duty by merely delivering to his employer a set of written accounts without attending to explain them and produce the vouchers by which the items of disbursements are supported In order to enable an agent to prepare accounts to be furnished to his principal he should be allowed to have reasonable access at proper times and in the presence of responsible persons to such books and papers in the principal s possession as may be necessary for the preparation of the account ANNODA PERSAD ROY v DWARKANATH GANGOPADHYA

I L R 6 Calc 754 8 C L R 321

2 ———— **Right to account on death of manager**—*Manager of company and employer —Liability to account—Accrual of right on death of manager against representative* A manager is bound to account to his employer whenever he is called upon to do so under reasonable circumstances On the death of such manager the right to an account accrues to the employer as against the manager s representatives LAWLESS v CALCUTTA LANDING AND SHIPPING COMPANY CALCUTTA LANDING AND SHIPPING COMPANY v LAWLESS I L R 7 Calc 627

5 LIABILITY OF PRINCIPAL

See PRINCIPAL AND AGENT I L R 33 Cal 31

1 ———— **Proof of purchase having been made for principal**—*Constructive purchase by agent with funds of principal* To establish a *primâ facie* case of constructive purchase by an [illegible] it must be [illegible] n [illegible] nts to [illegible] Ali [illegible] 233

SUFDUR ALI v WOOLFUT ALI

2 ———— **Right to sue principal**—*Election to sue agent—Suit Dismissal of* Where a creditor sued an agent of his debtor all [illegible] that the agent had made himself personally liable f r

PRINCIPAL AND AGENT—*contd*

5 LIABILITY OF PRINCIPAL—*contd*

debt and the suit was dismissed on the ground that the creditor gave credit to the principal —*Held* that the creditor was not debarred by such proceedings from suing the principal RAMAN *v* VAIRAVAN I L R 7 Mad 392

3 —— Purchase by agent out of scope of authority—*Assistant in indigo factory purchase of seed by—Disclosed principal* Held by the majority (GLOVER J *dissentiente*) that it is not within the reasonable scope of the authority of an assistant in an indigo factory to purchase any amount of indigo seed for his master and to make his master liable particularly when the seed was not purchased or used for the factory and that though the assistant in writing to the vendor for the seed styled himself in the body of the letter as the manager of the concern yet his signing himself for another person and not for the owner of the factory disclosed to the vendor that the other person and not the owner of the factory was his principal POGHOOBURDYAL MUNDUR CHRISTIAN 3 W R 123

4 —— Liability of principal to be sued on negotiable instrument executed by agent in his own name—*Contract Act 1872 ss 233 234 Quære* Whether having regard to ss 233 and 234 of the Contract Act a principal cannot be proceeded against upon a negotiable instrument executed by an agent in his own name—*Per* SUBRAHMANIA AYYAR J KRISHNA AYYAR *v* KRISHNASAMI AYYAR I L R 23 Mad 597

5 —— Right of person dealing

[illegible]

the suit was instituted the plaintiff knew to have acted as agent in the transaction for a third person Having obtained a decree he satisfied it in part by attachment of a sum of money and next caused the hypothecated property to be sold and purchased it himself Upon attempting to obtain

[illegible]

title thereto from his judgment debtor He then sued the principal debtor to recover the balance remaining due upon the bond after giving credit for the amount recovered by attachment in the suit against the agent *Held* that the plaintiff

[illegible]

PRINCIPAL AND AGENT—*contd*

5 LIABILITY OF PRINCIPAL—*contd*

6 —— Carriage of goods by railway—*Goods passing over the lines of several companies—Agreement for interchange of traffic—Loss of goods—Liability* The plaintiff delivered to the

[illegible]

Madras Company a receipt which recited that it was granted subject to the rules and regulations and charges in force on that or any other railway over which the goods might pass The goods were lost while on the line and in the charge of the defendants the G I P Railway Company and the plaintiff sued them for damage for breach of

[illegible]

rates that in such cases one company should receive payment and should account to the other

[illegible]

was wrongly brought against them as there was no contract between themselves and the plaintiff *Held* that the suit whether or not it might also have been brought against the Madras Railway Company was rightly brought against the defendants inasmuch as the agreement between the two companies if it did not actually constitute a partnership between them showed at least that the Madras Railway Company became the agents of the defendants to make the contract for carriage with the plaintiffs G I P RAILWAY COMPANY *v* RADHAKISAN KHUSALDAS I L R 5 Bom 371

7 —— Undisclosed principal—*Settlement of accounts between principal and agent —Right of unpaid vendor—Contract Act (IX of 1872) ss 231 232* The defendant who resided in Dholera employed the firm of *S K* as his agents

[illegible]

then lately arrived at Bombay) on the 24th March

[illegible]

reason to suspect that S K was an agent and not

PRINCIPAL AND AGENT—contd

5 LIABILITY OF PRINCIPAL—contd

principal in the tran act ons On the 27th and 28th March 1879 the 30 160 cocoanuts (the subject matter of the first two contracts) were transhipped into the vessel *Lalkmiprasad* and on the 29th March 1879 the 26 626 cocoanuts (the ubject matter of the third contract) were transh pped into the ve el *Lal ari* for conveyance to Dholera The *Lalsari* ailed from Bombay on the 31st March and on her arrival at Dholera the defendant obtained pos ession of the third lot of 26 626 cocoanuts which had been shipped on board On the 1 t April *S K* received from the defend

good faith and were received by *S K* at a time when the plaintiff gave credit to S K and did not know of any one el e to be charged with the price of the cocoanuts On the 2nd April the firm of S K stopped payment and on the 3rd April 1879 the plaintiff in consequence of the failure of *S K* and the non payment of the price of the cocoanut *transhipped the 30 160 cocoanuts (the* subject of the first two contracts) from the *Lal l mipra ad* into the *Pampra a l* These cocoa nuts were sub equently sold and the proceeds of the sale depo ited in the Bank of Bombay to abide the result of this suit On the 4th April the plaint iff di covered that the defendant wa the principal in the cocoanut transaction and brought this suit ag un t him to recover the price of the three lots of cocoanut The defendant denied that *S K* had

was entitled to recover The rule of Engli h law which makes the liability of an undi clo ed prin cipal subject to the qualification that he has not *bona f l* paid the agent or that the state of ac counts has not been altered is not adopted in the Contract Act S 232 is to be read as a qualifi cation of the first portion of paragraph 1 of s 231 *which gives a principal a general right to enf rce a* contract entered into by his agent S 232 qualifies that general right by making it ubject to the rights and obligations sul i ting between the agent and the other contracting party The second clau e of paragraph 1 of 231 gives a party contracting with an agent the same rights again t the principal only as he would have had again t the agent and s 234 adds a further qualification to his rights as again t the principal S 232 of the Contract Act adopt the qualification impo ed by English law upon the right of the principal to enforce a contract viz that he mu t take the contract subject to all the equitie in the same way as if th agent were the real prin ipal but it does not impose upon the ri ht of the other contracting party the qualification laid down by the ca es of *Thomp on v Davenport* 2 Smith s L C th Ed and from from *v*

5 LIABILITY OF PRINCIPAL—contd

Stokes L R 7 Q B 598 namely that the principal has not paid the agent or that the state of the ac count between the principal and agent has not been altered to the prejudice of the prin ipal The only qualification to the right of the other con tracting party against the principal is that impo ed by s 234 namely that he has not induced the principal to act upon the belief that the a ent only will be held liable PREMJI TRIKAMDAS v MADHOW JI MUNJI I L R 4 Bom 447

8 ——— — **Secret arrangement by agent**—*Purcha e by agent afterwards adopted by principal* If a principal adopts the acts of an agent in re pect of the purchase of a property he mu t take the property subject to the conditions with which the agent encumbered it notwithstanding any secret arrangement between them not known to third parties ISHEN CHUNDER SINGH v SHAMA CHURN W R 1864 3

9 — ——— **Fraud**—*Fraudulent s atements made by agent* Statements fraudulently mad by an agent for his own benefit are not binding on the principal JOWAHIR LALL v POOKURUM SINGH 6 W R 252

10 ——————— *Fraud of agent in sale of property* If an agent authorized to sell property commits a fraud against his principal th principal is the person who ought to suff r and n t a stranger DOORGA NARAIN SEN v BANEY MADHUB MOZOOMDAR I L R 7 Calc 199

11 — ——————— *Fraud of agent—Adoption of by principal* Principals are not allowed to benefit by adopting the fraud of their a ent KOYLASH CHUNDER BANERJEE v KALEE PROSUNNO CHOWDHRY 16 W R 80

12 ——————— *Liability in civil action of principal for con equences of agent s fraud* In a suit to recover the value of bullocks hired by the defendant s gomashta to convey quanti ties of salt from the Government golah which *proving to be in excess of the quantity enter d in* the Government pass owing to the fraud of the

ignorance of the salt merchant the defendant could be pleaded to exonerate him from the conse quences of his servant s fraudulent act SAIB JUNNA v PAMHURRY MUNDUL 1 Hay 461

13 ——————— *Bankruptcy of agent effect of—Breach of contract—Damages—Amendment of bill of complaint* This was a suit for foreclosure of a mortgage f r Rs50 000 during a cer tain contract which the plaintiffs contended had determined by the bankruptcy of their Calcutta agents The defence was that the contract was not so determined and that even if it were the defendant had a ri ht of lien or set-off which would cover the amount of the advance Th se co

PRINCIPAL AND AGENT—*contd*

5 LIABILITY OF PRINCIPAL—*contd*

consisted of the amount of loss in the sale of silk which the defendant after the said bankruptcy had shipped direct to London and sold there on non acceptance by the plaintiffs and of a claim of R18 024 the amount of a bill of the said agents which the defendant had accepted from them as payment for silk but which bill was dishonoured after the said bankruptcy Cl 6 of the agreement was as follow The silk to be paid for on delivery Delivery to be taken within ten days of the arrival of any parcel in Calcutta failing the payment within that time Carr Tagore & Co may sell it at the market price and should this be under the contract rate you agree to pay the difference Cl 10 of the agreement was as follows As you have no authority to make advances previous to the receipt of the silk and as Carr Tagore & Co stipulate for the advance in part of the sum which they are out of pocket to carry on the filatures the advance proposed being R50 000 at such times and in such portions as they may require after the delivery of the first parcel of silk under this contract so that such advances shall not at any time be in excess of R50 000 beyond the silk delivered for which interest at the rate of 6 per cent will be allowed and it is agreed that the question of advances shall be an open question and that in the event of advances being authorized the contract shall at once be in force The lower Court held that under these two clauses the defendants could not resort to the advances for their set off that the plaintiffs were not liable for the R18 024 and that the [illegible]

where there is no fraud that voluntary acceptance of an agent s bill as payment discharges the principal that a contract is not determined by [illegible] there has [illegible] that an [illegible] contract [illegible] avoid a liability for breach thereof that when a place of delivery is specified in a contract delivery must be made there that the plaintiff having failed to prove alleged fraud in a deed although entitled to relief under a distinct head of equity will not be allowed to make a new case and cannot in the same suit obtain a decree on the footing of the said deed that amendment of a bill will not be allowed if it appear that an account being the relief attainable would have been given if demanded and that the plaintiff has not offered to perform his part of a contract and allow compensation for breaches thereof to the defendant and to pay any balance that should be found against him that the mode of ascertaining damages for breach of contract prescribed in the contract must be adopted and the remedy by action at once accrues POLE *v* GORDON
2 Hyde 289 Cor 83 Bourke O C 1

PRINCIPAL AND AGENT—*contd*

5 LIABILITY OF PRINCIPAL—*contd*

14 ———— **Misfeasance and tort of agent**—*Liability of principal for wrongful acts of agent* A principal is liable for the misfeasance or tort of his agent when such misfeasance or tort has been done or committed with the subsequent assent adoption or ratification of the principal When it is found that a principal was cognizant of and countenanced the act of his agent it may be inferred that he assented to it RAI KISHEN CHAND *v* SHEO BARAM RAI **7 N W 121**

15 ———————— *Fraud of agent —Liability of principal—Scope of agent s authority —Fraud in the interest of the agent and not of the principal—Theft and forgery by servants no duty to guard against—Neglect—Proximate and direct cause of loss—Presumption—Guarantee by broker in one transaction effect of on subsequent transactions where signature of broker forged* A principal is liable for the wrongs of his agent committed [illegible]

entirely in his own interests the principal cannot be held responsible for the consequences of his fraudulent conduct *Barwick* v *English Joint Stock Bank L R 2 Exch 259 Houldsworth* v *City of Glasgow Bank 5 App Cas 317 British Mutual Banking Co Ld* v *The Charnwood Forest Ry Co L R 18 Q B D 714)* referred to There is no duty incumbent upon mercantile men any more than upon other people to anticipate and to take precautions against the possibility of a theft of letters or of forgery being committed *Societe General* v *Metropolitan Bank 27 L T 849* referred to The rule that whenever one of two innocent parties must suffer by the act of a third person he who has enabled such person to occasion the loss must sustain it must be restricted to this that the neglect must be in the transaction itself and be the proximate and direct cause that led to the loss complained of *Lickbarrow* v *Mason 2 T R 63* commented on *Freeman* v *Cooke 2 Exch 654 Arnold* v *Cheque Bank and Arnold* v *City Bank 1 C P D 578 Bank of England* v *Vagliano Bros [1891] App Cas 107 Swan* v *North British Australasian Co 2 H & C 175* referred to Even if there is negligence on the part of one of the parties in the conduct of their business it would not be sufficient to fix him with liability unless the loss was the ordinary or likely result of that negligence *Bank of Ireland* v *Trustees of Evans s Charities 5 H L C 389 Arnold* v *Cheque Bank 1 C P D 578* referred to and discussed. *Young* v *Grote 4 Bing 253* discussed and distinguished *Scolfield* v *Earl of Londesborough [1895] 1 Q B 543* referred to The signing by a broker of a bought note in which he guarantees the fulfilment of a contract on the part of the seller raises no presumption of law in transactions between the same parties which cannot be contradicted, that subse

PRINCIPAL AND AGENT—*contd*

5 LIABILITY OF PRINCIPAL—*contd*

quent bought notes to which the signature of the broker is forged containing similar guarantees were signed with the authority of the broker *Spooner* v *Browning* [1898] 1 Q B 528 referred to MORRISON v VERSCHOYLE (1901)
6 C W N 429

16 ——— **Tenant—Suit for Damages** A master or principal is liable for wrong done to third parties by his servant or agent provided that the act is done on his behalf and with the intention of serving his purpose ISWAR CHUNDER SANTRA v SATISH CHUNDER GIRI (1902)
I L R 30 Calc 207
s c 7 C W N 126

17 ——— **Agent s right to sue principal for price of goods purchased**—*Liability of principal—Right of suit* Where the plaintiffs as agent of the defendants purchased goods for the defendants from wholesale dealers and it was not their case as set out in the plaint that they had done so by pledging their own personal credit or that the pledging of their own credit was within the scope of the agency —*Held* that they would have no cause of action against the defendants for the amount due to the whole sale dealers until they were compelled to pay their demands KHURTUN SAHA v DHATIA DAS (1905)
I L R 32 Calc 1145

18 ——— **Contract with broker acting as principal**—*Contract—Specific performance—Contract Act (IX of 1872) s 235* Where the plaintiffs purported to act under contract with the defendant as brokers for the sale and purchase of jute but really acted on their own account as principals without the knowledge and consent of the defendant —*Held* that they were not entitled to recover for the latter s breach of contract by reason of s 236 of the Indian Contract Act S 236 is not restricted to cases where an agent purports to act for a named principal but follows the rule underlying the cases of *Rothschild* v *Brookman 2 Dow & Cl 188* and *Robinson* v *Mollett L P 7 E & I App 802* that an agent cannot recover on a contract if he really acts as a principal SEWDUTT ROY MASKARA v NAHAPIET (1907)
I L R 34 Calc 628

19 ——— **Undisclosed principal**—*Agent— Discloses himself —Strict construction* S 231 of the Contract Act (IX of 1872) deals with the rights (*a*) of the principal and (*b*) of the third party in cases where the contract is entered into by the agent without disclosing the principal The first clause refers to the general case and the ... deals with the praticular case where the principal discloses himself before the contract is completed The second clause should be read as governed by the first clause The words discloses himself in s 231 of the Contract Act (IX of 1872) should be construed strictly *Per* BATCHELOR J It has been warmly urged that the third party s right to repudiate which is allowed if the principal himself makes the disclosure should not be refused merely because the disclosure is made by some other person or the information reaches him from some other source But the argument to my mind is not convincing For whatever may be the subjective belief or conviction of the third party it is conceivable that he should have no right to avoid the contract unless the principal hitherto undisclosed comes out into the open and claims the benefit of the contract for himself and there would be no hardship in requiring the third party to challenge the alleged principal as to whether he makes this claim or not LAKSHMANDAS v ANNA LANE (1904)
I L R 32 Bom 356

6 LIABILITY OF AGENTS

1 ——— **Banian liability of**—*Custom* There is a presumption in Calcutta that where a vendor of goods deals with a banian of a European firm *qua* banian he is only to look to the banian for the price FAIZULLAH v RAMKAMAL MITTER
2 B L R O C 7

JUGGOBUNDOO SHAW v GRANT SMITH & CO
2 Hyde 129 Cor 47

s c on appeal GRANT SMITH & CO v JUGGOBUNDOO SHAW
Bourke A O C 117 2 Hyde 301

2 ——— **Agent of foreign principal**—*Presumption of law as to whom credit is given* Where it is sought to make the agent of a foreign principal liable on a contract there is no presumption of law but the case must be determined by the particular facts But in the absence of evidence to the contrary it will be presumed as a matter of fact that credit was given to the agent MCGAVIN v WILSON
1 Ind Jur N S 405

3 ——— **Agent mixing transactions of principal with his own**—*Borrowing* An agent is personally liable who mixes up his private transactions with those of his principal by borrowing for both JUGGURNATH ROY CHOWDHRY v MUNOREKHA DOSSEE
2 W R 156

4 ——— **Agent dealing with third party s goods as those of the principal**—*Liability to owner of goods* An agent who deals ... goods as if they belonged to his ... not ... or

PRINCIPAL AND AGENT—contd

6 LIABILITY OF AGENTS—contd

6 ———— Purchase by agent—*Knowledge of agency by vendor—Government servant* The defendant a servant of Government having given orders for bricks and the plaintiff being aware that the defendant was a servant of Government and that the bricks were required for building bridges on account of Government —*Held* that the Government was liable and not the defendant personally SREENATH ROY v PO S
4 W R S C C Ref 13

7 ———— Goods ordered by principal and accepted by agent—*Personal liability of agent* In a suit for the recovery of the value of certain articles sold and delivered to defendant No 1 who had given an order for payment which defendant No 2 as his agent had accepted by an endorsement plaintiff gave up the claim against defendant No 1 and demanded the amount from defendant No 2 alone *Held* that under the circumstances there could be no claim against defendant No 2 KALEE MOHUN SIRCAR v HUMAYUN KADER MAHOMED ALI 25 W R 91

8 ———— Liability in case of two in

[illegible]

the manager he was asked to send Rs 500 in currency notes through *M* payment being promised by a remittance through another bank or through *M* *M* delivered the letter to the manager who [illegible]

[illegible]

plaintiff himself and not in consequence of any representation made by the defendant the latter could not be held liable for the loss sustained by the former MOONEY v MUSSOOREE SAVINGS BANK
6 N W 319

9 ———— Undisclosed principal—*Promissory note signed by agent* If an agent signs a promissory note without disclosing the names of his principal the latter are not liable SHEO CHURN SAHOO v CURTIS 3 W R 139

10 ———————— *Contract Act (IX of 18?) s 230* A broker gave to one *G* the following sold note Sold this day by order and for account of E E Gubboy to my principal G P Notes for Rs 00 000 (two lakhs) at R98 11 (Sd.) A. T A Broker This note was endorsed— A. T A. for principal In a suit by *G* against the broker for failure to take delivery —*Held* that there was n thing in this contract to rebut the personal liability of the broker GUBBOY v AVETOOM I L R 17 Calc 4[illegible]

11 ———————— *Liability of o[illegible] for rent—Honorary Secretary to a School main[illegible] by a foreign society—Contract Act (IX of 1[illegible]) s 2[illegible]0* The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent The defendant pleaded that the house in question was occupied by the Beni Israel school of Bombay which was maintained by the Anglo Jewish Association of London that he was Honorary Secretary of the school and as such and not in his personal capacity had hired the house and that he had never paid the rent or [illegible]

[illegible]

the defendant BHOJABHAI ALLARAKHIA v [illegible] SAMUEL I L R 22 Bom [illegible]

12 ———— [illegible] *Liability of agent—Charter party—[illegible] ledge—Disclosure of name of principal [illegible] making the contract—Presumption of [illegible] agent where name of principal not [illegible] tract Act (IX of 1872) s 2[illegible]* The [illegible] charter party contracted to [illegible] *Oakdale* to the defendants upon certain [illegible] first clause of the charter party [illegible] plaintiffs agreed as agents for owner [illegible] steamship and subsequent clauses [illegible] the owners should bind the [illegible] cargo on board and that the master [illegible] owners should have a lien on the [illegible] etc The charter party was signed [illegible] and defendants in their own [illegible] sued the defendants for breach [illegible] in refusing to load the said [illegible] the plaintiffs had contracted [illegible] therefore not entitled to [illegible] by a person who is an a[illegible] taken as a whole to [illegible] party the notion that [illegible] that character b[illegible] contract Where on [illegible] the other is contracting [illegible] son whose name [illegible] laid down in cl. 2 of [illegible] of 1872) does n[illegible] making the contract [illegible] name of his prin[illegible] knowledge and [illegible] disclosure th[illegible] convey su[illegible] & Co v LAX[illegible]

13 ———— —*Contract A[illegible] (I of 18[illegible]) [illegible] stevedores to [illegible]

PRINCIPAL AND AGENT—*contd*

6 LIABILITY OF AGENTS—*contd*

ants let a steam ship to the plaintiff for a certain term and signed a charter party by and on behalf of the owners of the steam ship *A* The charter party was a time charter to commence on arrival at Calcutta and to terminate at one of certain ports the steamer in the interim to ply to and from any port the charterers pleased It was agreed that the steamer should be provided with a proper and sufficient crew of seamen engineers stokers firemen and other necessary persons for working cargo with all despatch and that in taking and discharging cargo the master and his crew with

insobriety or negligence on the part of master officers engineers stokers firemen or crew of the said steam ship The names of the principals were not disclosed in the charter party but were verbally disclosed before the charter party was signed. In an action against the agents for damages for refusing to supply stevedores and other persons in addition to the crew when loading and discharging cargo —*Held* that the presumption created by the second clause of 230 of the Contract Act is merely a *primâ facie* one and may be rebutted and that the contract was not personally binding on the agents because the *primâ facie* presumption of an intention to contract personally was rebutted by the language of the contract itself *Held* also that the terms of the charter party showed that the crew only were to assist in loading and discharging cargo and that the plaintiffs were not entitled to call on those responsible for

liable he cannot escape liability by evidence of any disclosure of his principal s name apart from the contract SOOPROMONIAN SETTY *v* HEILGERS

I L R. 5 Calc 71 4 C L R 377

14. ———————— On 6th April 1865 *A* who resided and carried on business at

ship bound for Bombay to be there delivered in like good order and well conditioned to *B* or his

have shipped per *Sir Jamsetjee Family* 2C8 bags of sugar for Bombay I hold the bills of lading for the

PRINCIPAL AND AGENT—*contd.*

6 LIABILITY OF AGENTS—*contd*

same and the ship is still detained here I hope you will be kind enough to let me know what you will do about the cargo if the said ship will sail for Bombay or tranship to any other vessel or deliver the cargo here To which *C & C* on the same day replied We shall be able to tell you in the course of a week or so what we propose doing with the ship *Sir Jamsetjee Family* as soon as anything has been decided due notice shall be given to the shippers of cargo already on board. On 1st June *C & C* again wrote *H A* having failed to carry out his charter of the *Sir Jamsetjee Family* in terms of the shipping order and sundry goods having been sent on board by him of which the following are believed to be to your order and for

you are ...—be at the for the

same being sent to the owners of the *Sir Jamsetjee Family* to be delivered to the consignees of the goods upon production of the bills of lading already signed You will of course understand that the goods are liable for the chartered rate ... R 10 per ton and the charterer having failed to complete the loading the difference of freight between

agreed that my goods be transhipped to a steamer going to Bombay at the current rate of freight but I must not pay the difference of freight whatever it may be In regard to *H A* I have nothing to do with them as the bill of lading per *Sir Jamsetjee Family* for 268 bags of sugar being signed by the captain of the same at the rate of freight R16 per ton I am liable for the same only If you are willing to tranship my said goods to a steamer at the same rate of freight I am willing and must pay it otherwise you will kindly order to deliver my goods from *Sir Jamsetjee Family* here *C & C* accepted and acted on the proposal in the last letter The sugar was transhipped from the *Sir Jamsetjee Family* to the *Gunga* from the mate of which *C* ... that the goods had were of *C* *Mula*

... Subsequently of the of lading ... *Mula* goods (in

of insurance which was again transferred. There were inserted in red ink in the bill of lading when given to *A* the words Bags all more or less in bad order and torn contents

PRINCIPAL AND AGENT—*cont'd*

6 LIABILITY OF AGENTS—*cont'd*

damaged and rotten marks indistinct not responsible for marks or condition of packages or contents. The *Hula* proceeded on her voyage but returned to Calcutta with her cargo damaged by the perils of the sea 260 of 4 s bags of sugar were condemned and sold in Calcutta under the authority of the agents of the *Hula* without notice to *C & C* or to *A* and neither were aware that the sale was about to take place. The remaining eight bags were sent to Bombay in another ship by the agents of the *Cungs* and *Hula* and were received by *A*. *Held* (overruling PHEAR J) that *C & C* were agents only of the owners of the *Sir Jamsetjee Family* but had *C & C* been liable as agents for *A* they would not have been liable for the full value of the goods damaged by the perils of the sea. *Quære* If *C & C* had expressly as agents of the owner of the *Sir Jamsetjee Family* contracted to tranship and deliver at Bombay according to the terms of the bill of lading would they have been personally liable. *Semble* A contract made with express reference to a principal though not by name would not render the agent personally liable as the agent of an undisclosed principal. COWIE *v* DHURMSEE POONJABHOY 2 Ind. Jur N S 75

15 ——— *Agents of ship—Liability of agent* Upon the following fact referred Defendants contracted with plaintiffs as agent of the captain and owners of a certain ship then in the Madras Roads. The plaintiffs were aware of this at the time when the contract was made. The captain was at the time in charge of his ship. At the time of the contract nothing was said by either party as to the person or persons on whose credit the contract was made —all that occurred being that defendants known by plaintiffs to be ...

that they contracted only as agents. The plaintiffs did not know the name of the owners nor the captain nor had they any further or other knowledge of the latter than that which his designation by his office of master of the ship conveyed. *Held* that in the absence of anything more than knowledge that the defendants were acting as agents of the master and owners of a ship in the Roads a decision declaring the agents liable was strictly in accordance with English law. PALMER *v* GORDON 7 Mad 82

16 ——— **Captain and officers of man of war**—*Damage occasioned by treatment of stranded ship without consent of owner* *A* the captain of a man-of war gave written instructions to *B* his lieutenant concerning a certain ship which was stranded. The official instructions contained the following passage "You will in all emergencies act as your discretion and judgment direct." At the same time *A* sent a demi official letter to *B* in which after several directions having reference to the disposal of the cargo he added "After getting all you can I should think that the wreck ought to be burnt but all is left to your discretion and judgment." In pursuance of these orders the wreck was burnt without the consent of the owner. *A* subsequently ratified the act of his subordinate. *Held* ...
d
c
cc
h
occasioned thereby. ABDOOLA BIN SHAIK ALLY *v* STEPHENS 2 Ind Jur O S 17

17 ——— **Fraud**—*Fraudulent agreement between agent and contractors for work* The ex King of Oudh ... cure the c... over to I... tract for a... ... his agents. The appellant was discharged before the completion of the work and he sued *I M* and the ex King jointly. *Held* that I did not render himself personally liable and that the contract was of such a description that the appellant was not entitled to a decree against the other respondents in respect of it as both I and the appellant were parties to a fraud on the ex King. BHOGOBAN CHUNDER SEN *v* BADSA ALLY SHA 1 Ind Jur O S 103

18 ——— **Payment of deposit as purchase money with auctioneer**—*Suit to recover deposit* The plaintiff purchased immoveable property at an auction sale and deposited certain amount on account of the purchase money with the auctioneer. The vendor refused to convey the property to the plaintiff. *Held* that the money having been deposited with the auctioneer as a stakeholder and not as an agent merely and being in his hands the action to recover it lay against the auctioneer and not against the vendor. ESSAJI ADAMJI *v* BHIMJI PURSHOTAM 4 Bom O C 125

19 ——— **Contract for municipality**—*Repudiation of contract by municipality—Want of authority* Plaintiff sued one *M M* overseer for the municipal office for the recovery of money due on a contract under which plaintiff had done certain work defendant contracting for the municipality and for the performance of work known by plaintiff to be municipal work. The municipality having ignored the contract it was held that the contract being a *quasi* contract defendant could not be held personally liable in the action. MODHOOSOODUN DEY *v* MOHENDRONATH MOOKERJI 9 W R 206

20 ——— **Gratuitous agent**—*Negligence—Gross negligence* A gratuitous agent is liable for any loss sustained by his principal through

PRINCIPAL AND AGENT—*contd*

6 LIABILITY OF AGENTS—*contd*

the gross negligence of the agent. What is gross negligence is a question on the facts of each particular ca e AGNEW v INDIAN CARRYING COMPANY 2 Mad 449

21. ———— **Negligence of agent**—*Agent to buy indigo seed—Exercise of judgment* Agents buying indigo seed in a rising market under an order to purchase on the most favourable terms cannot experiment by sowing a sample and waiting before they purchase to see whether it will germinate They are only bound to act to the best of their judgment and to use proper care and skill as agents in purcha ing what they are ordered to purchase and their action cannot be repudiated unless they are shown to have been guilty of negligence BETTS v ARBUTHNOT 19 W R P C 65

Affirming deci ion of High Court in ARBUTHNOT v BETTS 6 B L R 273

22 ———————— *Liability of firm for acts of member of firm—Contract Act s 192* The plaintiff and defendan s carried on business in the same place and when a member of either firm was sent to Calcutta to make purchases the other firm took advantage of the opportunity to get the same person to purchase goods on their behalf A member of the defendant s firm who was sent to Calcutta through his own negligence lost a sum of money given by the plaintiffs to the defendants firm for the purchase of goods The lower Courts found that the defendants acted as agent *Held* that the defendants firm and not only the particular member of the firm by whose negligence the money was lost was responsible SEKUNDER MONDUL v NOCOWRI BISWAS 11 C L R 547

23 ———————— — *Liability for loss sustained by company* *Held* under the circumstances that the company had suffered loss by the neglect of their agent and that he was liable to make good the loss sustained in con equence of his negligence CRAWLEY v MALING 1 Agra 63

24 ———— **Suit by principal against agent to recover money received and not accounted for**—*Termination of agency—Contract Act (IX of 1872) ss 201 218* Where an agent for the sale of goods receives the price thereof the agency does not terminate with reference to ss 201 and 218 of the Contract Act (IX of 1872) until he has paid the price to the principal and a suit by the principal to recover the price is within time if brought within three years from the date of a demand for an account of such price The agency does not terminate immediately on the sale of the goods It does not terminate at the time when the plaintiff obtained knowledge of the defendant breach of duty BABU RAM v RAM DAYAL I L R 12 All 541

FINK v BULDEO DASS I L R 26 Calc 715

25 ———— **Illegal cess**—*Kharcha—Liability of agent to account for sums real ed not legally recoverable by principal—Bengal Tenancy Act s 74* An agent is liable to account to his principal for the sums realized by him from tenants although th said sums are not legally recoverable by the landlord, as being illegal cesses *Nobin Chunder Roy Chowdry v Gooroo Gobind Mojoomdar 25 W R 8* doubted *Gobind Soonder Singh v Chandi Charan Bhattacharjee unreported* followed NAGENDRABALA DASSI v GURU DOYAL MUKERJI (1903)

I L R 30 Calc 1011
s c 7 C W N 535

26 ———— **Administrator s Agent**—*Agent appointed by administrator not liable on the contract of agency to the person entitled to the e tate* An agent appointed by the admini trator of an estate as such cannot be proceeded a ain t on

I L R 30 Mad 245

7 COMMISSION AGENTS

1 **Unauthor zed profits of agent**—*Contract Act (IX of 1872) ss 215 216—Evidence Act (I of 1872) s 92—Contemporan ous oral agreem nt—Account sales* The plaintiff a firm of merchants entered into an agreement (which was reduced to writing) with the defendants who were dealers in coffee and other produce to the following effect *viz* that all con ignments of produce which the defendants might make to Europe should be made through the plaintiffs firm that the plaintiff should receive a commis ion of 1 per cent for themselves and 2½ per cen for their a ents at the port of consignment that the plaintiffs should make certain advances to the defendants against the produce and that the sums advanced should be repaid with interest at such rates as may be fixed at the various dates of such loan it being agreed that such interest is to be regulated by the then prevailing rate at the office of the Bank of Madras at Tellicherry The written agreement was sil nt as to the mode of ale rate of exchange and other matters connected with the bu ine s but it was at the same time further agreed orally that the sales of the defendant produce were to be made under the directions and at the discretion of the plaintiffs Business was carried on on the foot ing of the above agreements for eighteen month during which period the plaintiffs furni hed to the ... for the con were ac The ming in

debted to the plaintiffs and about nine month after the date of the above mentioned a reement the defendants executed in favour of the plaintiffs a mortgag in which the then amount of their indebtedness was recited The defendants became further indebted to the plaintiffs and the plaintiff

PRINCIPAL AND AGENT—*contd*

7 COMMISSION AGENTS—*contd*

having furnished them with an account of the transactions between them now sued to recover the balance due The defendants admitted the correctness of the debit side of the account but denied in general terms that of the credit side Evidence was given by the plaintiffs of the receipt of the account sales in the ordinary course of business and of the delivery of copies to the defendants from time to time and they were filed as exhibits without further proof It appeared that in the account the defendants were charged on account of local exchange at a rate higher than that actually paid to the Bank with which the plaintiff had made a special arrangement without reference to the contract with the defendants. It also appeared that the plaintiff under an arrangement made with their agents at the ports of consignment had received from them about 1 per cent. on the various consignments by way of return commission and that this arrangement had not been communicated to the defendant *Held* (i) that the account sales were *prima facie* proof of the transactions to which they related (ii) that evidence of the contemporaneous oral agreement was admissible (iii) that the defendants were not entitled to the benefit of the special arrangement between the plaintiffs and the Bank (iv) that the plaintiffs were liable to the defendants for the amount received by them as return commission MAYEN *v* ALSTON I L R 16 Mad 238

2 ——— Principal and Factor—*Consignment for sale—Advance by factor on consignment—Right of factor to sell goods consigned to him for sale below the limit of price prescribed by consignor* In January 1889 an agreement was made between the plaintiffs and the defendant which provided that the defendant in Bombay was to act for the plaintiffs in influencing consignments of produce to the care of the plaintiffs in London Such produce was to be sold by the plaintiffs in London for a certain commission and brokerage One of the terms of the agreement was that the business in England was to be worked entirely in the defendant s name and the defendant was to undertake to guarantee the plaintiff free of all loss in connection with the said consignments and to guarantee the payment of redrafts etc On the 25th January 1889 the defendant consigned 435 packages of cloves to the plaintiffs in London and drew against the consignment a draft for £2 100 on the plaintiffs In his consignment letter the defendant stated that the consignment was from his constituent *C K* but that as R30 000 had been advanced to him the consignment was shipped in the defendant s name The letter continued The cost is 9½*d* per pound but he expects more and not to be sold under the above rate. The sum drawn against the cloves (£2 100) was £400 in excess of their value and on receipt of the consignment letter on the 11th February 1889 the plaintiffs at once telegraphed to the defendant to remit by cable £400 against over draft against cloves On the next day the defendant replied by telegraph I will remit you by outgoing mail The plaintiffs accepted and [illegible]

of a sale being effected The lowest limit named by him was 6*d* per pound on the 31st October 1889 In December 1889 the market price was only 5*d* per pound and the deficit owing to the plaintiffs was £1 300 The plaintiffs presented bills to the defendant for this balance but they were refused On the 5th February 1890 after due notice to the defendant the 435 bales of cloves were sold [illegible]

which the present suit was brought The defendant contended that the plaintiff were not justified in selling the clove below the price limited *viz* 6*d* per pound and claimed to be credited with £329 1 8 which was the difference between the amount actually realized by the sale and the amount which [illegible]

owing to a falling market and that the defendant acquiesced in that condition (ii) that the plaintiffs had throughout claimed the right to sell if the condition was not observed and that the defendant inferentially admitted the right claimed by the plaintiff The conclusion to be drawn was that the business was conducted on that basis and that when the condition was broken the plaintiffs right to sell arose according to the course of business notwithstanding the limit of price imposed by the defendant *Per* SARGENT *C J*—The result of the authorities is to show that where a factor for sale who has made advances claim the right to sell *invito domino* the question is whether there was an agreement between the parties either express or to be inferred from the general course of business or from the circumstances attending to particular consignment that the factor should under any and what circumstances have the power to sell against the wish of the owner of the goods The onus of proving such agreement lies on the factor who has made the advances *Per* FARRAN *J*—On the whole the authorities warrant the inference that where goods are consigned to a foreign merchant as security for an advance albeit he may be a factor entrusted with the sale of goods on commission and where by reason of the fall in the market or other

PRINCIPAL AND AGENT—*contd*

7 COMMISSION AGENTS—*contd*

limit on their sale and desire to hold them on if the principal do not put his factor in funds to make up the deficit so caused JAFFERBHOY LUDHABHOY CHATTOO v CHARLESWORTH
I L R 17 Mad 520

3 ———— **Agency to sell coupled with interest**—*Contract Act s 202—Discretion as to price left with agent—Power of principal to impose limits as to price* The defendant consigned goods to a firm in London for sale and in respect of each consignment he received an advance from the plaintiff who was the agent of the London firm and signed a consignment note which contained the following passage I hereby authorize you to sell the above goods at the best price obtainable without reference to me and I give you full discretion and power to act on my behalf to the best of your judgment in regard to such sale and in all matter connected with the management of this consignment Should there be any short fall after realization of the above consignment I hereby authorize you to draw on me for the amount and I engage to honour such draft and to pay it on presentation The plaintiff guaranteed the payment of the redrafts to the London firm on whose account he made the advances to the defendant Short falls having occurred on certain consignments and the London redrafts having been dishonoured the plaintiff paid them and now sued to recover the amount from the defendant It appeared that consignments had been sold at prices less than certain limits which had been fixed by the defendant subsequent to the receipt of the advances and the signature of the consignment notes *Held* that the defendant had no right (regard being had to the terms of the consignment note and the course of dealing between the parties) so to impose limits of price and that the plaintiff was entitled to recover KONDAYYA CHETTI v NARASIMHULU CHETTI
I L R 20 Mad 97

4 ———— **Sale or lease of house through agent**—*What entitles agent to commission—Express stipulation—Direct intervention—Contract Act (IX of 1872) s 20 —Period of time for revocation or renunciation of authority—Quantum meruit* In the absence of any special stipulation an agent in order to found a claim for his bonus or commission in selling or letting a house must show that such sale or lease was the direct result of his intervention and was obtained by means of his agency or some sub agent of his it is not sufficient for him to show that such lease or sale was obtained indirectly as a remote and casual consequence of his efforts *Antrobus v Wickens 4 F & F 291 Curtis v Nixon 24 Law Times 706 Toulmin v Millar 58 Law Times 96* followed Under s 20 of the Indian Contract Act in the absence of any express contract the period of time which is to be implied depends on the particular circumstances of each case *Simpson v Lamb 17 C B 603*

PRINCIPAL AND AGENT—*contd*

7 COMMISSION AGENTS—*concld*

Hamlyn & Co v Wood & Co [1891] 2 Q B 488 followed JORDON v RAM CHANDRA GUPTA (1904)
8 C W N 831

5 ———— **Commission agents—Pakki adat system**—*Sale and purchase by the agent on his own account—Wagering contracts—Usage of trade—Tender of evidence as to delivery at other tarias—Relevancy of such evidence* The defendant a resident of the North West Provinces from time to time sent orders to the plaintiffs in Bombay to sell and purchase cotton on his account The plaintiffs carried out the defendant s orders as they were received Up to the due date they had purchased on behalf of the defendant 400 bales more than they had sold It appeared that by reason of other contracts entered into with the merchants from whom they had purchased on behalf of the defendant the plaintiffs had cancelled all these purchases before the due date The defendant neither sent money to pay for the cotton nor did he direct the plaintiffs to sell on his behalf The plaintiffs sued the defendant describing themselves as commission agents for their commission and for the loss on 400 bales sold on defendant s account The plaintiffs were unable to show that they had paid any damages on account of the defendant for failure to take delivery to any of the merchants from whom they had purchased on [illegible]

selves and the defendant to treat themselves as the principals on the ground that the business was conducted on the *pakki adat* system under which no privity was established between the defendant and the merchants to whom or from whom cotton was sold or bought on his account *Held* that if the plaintiffs were as their plaint stated commission agents and they were employed by the defendant as his commission agents and as such under instructions and on account of the defendant entered into these purchases they had no cause of action *Held* further that the usage termed the *pakki adat* system involved a material departure from the ordinary relations between a principal and his agent of which there was no suggestion in the pleadings or issues nor was there any evidence to prove it The plaintiffs must therefore be held to the case they had made During the course of the hearing in the lower Court it appeared that at the *tarias* for which contracts in question had been made the plaintiffs had neither given nor taken delivery of any cotton They tendered evidence to show that at other *tarias* they had given or taken delivery of [illegible]

v SIDHRUTHRAI (1905) [illegible]

PRINCIPAL AND AGENT—*contd*

8 SUIT FOR ACCOUNT

1. — — **Limitation**—*Suit for account—Limitation Act (XV of 1877) Sch II Art 89 and 120* A suit by a principal against his agent for an account and also for recovery of moneys from him that may be found due in a suit for moveable property received by the agent on behalf of the principal and not accounted for and is governed by Art 89 Sch II of the Limitation Act (XV of 1877) *Jogendra Nath Roy v Dol Nath Chatterjee* 8 C W N 11 followed SHIB CHUNDRA ROY v CHANDRA NARAIN MUKERJEE (1905) **I L R 32 Calc 719**

2. ——— — — *Account suit for—Limitation—Charge upon immoveable property—Contract to pay for account—Limitation Act (XV of 1877) Sch II Art 89 120 132* Where the suit is not merely for an account but one to enforce in the plaintiff's favour the charge created to secure the money which might be found due from the agent to his principal on his account the case falls within Article 132 of the Second Schedule of the Limitation Act. To ascertain which Article of the Second Schedule of the Limitation Act applies it is important to see what is the relief which the plaintiff claims *Asghar Ali Khan v Khurshed Ali Khan I L R 24 All 27 L R 29 I A 23 Jogendra Nath Roy v Dol Nath Chatterjee 8 C W N 11 Madhub Chunder Chuckerbutty v Debendra Nath Dey 1 C L J 146 Shib Chandra Roy v Chandra Narain Mukerjee I L R 32 Calc 719 Mati Lal Bose v Amin Chand Chattopadhya 1 C L J 11* distinguished HAFEZUDDIN MANDAL v JADU NATH SAHA (1908) **I L R 35 Calc 298**
8 C 12 C W N 820

3. ——— **Pleader and Client**—*Agency—Relation between co mortgagors one of them a pleader—Pleader—Accountability—Settled account—Suit to falsify—Specific averment of error necessary—Changing suit for accounts into suit to falsify settled account—Procedure in account suits—Account* A person does not become the agent of another merely because he gives him advice in matters of business. The essence of the matter is that the principal authorises the agent to represent or act for the principal in bringing him or aid in bringing him in contractual relation with a third person that is to say there must be a recognition of the derivative authority of the agent. A solicitor who has been employed as such in a transaction for investment of money may be liable for negligence in lending money on insufficient security. But the liability varies with the extent of the part he is employed to take in the transaction *Dooley v Watson 39 Ch D 178* referred to. Plaintiff jointly with one *P* a pleader advanced money on what turned out to be insufficient security. It was however found that the plaintiff knew and approved of the security at the date of investment *Held* that the plaintiff could not call upon *P* to recoup him any loss he sustained by reason of the insufficiency of the security even though he might have obtained the advice of *R* as pleader on entering into the transaction MOHESH CHANDRA BOSU v RADHA KISHORE BHATTACHARJEE (1905)
12 C W N 28

PRINCIPAL AND SURETY

See ACTIONABLE CLAIM
I L R 30 Mad 235

See EXECUTION OF DECREE—MODE OF EXECUTION—PRINCIPAL AND SURETY
I L R 4 Calc 331
I L R 19 Bom 578

See HINDU LAW—CONTRACT—PRINCIPAL AND SURETY **4 Mad. 190**

See SURETY

——— liability of—

See SURETY BOND **I L R 36 Calc 562**

1 LIABILITY OF PRINCIPAL

1. ——— **Joint and several liability**—*Decrees against both parties* Where two parties are jointly and severally liable ...

party MAHOMED ROHEEMOODDEEN v INDOOR CHUNDER JOWHUREE **12 W R 192**

2. ——— **Remedy between principal and surety**—*Deficit in Collectorate treasury—Attachment of property by Collector* When on the discovery of a deficit in the deposit accounts of certain zamindars a Collector attaches the property of the sureties for the Collectorate treasurer the remedy open to the sureties is against the treasurer only SADUT ALI KHAN v MANIKARNIKA CHOWDHRAIN NUND MOHUN CHOWDHRY v MANIKARNIKA CHOWDHRAIN **W R 1864 119**

3. ——— *Right of surety who has paid the debt to recover from principal* ...

tion the right is also transferred to him to stand in the place of the original creditor and to use ...

having been paid by himself HEERA LALL SAMANT v OOZEER ALI **21 W R 347**

PRINCIPAL AND SURETY—*contd*

2 RIGHTS AND LIABILITIES OF SURETY

1 ———— **Extent of liability**—*Voluntary payments by principal* The liability of a surety will not extend beyond the precise limits of his undertaking he is not liable for any sum voluntarily paid by his principal to a third party for any purpose of his own KHETTAR NATH SEAL v. SHIB NATH CHATTERJEE **W R 1864 284**

2 ———————— *Specific contract—Liability of surety—Costs of suing principal* *Held* that a surety s liability must be measured by the contract and where the contract is specific and not in general and indefinite term the surety cannot be held liable for costs and interest incurred in suing the principal debtor DABEE CHURN v. JANKEE PERSHAD **3 Agra 141**

3 ———— **Liability on bond**—*Running account—Appropriation of payments—Joint bond —Notice to surety of default* A principal and two suretie executed in favour of a bank a joint bond to secure the payment of sum placed to the cash credit loan account of the principal together with intere t and the premia on a pol cy of life assurance within one year from the date of the bond At the end of the year a con iderable sum remained un paid but the principal continued dealing with the bank and the account was continued for three years after the date of the bond as a running ac

ner drawn out In a suit brought by the bank against the sureties to recover the amount due at the end of the fir t year it was *held* that inasmuch as the whole account from the date of the bond to the end of the principal s dealing with the bank

the end of the first year were thereby satisfied no amount remained due on the bond *Semble* That for the purpose of giving persons who appear on the face of an instrument to have executed it as principals the equitable rights of sureties they may show by evidence dehors the instrument that they exe uted only as sureties *Semble* That a surety is not entitled to notice of default made by the principal *Semble* That there being no expre s stipulation to the contrary the fact that the principal was allowed a greater credit than that ecured would not have di charged the sureties. KOONDAN LALL v. JAHANS **1 Agra 17**

4 ———————— *Sale of mortgaged property in execution of money decree obtained by pr t mortgagee—Effect on second mortgagee s rights —Purcha e by one of several joint mortgagees of mortgaged property—Limitation—Suit for sale of mortgaged property* In January 1866 *B* obtained a simple money decree only in a suit for enforcement of lien created by a bond executed by the wife of *Z* and at a sale in execution of uch decree a 10 biswas share hypothecated in the bond was sold and purchased by *Z* in November 18[illegible] On the 3rd May 1872 two bonds were executed in favour of *B* and *H* jointly the fir t by *Z* and *I* jointly hypothecating 6¼ out of the above mentioned 10 biswas and the second by *S* in which the obligor promi ed to pay the obligees the amount of the bond given by *Z* and *I* in the event of such amount not being paid by them, and mortgaged certain property as ecurity for such payment by him In December 18[illegible] *Z* gave another bond to *B* hypothecating the same 10

S a purchaser from tho e heirs of the property mortgaged in the security bond and *D* in which they claimed to recover the money due on the bond by sale of the property mortgaged therein and also by the sale of the property mortgaged in *S* s security bond *Held* that inasmuch as the bond exe

money could have been maintained it followed that had there been a claim in the plaint to obtain a decree personally against the joint obligors the plea of limitation by which such a claim could have been defeated would have been equally efficacious as regards the heirs of *S* but no such claim had been made and the obligation of surety under his bond of the 3rd May 1872 being confined to the personal default of *S* his heirs had been wrongly imported into the present litigation which alone sought to enforce the hypothecation of the joint bond against the hypothecated property BARP SINGH v. ZAIN UL-ABDIN **I L R 9 All 205**

5 ———————— *Contract Act* [illegible]
18[illegible] [illegible]
Where [illegible]
cating *I* [illegible]
any bal[illegible]
of *K* s [illegible]
having signed a separate surety bond [illegible] subsequent to the advance of the money —*Held* [illegible] for want [illegible] t Act [illegible]
tion of the surety considered and determined NANAK RAM v. MEHIN LAL **I L R 1 All 487**

6 ———— **Bond for faithful discharge of duty of overseer**—*Carelessness of principal* By a bond given for the faithful di charge of the

PRINCIPAL AND SURETY—*contd*

2 RIGHTS AND LIABILITIES OF SURETY—*contd*

office of overseer to a ferry fund committee the surety became bound to make good any funds entrusted to the overseer which may be misused Held that under the word the surety was liable for a loss of fund arising from the mere carelessness or indiscretion of the principal independently of any dishonesty as by his lending the money to contractors SECRETARY OF THE FERRY FUND COMMITTEE v WARD Marsh. 89 1 Hay 155

7 ———— Bond for performance of duties of office—*Clerk of Small Cause Court—Subordinate Judge powers of* The defendant and J W C clerk of the Small Cause Court at Allahabad entered into a bond to the Judge of the Small Cause Court as well as to his successors in office in a certain sum as security for the true and faithful performance by J W C of his duties as clerk of the said Court and for his well and truly accounting for all moneys entrusted to his keeping as such clerk of the Court Held in a suit again the defendant as

power as Subordinate Judge and that had the Small Cause Court Judge not been invested at the

I. L R 1 All 87

8 ———— Creditor and surety—*Right of surety to benefit of securities held by creditor—Surety for a part of debt due by principal debtor to creditor—Payment by surety of that part—Right of surety to benefit of securities does not arise until whole of debt paid off—Contract Act (IX of 1872) s 141* In August 1889 one K was indebted to the Bank of Bengal (the defendants) in the sum of R3 15 000 The Bank pressed for security or payment and on the 5th September 1889 K executed in favour of the Bank two mortgages of certain immoveable properties the value of which was estimated to be R1 35 000 The mortgages though stamped to secure this amount only were drawn to cover the whole liability of K to the Bank and recited that he had become largely indebted to the Bank on certain bills etc and had agreed to give security in respect of such indebtedness as was thereafter expressed and they contained covenants by K to pay to the Bank all sums of money then due or thereafter to become due by him in respect of such bills etc Besides the said two mortgage the Bank obtained other securities for a

were given and accordingly the plaintiff became surety for K for the sum of R1 25 000 This sum

he was subsequently obliged to pay and he then

this debt he as surety had paid a part viz R1 25 000 to the Bank and that he was therefore to that extent entitled to stand in the place of the Bank and to receive a share of the proceeds of the said securities proportioned to the sum which he had paid Held that the plaintiff was not entitled to the benefit of the securities held by the Bank until the whole of the debt due to the Bank by K was paid A surety who has paid the debt which he has guaranteed has a right to the securities held by the

such securities which only arises when the creditor s claim against such securities has been satisfied GOVERDHANDAS GOKULDAS TEJPAL v BANK OF BENGAL I. L R 15 Bom 48

9 ———— Stipulation with bank to be considered as

sidered as principal debtor so as not to be exonerated from liability by any dealings between the

discharged by reason of time having been given to him The effect of the deed being plain neither appellant could escape liability except by proof of misrepresentation or undue influence HODGES v DELHI AND LONDON BANK L R 27 I A 168

10 ———— Laches of creditor—*What amounts to laches—Discharge of surety* Plaintiff advanced money to K to enable him to complete

that the plaintiff had not neglected any imperative

PRINCIPAL AND SURETY—*contd*

2 RIGHTS AND LIABILITIES OF SURETY—*contd*

duty incumbent on him as a creditor and that his conduct did not amount to laches so as to discharge the surety from any portion of his liability DWARKANATH MITTER v. DENONATH BONNERJEE

Bourke O C 1

11 ——— **Mutual debts**—*Set off—Discharge of surety* P borrowed money of the D B Corporation payable by monthly instalments and G became security for him P failed to pay the D P Corporation having then a considerable balance to his credit in their hands A year after they sued G as surety for the sum borrowed *Held* in giving a decree for the plaintiffs that a banker need not set off against a debt a cash balance of the debtors in his hands but may proceed against the surety DELHI BANK CORPORATION v. GREENWAY

Bourke O C 227

12 ——— **Agreement to mortgage assignment of**—*Bond of indemnity—Guarantee—Interest* Liability of parties discussed and form of decree given in a case where by an agreement in writing one of the defendants in consideration of money lent to him by B the other defendant agreed to execute a mortgage to B containing the payment of the principal and interest specified in the agreement MANICKYA MOYEE v. BARODA PROSAD MOOKERJEE

I L R 9 Calc 355 11 C L R 430

13 ——— **Suit against surety**—*Acquittal of principal by Criminal Court* The acquittal of the principal in a Criminal Court is no bar to a civil action against the sureties In a suit by the mutwalli of the Hooghly Imambara against the treasurer of that endowment and sureties under a security bond executed on an optional stamp of R8 for a sum of R17 280 o 6 alleged to have been misappropriated by the treasurer who had been committed to but acquitted by the Sessions Court —*Held* that although there was gross neglect on the part of the mutwalli in the supervision and examination of his cash balance yet as there was no evidence of fraud or mutual connivance at the delinquence of the treasurer the former was entitled to recover from the sureties the sum which the stamp used on the security bond would cover *viz* R1 000 with costs in proportion and interest KERAMUT ALI v. ABDOOL WAHAB

17 W R 131

14 ——— *Suit for breach of contract—Performance by surety* Where the surety had begun to perform the duty which the principal had contended to perform —*Held* that this circumstance would not preclude the plaintiffs from suing the defendant as surety for breach of the contract PIERCE v. OPENDRA SHETTI CANAPATHY

7 Mad. 364

15 ——— *Contract Act (IX of 1872) ss 133 139—Surety still liable though remedy against principal barred* Where a plaintiff sued a principal and surety for arrears of rent and it appeared that the principal was dead at the time the suit was instituted and where the representative of the principal was not made a party till after the right to recover the arrears as against him was barred by limitation —*Held* that the surety was still liable the suit as against him having been instituted within the period allowed. *Hajarimal v Krishnarao I L R 5 Bom 647* cited and approved KRISHTO KISHORI CHOWDHRAIN v. RADHA ROMUN MUNSHI

I L R 12 Calc 330

16 ——— *Obligation to sue principal* *Held* that a creditor is not bound to exhaust his remedies against the principal debtor before suing the surety and that when a decree is obtained against a surety it may be enforced in the same manner as a decree for any other debt. LACHMAN JOHARIMAL v. BAPU KHANDU NAND RAM SARDARMAL v. BHABANI HARPATI

6 Bom A C 241

17 ——— *Contract Act ss 134 137* A surety s liability to pay the debt is not removed by reason of the creditor s omission to sue the principal SANKANA KALANA v. VIRUPAKSHAPA GANESHAPA

I L R 7 Bom. 146

18 ——— *Suit on hundi—Accommodation acceptance—Contract Act s 128—Co extensive liability of surety* In a suit against the acceptor of a hundi the dependant contended that as he had accepted the hundi for the accommodation only of a third person he was liable only as surety and the plaintiff therefore could not proceed against him until he had exhausted all his remedies against the principal *Held* that the liability of a surety being under the Contract Act co extensive unless there is some contrary agreement with that of his principal it was not necessary for the plaintiff to have first exhausted his remedies against the principal *Totakot Shangunni Menon v Kurusingal Kalu Varid 4 Mad 190* and *Lachman Joharimal v Bapu Khandu 6 Bom A C 241* cited PANIOTY v. DWARKA MOHUN DASS

4 C L R 145

19 ——— **Execution of decree against surety**—*Right to execute decree against property forming security for payment of debt where principal has been released* Where a judgment-creditor or decree holder releases his deceased judgment debtor s representatives into whose hands that debtor s assets have come and exempts the property in question from execution he cannot go against property which only became liable by way of security for the due payment of the debt by the principal debtor VILLAYET ALI KHAN v. AMEENOODDEEN AHMED

23 W R 19

20 ——— **Contract of guarantee**—*Surety bond—Consideration—Forbearance of claim—Continuing guarantee—Contract Act (IX of 1872) 129* The forbearance of a claim against

PRINCIPAL AND SURETY—*contd*

2. RIGHTS AND LIABILITIES OF SURETY—*contd*

a third person is a sufficient consideration for a surety bond although there may be no express contract by the obligee to forbear *Callisher* v *Bischoffsheim L. P 5 Q B 449* and *Crears* v *Hunter L. R. 19 Q B 341* followed *Lloyds* v *Harper L. R 16 Ch. D 90 Balfour* v *Crace [1902] 1 Ch ... Burg s v Eve L R 13 Eq 450* and *Raj Narain Mookerjee* v *Ful Kumari Debi I L R 29 Calc. 68* referred to JAGADINDRA NATH ROY v CHANDRA NATH PODDAR (1903)

I. L. R 31 Calc 242

21. ———— Limitation—*Limitation Act (XV of 18) s 20—Payment of interest by principal—Liability of surety* The payment of interest by the debtor within limitation does not give a fresh starting point for limitation against the surety under s. 20 of the Limitation Act (XV of 1877)

22. ———— Joint decree—*Liability of surety—Liable for full amount decreed in the absence of any equity* Where principal and surety are jointly sued and a decree is passed against both for a certain amount and against the principal for the full amount including the amount jointly decreed the

23 ———— Variance in terms of contract—*Breach of Contract—Surety liability of—Contract Act (IX of 1872) s 133* A entered into a surety bond on behalf of *B* for the

did not render account for the year 1308 and was allowed to realize rents for 1309 in breach of the terms of the contract. In a suit for account against *B* and his surety —*Held* that there was no variation in the contract between the parties as contemplated by s 133 of the Contract Act and that the surety was liable KANAI PROSAD BOSE v JOTINDRA KUMAR ROY CHOWDHRY (1909)

I. L. R 36 Calc 626

PRINCIPAL AND SURETY—*contd*

3 DISCHARGE OF SURETY

1 ———— Death of principal—*Execution of decree.* A decree was obtained against a surety only the principal debtor being dead and his property having been attached as of an intestate and proclamation made *Held* that the property could not be taken in execution of the decree against the surety KALI CHARAN v SRIRAM

2 B L R A. C 192 11 W R 60

2 ———— *Beng Reg II of 1806 s 4* The liability of a surety of his heir under s. 4 Regulation II of 1806 ceased after the death of the principal. DHURM CHAND SREEMUL v HURRISH CHUNDER DOOBEY 2 Hay 115

3 ———— Indulgence granted to principal—*Absence of injury to surety Semble* An indulgence granted to a principal debtor does not absolve a surety who is not injured thereby DELHI BANK CORPORATION v GREENWAY

Bourke O C 227

4. ———— Relinquishment of portion of claim by creditor—*Act prejudicial to surety* Where a creditor sued his principal debtor and two sureties upon a mortgage bond and in his plaint formally relinquished his claim against part of the mortgaged property it was *held* that after such relinquishment the sureties were no longer bound their position being altered for the worse by reason of such relinquishment NARAYAN GOVIND OK v GANESH ATMARAM FADKE 7 Bom A C 118

5 ———— Right of surety to disclosure of material facts—*Absence of fraud* There is no rule of law entitling a surety without question asked to a disclosure of all material facts

6 ———— Concealment of material fact from surety—*Guarantee—Contract Act (IX of 1872) ss 13, 143—Further duties imposed on person for whom defendants were sureties* In August 1881 the defendants became sureties to the Bank of Bengal for the due discharge by one *B* of the duties and liabilities of the office of khajanchi of

him for the total amount and they sued the de fendants as sureties The defendants pleaded that they were not liable inasmuch as the Bank had *appointed B to perform the duties of second clerk, in*

PRINCIPAL AND SURETY—*contd*

3 DISCHARGE OF SURETY—*contd*

of the Contract Act as to transactions subsequent to the variance The Court was of opinion that inasmuch as the evidence showed that *B* was second clerk at the time of his appointment as khajanchi and continued afterwards to fill that office by arrangement between him and the agent of the Bank the question was not whether there had been a subsequent variation of the contract but whether as the surety bond was silent as to this part of the arrangement between the Bank and *B* and it was made (as the defendants alleged) without their knowledge and consent they were discharged from liability on the ground that a material circumstance had been concealed from them *Held* that the defendants were not discharged from liability The expression keeping silence in s 143 of the Contract Act clearly implies intentional concealment as distinguished from mere non disclosure The withholding must be fraudulent as necessarily is the case where a material circumstance is intentionally concealed In this case there

for his faithful discharge of the duties of khajanchi. The evidence showed that the duties of the two offices were perfectly distinct and therefore even if *B* had been re appointed to the office of second clerk after his appointment to the office of khajanchi (as it was contended for the defendants was the proper way of regarding what occurred) there would have been no material alteration in the duties of khajanchi which would have relieved the defendants from their obligation as sureties but merely the addition of a new office which would not affect the sureties liability, unless indeed the surety bond contained an agreement that the principal should not undertake any other business It was also contended for the defendants that they were discharged liability inasmuch as in the year 1883 the names on certain bills discounted with the Bank were found to be forged The Bank then made a claim upon *B* in respect thereof and he repudiated his liability The defendants contended on the authority of *Phillips v Foxall L R 7 Q B 666* that it was the duty of the Bank to have informed them of

7 ———— Subsequent arrangement—*Obtaining fresh acknowledgement from debtor* Money was lent on the security of a third party who died before the loan was repaid The lender then

PRINCIPAL AND SURETY—*contd*

3 DISCHARGE OF SURETY—*contd*

took a fresh acknowledgment from the borrower for the sum due *Held* that the subsequent arrangement which did not contemplate the continuance of the third party s security cancelled his liability SEETARAM SAHOO *v* DACOSTA 12 W R 294

8 ———— **Variance in terms of contract**—*Contract Act s 133* A kabuliat whereby a lessee agrees without the consent of the person guaranteeing the payment of the rent agreed to be paid under a former kabuliat that he will pay rent

subsequent to such variance KHATUN BIBI *v* ABDULLAH I L R 3 All 9

9 ———— **Neglect to register bond**—*Suit for money lent against principal* In a suit

neglect to have the bond registered *Held* that the surety was discharged as he could only be liable by virtue of the mortgage bond which being invalid for want of registration could not be used against him. The principal however might be sued as for money lent if the loan could be proved by the other evidence SHANKAR BAPU *v* VISHNU NARAYAN 4 Bom. A C 79

10 ———— **Bills of exchange**—*Deposit of goods as collateral security for repayment—Sale by creditor of goods deposited as security* *A* drew five bills in favour of *B* on *F & Co* who accepted them

renewal the Bank he principal as of all

sums which the Bank had already advanced or should advance on account of the drawers deposited as collateral security various quantities of Chili copper

and effects were appointed under the Act On presentation to *A* of the first of the renewed bills he served notice on the Bank not to part with the securities deposited with them alleging that the bills drawn and renewed by him were accommodation bills for which he had not received any consideration and were renewed on the faith of the securities being applicable to their discharge The assignees of *F & Co* redeemed the copper by paying to the Bank the amount of the principal and interest due on the bills drawn by *F & Co* all the bills drawn by

PRINCIPAL AND SURETY—contd

3 DISCHARGE OF SURETY—contd

A were dishonoured and the Bank of Bengal brought an action against *A* for their amount On a bill filed by *A* the Bank was restrained by injunction from proceeding with the action at law *Held* on appeal by the Judicial Committee discharging the injunction and reversing the decree of the Supreme Court that under the circumstances the redemption of the securities was a sale within the meaning of the condition contained in the deposit bill and that such sale was not a release to *A* as surety for the previous bill the condition not being that the copper or the proceeds thereof should be applied preferentially or *pari passu* with the other debts but simply in reimbursement to the Bank of the principal and interest due on the bills BANK OF BENGAL *v* RADHAKISSEN MITTER

3 Moo I A 19

11. ———— Agreement for payment of decree or in default to execute it—*Failure to execute it on default—Act IX of 1872 ss 134 137 139 and 141* A decree holder in execution

decretal money with costs and interest at 8 annas per cent. shall be executed after one month and for the satisfaction of the decree holder we the executants stand as sureties of the judgment debtors. The judgment debtors paid five instalments and then made default The decree holder omitted to apply for execution and the decree became time barred He then sued the sureties to recover the amount of the decree *Held* that the terms of the bond requiring the creditor to execute his decree within one month were peremptory and imported much more than the usual agreement under such circumstances that the decree holder might execute his decree if he pleased on a default that the legal consequence of his omission to execute the decree being the discharge of the principal debtors the sureties would, under s. 134 of the Contract Act stand discharged likewise that his action was much more serious than mere forbearance in favour of this debtors in the sense of s 137 that he had done an act inconsistent with the equities of the sureties and omitted to do an act which his duty to them (under the agreement) required whereby their eventual remedy against the principal debtors was impaired (s. 139) that he had deprived the sureties of the benefit of the security constituted by the decree that they were therefore discharged to the extent of the value of that security (s. 141) and that the suit must consequently be dismissed HAZARI *v* CHUNNI LAL I L R 8 All 259

12 ———— Giving time to principal—*Execution of subsequent agreement unknown to surety* *A* and his surety *B* executed a bond to *C* for the faithful discharge of *A* s duties as a gomashta In September 1866 upon accounts being rendered *A* was found indebted to *C* in a certain sum of money *A* thereupon executed an *ikrar* to *C* which was accepted by *C* agreeing thereby to pay the amount due in February following On default being made *C* sued *A* and *B* for the amount due *Held* that the acceptance of the *ikrar* without the knowledge or consent of *B* giving time for payment was a discharge to the surety PURI SUNDARI DEBI *v* DROBOMAYI DEBI 7 B L R Ap 10

S C PUTEE SOONDUREE DABEE *v* CHUNDER SHEKHUR GHOSSAL 15 W R 252

13 ———— *Liability of surety—Acceptance of promissory notes* *A* entered into a bond to *C* as surety for *B* s good conduct etc as *C* s servant *C* subsequently on *A* s request retained *B* in his service *B* became a de

MAN *v* GOPAUL DOSS SEN

1 Ind. Jur N S 277

14 ———— *Negotiable In* ... *66—Con* ... *discharge* ... by the ... ry not ... is aware that the note was made by the defendant for the accommodation of the acceptor Watson & Co with whom the plaintiff had large dealings On the 4th August 1887 Watson & Co executed in favour of the plaintiff and another creditor a mortgage of certain property to secure the amount then due by Watson & Co including the amount due to the plaintiff on the promissory note the mortgage contained a personal covenant by Watson & Co

by accepting the mortgage promised to give time

Semble The maker of a promissory note is not discharged by the holder s failure to present it at due date PAMAKISTNAYYA *v* KASSIM

I L R 13 Mad. 172

15 ———— *Sureties of naib—Acceptance of bonds from naib* The sureties of naib are absolved from liability if the principal takes bonds from the naib in acknowledgment of the debts ... payment ... sureties.

PRINCIPAL AND SURETY—*contd*

3 DISCHARGE OF SURETY—*contd*

16 ———————— *Proof of fact of per on being surety* In a suit against *D* and *K* on a promissory note where *K* raised the defence that he was only a surety for *D* and that the plaintiff having given time *D* was released from liability —*Held* that it was necessary to how that the fact that K signed the note only as surety for *D* was known to the plaintiff at the time when the note was made *Held* also that a binding contract to give time to the principal cannot be inferred from the mere receipt by the creditor of interest in advance on the note PUNCHANUN GHOSE *v* DALY

15 B L R 331

17 ———————— *Acceptance of interest in excess or advance—Discharge of surety* In an action again t a surety for principal and interest payable on a promissory note —*Held* overruling the decision of the Court below (MACPHERSON J) that the creditor by the mere acceptance without the knowledge or con ent of the surety of interest in ... d himself ... l thereby ... I oy

9 B L R 261 18 W R 416

18 ———————— *Acceptance of interest in advance* The mere taking by the holder of a promissory note of intere t in advance from the principal debtor does not operate as an agreement ...

19 ———————— *Intere t paid in advance—Discharge of surety—Accommodation acceptor—Contract Act (IX of 1872) s 13(* The drawer of hundis paid advance intere t to the holder to obtain time which he did obtain for payment after due date *Held* by the Privy Council that the liability of an accommodation acceptor of the hundis depended on whether he knew of and consented to this arrangement *Held* also on the merits that he knew of and consented to advance interest being taken GOURCHANDRA PAL *v* PROTAPCHANDRA DASS I L R 6 Calc 241 6 C L R 591

Affirming on appeal PROTAP CHUNDER DAS *v* GOUR CHUNDER POY

I L R 4 Calc 132 2 C L R 455

20 ———————— *Suit on hundi—Accommodation—Acceptance* The defendant in the course of dealing with *S A* of Patna used to draw hundis at Patna on him elf at Calcutta and sell them to *S A* at Patna *S A* sometimes only paying part of the con ideration for the hundi On 13th September 1867 the defendant drew a hundi for R2,500 payable forty one days after date in the ...

ness paying for it R2 468 or thereabouts It then purported to be accepted by the defendant in favour of *S A* Before the hundi fell due *S A* failed ...

failure to *S A* who had not paid the consideration as stipulated the defendant pres ed him for payment of the consideration for the hundi and *S A* wrote and delivered to the defendant the following letter dated September 16th 1867 from him elf to his firm in Calcutta Further I sent you a chitti (hundi) for R2 500 drawn by Bhugwan Das (the defendant) upon Bhugwan Das upon (us) Calcutta value deposited by me on September 13th 1867 payable forty one days after date in Company s rupees I have taken a hundi of this description which you will pay on its due date The money has not been paid for which I give this puja in writing which you will know After *S A* s failure and after the defendant s refu al to pay on the due date the plaintiff made the arrangement with *S A* which is embodied in the following letter from *S A* to the plaintiff dated November 3rd 1867 Further I discounted with you at Calcutta hundis for R5 000 which one Litam Das coming to Calcutta were paid off in the following manner a hundi for R 500 drawn by Bhugwan Das on Bhugwan Das value deposited by me on the 10th day of the light side of the moon in Bhadra payable forty one day after date in Company s rupees and a hundi for R 500 by Gopi Shaw Debi Shaw Radha Shaw Ram Sahayi Pay value deposited by me on 14th day of the light side of the moon in Bhadra payable forty one day after date in Company s rupees I discounted hundis of this description and out of them I paid R2 200 in cash through Syad Mahomed Hossein Khan Sahib The balance R2 800 is due the condition for payment of which is as follows (here follows the manner in which payment was to be made) I made an agreement of this sort and I will pay the whole of the amount inclusive of interest at 8 annas and will take the two hundis from Bhai Ram Kissen Futteh Chund with whom they are ... to the ... for the ... of the letter of 16th September was to make the defendant a surety only for *S A* that the plaintiff had notice ... into the agreement ... d as a ... plaintiff ... efend ... that ... t but ... t con ... make ... ndant ... efend was liable *Per* NORMAN J —Notice of the ... ant s position in regard to the hundi was not com

PRINCIPAL AND SURETY—*contd*

3 DISCHARGE OF SURETY—*contd*

municated to the plaintiff *Per* MACPHERSON *J*—The agreement contained in the letter of 10th September did not alter the position of the parties so as to make S 4 the principal debtor and the defendant his surety HARJIBAN DAS *v* BHUGWAN DAS
7 B L R 535 16 W R O C 16

21 ——— Omission by creditor to sue principal debtor within period of limitation—*Contract Act* 134 13 —*Discharge of surety* The omission of a creditor to sue his principal debtor within the period of limitation discharges the surety under s 134 of the Contract Act (IX of 1872) even though the non suing within such period arose from the creditor s forbearance s 13 of the Contract Act does not limit the effect of s 134 It object is to explain and prevent mis conception as to the meaning of s 135 It applies only to a forbearance during the time that the creditor can be said to be forbearing to exercise a right which is till in existence *Hamrimal v Krishna ar I L R Bom 64* and *Kristo Kishor Choudhrain* v *Patha Pomun Munshi I L R I Calc 3 0* dissented from *Hazari* v *Chunni Lal I L R 8 All 259* referred to RADHA *v* KINLOCK I L R 11 All 310

22 ——— Omission of creditor to serve summons on the principal debtor—*Contract Act s 1 4—Civil Procedure Code (Act XIV of 1882) s 99A —Practice* In a suit against the principal debtor and the surety the omission of the creditor to effect service of summons on the principal debtor does not discharge the surety from his liability under s 134 of the Contract Act (IX of 1872) ALLI *v* MAHOMED
I. L. R. 14 Bom. 267

23 ——— Suit for rent—*Release of parties who were sureties for payment of rent* Where in a suit for rent some persons were made parties

defendants had not the effect of the release of the liability of the other defendants *Heeralall Samunt* v *Oo eer Ali 21 W R 347* distinguished JOGEMAYA DASSI *v* GIRINDRA NATH MUKERJEE
4 C W N 590

24. ——— Agreement to give time to principal debtor—*Contract Act (IX of 1872)*

499 referred to DAMODAR DAS *v* MUHAMMAD HUSAIN I L R. 22 All. 351

PRINTER LIABILITY OF

See SEDITION I L R 35 Calc 141

PRINTING PRESS

——— confiscation of—

——— *Sedition—Instrument for commission of offence* A printing press cannot be said to have been used for the commission of sedition inasmuch as the offence consists in the publication and not the printing the press being only a remote instrument ABINASH CHANDRA BHATTACHARJEE *v* EMPEROR (1907)
I L R 34 Calc 986

PRINTING PRESSES AND NEWS PAPERS ACT (XXV OF 1867)

——— ss 3 and 12— *Publisher meaning of* The word publisher has been used in the Printing Presses and Newspapers Act (XXV of 1867) in the restricted sense and does not include a person who merely sells a book or a paper QUEEN EMPRESS *v* BANKA PATNI
I L R 23 Calc 414

PRIOR MORTGAGE

See MORTGAGE I L R 31 Bom 112

PRIOR AND PUISNE MORTGAGEES RIGHTS OF

See MORTGAGE 11 C W N 403

PRIORITY

See BENGAL TENANCY ACT s 167
13 C W N 412

See MORTGAGE

See MORTGAGE I L R 33 Calc 41
10 C W N 276 1010
L R 35 I A 139
12 C W N 993

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS

See TRANSFER OF PROPERTY ACT s 88
13 C W N 1138

See VENDOR AND PURCHASER—INVALID SALES I L R 26 Bom 159

——— between landlord and mortgagee—

See SALE FOR ARREARS OF RENT
I L R 34 Calc 724

——— of deeds—

See MORTGAGE—MARSHALLING

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES

See VENDOR AND PURCHASER—LIEN

See VENDOR AND PURCHASER—NOTICE

See VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY

PRIORITY—concld

——— of Official Assignee—

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE

See INSOLVENCY ACT (11 & 12 VICT c 21)
I L R 28 Calc 419

——— of registered over unregistered deed—

See REGISTRATION ACT (III OF 1877)—

s 49

ss 49 AND 50

s 50

PRISONER

See ACCUSED PERSON

See EXAMINATION OF ACCUSED PERSON

See INSOLVENCY ACT (11 & 12 VICT c 21) s 8 I L R 26 Bom 649

See PARDON

See WRONGFUL CONFINEMENT
I L R 30 Calc 95

——— examination of—

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED

See EXAMINATION OF ACCUSED PERSON

——— rights and privileges of—

1 ——— Preparation of petition of appeal. Every facility should be allowed to prisoners to enable them to prepare their petition of appeal QUEEN *v* NITTO GOPAL PAULIT
13 W R Cr 69

2 ——— Presentation of petition of appeal—*Right to present petition to Court without intervention of vakil* A prisoner in jail under a civil warrant is entitled to present a petition of appeal to the Court having power to hear appeals without the intervention of a vakil *In the matter of the petition of* KRISTNAPPAH 6 Mad 38

3 ——— Employment of pleaders—*Vakalatnama opportunity for giving* Prisoners should have the fullest opportunity of giving vakalatnamas to any persons they please *In the matter of the petition of* DADABHAI 1 Bom 16

4 ——— Conversing with and instructing pleaders—*Private instructions* Prisoners should be allowed to have free converse with their vakils out of the hearing of the police officers in charge of such prisoners REG *v* KASHINATH DINKAR 8 Bom Cr 126

5 ——— Right of freedom from fetters on trial [illegible]

4 Mad Ap 69

PRISONER—concld

——— rights and privileges of—*concld*

6 ——— Nature of charge—*Accused, right of to know exact nature of charge made against him—Criminal Procedure Code (Act X of 1882) s 221* An accused is entitled to know with certainty and accuracy the exact nature of the charge brought against him and unless he has this knowledge he must be seriously prejudiced in his defence This is true in all cases but it is more especially true in cases where it is sought to implicate him for acts not committed by himself but by others with whom he was in company BEHARI MAHTON *v* QUEEN EMPRESS
I L R 11 Calc 106

7 ——— *Right of accused to have charge read and to appear by mukhtar* The Magistrate when he has prepared the charge is [illegible]

8 ——— [illegible] of documents [illegible]

J—A prisoner is entitled to have copies of all documents for which he asks and which he thinks necessary for his defence and it is for the officer trying the case whether Magistrate or Judge to determine at the hearing whether the documents filed by the prisoner are or are not admissible as evidence *In the matter of the petition of* SHIB PRASAD PANDA
6 B L R Ap 59 14 W R Cr 77

9 ——— Right to inspect books in case of theft—*Right to make statement* So far as it may be necessary for the purposes of the trial when books are the subject of a charge of theft the accused is entitled to inspection of the books It is not competent to the Court in a criminal trial to refuse to allow the accused to make a statement *In the matter of* ABDUL GUFFOOR 10 C L R 54

10 ——— Right of accused to hear sentence—*Criminal Procedure Code 1861 1869 s 2*[illegible] When the proceedings in a case tried by a Subordinate Magistrate are submitted under s [illegible] of the Code of Criminal Procedure to a District Magistrate to pass sentence upon the accused the accused is entitled to be present at the passing of such sentence before the District Magistrate PRO *v* RAGHA NARANJI 7 Bom Cr 31

QUEEN *v* GUNESH SIRCAR 7 W R Cr 38

PRISONERS ACT (III OF 1900)

——— ss 2 11—

See CORONER 7 C W N 889

PRISONERS ACT (III OF 1900)—*contd*

——— ss. 7, 8 9—

See HABEAS CORPUS WRIT OF
I L R. 29 Calc 286

——— s 11—

See CORONER, INQUISITION BY
I L R 31 Calc 1

PRISONERS TESTIMONY ACT (XV OF 1862)

See CIVIL PROCEDURE CODE 1859 s 87 (1859 '8) 4 B L R O C 51

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—PRISONER TESTIMONY ACT 5 B L R 215 13 W R 278

PRISONS ACT (XXVI OF 1870)

——— Power of Superintendent of jail —*Abetting e cape of pr on r—B ng R g XII of 1816* A uperintendent of a jail has no power under Act XXVI of 1870 to impri on for one year a night watchman convicted before him on a charge of aiding and abetting the e cape of a pri oner Neither had he power under Regulation XIV of 1816 QUEEN v SHEOUMBER LAL
4 N W 4

——— s 45—*Entering a havalat with intent to convey food to pr oner—Rules made by Local Government for th managem nt and di cipline of pri oners—Hou e trespas —Offence in relation to pri son—Penal Code s 442—Previous acquittal* Per SPANKIE J and OLDFIELD J (STUART C J doubting) that a havalat (lock up) is a pri on within the meaning of the Prisons Act Per STUART C J that food is not an artic e within the meaning of s 45 of that Act Per STUART C J and OLDFIELD J that the conveyance of food into a havalat not being expres ly prohibited by the rules made by the Local Government under s 54 of that Act for the management and di cipline of pri ons is not contrary to the regulations of the pri ons within the meaning of s 4 of that Act and is therefore not an off nce punishable under that section *Held* therefore *per* STUART C J and OLDFIELD J that where a person en tered into a hav lat with intent to convey or attempt to convey food to an under trial pri oner such act on hi part did not amount to hou e tres pa s within the meaning of s 44 of the Penal Code and it was not an act puni hable under s 45 of the Prisons Act Per SPANKIE J (*contra*) Per STUART C J that the fact that such person had been tried for house trespass and acquitted was no bar to his being tried sub equently for an offence under 45 of the Prisons Act EMPRESS v LALAI
I L R 2 All 301

PRISONS ACT (IX OF 1894)

——— s 52—*Presidency Magistrate not a District Magi trate or Magi trate of the first class within s 52 of the Act* A Pre idency Magistrate is not a District Magistrate or Magistrate of the first cla s within the meaning of s 52 of the Pri ons Act and he has no jurisdiction to try pri soners for offences under that ection EMPEROR v CHOTA SINGH (1908) I L R 32 Mad 303

PRISONS ACT (IX OF 1894)—*concld*

——— s 52—*concld*

(continued above)

PRIVACY

See CUSTOM I L R 10 All 358

See EASEMENT I L R 29 All 285

See JURISDICTION OF CIVIL COURT—PRIVACY INVASION OF

See PRESCRIPTION—EASEMENTS—PRIVACY

See RIGHT OF SUIT—PRIVACY INVASION OF

——— intrusion on—

See CRIMINAL TRESPASS
I L R 22 Calc 391 994

See PENAL CODE s 332
I L R 18 All 246

——— right of—

See PRIVACY I L R 29 All 64 582

——— *Easement—Easements Act (V of 1882) s 4—Suit by occupier of house* Not only the owner but the les ee or other person in lawful pos es ion of premi es may maintain an action if his right of privacy is interfered with *Gokal Prasad v Radho I L R 10 All 358* referred to KUNDAN v BIDHI CHAND (1906)
I L R 29 All 64

PRIVATE AWARD

See APPEAL 11 C W N 220

PRIVATE DEFENCE RIGHT OF

See ABSCONDING OFFENDER.
I L R. 29 Calc 417

See CULPABLE HOMICIDE
12 W R Cr 15
I L R 3 All 253

See PENAL CODE ss 99 TO 100
13 C W N 1180

See PENAL CODE s 444
I L R 25 Mad 729

See RIOTING
1 C L R 521
10 C L R 578
I L R 13 Mad 148
I L R 24 Calc 686
I L R 26 Calc 574
I L R 24 All 298
I L R 36 Calc 296 827 865

See THUMB IMPRESSIONS
I L R. 30 Calc 97

——— using force in protecting property—

See PENAL CODE s 143
13 C W N 827

PRIVATE DEFENCE RIGHT OF—*contd*

1 ———— **Commencement of and restrictions on, right**—*Penal Code ss 97 99* The right of private defence as described in s 97 of the Penal Code is subject to the restrictions mentioned in s 99 that is it should be exerci ed only in the defence of one s own body or that of another person against an offence affecting the human body Under 10? the right commences only on a reasonable apprehen ion of danger to the body cau ed by an attempt or threat to commit an offence and by s 99 cl 4 the right is restricted to not inflicting more harm than it is necessary to inflict for the purpose of defence QUEEN v GOBARDHAN BHUYAN **4 B L R Ap 101 13 W R Cr 55**

2 ———— **Extent of right**—*Penal Code s 103 and s 99* The right of private defence under s 103 of the Penal Code is restricted by s 99 of that Code and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence QUEEN v DHUNUNJAI POLY **14 W R Cr 68**

3 ———— **Commencement and extent of the right**—*Penal Code ss 99 105—Information of offence to be committed* The third clause of s 99 of the Penal Code must be read with the first clause of s 105 The right of private defence of property commences when a reasonable apprehension of danger to the property commences Be [illegible]

to be based on some information of a definite kind as to the time and place of the danger actually threatened The accused No 1 received information one evening that the complainants intended to go on his land on the following day and uproot the juvari seed sown in it At about 3 o clock next morning he was informed that the complainants had entered on his land and were ploughing up the seed Thereupon he at once proceeded to the spot followed by the other accused and remonstrated with the complainants The complainants without paying any attention to his remonstrances commenced an attack on the accused In the fight which ensued both sides received serious injuries and the leader of the complainant s party was killed The accused were thereupon charged and convicted under ss 304 114 325 and 323 of the Penal Code of culpable homicide not amounting to [illegible]

and that in the exercise of this right they did not inflict more harm than was nece sary *Held* also that the accused were not bound to act on the information received on the previous evening and seek the protection of the public authorities as they had no reason to apprehend a night attack on their property QUEEN EMPRESS v NARSANG PATHABHAI **I L R 14 Bom 441**

PRIVATE DEFENCE RIGHT OF—*contd*

4. ———— **Pleading right**—*Persons inviting attack* The right of private defence cannot be pleaded by persons who believing they will be attacked court the attack QUEEN v NOWABDEE **W R 1864 Cr 11**

5 ———— *Onus probandi—Alternative plea* It is for those who raise the plea of private defence to prove it The act charged cannot be denied and the plea of private defence raised as an alternative If raised a full account of the occurrence must be given in evidence *In the matter of the petition of* JAMES SIRDAR **1 C L R 62**

6 ———— *Right of private defence—Plea of accused* If the accused pleads not guilty and does not admit the act but the pleader for the defence advances in his argument the plea of the right of private defence the duty of the Court is to accept the plea if it appears upon the evidence either for the prosecution or from the defence that what was done by the accused was in self-defence PASPUT GOPE v RAM BHAJAN OJHA **1 C W N 545**

7 ———— *Onus probandi—Evidence Act s 105* Where the accused had been convicted of riot under s 148 and of grievous hurt under s 325 of the Penal Code the Sessions Judge on appeal held that the complainants had themselves been the aggressors and that the accused had merely exercised the right of private defence but inasmuch as they had not set up the plea of private defence he considered it was not [illegible] the conviction *Held* [illegible] the find [illegible] they had [illegible] ng the ac [illegible] *the matter of* KALI CHURN MOOKERJEE **11 C L R 232**

8 ———— **Exercise of right**—*Possession* A party in possession of land is legally entitled to defend his possession against another party seeking to eject him by force QUEEN v TULSI SINGH **2 B L R A. Cr 16 10 W R Cr 64**

QUEEN v MOKEE **12 W R Cr 15**

9 ———— *Dispute as to possession of land* Where A is in actual peaceable possession of land B s attempt to recover posses ion of it by force is an illegal act which A has a right to resist If B uses force in carrying out his attempt A has a right to oppose force to force and to inflict upon B such injury as is necessary to compel him to desist QUEEN v SACHEE *alias* SACHEE BOLER **7 W R Cr 112**

10 ———— **Criminal trespass**—*Penal Code ss 99 and 104* Where the offence which occasions the right of private defence of property is criminal trespass the right of defence under s 104 of the Penal Code only extends (subject to the restrictions of s 99) to the voluntarily causing to the wrong doers some harm other than death QUEEN v GOBURDHUN PARI **14 W R Cr 74**

PRIVATE DEFENCE RIGHT OF—*contd*

11. ——— Culpable homicide The legal right of private defence of the body and property is not exceeded by a person who is attacked by another with a spear and who strikes a blow with a latee which results in the death of the party attacking and such right of private defence of the body extend under s 100 of the Penal Code to the taking of life where grievous hurt is reasonably apprehended QUEEN v MOIZUDIN
11 W R Cr 41

12. ——— *Penal Code ss 143, 304—Culpable homicide* The prisoners who in resisting a sudden attack made upon them by certain persons for the purpose of cutting their crop and when they had no time to complain to the police inflicted a wound on one of them with a bamboo from the effects of which the man died were convicted by the Sessions Judge under ss 148 and 304 of the Penal Code The High Court acquitted the prisoners holding that the force used or the injuries inflicted were not such as to exceed their right of private defence of property QUEEN v GOOROO CHURN CHANG
6 B L R Ap 9 14 W R Cr 69

13 ——— *Penal Code s 100 cl 2 and s 103 cl 4* Under the facts of this case a person was held to have rightly exercised the right of private defence as contemplated in cl 2 s 100 and cl 4 s 103 Penal Code though in the exercise of such right he killed one of his aggressors QUEEN v RAM LALL SINGH
22 W R Cr 51

14. ——— House breaking—*Limits of right of defence* The right of private defence of property against house breaking does not extend to causing the death of the house breaker when he has made his escape from the premises empty handed and is at some distance from the place No more harm should be done than is necessary to effect his capture QUEEN v BOLAKI JOLAHAD 1 B L R S N 8 10 W R Cr 9

15 ——— *Attacking man found in house at night* The accused was attacked by a man whom he found by a hole cut in his house for the purpose of committing a burglary and struck the man a blow which caused his death *Held* that the accused simply exercised his right of private defence and had committed no crime QUEEN v PELKOO NUSHYO 2 W R Cr 42

16 ——— House trespass with intent to commit adultery *Penal Code ss 96 104* Where a person assisted by a friend retaliated severely on another who trespassed into his house with the object of having intercourse with his wife he was held to have committed no offence ss 96 and 104 of the Penal Code justify [illegible]

17 ——— Obstruction of public servant—*Resisting police officer making search without warrant—Penal Code s 99—Criminal Procedure Code 1861 s 135* An officer subordinate to an officer in charge of a police station who was deputed by the latter to make an inquiry under s 135 of the Code of Criminal Procedure attempted without a search warrant to enter a house in search of property [illegible] that officer was acting otherwise than in good faith and without malice REG v VYANKATRAV SHRINIVAS
7 Bom Cr 50

18 ——— *Penal Code (Act XLV of 1860) s 99—Obstruction of and resistance to Inspector searching house without warrant—Officer acting illegally but in good faith—Madras Abkari Act ss 31 and 36* A Sub Inspector of Salt and Abkari attempted without a search warrant to enter a house in search of property the illicit possession of which is an offence under the Madras Abkari Act and was obstructed and resisted *Held* that having regard to s 99 of the Penal Code even though the Sub Inspector was not strictly justified in searching a house without a warrant the persons obstructing and resisting could not set up the illegality of the officer s proceeding as a justification of their obstruction as it was not shown that that officer was acting otherwise than in good faith and without malice QUEEN EMPRESS v PUKOT KOTU
I L R 19 Mad 349

19 ——— *Penal Code ss 99* [illegible] obtained a decree against the accused for possession of a certain piece of land When the Mamlatdar proceeded to execute the decree he found that [illegible] Collector for advice The Collector on looking into the papers of the case ordered a surveyor to [illegible] thereupon tried and convicted of voluntarily obstructing a public servant in the discharge of his public functions under s 186 of the Penal Code (Act XLV of 1860) *Held* that the Collector s order was entirely *ultra vires* as to leave no room for the operation of either the first or the second clause of s 99 of the Penal Code as to right of private defence QUEEN EMPRESS v TULSIRAM
I L R 13 Bom 168

PRIVATE DEFENCE RIGHT OF—*contd*

20 ———— *Penal Code s 99 —Resistance to warrant of arrest in execution of a decree—Assault on officer* A warrant issued for the arrest of a debtor under the provisions of s 251 of the Civil Procedure Code was initialled by the Munsarim of the Court sealed with the seal of the Court and delivered to the proper officer for execution The debtor forcibly resisted the officer and was tried and convicted under s 353 of the Penal Code of assaulting a public servant in the execution of his duty as such *Held* with reference to s 99 of the Penal Code that the act of the accused did not cease to be an offence on the ground that it was done in the exercise of the right of private defence QUEEN EMPRESS v JANKI PRASAD
I L R 8 All 293

21 ———— Premeditated riot There can be no right of private defence either on one side or the other in a case of premeditated riot QUEEN v JEOLALL 7 W R Cr 34

22 ———— *Penal Code (Act XLV of 1860) s 96 et seq* When a body of men ... rights or supposed right no question of self defence arises QUEEN EMPRESS v PRAG DAT
I L R 20 All 459

23 ———— *Penal Code s 104 —Persons acquitted of culpable homicide but convicted of rioting* In an affray respecting land one of the aggressive party was killed The prisoners who were exercising the right of private defence of property were acquitted by the jury of culpable homicide but convicted of rioting *Held* that not being legally guilty of any offence coupled with rioting and not being rioters or members of an unlawful assembly they could claim the benefit of s 104 Penal Code they were therefore released QUEEN v MITTO SINGH 3 W R Cr 41

24 ———— *Rioting—Unlawful assembly—Right of private defence of property—Penal Code (Act XLV of 1860) ss 97 103 104 10 and 107* A party of persons consisting of some five peadas and a number of coolies sufficient for the ...

master *T* The river at the time was almost dry and the party did not go armed ready to fight or use force and they did not during the subsequent occurrence use force Having arrived at the spot about 10 A M they proceeded to work at the bund until the afternoon At about 4 P M a body of men consisting about 1 200 in all many of them ...

of whom were more or less severely wounded with the lathis The occurrence resulted in the conviction of some of *M*s servants for rioting under s 147 of the Penal Code *M*s people wholly denied any right on the part of *T* to construct or repair ...

the river justified them in coming to stop the work and the show and use of force in compelling them to do so *Held* that the prisoners had been rightly convicted *Held* further that as no right of private defence of property is conferred by the Penal Code except as against the perpetrators of offences under the Penal Code and that as upon the facts of the case as found no offence had been committed by *T*s people their acts amounting merely to a civil trespass and as there was no pressing or immediate necessity of a kind showing that there was no time to have recourse to the protection of the public authorities no question as to the right of private defence arose in the case GANOURI LAL DAS v QUEEN EMPRESS I L R 16 Calc 206

25 ———— Trespass—*Penal Code ss 9 104 105* Where *A* trespassed on the lands of *B* whose servants seized and confined *A* till the following day when *B* gave information to the police it was *held* that the conduct of *B* and his servants in confining *A* could not be supported on the ground that they were exercising the right of private defence of property under ss 97 104 and 105 of the Penal Code SHURUFOODDIN v KASI NATH 13 W R Cr 64

26 ———— *Trespass—Demand for payment of rent* Mere persistence in demand for rent does not amount to trespass justifying the exercise of the right of private defence MAHOMED JAN v KHADI SHEIKH HURNATH DE v JOYGOPAL DE HURIS CHUNDRA DAS v BOLA AUDHICAREE AHMUDDIN v ANUND MOHUN MOZOOMDAR 16 W R Cr 75

27 ———— Wrongful distraint of crops—*Penal Code ss 97 99* Where a zamindar s servants enter on land with the intention of distraining the crops without proper notice the raiyat owners are justified in considering such actions as trespass *Quære* Would the raiyats in such a case be protected by the provisions of the Penal Code ss 97 and 99 in preventing the distraint and confining the men employed to make it QUEEN v KANHAI SHAHU 23 W R Cr 40

28 ———— *Indian Penal Code (Act XLV of 1860) s 147—Riot—Private defence of property—Indian Penal Code (Act XLV ...*

... ceeded to attack ... which grievous hurt was caused *Held* that it was

PRIVATE DEFENCE RIGHT OF—*contd*

not open to party A to plead that they were acting in the exercise of their right of private defence of property *Queen Empress* v *Prag Dat I L R 20 All 459* followed *Queen Empress* v *Narsang Pathalbai I L R 14 Bom 441* distinguished *Pachkauri* v *Queen Empress I L R 24 Calc 686* not followed. KING EMPEROR v KALIJI (1901)
I L R 24 All 143

29 — — Obstructing religious procession—*Penal Code (Act XLV of 1860) ss 97 101 104—Private defence— Protect a right — Unlawful assembly* The villagers belonging to *C* walked in a religious procession through a part of the village of *K* carrying with them a vessel containing water which purported to be consecrated The villagers of *K* objecting obstructed the procession whereupon the members of it resisted the obstruction and used some violence causing grievous hurt to one of the obstructor and hurt to others of them The members of the procession were charged with and convicted of being member of an unlawful assembly possessing deadly weapons and causing grievous hurt and their convictions were upheld on appeal On revision —*Held* that the convictions were wrong The accused were justified in the circumstance in exercising their right of private defence and the harm inflicted was not more than appeared to have been necessary for the purpose of self-defence REGULA BHEEMAPPA v EMPEROR (1902) I L R 26 Mad 249

[illegible]

Where on the complaint of one *G* that his wife was wrongfully confined by his father in law a warrant was issued under s 96 Criminal Procedure Cod and the Police attempting to execute this warrant at the house of the father in law was obstructed by him and seven others who also used criminal force *Held* that the [illegible]

must be treated as nullity the accused were not deprived of the right of private defence under s 99 Indian Penal Code Not strictly justifiable by law in s. 99 Indian Penal Code explained BISU HALDAR v EMPEROR (1907)
11 C W N 836

31 ———— Attack by a large body of armed men prepared to fight—*Rioting—Penal Code (Act XLV of 1860) ss 96 to 106 147* [illegible]
The complainant s party consisting of twelve or thirteen person went with *kodalis* to a *bund* erected on the land of the master of the accused in order to cut it as it obstructed the flow of water from their lands and destroyed their crops. The accused hearing of this at once assembled to the number of 50 or 60 armed themselves with *lathis* and proceeded to the *bund* At this time the complainant s party had either finished the cutting or

PRIVATE DEFENCE RIGHT OF—*concld*

ceased to do so when they saw the accused approaching The latter attacked the complainant s party and drove them to their village One or more of the assailants also beat a man who was present there but was not connected with the cutting of the *bund* both in the first attack and when they returned from the chase and fractured his skull in consequence of which he died shortly after *Held* that the accused were members of an unlawful assembly from the beginning as they went armed with *lathis* and in large numbers to enforce their right at all hazards that if not so at the beginning they became an unlawful assembly [illegible]

Empress I L R 24 Calc 686 distinguished *Kabiruddin* v *Emperor I L R 35 Calc 368 12 C W N 584* followed. EMPEROR v AMBIKA LAL (1908)　　I L R 35 Calc 443

32 ———————— *Rioting—Assembly of armed men prepared for fight—Penal Code (Act XLV of 1860) ss 96 to 106—Misdirection to jury* There is no right of private defence where two parties arm themselves for a fight to enforce their right or supposed right and deliberately [illegible]

attack *In re Kalee Beparee 1 C L R 591* and *Jairam Mahton* v *Emperor I L R 35 Calc 103* followed KABIRUDDIN v EMPEROR (1908)
I L R 35 Calc 368

33 ———————— *Common object as found by Original and Appellate Courts—Penal Code (Act XLV of 1860) ss 96—106* No right of private defence arises where a large body of men [illegible]

spears and heavy billets of wood proceeded to the disputed land attacked the complainant and his father and destroyed the crops growing thereon Both parties claimed the land as having fallen to [illegible]

tioner s rights on the day of occurrence and in any case that they had ample time to have recourse to the authorities for the protection of their rights Where the accused were charged with [illegible]

raised the same questions, and that the accused were in no way prejudiced. MANIRUDDIN v EMPEROR (1908)　　I L R 35 Calc 394

PRIVATE INTERNATIONAL LAW

———— French citizens in British India —*Onus—Domicile proof of—Post nuptial marriage settlement—Immoveable property law governing—Lex rei sitæ—Matrimonial domicile—Code Napoleon Arts 1401—1496* One Alexandre Charriol married a French woman in British India *sans contract* Subsequently he executed a marriage settlement dealing with certain immoveable property in Calcutta settling the same on certain trusts The property was sold later on and the sale proceeds were invested in certain funds In this suit by the present trustees for directions for the disposition of the trust funds the question was whether the deed was invalid and inoperative and therefore whether French and not English law should govern the disposal *Held* that the onus was first on the person attacking the settlement to show conclusively that the settlor was a French citizen with a French domicile *Held* also on the facts of this case that the settlor was not a French citizen with a French domicile *Held* further that even if the settlor were of French domicile his having married a French woman *sans contract* did not imply such a *special* contract as would take away the operation of the ordinary rule that *lex rei sitæ* would govern immoveable property *D Nicols v Curlier* [1900] 2 Ch 410 dissented from *D Nicols* v *Curlier* [1900] A C 21 explained Story s Conflict of Laws s 159 referred to BONNAUD v CHARRIOL
I L R 32 Calc 631
9 C W N 394

PRIVATE LAND

See BENGAL TENANCY ACT s 120 (2)
7 C W N 400

PRIVATE PARTITION

See PARTITION I L R 36 Calc 726

PRIVATE PROSECUTOR.

———— Right to papers—*Criminal Procedure Code (Act XXV of 1861) s 434* Private prosecutor not allowed to appear on a reference to the High Court under s 434 of the Criminal Procedure Code QUEEN v RAMJAI MOZUMDAR
6 B L R Ap 46

S C SUDDURUDDEEN SIRCAR v RAM JOY MOJOOMDAR 14 W R Cr 51

PRIVATE SALE

See CIVIL PROCEDURE CODE 1882 310A
I L R 30 Bom. 575

See PRACTICE I L R 30 Bom. 109

PRIVATE STREET

See BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT VI OF 1873) ss 33 AND 42
I L R 27 Bom 221

PRIVILEGE

See DEFAMATION 8 Bom Cr 168
I L R 6 Mad 381
I L R 11 Mad 477
I L R 15 Mad 214 414
I L R 16 Mad 235
I L R 17 Bom 127 573
I L R 22 Calc 46
I L R 17 Mad 87
I L R 19 Bom 51 340
I L R 36 Calc 3/5

See FALSE CHARGE I L R 19 Bom 51

See LIBEL I L R 14 Bom 97
I L R 23 Calc 867
8 C W N 731
I L R 35 Calc 495
I L R 36 Calc 883 907

———— from arrest—

See ARREST—CIVIL ARREST

See CONTEMPT OF COURT—EFFECT OF CONTEMPT 4 B L R O C 90

See PARDANASHIN WOMEN 8 W R 289
1 B L R F B 31
I L R 4 Calc 583
I L R 7 Calc 19

———— from attendance in Court—

See PARDANASHIN WOMEN

See PARTIES—PRIVILEGES OF PARTIES
Marsh 627
15 W R 199

———— from suit—

See DEFAMATION

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS

See LIBEL

See SECRETARY OF STATE
I L R 27 Bom. 189

———— of counsel—

See PENAL CODE s 499 EXCEP 9
13 C W N 340

PRIVILEGED COMMUNICATION

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE I L R. 4 Calc 231

See DEFAMATION

See INSPECTION OF DOCUMENTS.
I L R. 2 Bom. 453
I L R 11 Calc 665
I L R. 12 Calc 265
I L R. 15 Bom. 7
I L R. 22 Calc. 105

See LIBEL.

1. ———— Professional communication —*Attorney and client—Privilege—Evidence Act (I of 1872) s 126* To be privileged under s. 126 of the

PRIVILEGED COMMUNICATION— *contd*

Evidence Act (I of 1872) a communication by a party to his attorney must be of a confidential or private nature. Where defendants at an interview at which the plaintiff was present admitted their partnership to their attorney who was then also acting as attorney for the plaintiff —*Held* that the attorney was not precluded by s 126 of the Evidence Act (I of 1872) from giving evidence of this admission to him, 1st because the defendants statements having been made in presence and hearing of the plaintiff could not be regarded as confidential or private and because those statements did not appear to have been made to the attorney exclusively in his character of attorney for the defendant but to have been addressed to him also as attorney for the plaintiff MEMON HAJEE HAROON MAHOMED v ABDUL KARIM

I. L. R 3 Bom. 91

2. ———————— *Privilege extent of—How far solicitor bound to disclose communication made in course of employment—Attorney and client—Evidence Act (I of 1872) s 126* The law relating to professional communications between a solicitor and a client is the same in India as in England. It is not every communication made by a client to an attorney that is privileged from disclosure. The privilege extends only to communications made to him confidentially and with a view to obtaining professional advice. Where a solicitor claims privilege under s 126 of the Indian Evidence Act (I of 1872) he is bound to disclose the [illegible]

[illegible]

Act protects from publicity not merely the details of the business but also its general purport unless it be known *aliunde* that such business falls within proviso I or II to the section. At an interview between a solicitor and a client the solicitor took down a certain statement made by a person named *A B* who was in his client s company and whose name was communicated to him in the course and for the purpose of his professional employment

[illegible]

asked whether the person who had made the statement had given his name as *A B*. The solicitor declined to answer the question on the ground of privilege *Held* that the solicitor was bound to

[illegible]

PRIVILEGED COMMUNICATION— *—contd*

3 ———————— *Communication to Mukhtears acting as pleaders for their clients—Evidence Act (I of 1872) s 126* The restrictions imposed by s 126 of the Evidence Act in respect of what are known as privileged communications extend also to communications made to mukhtears when acting as pleaders for their clients ABBAS PEADA v QUEEN EMPRESS

I. L R 25 Calc 736
2 C W N 484

4 ———————— *Communication to clerk of pleader—Evidence Act (I of 1872) ss 120* [illegible] Per BANERJEE J —S 127 of the Evidence Act (I of 1872) extends to a communication made to the pleader s clerk the same confidential character that attaches to a communication to the pleader direct under s 126 KAMESHWAR PERSHAD v AMANUTULLA I L R 26 Calc 53
2 C W N 649

5 ———————— *Act II of 1855 s 24—Vakil and client* S 24 Act II of 1855 does not warrant a vakil s exclusion from the witness box though it may excuse his answering certain questions relating to communications between him and his client DOOLAR JHA v PUNJEET ROY 15 W R 340

6 ———————— *Act II of 1855 s 24—Mukhtear and client* The question whether [illegible]

7 ———————— *Prosecutor in criminal case and his attorney and clerk* *Semble* Communications between a prosecutor in a criminal case and his attorney and between the attorney and his clerk with respect to the case are not privileged *In the matter of the petition of* BELILIOS 12 B L R 249
s c QUEEN v BELILIOS 20 W R Cr 61

8 ———— **Statements laid before counsel**—*Legal advice* Statements laid by clients before counsel for the purpose of obtaining legal advice are privileged MUNCHERSHAW BEZONJI v NEW DHURUMSEY SPINNING AND WEAVING COMPANY I L R 4 Bom 576

9 ———— **Letters between Government servants**—*Discovery—Production of documents—Solicitor and client—Act XIV of 1882 s 133* Letters written by one of the defendant s servants to another for the purpose of obtaining information with a view to possible future litigation are not privileged even though they might under the circumstances be required for the use of the defendant s solicitor. In order that privilege may be claimed it must be shown on the face of the affidavit that the documents were prepared or written merely for the use of the solicitor BIPRO DOSS DEY v SECRETARY OF STATE FOR INDIA

I. L. R. 11 Calc 655

PRIVILEGED COMMUNICATION—*contd*

10 ——— **Letters between solicitors for various plaintiffs**—*Attorney and client—Inspection—Production—Waiver of privilege* The plaintiffs resided in England and sued the defendant in Bombay for specific performance of an agreement to purchase certain premises This agreement had been made on behalf of the plaintiffs by *S* their agent in Bombay The defendant pleaded that by the terms of the agreement it was provided that the deed of assignment should contain a covenant by the three plaintiffs to indemnify the defendant against any claims upon the premises that might be made at any time by or on behalf of the representatives of one *N* The defendant s solicitor prepared a draft assignment which contained this covenant and sent it to the plaintiff's solicitors (Messrs *P* and *W*) for approval On the 19th March 1880 *W* called upon *B* the defendant s solicitor and informed him that *M* the third plaintiff refused to sign any deed which contained the above covenant At this interview *W* read to *B* portions of a letter written with reference to the proposed deed by *McG & Co* (solicitors for the first two plaintiffs) to *T* the solicitor of the third plaintiff and of another letter written by *T* to his client the third plaintiff The defendant called upon the plaintiff to produce these letters for inspection *Held* that the letters were privileged and that the fact that portions of them had been read to the defendant s solicitor was no waiver of the privilege as regarded the parts which were not read KAY *v* POORUNCHAND POONALAL

I L R 4 Bom 631

11 ——— **Letters by client to solicitor**—*Discovery—Affidavit of documents—Sufficiency of affidavit—Further affidavit—Inspection of documents—Practice* Where in an affidavit of documents privilege is claimed for a correspondence on the ground that it contains instructions and confidential communication from the client (the plaintiff)

PORATION *v* BROWN & Co

I L R 12 Calc 265

12 ——— **Statement in petition to Magistrate**—*Defamation* *Held* that under the circumstances of the case the allegations contained in a petition presented by respondent to the Magistrate acting in his administrative capacity cannot be regarded as a privileged communication made in the course of judicial proceedings and it being proved that the allegations so made were made with sinister motive and malicious intention and that they were irrelevant to the occasion the appellant was entitled to some substantial damages CHOWDHRY GOORDUTT SINGH *v* GOPAL DASS

1 Agra 33

13 ——— **Statement to punchayet**—*Illegal conviction for defamation* Where a person called upon by a punchayet convened by the complainant s relative to explain why he had made a defamatory remark concerning the complainant made a statement by way of explanation —*Held* that such statement being privileged a conviction for defamation for making such statement was illegal *In re* GOVINDAPPA NAYAK

I L R 7 Mad 36

14 ——— **Petition to Revenue Officer**—*Defamation—Presumptions as to malice* Certain raiyats in a zamindari village addressed a petition to the tehsildar praying that the Village Munsif might be retained in office notwithstanding the zamindar s application for his removal The petition imputed criminal acts to the zemindar who now sued the petitioners for damages on the ground that the petition contained a false and malicious libel It was found that in fact the communication was made *bona fide* and that there was some ground for some of the imputations *Held* that the petition was a privileged communication and the alleged libel was not actionable The question when malice may be presumed discussed VENKATA NARASIMHA *v* KOTAYYA

I L R 12 Mad 374

15 ——— **Communication by a servant of a company to one of his subordinates as to another subordinate**—*Defamation* In an action for damages for defamation brought by a brewer recently employed by a brewery company against the local manager of the company the defamatory statements complained of were contained in a letter written by the defendant to the directors of the company and also in a letter written to another brewer in the employ of the company in which he said that the plaintiff had failed most utterly and I have been compelled to inform him that you will take the position of senior brewer at the brewery *Held* that all these statements were in the nature of privileged communications. LEISHMAN *v* HOLLAND I L R 14 Mad. 51

16 ——— **Letter from husband to wife**—*Evidence Act (I of 1872) s 122—Letter taken on search of wife s house* On a trial for the offence of breach of trust by a public servant a letter was tendered in evidence for the prosecution which had been sent by the accused to his wife at Pondicherry and had been found on a search of her house made there by the police *Held* that the letter was not inadmissible in evidence against the accused as being a privileged communication S 122 of the Evidence Act was not applicable QUEEN EMPRESS *v* DONAGHUE I L R 22 Mad. 1

17 ——— **Official communication**—*Penal Code (Act XLV of 1860) s 499 Exception—Defamatory communication made in official confidence—Malice in fact—Privilege of public officer to refuse to disclose official communication, nature of—Public interests—Indian Evidence Act (I of 1872) s 124* Where a defamatory statement is made on a privileged occasion the complainant must show that there was malice in fact S 1

PRIVILEGED COMMUNICATION— *conc d*

Indian Evidence Act makes the public officer to whom a communication is made in official confidence the judge of whether such communication should or should not be divulged in the public interest and he is entitled to decide whether the public interests would suffer by its production and if he considers they would so suffer to refuse to produce it *Beatson v Skene* 5 H & N 838 *Hennessy v Wright* 1 Q B D 509 referred to Where a public officer to whom a defamatory

LIDHU BHUSAN BOSE v HARI NATH CHAKRAVARTI (190-) 7 C W N 246

PRIVILEGED OCCASION

See LIBEL I. L. R 36 Calc 907

PRIVY COUNCIL.

See APPEAL I L. R 35 Calc 648

See APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE 1882 s 596 9 C W N 370

See CIVIL PROCEDURE CODE 1882 s 610 I L R 28 All. 337 10 C W N 545 564

See DEFAMATION I L. R. 35 Calc 495

See HINDU LAW 10 C W N 95

See LETTERS PATENT 9 C W N 568 I L. R 32 Bom 186

See MORTGAGE I L R 31 Calc 332

See OUDH RENT ACT s 108 13 C W N 1093

See PARTITION 13 C W N 690

See PRACTICE 10 C W N 225 230 I L R 28 All 215 219

See PRIVY COUNCIL PRACTICE OF

——— decree of—

See EXECUTION OF DECREE —ORDERS AND DECREES OF PRIVY COUNCIL.

——— execution of decree of—

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

See LIMITATION ACT 1877 ART 180 (1859 s 19)

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS

5 B L R 605 13 Moo I A 490 16 W R 30 23 W R 449

PRIVY COUNCIL—*contd*

1 ——— **Decree of affirmance or refusal**—*Leave to appeal to Privy Council—Valuation* In a Land Acquisition case the applicant claimed a sum of R17 000 odd as the value of the land taken the Collector assessed the value at

High Court partially decreed the appeal by giving the petitioner an additional sum of about R7 000 The appellant then applied for leave to appeal to the Privy Council *Held* that the decree of the High Court was properly a decree of affirmance of the first Court s decree as regards the subject

2 ——— **Pauper suit**—*Leave to appeal to Privy Council—Civil Procedure Code (Act XIV of 1882) ss 9 592—Letters Patent of 1865 s 39—Order of the High Court under s 592 allowing a party to sue in forma pauperis—Power of High Court to grant certificate as to fitness of appeal* An order passed by the High Court under s 592 of the Civil Procedure Code deciding that a certain party should be allowed to sue in *formâ pauperis* is not a final decree passed in an appeal within the meaning of s 595 of the Civil Procedure Code nor is it a

3 ——— **Interlocutory orders**—*Letters Patent cls 13 40—Leave to appeal—Jurisdiction question of* The High Court in the exercise of its Extraordinary Original Civil Jurisdiction removed to itself for trial a suit instituted in the Court of the Resident at Aden On an application having been made for leave to appeal to the Privy Council —

I L. R. 28 Bom. 292

4 ——— **Agency Courts in Kathiawar**—*Appeal—Governor of Bombay in Council—Relation of Kathiawar to the British Crown and nature of extent of control exercised over it—Suits Civil and Political—Political Jurisdiction—Order of a King s Court injuriously affecting person not a British subject—King in Council right of redress by* The Province of Kathiawar is not wholly British Indian territory The relation of the

PRIVY COUNCIL—contd.

[illegible]

PRIVY COUNCIL APPEALS ACT (XI OF 1874)

[illegible]

PRIVY COUNCIL, PRACTICE OF

PRIVY COUNCIL PRACTICE OF—contd

See Appeal to Privy Council—Practice and Procedure

See Mahomedan Law—Inheritance—Findings of fact
I L R 31 All. 557

See Mahomedan Law—Validity of Gift I. L. R 35 Calc 271
L R 35 I A 67

See Will, genuineness of
13 C W N 782

1 ADMISSION TO PRACTICE.

——— **Rules of 31st of March 1871—** *Vakil of High Court* The words of ss 2 and 3 of the Rules of 31 t Mar h 1871 are such that the

I L R 16 Calc 636
L R 16 I A 163

2 RECORD PREPARATION OF

——— **Decision limited to one of several issues of law**—*Omission of immaterial matter in preparation of printed book* In a suit in which the original Court had framed and decided several issues the High Court on appeal confined their decision to the questions which in their

whether the copy should be made of the whole record or of only so much of it as was material to the correctness of the High Court s decision.

PRIVY COUNCIL PRACTICE OF—contd

2 RECORD PREPARATION OF—concld

Their Lordships directed that only so much of the

3 APPEALS FROM INTERLOCUTORY ORDERS

——— There is no law which requires a suitor to appeal from interlocutory orders under penalty of forfeiting for ever the benefit of the consideration of the Appellate Court The Privy Council have in many cases corrected erroneous interlocutory orders on the appeal of the whole cause coming before them Moheshur Singh *v* Government of India
3 W R P C 45 7 Moo I A 283

Sheonath *alias* Burray Kaka *v* Ramnath *alias* Chotay Kaka
1 Ind Jur N S 161 5 W R P C 21
10 Moo I. A 413

Forbes *v* Ameeroonissa Begum
1 Ind Jur N S 117
5 W R P C 47
10 Moo I A 340

4 ENLARGING TIME FOR APPEAL

——— **Jurisdiction of Judicial Committee as to application to enlarge time for appeal** The Judicial Committee have

secution thereof until further order Gungadhur Seal *v* Paddamoney Dossee 6 Moo I. A 209

5 SPECIAL LEAVE TO APPEAL

1 ——— **Form of petition**—*Amendment of a petition too general and vague* It is incumbent upon a party applying for special leave to appeal to set out in the petition a full statement of the facts and legal grounds to show that there is a substantial case on the merits and a point of law involved proper to be determined by the Appellate Court

dismissed or to stand over for amendment as being too general and vague On the amended petition stating in detail the facts and specially showing

PRIVY COUNCIL PRACTICE OF—*contd*

5 SPECIAL LEAVE TO APPEAL—*contd*

legal grounds of objection to the decrees and order of the C ... special leave t ... DNEE DOSSEE

11 Moo I A 1

2 ———— **Application for special leave**—*Omission of material facts—Costs* A petition for special leave to appeal being *ex parte* it is a universal and most important rule of the Court that every fact which is material to the determination of the question raised upon the petition should be truly and fairly stated and where there is an omission of material facts whether it arise from improper intention on the part of the peti ...

have been induced to make Where the Court was of opinion that there had been no intentional misrepresentation and that there had been delay on the other side it discharged an order giving special leave to appeal where an important fact had been kept from the Court without costs remarking that it would have thought it right whether the mistake was intentional or not to have given costs had it not been for the delay MOHUN LALL SOOKUL *v* BEBEE DOSS 8 Moo I A 193

3 ———— *Incorrect statement of facts—Incorrect statement as to valuation* In this case the Privy Council originally gave leave ...

exceeded R10 000 The appeal was restored with ... the Bengal ... subject of ... MOHUN LOLL ... R P C 9 ... Moo I A. 492

4 ———— **Reasons omitted in order admitting to review**—*Civil Procedure Code (Act XIV of 1882) s 626* With reference to the requirement in s 626 of the Civil Procedure Code that reasons should be recorded by the Judge ...

SHANKAR BAKSH *v* BULWANT SINGH. *Ex parte* SHANKAR BAKSH I L R 27 Calc 333
L R 27 I A 79
4 C W N 203

5 ———— **Counter petition to dismiss appeal**—*Leave to appeal granted ex parte.* If leave to appeal be granted *ex parte* the respondent may as a matter of course present a counter petition to dismiss the appeal SIBNARAIN GHOSE *v* HULLODHUR DOSS 6 Moo I A 207

6 ———— **Appeal in matter not strictly appealable**—*Stat 3 & 4 Will IV c 41* Where a matter has been referred by Her Majesty to the Judicial Committee which is not strictly an appealable grievance their Lordships may under the reservations contained in 3 & 4 Will IV c 41 advise Her Majesty to grant the petitioner leave to appeal MORGAN *v* LEECH 2 Moo I A 498

7 ———— **Special leave where no application made in India**—*Case under appealable value.* The Judicial Committee will not entertain an application for special leave to appeal to Her Majesty in Council from a decree of the High Court where the subject matter in suit is under the appealable value prescribed by ss 39 and 40 of the Bombay Charter of 1682 unless the petitioner has applied to the High Court for such leave and has been refused GUNGOWA KOME MALUPA *v* ERAWA KOME JOGAPA 13 Moo I A 433

8 ———— **Special leave where application in India not made within time**—*Order giving interest on amount of decree* Leave ... costs from an ...

LAND *v* MODEE PESTONJEE KHOORSHEDJEE 3 Moo I. A. 220

9 ———— *Alteration of practice by High Court—Appeal from original decree and order refusing review* Pending proceedings before the High Court on an application for a review of judgment that Court altered the then ... appeal within ...

having expired special leave to appeal from the original decree and the order refusing a review was allowed NOGENDRO CHUNDER GHOSE *v* MAHOMED EUSUFF 12 Moo I A 107

10 ———— **Case under appealable** ... *appeal* ... granted not ... been made for ... the allegation ... much under ... demand ... of the Court ... yet the ... the appeal ... KETTAPA

10 Moo I A 313
1 Ind. Jur N S 205

PRIVY COUNCIL, PRACTICE OF—*contd*

5 SPECIAL LEAVE TO APPEAL—*contd*

11. ———— *Leave granted on terms—Provision for payment of compensation agreed on.* Where the Court grants leave to appeal under the general jurisdiction of the Queen in Council it will impose such terms upon the party applying as the special circumstances of the case require Appeal admitted from an order confirming the report of the commissioners in a partition suit although the appealable value was under R10 000 the amount prescribed by the Order in Council of the 10th April 1838 The petitioner (the plaintiff) had offered to compensate the defendant if the report of the commissioners was varied The Judicial Committee in granting leave to appeal put the petitioner upon terms of lodging in the Council office within four months a certificate of recognizance to the Queen in the sum of £1,500 for such compensation and costs as might be awarded. *In re* SIBNARAIN GHOSE

5 Moo I A 322

12. ———— *Value of the subject matter disputed* The value of the subject matter in dispute though laid in the plaint at a sum exceeding the minimum amount R10 000 was re[illegible]

an amc[illegible]

merit[illegible]

In [illegible]

entire [illegible]

dispute was under the appealable value refused leave to appeal to England On special petition leave to appeal was granted the appellant claiming to open the question of the value of the subject matter in question calculated by the Zillah Judge PRANNATH ROY CHOWDHRY *v* SURNOMOYEE

7 Moo I A 553

13 ———— *Important principle of law involved* Where an important principle of law was involved in the decision special [illegible]

KERAKOOSE *v* BROOKS

8 Moo I A 339 4 W R P C 61

14 [illegible]

SUMBHOOLALL GIRDHURLALL *v* COLLECTOR OF SURAT

4 Moo I A 1
8 W R P C 55

15 ———— *Question on which the decision of many suits depended* Special leave to appeal given in a case involving a question of tenure service called chakoran although the [illegible]

8 Moo I A 265

16 ———— *Leave granted on terms as to payment of costs—Question of jurisdiction* The Supreme Court in overruling the objections to the jurisdiction of the Court refused leave to appeal the subject matter of the action being [illegible]

SPOONER *v* JUDDOW 4 Moo I A 353

17 ———— **Leave in suits consolidated by consent**—*Valuation* Special leave to appeal granted in a suit which had been consolidated by consent of both parties A defendant to a suit having adopted a certain valuation cannot in the same suit object to that valuation KRISTO INDRO SAHA *v* HULOMONEE DOSSEE L R 1 I A 84

18 ———— **Decrees of the High Court made on cross appeals**—*Procedure* The High Court passed a separate decree on a cross appeal identical in terms with those of a decree passed on the appeal in the same suit From the latter decree an appeal to Her Majesty in Council was then declared by the High Court to be admitted under s 603 Civil Procedure Code But the defendant s application to have his appeal from the decree on the cross appeal similarly admitted was refused The Judicial Committee was of opinion that special leave should be granted to appeal from this decree without further security being required than had already been taken in respect of the appeal in the other MUHAMMAD IKRAM UD DIN *v* NAJIBAN I L R 19 All 95
L R 23 I A 167

19 ———— **Leave on appeal from a decree not final**—*Practice on erroneous construction of Charter* On a special application to the King in Council founded on the fact that the previous uniform practice of the Supreme Court at Madras though upon an erroneous construction of the Charter was to admit only appeals upon a final decree leave to appeal was granted by the Privy Council EAST INDIA COMPANY *v* ALLY

7 Moo I A 555

20 ———— **Order as to custody of** [illegible]

Christian and her mother who was as the Court held living in adultery was inducing her daughter to adopt the faith and habits of a Mahomedan Liberty given pending the hearing of the appeal to the petitioner to apply to the High Court to have access at suitable times to her daughter *In the matter of* SKINNER *alias* NAWSHABA BEGUM

13 Moo I A 532

PRIVY COUNCIL PRACTICE OF—*contd*

5 SPECIAL LEAVE TO APPEAL—*contd*

21 ——— **Order as to important question of law**—Special leave to appeal was granted to try the question whether under the Registration Act 1871 a Zillah Judge can review an order of his own Court refusing to register a document REASUT HOSSEIN *v* ABDOOLLAH

L R 1 I A 72

22 ——— **Appeal from Non Regulation Provinces**—*Stat 3 & 4 Will IV c 41* No provision by Statute or Charter being made for appeal to Her Majesty in Council from judgments of the Court of the Judicial Commissioner of Oudh created on the annexation of that kingdom in the year 1856 the Judicial Committee to prevent the denial of justice admitted an appeal under Stat 3 & 4 Will IV c 41 SALIK RAM *v* AZIM ALI BEG

1 Ind Jur O S 117 8 Moo I A 270

23 ——— **Order suspending pleader for misconduct**—*Act XX of 1865* The High Court acting regularly within its jurisdiction suspended a pleader from practice for misconduct The Judicial Committee not being prepared to say from the materials before it that the High Court s conclusion on a pure question of fact was wrong refused to grant special leave to appeal It would not have followed even if more doubt had been entertained on such a question that an appeal would have been granted against Judge so acting *In the matter of* QUARRY

I L R 2 All 511 L R 7 I A 6

24 ——— **Leave to appeal on terms**—*Counter petition to revoke lea e* Leave to appeal on an *ex parte* application was under the special [illegible]

ting the appeal filed a counter petition to revoke the leave granted to appeal The Judicial Committee under the circumstances there having been great delay made an order putting the appellant upon terms of lodging his petition of appeal within six weeks or the appeal to stand dismissed and [illegible]

costs of the application to revoke the leave to appeal until the hearing MCKELLAR *v* WALLACE

5 Moo I A 372

25 ——— **Time for making application**—*Application nunc pro tunc—Special appeal appeal from order on—Judgments of lower Court on facts* Where a case has been heard by the High Court on special [illegible] Council it is d[illegible] decisions of th[illegible] ration for special leave to do so should be made previous to the hearing The Judicial Committee will not as a rule allow a petition of appeal from those decisions to be put in at the hearing *nunc pro tunc* GOLAM ALI *v* KALLY KISHEN THAKOOR

12 B L R P C 107 18 W R 289

26 ——— *Application nunc pro tunc—Leave to appeal granted without authority—Preliminary objection* An objection that an appeal has come before the Judicial Committee without proper authority ought to be taken at the earliest moment but may be entertained at any stage of the appeal and is not unfrequently heard when the appeal is called on and before the arguments on the merits have commenced An appeal bein called on and before the case was gone into on the merits the objection was taken by the respondent and appeared to be well founded. The appellant thereupon applied to the Judicial Committee to grant him special leave to appeal *nunc pro tunc* *Held* that it was competent to the Judicial Committee to grant such special leave but leave was refused under the particular circumstances of the case GAJADHAR PERSAD *v* WIDOWS OF EMAM ALI BEG

15 B L R P C 221
L R 2 I A 205

27 ——— **Case under appealable value**—*Civil Procedure Code (Act XIV of 1882) ss 600 596—Privy Council special leave to appeal to—Practice* In preferring an appeal to the Privy Council in a case which is under the appealable value a person who asks for special leave to appeal should first apply to the High Court for a certificate under the second part of s 600 that the case is otherwise a fit one for appeal Special leave to appeal will be given only in cases which involve a substantial question of law The word and in the first part of s 596 means and and not or MOTI CHAND *v* GANGA PERSHAD SINGH (1901)

I L R 24 All 174
s c 6 C W N 362
L R 29 I A 40

28 ——— **Value of subject matter in dispute**—*Special leave to appeal—Suit for damages for more than R10 000 dismissed on appeal—No assessment of amount of damages by first Court—Civil Procedure Code (Act XIV of 1882) s 596—Refusal of leave to appeal by High Court* The Judicial Committee granted special leave to appeal in a case in which the petitioner had sued for R30 000 but his suit had been dismissed without any assessment of the amount of damages recoverable and the High Court had under s 596 of the Civil Procedure Code refused leave to appeal to the Privy Council on the ground that the petition had not shown that the case was necessarily of the proper appealable value. IKRAMUL HUQ *v* WILKIE (1906)

I L R 33 Calc 893
s c L R 33 I A 106
11 C W N 948

29 ——— **Native Appellate Court of New Zealand**—*Special leave—Petition, if lies—Prerogative of Crown—Exclusion must be express—Forfeiture of rights by Sovereign and subject—Decision declared final and conclusive by Statute—*

PRIVY COUNCIL PRACTICE OF—contd

5 SPECIAL LEAVE TO APPEAL—contd

Effect. The Native Appellate Court and the Native Land Court of New Zealand have been given exclusive jurisdiction over the civil rights of natives in land and in matters of succession probate and administration the object being to provide for determination of disputes among the natives according to their own custom. The Statute which constituted the Native Appellate Court declares that the decision of the Court shall be final and conclusive. *Held* that this does not exclude a petition to His Majesty for leave to appeal. The Native Appellate Court was given jurisdiction over matter which but for its creation would have been subject to the jurisdiction of the ordinary law Court and the exclusion of the right to appeal would therefore be a forfeiture of existing rights on the part of Sovereign and subject. *Theberg* v *Laudry L R 2 A C 10* and *Cushing* v *Dupuy L R 5 A C 415*. *In the matter of the Will of* WI MATUA (1908) 12 C W N 1081

6 LEAVE TO DEFEND APPEAL

1 ——— Appeal by one of two defendants severed in defence—*Alternative liability.* Two sets of defendants severed in their defence (their interest involving an alternative as to which was responsible to the plaintiff) and the Court below fixed one set of the defendants with liability. On an appeal in which the plaintiff was made sole respondent the other defendants were held entitled to appear and to lodge a separate case. EAST INDIA COMPANY v POBERTSON 7 Moo I A 361

2 ——— Allowing respondent to defend after great delay in appearing—*Leave on terms.* Where the respondent did not appear the appeal was after two years set down for hearing *ex parte*. Before the hearing the respondent appeared and moved under special circumstances to postpone the hearing for six months to enable him to lodge his case. The Judicial Committee put him upon terms of having the

3 ——— Delay of respondents in entering appearance—*Service of peremptory*

should be served with notice that unless they brought in their case without delay the appeal would be heard *ex parte* giving the appellant liberty to proceed in the Court below to render such service effectual and the Court was ordered to certify to the Judicial Committee what had been done with respect to the same. WISE v KISHEN COOMAR BOSE 4 Moo I A 201

PRIVY COUNCIL PRACTICE OF—contd

7 CROSS APPEAL

1 ——— Admission of cross appeal after time—*Admission on conditions.* A cross

2 ——— *Mistake of respondents as to practice.* Cross appeal allowed from part of a decree of the Sudder Court appealed from to England although the respondents had not applied in India for leave to appeal within the proper time the respondents being mistaken in the practice of the Judicial Committee upon a cross appeal. Such cross appeal directed to be prosecuted and heard upon one printed case if the principal appeal was proceeded with but in the event of the principal appeal being dismissed for want of prosecution liberty was reserved to the respondents to prosecute the cross appeal as a separate appeal. NANA NARAIN RAO v HURREE PUNT BHAO 6 Moo I A 464

3 ——— Leave given at hearing to bring cross appeal in order to open out whole decree—*Appeal from part of decree.* In

8 VALUATION OF APPEAL

1 ——— Mode of valuation—*Appeal to Privy Council—Appealable value—Stamp on plaint—Beng Reg X of 1829 s 17.* In estimating

part of the property sought to be recovered. A

was granted to appeal. *Quære* Whether the stamp on the plaint required by Regulation X of 1829 s 17 being for fiscal purposes only is conclusive of the value of the property sued for AMEENA KHATOON v RADHABENOD MISSER 7 Moo I A 261

PRIVY COUNCIL PRACTICE OF—*contd*

8 VALUATION OF APPEAL—*contd*

2 ———— Test of value of property— ... Bengal ... of the ... value

MOHUN LALL SOOKUL *v* BEBEE DOSS

8 Moo I A 193

3 ———— **Case under appealable value unless by addition of interest after decree**—*Discretion of Judicial Committee* Leave to appeal to the Privy Council is to be given in ca es where the petition is pre ented within the pre cribed period and the value of the matter in dispute in the appeal amounts to R10 000 including interest up to the decree The grant of leave to appeal in cases where the specified amount of R10 000 can only be reached by the addition of interest subsequent to the decree is in the discretion of the Privy Council SUTEESCHUNDER ROY *v* GUNES CHUNDER SURNOMOYEE *v* SUTEESCHUNDER ROY GOOROO PERSAD KHOOND *v* JUGGUT CHUNDER

3 W R P C 14
8 Moo I A 164 to 166

4 ———— **Abandonment on appeal of part of amount of claim**—*Reduction of claim to below prescribed limit of appealable amount* The defendants having a *bonâ fide* intention to appeal in respect of the whole amount decreed obtained the certificate and admis ion of their appeal as competent within the Code of Civil Procedure Afterwards in their printed ca e and at the hearing they withdrew part of their appeal reducing by so doing the amount in dispute to one below the limit prescribed for appeals where there is no special leave obtained *Held* that this did not render the appeal incompetent KALKA SINGH *v* PARAS RAM

I L R 22 Calc 434
L R 22 I A 68

5 ———— **Addition of costs of suit to principal sum**—*Appealable value—Appeal to Privy Council* Costs of suit cannot be added to the principal sum and interest in calculating the appealable value of R10 000 the amount restricted by the Order in Council of the 10th April 1838 DOORGA DOSS CHOWDRY *v* RAMANAUTH CHOWDRY

8 Moo I A 262

6 ———— **Actual value of property in suit**—*Valuation in plaint—Evidence* Appeal admitted from the Sudder Court at Calcutta in a case where the land sued for was laid in the plaint as under R10 000 upon evidence stating the value of the property much to exceed that sum. GOUR MONEY DEBIA *v* ABDOOL GUNNY

8 Moo I A 268

7 ———— *Valuation in plaint—Evidence* The amount of the stamp upon the plaint is not conclu ive of the value of the subject matter of the suit By the procedure of the Native Courts the value of the suit for the purpo e of the stamp duty is assessed at three times the annual rent payable to Government in respect of the property sued for *Held* on an *ex parte* petition for leave to appeal in a ca e in which the value was laid in the plaint as being under R10 000 that as the calculation was estimated with reference to the stamp duty only leave to appeal would be granted conditionally upon the production of satisfactory evidence in India by the petitioner and transmitted with the transcript that the real or market value of the property exceeded R10 000 otherwi e the leave granted to be null and of no effect MOHUN LALL SOOKUL *v* BEBEE DOSS

7 Moo I A 428

8 ———— **Consolidation of suits under appealable value**—*Stat 21 Geo III c 70 s 21* Upon the construction of the Stat 21 Geo III c 70 s 21 it was held that two suits (each for less than R50 000 but both for more than that amount) in which separate judgments were given could not be con olidated for the purpose of permitting an appeal to the Privy Council each judgment when pronounced having been final and conclu ive MAHOMED UBDOOLLAH *v* MOTEE CHUND

5 W R P C 34 1 Moo I A 383

9 ———— **Several suits each under appealable value**—*Suits as to same question of law—Leave to appeal granted on condition* Five separate suits were brought by the same plaintiff against the same defendants in which the same question of law was raised The amount involved in each suit was under R10 000 the appealable value although in the aggregate the amounts claimed exceeded that sum Leave to appeal in the suits was granted upon the undertaking that the parties consented within two months by a proceeding before the Sudder Court to abide by the deci ion of the Privy Council in the first appeal as governing the four other appeals when the Registrar of the Sudder Court was to tran mit only the transcript of the first suit otherwise the five transcripts to be remitted in the ordinary course GOPAL LALL THAKOOR *v* TELUK CHUNDER RAI

7 Moo I A 548

9 STAY OF PROCEEDINGS IN INDIA PENDING APPEAL

1 ———— **Refusal to stay proceedings**— ... admitted by Privy Council ... By ... utta a suit ... be tried de ... s decree was ... as a limited ... y Council ... h Court ...

... absence refu ed to make any order ... out prejudice to the petitioner's further application

PRIVY COUNCIL PRACTICE OF—*contd*

9 STAY OF PROCEEDINGS IN INDIA PENDING APPEAL—*contd*

when he had served the respondent PERLADH SEIN *v* BHOODOO SINGH 10 Moo I A 78

2 ———— **Application to stay proceedings without appealing from order refusing to stay them**—*Appeal from order of remand—Delay in applying* Application to stay proceedings in a cause in which an appeal from an order in the nature of an interlocutory order is pending before Her Majesty in Council ought satisfactorily to show that a serious injury will be the result to the party applying unless the delay asked for be granted and that the party applying has come promptly to make the application Where therefore an appellant from an order of the High Court of Judicature which remitted back a cause appealed to that Court from the Zillah Court for the trial of issues framed in accordance with the provisions of Act VIII of 1859 s 139 having failed in obtaining an order from the High Court to stay proceedings in the Zillah Court pending the appeal but not having appealed from that decision presented a petition to Her Majesty in Council praying that all proceedings in the remanded suit might be stayed till the pending appeal had been heard the Judicial Committee without determining the question of their right to interfere in such circumstances held that the petitioner had not shown any such injury or used such expedition as entitled him to ask for a stay of proceedings *Quære*—Whether where an order has been made by the superior Court below refusing to stay proceedings and such order is not especially appealed from the Judicial Committee have any authority to interfere though an appeal is pending before them from a previous order of the superior Court made in the same suit remitting the cause back to the inferior Court before which it is pending SIDHEE NUZUR ALLY KHAN *v* OOJOODHYARAM KHAN

10 Moo I A 322 1 Ind Jur N S 185

3 ———— **Stay of proceedings on recognizances**—*Abandonment of appeal—Vacation of recognizance pending appeal* Recognizance [illegible]

4 ———— **Stay of proceedings in India pending appeal**—*Protection of property pending an appeal by special leave—Order for stay of proceedings—Civil Procedure Code (Act XIV of 1882) Ch XVI* Special leave of Her Majesty in Council was obtained for the filing an appeal from a decree of the High Court affirming the dismissal of the petitioner's suit The High Court rejected his application as plaintiff (appellant) for an order staying execution and continuing the possession of a manager of the estate in litigation pending the result of the appeal The rejection was grounded on the absence of authority for this purpose the High Court being authorized in their judgment only to make such an order in regard to appeals admitted by themselves On the petition that the High Court's decision might be reversed or such order made as would protect the property to abide the ultimate disposal of the suit their Lordships were of opinion that direct interference to continue the management or to appoint a Receiver was impracticable But that on the other hand interference had on occasions been effected where the appellant being in possession an order for stay of proceedings had maintained the existing state of things Therefore an order staying proceedings should now be recommended by them the petitioner being answerable in damages and any aggrieved respondent having leave to move for the discharge of the order MOHESCHANDRA DHAL *v* SATRUGHAN DHAL I L R 27 Calc 1

Ex parte MOHESCHANDRA DHAL

L R 26 I A 284
4 C W N 31

5 ———————— *Appeal to Privy Council—Stay of proceedings pending appeal—Application to be made to the Court in India in the first instance—Conditional order for stay—Cost* Application for stay of proceedings pending an appeal to the Judicial Committee ought always to be made in the first instance at any rate to the Court in India which has ample power to deal with the matter according to the circumstances of the particular case and has knowledge of details which the Judicial Committee cannot possess on an interlocutory application Application was granted in the special circumstances of this case on the appellant giving an undertaking for expediting the hearing of the appeal and leave was given to the respondent to apply to the Court in India for the appointment of a Receiver or for payment by the appellant of a reasonable amount in Court or any other relief as he may be advised Appellant to pay the costs of the application in any event VASUDEVA MODELIER *v* SADAGOPA MODELIER (1906) 10 C W N 945

6 ———— **Stay of execution**—*Application to set aside order of Court in India for execution pending appeal* An application to rescind an order of the Sudder Court at Madras for the execution of a decree pending an appeal and for an order to stay execution refused on the ground of the length of time that had elapsed from the making of the order and the probability of its having been acted on in India *In re* BOMMARAUZEE BAHADUR 5 Moo I A 298

7 ———— **Refusal of order staying execution where decree was not yet appealed to the Privy Council but leave to appeal from interlocutory orders in execution granted**—*Security for performance of order to be*

PRIVY COUNCIL PRACTICE OF—*contd*

8 VALUATION OF APPEAL—*contd*

2 ——— Test of value of property—

Bengal of the value

6 Moo I A 193

3 ——— **Case under appealable value unless by addition of interest after decree—** *Discretion of Judicial Committee* Leave to appeal to the Privy Council is to be given in cases where the petition is presented within the prescribed period and the value of the matter in dispute in the appeal amounts to R10 000 including interest up to the decree The grant of leave to appeal in cases where the specified amount of R10 000 can only be reached by the addition of interest subsequent to the decree is in the discretion of the Privy Council SUTEESCHUNDER ROY *v* GUNES CHUNDER. SURNOMOYEE *v* SUTEESCHUNDER ROY GOOROO PERSAD KHOOND *v* JUGGUT CHUNDER

3 W R P C 14
8 Moo I A 164 to 166

4 of claim The appeal in respect of the whole amount decreed obtained the certificate and admission of their appeal as competent within the Code of Civil Procedure Afterwards in their printed case and at the hearing they withdrew part of their appeal reducing by so doing the amount in dispute to one below the limit prescribed for appeals where there is no special leave obtained. *Held* that this did not render the appeal incompetent. KALKA SINGH *v* PARAS RAM

I L R 22 Calc 434
L R 22 I A 68

5 ——— **Addition of costs of suit to principal sum—***Appealable value—Appeal to Privy Council* Costs of suit cannot be added to the principal sum and interest in calculating the appealable value of R10 000 the amount restricted by the Order in Council of the 10th April 1838 DOORGA DOSS CHOWDRY *v* RAMANAUTH CHOWDRY

8 Moo I A 262

6 ——— **Actual value of property in suit—***Valuation in plaint—Evidence.* Appeal admitted from the Sudder Court at Calcutta in a case where the land sued for was laid in the plaint as under R10 000 upon evidence stating the value of the property much to exceed that sum GOUR MONEY DEBIA *v* ABDOOL GUNNY

8 Moo I A 268

7 ——— *Valuation in plaint—Evidence* The amount of the stamp upon the plaint is not conclusive of the value of the subject matter of the suit By the procedure of the Native Courts the value of the suit for the purpose of the stamp duty is assessed at three times the annual rent payable to Government in respect of the property sued for *Held* on an *ex parte*

PRIVY COUNCIL PRACTICE OF—*contd*

8 VALUATION OF APPEAL—*contd*

satisfactory evidence in India by the petitioner and transmitted with the transcript that the real or market value of the property exceeded R10 000 otherwise the leave granted to be null and of no effect MOHUN LALL SOOKUL *v* BEBEE DOSS

7 Moo I A 428

8 ——— **Consolidation of suits under appealable value—***Stat 21 Geo III c 70 s 21* Upon the construction of the Stat 21 Geo III c 70 s 21 it was held that two suits (each for less than R50 000 but both for more than that amount) in which separate judgments were given could not be consolidated for the purpose of permitting an appeal to the Privy Council each judgment when pronounced having been final and conclusive MAHOMED UBDOOLLAH *v* MOTEE CHUND 5 W R P C 34 1 Moo I A 383

9 ——— **Several suits each under appealable value—***Suits as to same question of law—Leave to appeal granted on condition.* Five separate suits were brought by the same plaintiff against the same defendants in which the same question of law was raised The amount involved in each suit was under R10 000 the appealable value although in the aggregate the amounts claimed exceeded that sum Leave to appeal in the suits was granted upon the undertaking that the parties consented within two months by a proceeding before the Sudder Court to abide by the decision of the Privy Council in the first appeal as governing the four other appeals when the Registrar of the Sudder Court was to transmit only the transcript of the first suit otherwise the five transcripts to be remitted in the ordinary course GOPAL LALL THAKOOR *v* TELUK CHUNDER RAI

7 Moo I A 548

9 STAY OF PROCEEDINGS IN INDIA PENDING APPEAL.

1. ——— **Refusal to stay proceedings—***Appeal specially admitted by Privy Council* By a decree of the Sudder Court at Calcutta a suit was remanded to the Zillah Court to be tried de ... this decree was ... admitted ... Council ... h Court ... be appeal ... of the ... stion at ... The ... Mary ... appellant then presented a petition ... in Council and applied *ex parte* for the same relief but the Judicial Committee in the respondent's absence refused to make any order though without prejudice to the petitioner's further application

PRIVY COUNCIL PRACTICE OF—*contd*

9 STAY OF PROCEEDINGS IN INDIA PENDING APPEAL—*contd*

when he had served the respondent PERLADH SEN v BHOODOO SINGH 10 Moo I A 78

2 ———— Application to stay proceedings without appealing from order refusing to stay them—*Appeal from order of remand—Delay in applying* Application to stay proceedings in a cause in which an appeal from an order in the nature of an interlocutory order is pending before Her Majesty in Council ought satisfactorily to show that a serious injury will be the result to the party applying unless the delay asked for be granted and that the party applying has come promptly to make the application Where therefore an appellant from an order of the High Court of Judicature which remitted back a cause appealed to that Court from the Zillah Court for the trial of issues framed in accordance with the provisions of Act VIII of 1859 s 13) having failed in obtaining an order from the High Court to stay proceedings in the Zillah Court pending the appeal but not having appealed from that decision presented a petition to Her Majesty in Council praying that all proceedings in the remanded suit might be stayed till the pending appeal had been heard the Judicial Committee without determining the question of their right to interfere in such circumstances held that the petitioner had not shown any such injury or used such expedition as entitled him to ask for a stay of proceedings *Quære*—Whether where an order has been made by the superior Court below refusing to stay proceedings and such order is not especially appealed from the Judicial Committee have any authority to interfere though an appeal is pending before them from a previous order of the superior Court made in the same suit remitting the cause back to the inferior Court before which it is pending SIDHEE NUZUR ALLY KHAN v OOJOODHYARAM KHAN

10 Moo I A 322 1 Ind Jur N S 185

3 ———— Stay of proceedings on recognizances—*Abandonment of appeal—Vacation of recognizance pending appeal* Recognizance entered into to abide the determination of an appeal vacated upon petition of the appellant upon the abandonment of the appeal PEED v GOURMONEY DABEE 6 Moo I A 490

4 ———— Stay of proceedings in India

petitioner s suit The High Court rejected his application as plaintiff (appellant) for an order staying execution and continuing the possession of a manager of the estate in litigation pending the result of the appeal The rejection was grounded on the absence of authority for this purpose the High Court being authorized in their judgment only to make such an order in regard to appeals admitted by themselves On the petition that the High Court s decision might be reversed or such order made as would protect the property to abide the ultimate disposal of the suit their Lordships were of opinion that direct interference to continue the management or to appoint a Receiver was impracticable But that on the other hand interference had on occasions been effected where the appellant being in possession an order for stay of proceedings had maintained the existing state of things Therefore an order staying proceedings should now be recommended by them the petitioner being answerable in damages and any aggrieved respondent having leave to move for the discharge of the order MOHESCHANDRA DHAL v SATRUGHAN DHAL I L R 27 Calc 1

Ex parte MOHESCHANDRA DHAL

L R 26 I A 284
4 C W N 31

5 ———— *Appeal to Privy Council—Stay of proceedings pending appeal—Application to be made to the Court in India in the first instance—Conditional order for stay—Cost* Application for stay of proceedings pending an appeal to the Judicial Committee ought always to be made in the first instance at any rate to the Court in India which has ample power to deal with the matter according to the circumstances of the particular case and has knowledge of details which the Judicial Committee cannot possess on an interlocutory application Application was granted in the special circumstances of this case on the appel

(1906) 10 C W N 945

6 ———— Stay of execution—*Application to set aside order of Court in India for execution pending appeal* An application to rescind an order of the Sudder Court at Madras for the execution of a decree pending an appeal and for an order to stay execution refused on the ground of the len[illegible]
the
acte

7 ———— Refusal of order staying execution where decree was not yet appealed to the Privy Council but leave to appeal from interlocutory orders in execution granted—*Security for performance of order to be*

PRIVY COUNCIL, PRACTICE OF—*contd*

9 STAY OF PROCEEDINGS IN INDIA PENDING APPEAL—*concld*

made by Her Majesty in Council—Civil Procedure Code 1882 s 608—Intimation to Court below A party to a suit in an Appellate Court who had obtained leave to appeal from its decree to Her Majesty in Council petitioned for the order of the latter staying execution of interlocutory orders made in execution of such decree and directing payment by the petitioner to the opposite party of large sums without security taken for their repayment in the event of the decree being reversed This accompanied a petition for special leave to appeal against those orders The latter was granted but it not being competent to the Judicial Committee to make any order as to the stay of execution an intimation was made by it to the Court below that it appeared to be the reasonable course that the opposite party should not pending the appeal be put into possession of the large sums in dispute That intimation being made the petitioner might apply to the Court below for the due security of all money paid into the Treasury in obedience to the decree *Shidhee Nazir Ali Khan v Oojoodhyaram Khan 10 Moo I A 372* and *Jariutool Batool v Hosseinee Begum 10 Moo I A 196* referred to INDER KUMARI *v* JAIPAL KUMARI

I L R 14 Calc 290
L R 14 I A 1

8 ———— *Civil Procedure Code 1882 s 608 sub s (c)* The High Court having under s 603 sub (a) of the Civil Procedure Code declared the admission of an appeal from their decree refused an order applied for under s 608 sub s (c) for staying execution pending the appeal the two Judges constituting the Court differing as to whether or not the case was such that the application should be granted Their Lordships decided that the execution of the decree should be stayed pending the appeal An order of Her Majesty in Council followed to that effect CHATRAPAT SINGH DUGGA *v* DWARKANATH GHOSE

I L R 22 Calc 1
L R 21 I A 70

See (the latest Case) NITYAMONI DASI *v* MADHU SUDAN SEN

I L R 38 Calc 335

10 WITHDRAWAL OF APPEAL

———— **Application for dismissal of appeal by agreement**—*Arrangement between parties* A petition to dismiss an appeal from the Sudder Court in India and for an order directing that Court to carry into execution the terms of a deed of compromise upon which the withdrawal of the appeal was founded refused. All that the Privy Council will do in such circumstances is to make an order of dismissal reserving to the parties leave to apply to the Court in India to take further proceedings in pursuance of such agreement BUTTI CHURN GHOSAL *v* MUDDEN KISHORE INDOO

5 Moo I. A. 107

PRIVY COUNCIL PRACTICE OF—*contd.*

11 INSOLVENCY OF APPELLANT

———— **Effect of insolvency of appellant on appeal**—*Procedure—Adjournment to allow Official Assignee to appear* After an appeal from Calcutta had been set down for hearing intelligence was received shortly before the day appointed for hearing that the appellant had been adjudged an insolvent under the Indian Insolvent Act 11 [illegible]

[illegible] the appeal to be dismissed and directed the respondents to serve the Official Assignee in India with such notice No steps having been taken by the Official Assignee within the time limited for prosecution their Lordships refused a further extension of time and dismissed the appeal COOROO CHURN SEIN *v* RADHANAUTH SEIN

7 Moo I A 1

12 DEATH OF PARTY ON RECORD

1 ———— **Practice relating to substitution of parties on revivor**—*Representative character to be ascertained by lower Court* On the death of a party on the record of an appeal pending before Her Majesty in Council proof must be given in the Court from which the appeal has been preferred of the representative character of the person or persons by or against whom revivor is sought There ought to be some finding of the Court below which also should give its own opinion as to who are the parties proper to be substituted upon the record. A certificate or statement on which their Lordships can act should be made by the Court below HAIDAR ALI *v* TASSADDUK RASUL. *Ex parte* HAIDAR ALI

I. L. R. 16 Calc 184
L R 16 I. A. 209

2 ———— **Death of respondent after hearing and before judgment**—*Addition of parties* Where the respondent a widow and heir died after the case had been argued and in consequence the inheritance ceased to be represented in the suit and there was no one in whose presence certain necessary accounts could properly be taken against the widow the Judicial Committee after adding the heir thought it unnecessary to delay the decree but let it rest with the plaintiff the appellant to apply to the Court below to add the necessary parties SURENDRO KESHUB ROY *v* DOORGASOONDERY DOSSEE I L R 19 Calc 513
L R 19 I. A. 108

See CHETAN CHARAN DAS *v* BALBHADRA DAS

I. L. R. 21 All. 314

13 SUBSTITUTION OF APPELLANT

———— **Procedure**—*Security for costs—Terms as to costs* An appellant after the transmission of his appeal to England obtained leave in the High Court to withdraw it. The appeal involved the rights of a minor party to the suit, whose mother and guardian obtained an order for

PRIVY COUNCIL, PRACTICE OF—*contd*

13 SUBSTITUTION OF APPELLANT—*concld*

her to be sub tituted for the withdrawing appel lant on the terms that she should give security to the sati faction of the Hi h Court for costs already ordered and should undertake to abi le by any order as to general co t GOUR MOHUN CHAKERBATI *v* TARASUNDERI DEBI

I L R 17 Calc 693

14. DISMISSAL OF APPEAL FOR WANT OF PROSECUTION

1 ———— **Delay in taking proceedings after admission of appeal** An appeal was allowed in O t ber 1854 by the Supreme Court at Cal utta to England. After the allowance of the appeal no further teps were taken by the appel lan In March 185 the Judicial Committee upon a certificate of the Regi trar of the Supreme Court that no further proceedings had been taken after th order allowin the appeal di mis ed the appeal at the in tance of the re pondents for want of prosecution. PABUTTY DOSSEE *v* PADHANAUTH SEIN

6 Moo I A 346

2 ———————— On spe ial appli

ent brought in his printed ca e but the appellant though served with a peremptory notice did not lodge his case or take any other step in the matter In such circumstance on application by the re pondent the appeal was di mi ed and the respondent s co ts directed to be paid out of the sum depo ited in the Council office the balance to be returned to the appellant GOURMONEE DEBIA *v* ABDOOL GUNNEE

10 Moo I A 59

3 ———————— *Failure to deposit security* Six months having elapsed without the

paying the costs of the day ordered to stand over for three months for the appellant to perform the condition in failure th reof the appeal to stand di mi sed HURROSOONDREE DIBIAH *v* PRAN KISHEN SINGH

7 Moo I A 16

4 ———— **Application to the Court in**

withdraw from the suit —*Held* that it was competent to the re pondent in England to have the appeal dismi ed for want of prosecution although the guardian had given security for the costs and paid the expenses of the appeal and although the (former) infant was not served with notice of the motion the Council being satisfied that he had in

PRIVY COUNCIL PRACTICE OF—*contd*

14 DISMISSAL OF APPEAL FOR WANT OF PROSECUTION—*concld*

the High Court petitioned for leave to withdraw BISTUPRYA PATMADAYI *v* BASUDEB DHALL BEWARTI PATNAIK 6 B L R 190 15 W R P C 19

S C BISTOOPRIA PUTMADAYE *v* NUND DHUT

13 Moo I A 602

15 RESTORATION OF APPEAL

1 ———— **Appeal dismissed through unavoidable accident** —*Acts XVI of 1845 XXIX of 1841 and XV of 1853 s 6—Costs* Act XVI of 1845 amending Act XXIX of 1841 enacts tha it is competent to the Sud ler Court in the ca e

the Court that the dismi sal was occasioned by the default of his vakil or by unavoidable accident An appeal was made to the Sudder Court at Calcutta but in consequence of the ab ence from illne s of the appellant s mukhtar the written rea ons of appeal were not lodged within six weeks the time prescribed by Act XV of 1853 s 6 and the appeal was dismis ed Upon appli cation for re admission of the appeal the evidence showed that there had been no wilful delay and that the appellant was in ignorance of the fact of the rea ons of appeal not having been filed *Held* rever ing the decree of the Sudder Court that such circumstances constituted a case of unavoidable

costs of the appeal in England against such decree were ordered to be paid by the respondents. ANUNDMOYEE DOSSEE *v* POORNO CHUNDER ROY

9 Moo I A 26

2 ———— **Appeal dismissed by reason of guardian absconding and abandoning case**—*Power to rectify mistakes in orders* By the Common Law the Judicial Committee po esses the same power as the Courts of Record and Statute have

mi pri

ments

ex po,

nd affirmance

hich purport

the Judicial

st be taken

simply as a dismissal and it appearing that the

PRIVY COUNCIL PRACTICE OF—*contd*

15 RESTORATION OF APPEAL—*contd*

and abandoned the cause their Lordships rescinded the order of dismissal and restored the appeal on the terms of the appellant's paying the costs and giving access to the transcript of the proceedings in the Court below in their hands and undertaking to lodge the case within five months RAJUNDER NARAIN RAE *v* BIJAI GOVIND SINGH
2 Moo I A. 181

3 ———— Appeal dismissed for want of prosecution—*Ignorance of necessary proceedings* Where an appeal had been dismissed for want of prosecution no step having been taken in it for ten years the appeal was on petition to the King in Council restored the appellant paying the costs of dismissal and restoration it appearing that the appellant was ignorant of the proceedings necessary to be taken in England and that he had though after the lapse of some years instructed a commer[illegible] [illegible]t

o

2 Moo I A 441

4 ———— *Delay in receipt by agent of appellant of the transcript* Leave given to restore an appeal dismissed for want of prosecution the appellant's agent though instructed to prevent the dismissal of the appeal not having received the transcript until after the expiration of a year and a day from the time of the allowance of the appeal and the respondent having in consequence thereof obtained an order of dismissal. BISNOSOONDERY DABEE *v* BURRODACAUNT ROY
2 Moo I A 127

5 ———— *Ignorance of existence of new rules* Appeal restored after being dismissed for want of effectual prosecution within the time limited by the 5th rule of the Order in Council of 13th June 1853 the new rules having been only recently adopted by the Sudder Court at Calcutta and the appellant in ignorance of their existence being engaged in taking steps to prosecute the appeal within the time and according to the practice previously existing GUDADHUR PURSHAD TEWAREE *v* SOONDERKOOMAREE
6 Moo I A 201

SETO LUCHMEECHUND *v* SETO ZORAWAR MULL
6 Moo I A 204

6 ———— *Abandonment of appeal—Stat 8 & 9 Vict c 30 s 2* In circumstances showing conflicting and opposite decisions by the Sudder Court upon the same question at issue between the same parties an appeal treated under Stat 8 & 9 Vict c 30 s. 2 as abandoned for non prosecution was restored upon terms of paying costs and undertaking to lodge cases forthwith and to lodge security or a bond in England to the amount of £500 Where an appeal has been treated as abandoned under 8 & 9 Vict c 30 s 2 their Lordships have no power to grant leave to institute a new appeal only a discretion to allow the original appeal to be restored HURROSOONDREE DEBIAH *v* PRAN KISHEN SINGH
6 Moo I A. 491

7 ———— *Consolidation of dismissed appeal with another pending* Leave given to restore an appeal dismissed for want of prosecution the Court below having consolidated it with another appeal in the same cause which was still pending SUROOP CHUNDER SIRCAR CHOWDRY *v* RAMRUTTON MULLICK 1 Moo I A. 358

8 ———— *Application for restoration of case—Security for costs of appeal* Application for restoration of appeal acceded to in consideration of the interests of infants being involved in the case, and of the state of that part of India when the matter arose in and after 1857 on the condition of deposit of further security and of [illegible] certain time

BIRJOBUTTEE *v* PERTAB SINGH
3 W R. P C 36 8 Moo I A 163

9 ———— Security on restoration of appeal—*Deposit of costs* Where Government securities for the due prosecution of the appeal and costs were deposited in the registry of the Sudder Court the Judicial Committee in restoring the appeal dispensed with the usual recognizance in England SETO LUCHMEECHUND *v* SETO ZORAWAR MULL
6 Moo I. A 204

10 ———— Petition to restore an appeal—*Terms under which it was restored* Under rule 5 of the Orders in Council of the 13th June 1853 an appeal was dismissed for want of prosecution on the 8th October 1896 The record had been received on the 15th January 1896 and since then no steps had been taken. The delay having been explained and the cause of it considered sufficient the appeal was restored to the file on conditions as to costs and on security to be given in England. PABIABAI *v* MAHOMED IMAM KHAN
I. L. R 21 Bom. 723
L. R. 24 I A 128

16 REMISSION OF CASE TO INDIA

1. ———— Refusal to consider documentary evidence not sent with record. The Privy Council will not act as a Court of Original Jurisdiction therefore where the Judge of the Court below improperly suppressed documents which were not discovered until after the transmission of appeal to Her Majesty in Council, their Lordships refused to give an opinion on the merits and remitted the case to India for reconsideration JUVEERBHAEE *v* MURUJBHAEE 3 Moo I. A 304

2. ———— Remand to take fresh evidence—*Refusal of Court below to consider evidence* Where the lower Courts on the ground that the defendant's title under a sanad was absolute declined to consider evidence which the plaintiff

PRIVY COUNCIL PRACTICE OF—*contd*

16. REMISSION OF CASE TO INDIA—*contd*

relied on as showing that the defendant really held for him as a trustee the case was remanded by the Judicial Committee in order that such evidence might be received and considered SHERE BAHADUR SING v THAKURAIN DARIAO KUAR
I. L. R. 3 Calc 645

3 ——— Reversal in formar analogous case—*Case decided by High Court as involving question already decided* The High Court dismissed an appeal from the Zillah Court on the ground that it involved the same question as had been decided by them in another suit brought by the plaintiff in respect of the validity of a zur i peshgi deed. The decision in the prior suit was on appeal reversed by the Judicial Committee In such circumstances on the appeal from the later decision coming on for hearing *ex parte* their Lordships with the consent of the appellant remitted the case to the High Court with a declaration that the deed was valid and with directions that if the respondent did not appear within a reasonable time to be fixed by the High Court to dismiss the appeal from the Zillah Court and in the event of the respondent appearing then to hear the case on the merits KALEEPERSHAD TEWAREE v LALLA BINDA LALL
12 Moo I. A 343

4 ——— Form of decree of High Court—*General decree affirming Court below without details where lower Court merely reverses first Court* A suit for possession and redemption in which a third party intervened on the claim that the plaintiff had conveyed to him half of the property in dispute was dismissed On appeal by the plaintiff in which the intervenor did not appear the lower Appellate Court merely reversed the decree of the first Court and the High Court affirmed the decree of the lower Appellate Court The Privy Council while affirming the decree of the High Court observed that the question as to the form of the decree ought to have been raised before the High Court if it was thought that the decree was not sufficient to found execution upon so that the details of the decree might have been stated and they remanded the case to the High Court to ame[illegible]
their judgme[illegible]
the plaintiff [illegible]
SOONDUR LAL [illegible]

17 PRACTICE AS TO OBJECTIONS

1. ——— Formal objections The practice of the Privy Council has been never to favour objections merely of form MOKUDDIMS OF MOUZA KUNKUNWADY v EVAMDAR BRAHMINS OF MOUZA SOORPAL
7 W R P C 8 3 Moo I A 383

2 ——— *Pleadings—Matters of form—Refusal to insist upon* In reviewing proceedings of the Courts in India where the Hindu and Mahomedan laws are the rule and where the forms of pleadings are wholly different from

PRIVY COUNCIL PRACTICE OF—*contd*

17 PRACTICE AS TO OBJECTIONS—*contd*

those in use in Courts where the law of England [illegible]

DHAREE SINGH v KOOLAHUL SINGH
6 W R P C 1 2 Moo I A 344

3 ——— Technical objections—*Fresh grounds—Question of disputed consent to arbitration* In the examination of such questions as whether as alleged the consent of one of the parties to an arbitration was obtained by threats the Privy Council will look to the broad principles of justice and equity and discourage mere technical objection and the invention of new grounds of dispute which were not even mentioned at the commencement of the suit PURVATHA VURDHAY NAUCHIAR v JAYAVERA PAMAKOMARA ETTYAPA NAICKER
4 W R P C 31

s c ZAMINDAR OF RAURNAD v ZAMINDAR OF YELTIAPOORAM 7 Moo I A 441

4 ——— Objections on matters of practice—*Immaterial irregularities* The Privy Council will not interfere in a case in which objections are taken to matters of practice unless they see very clearly that justice has not been done ABDOOL ALI v MOZUFFER HOSSEIN CHOWDRY
16 W R P C 22

5 ——— Pleadings rule of—*Presumption as to averments not traversed* The strict rule that averments not traversed must be taken to be admitted will not be applied by the Privy Council to the Indian Courts ANUNDOMOYEE CHOWDHRAIN v SHEEB CHUNDER ROY
2 W R P C 19 9 Moo I A 287
Marsh 455

6 ——— Ground for varying decree —*Duty of Appellate Court—Suits heard together evidence in* It is objectionable to disturb or vary a decree properly made by the lower Court for the mere purpose of guarding against the possible error of some other tribunal in some future suit Two suits were heard together On objection made in [illegible]

[illegible] een [illegible] it [illegible] een [illegible] of

Appeal has to determine whether the decision of the lower Court when pronounced was a correct decision of the issues then pending before it between the then parties to the suit ANUNDMOYEE CHOWDHRAIN v SHEEB CHUNDER ROY
Marsh. 455 2 W R P C 19
9 Moo I A 287

7 ——— Objection as to suit being merely declaratory—*Special leave to appeal—Technical nature of grounds of appeal* A defendant obtained special leave to appeal to Her Majesty

in Council on the ground that the case involved questions of law of great importance to the Jain sect of which he was a member On the appeal coming on for hearing he contended that the suit should have been dismissed by the Courts below as a claim for a declaration of right in respect of which no consequential relief was sought or could be given *Held* that considering the special grounds on which the defendants had obtained leave to appeal the somewhat technical character of the defence he now put forward and the general circumstances of the case he ought not to be allowed to insist on this objection SHEO SINGH RAI v DAKHO

I L R 1 All 688 2 C L R 193
L R 5 I A 87

8 ———— Objection not taken before High Court—*Grounds of appeal* The Judicial Committee refused to entertain an objection taken in the grounds of appeal which had not been taken on appeal to the High Court FORBES v MEER MAHOMED HOSSEIN

12 B L R P C 210 20 W R 44

9 ———— *Point not taken in lower Courts* A point not raised in the plaint before the District Judge nor in the High Court cannot be raised before the Judicial Committee SOMBHU NATH SANTRA MOHAPATRA v SURJA MONI DEI

1 C W N 649
I L R 25 Calc 187
L R 24 I A 181

10 ———— *Circumstances not raised in the lower Court—Pleadings* In this

proper examination of the case with respect to them *Held* that the High Court was justified in refusing to allow the appellant to raise the point NAM NARAIN SINGH v BHIM GANJHU

3 C W N 249

11 ———— *Objection as to validity of deeds* A plaintiff sued to set aside certain documents which he alleged to have been forged by the defendant At the trial of the case in the Court of first instance the only issue directed to these documents was — Are the three written agreements said to have been given by the plaintiff to the defendant genuine and valid deeds? It was not contended by the plaintiff in that Court that the agreements had been obtained from him while he was a minor by undue influence nor was that objection taken in the grounds of appeal against the judgment of the Court *Held* that it was too late to take the objection for the first time in the Court of Appeal AMEEROONISSA KHATOON v ADADOONISSA KHATOON

15 B L R 67 23 W R 208
L R 2 I A 87

12 ———— *Objection to right of action* The Privy Council will not entertain a purely technical objection to a party's right of action which has not been made in the Court below BANK OF BENGAL v MACLEOD

5 Moo I A 1

13 ———— *Right to sue Semble* The right of a party to institute a suit as heir of an original grantee not having been disputed in the Courts below cannot be questioned before the Judicial Committee MILLS v MODEE PESTONJEE KHOORSHEDJEE

2 Moo I A 37

14 ———— *Objection of limitation—Beng Regs II of 1805 II of 1819 III of 1828* An objection raised for the first time at

BAHADOOR v GOVERNMENT OF BENGAL

4 Moo I A 466

15 ———— *Objection to order of Court in India substituting respondent for appellant on death of sole appellant* Pending the appeal to England the sole appellant died and the Sudder Court made an order substituting one of the respondents in his stead as appellant *Semble* It is not competent to the other respondents to object to such order at the hearing of the appeal the proper course being to move the Sudder Court to discharge such order KASI PERSAD NARAIN v KAWALBASI KOOER

5 Moo I A 148

16 ———— *Objections to report of Commissioner under Civil Procedure Code 1859 s 181* Where a report or supplemental report had been made by Commissioners to whom accounts had been referred for investigation under Act VIII of 1859 s 181 the Privy Council refused to entertain any objections thereto which had neither been brought to the notice of the first Court nor made in any of the grounds of appeal in the Courts in India SETH GUJMULL v CHAREE KOWAR

L R 2 I A 34

17 ———— *Objection taken without cross-appeal—Alteration of decree asked for by respondent without cross appeal—Civil Procedure Code 1882 s 561* In reference to whether the decree made against one of the respondents could be varied in his favour he not having filed a

PRIVY COUNCIL, PRACTICE OF—*contd*

19 QUESTIONS OF FACT—*contd*

ence, there had been no omission on the Judge's part affording ground for appeal and the Judicial Committee refused to interfere. CHANDICHURN SHASHMAL v DURGA CHURN MIRDUA
I L R 9 Calc 260 12 C L R 81

16 ———— Questions of boundary—*Miscarriage in conduct of decision.* The Privy Council will never interfere with the finding of an Indian Court on a question of boundary unless they are clearly satisfied that there has been some plain miscarriage in the conduct or decision of the case upon which they can put their hands and make the grounds for an order reversing or varying the decree. RAMGOPAL ROY v GORDON STUART & Co. 14 Moo I A 453 17 W R 285

17 ———— *Perusal on evidence* In a question relating to boundaries of land

18 ———— Waiver—*New point—Question not allowed to be raised on appeal—Question of fact decided by first Court against appellant and not raised in High Court* *Held* that a question of whether there had been or not a waiver of an irregularity in the conduct of a sale which question had been decided by the first Court adversely to the appellants and had not been submitted to the High Court for review could not be

19 ———— Circumstances to be taken

mortgage was a fictitious or a real transaction there

witnesses were not called and the evidence given by those who were called was open to much adverse criticism. The Courts in India differed the Subordinate Judge deciding that the mortgage was fictitious and the High Court holding it to be a genuine transaction. *Held* by the Judicial Committee that in determining which story was to be accepted it was necessary for their Lordships to rely largely upon surrounding circumstances the position of the parties and their relation to one another the motives which could govern their actions and their subsequent conduct and so dealing with the case their Lordships upheld the decision of the High Court. The fact that if a genuine transaction it was advantageous to the

PRIVY COUNCIL PRACTICE OF—*contd*

19 QUESTIONS OF FACT—*concld*

mortgagor and if fictitious it afforded him no immediate protection from creditor (which was the motive alleged by the defendants for entering into the transaction) was a very material circumstance in the case DALIP SINGH v NAWAL KUNWAR (1908) I L R 30 All 258

20 CONCURRENT JUDGMENTS ON FACTS

1 ———— Presumption as to correctness of facts Where the lower Courts have proceeded upon the evidence and have come to the same conclusion it is an established rule of practice that the Judicial Committee of the Privy Council will not on appeal enter into the question whether the decisions of the Courts below are or are not correct on matters of fact JAIMUNGAL KOERI v MOKHUN KORI 10 C L R 611

2 ———— The Privy Council in cases pending upon facts which have received the concurring judgments of two Courts in India will not set aside the last judgment unless it can see very clearly that that judgment was wrong PETAMBER MANIKJEE v MOTEECHUND MANIKJEE
5 W R P C 53 1 Moo I A 420

KHOORSHEDJEE MANIKJEE v MEHRWANJEE KHOORSHEDJEE
5 W R P C 57 1 Moo I A 431

VENCATA NILADRY POW v ENOOGOONTY SOORIAH
5 W R P C 79

CHELLAMAMAL v MUTTIALMAL
15 W R P C 1

RAMRUDEEGOWDA v DESSAI SAHEB
17 W R P C 8

JOY NARAIN GIRI v SHEEB PROSHAD GIRI
19 W R P C 275

PORESH NARAIN ROY v WATSON & Co
23 W R P C 451

3 ———— This case did not come strictly within the above rule but the Privy Council observed that whereas in this case the

case to be made out before they would recommend Her Majesty to reverse such a decision HUMEEDA *alias* KHAJOO v AMATOOL MEHDEE BEGUM
17 W R P C 106

4 ———— The Lords of the Privy Council do not as a rule disturb the concurrent decision of both the Courts below upon a question of fact unless it very clearly appears there has been some miscarriage of justice some mistrial or that the conclusion is very plainly erroneous GOSAIN TOTA RAM v PURINIBALLAB
3 B L R P C 34
12 W R P C 32 13 Moo I A 77

PRIVY COUNCIL PRACTICE OF—*contd*

19 QUESTIONS OF FACT—*contd*

7 ———— Disputed facts—*Presumption of correctness in cases of disputed fact* It is the practice of the Judicial Committee in a case of disputed fact when the Courts in India appear to have diligently investigated the evidence and no palpable mistake is apparent in the appreciation

8 ———— Judgment on facts—*Appeals from Non Regulation Provinces* In cases from Non Regulation Provinces wherein the procedure is somewhat loose and where the merits depend much on local custom and local inquiry it

9 ———— Improper admission of evidence—*Sufficiency of evidence* Where evidence such as hearsay is improperly admitted the question for the Judicial Committee is whether rejecting that evidence enough remains to support the finding Disapproval was expressed by their Lordships of the reception by the lower Court of evidence which ought not to have been admitted MOHUN SING *v.* GHURIBA

6 B L R 495 15 W R P C 8

10 ———— Erroneous conclusion from evidence—*Hearsay evidence* Where the High Court founded their judgment upon evidence which did not justify the conclusion the Judicial Committee reviewed the whole evidence in order to ascertain whether the decree could be supported AJODHYA PRASAD SING *v.* UMRAO SING

6 B L R 509 15 W R P C 1
13 Moo I A 519

11 ———— Evidence wrongly admitted—*Sufficiency of evidence* Where the Courts below had admitted evidence not properly admissible the Judicial Committee examined the whole evidence, and being satisfied that there was independent of that inadmissible evidence sufficient to justify the decision of those Court dismissed the appeal LALA BANSIDHAR *v.* GOVERNMENT OF BENGAL 9 B L R 264 16 W R P C 11
14 Moo I A 86

12 ———— Direct evidence as opposed to suspicion—*Adoption* The Sudder Ameen having held an adoption proved the Principal Sudder Ameen on appeal reversed that decision on the fact The case came before the High Court on special appeal and the decision then given was appealed to England and special leave was given by Her Majesty to appeal against the decision of

the Principal Sudder Ameen on the facts KALI CHANDRA CHOWDHRY *v.* SHIB CHANDRA BHADURI

6 B L R 501 15 W R P C 12

13 ———— Second appeal—*Code of Civil Procedure (Act XIV of 1882) ss 584 585—Jurisdiction to hear a second appeal on what matters—Secondary evidence question of* Under ss 584 and 585 of the Code of Civil Procedure 1882 a second appeal is confined to matters of law usage having the force of law or substantial defect in procedure On an appeal to the Judicial Commissioner from a decree given on first appeal by an Appellate Court and maintaining a finding of fact by the original Court the only questions were (i) whether secondary evidence had been properly admitted on a case that had arisen for its admission and (ii) whether the evidence offered constituted secondary evidence of the matter in dis

having been applied for) the facts were not open to decision on this appeal this Committee could only do what the Judicial Commissioner on second appeal under the above sections could have done and that as the case stood they were bound by the findings of facts of the first Appellate Court. LUCHMAN SINGH *v.* PUNA I L R 16 Calc 753
L R 16 I A 125

14 ———— Question in issue—*Parties—Admission—Execution of deed* The plaintiff claimed to have inherited estate in the possession

maintained. An issue having been fixed as to the execution and the plaint also showing that the execution was disputed their Lordships declined to treat the execution as not having been in contest ANAND KUAR *v.* TANSUKH

I L R 11 All 398

15 ———— Failure to produce evid

material fact which had to be proved by him and the decision was against him. The record of another proceeding would it was said, have supplied this

to the above order and in not tendering the evid

PRIVY COUNCIL, PRACTICE OF—*contd*

20 CONCURRENT JUDGMENTS ON FACTS —*contd*

ence by the Judicial Committee it was however found that the plaintiff had not proved his case VENKATESWARA IYAN v SHEKHARI VARMA
I L R 3 Mad 384 L R 8 I A 143

16 ——— **Question as to disputed adoption**—*Reversal of concurrent Courts on fact* In a suit which involved a disputed question of fact as to an alleged adoption and the due execution of a will the Court in India disregarding other evidence relied solely upon the evidence of a witness examined at the instance of the first Court itself The effect of the evidence of this witness was to show that at the time of the adoption and execution of the will the alleged testator was in a dying state and although at times roused to consciousness was from his enfeebled mind incapable of understanding the acts he was represented to have performed the Courts below however on the evidence of this witness as to his testamentary capacity corroborated as they thought by a letter of the widow of the alleged testator recognizing the adoption and by her acquiescing in the performance of certain funeral rights of her deceased husband by the supposed adopted son pronounced both the adoption and the will to be valid Upon appeal held that although as a general rule in a question of fact the Judicial

17 ——— **Question as to authority of agent**—*Document signed by agent—Objection not raised below* Where the sole question raised in both Courts in India was whether or not certain documents purporting to be an allowance of plaintiff's accounts by the defendant's agent were signed by the agent as to which fact both Courts below were concurrent the Privy Council declined to relax their rule as to concurrent judgments on facts and to allow the defendant to raise before them the question as to the authority of the agent to bind his principal BABOO LALL v LUTTOO RAM 18 W R P C 233

18 ——— **Concurrent judgments as to failure to prove title** Where in a suit for

PRIVY COUNCIL PRACTICE OF—*contd*

20 CONCURRENT JUDGMENTS ON FACTS —*contd*

19 ——— **Question as to evidence of custom**—*Question of fact* It having been alleged that an estate by custom descended to a single heir in the male line the High Court concurring with the Court of first instance found that this custom had not been proved to prevail in the family On an appeal contesting this finding it

dispute the last owner of that estate who held all the shares in the village having caused an entry to be made to the effect that his eldest son should be his sole heir the others of the family being

I L R 8 All 516

20 ——— *Wajib ul urz*—*Concurrent findings of Courts below* A custom of inheritance was alleged to prevail in an Oudh clan that if the branch of a family became extinct the other branches of it should take the estate amongst them in equal shares without regard to their degrees in kinship to the deceased This custom was found not proved by the Original and Appellate Courts upon evidence of instances of succession in kindred families and of right recorded in certain wajib ul urz If there had been any principle of evidence not properly applied or documentary evidence had been referred to on which it could be shown that the Courts below had been led into error the case might have been re-examined on this appeal but in the absence of such ground this could not be done THAKUR HARIHAR BAKSH v THAKUR UMAN PARSHAD I L R 14 Calc 296 L R 14 I A 7

21 ——— **Agreement for division of family property in equal shares** Two Courts in concurrence found that there had been an agreement between two parties interested in a family

through the whole of the evidence they would

terfere with concurrent findings of the Courts below KRISHNAN v SRIDEVI PUTHIA KOVILAKATH KRISHNAN RAJA AVERGAL v PUTHIA KOVILAKATH SRIDEVI I. L. R 12 Mad. 512

22. ——— **Findings of fact**—*Concurrent findings by two Courts* The usual course of

PRIVY COUNCIL PRACTICE OF—*contd*

20 CONCURRENT JUDGMENTS ON FACTS —*contd*

LALA SHAM SOONDUR LAL *v* SOORAJ LAL
26 W R P C 48

DEVAJI GAYAJI *v* GODABHAI GODBHAI
2 B L R 85 11 W R P C 35

5 ——— Where the Court of appeal in India concurs in the finding of the Court of first instance on a question of fact the Privy Council will not disturb that finding unless satisfied beyond all reasonable question that there was some miscarriage in respect of the principle on which the decision rested of a presumption to which too much weight was given or of something as to which the Judicial Committee could see there was a principle involved which ought to be set right for the guidance of the Court in other cases GABINDSUNDARI DEBI *v* JAGADAMBA DEBI
6 B L R 168 15 W R P C 5

6 ——— Provided that there has been no contravention of law or procedure or of any principle of justice the rule is observed by the Judicial Committee and commonly recognized by Courts of second appeal that there will be no interference with concurrent judgment of Appellate and Original Courts upon matters of fact unless very definite and explicit reasons are assigned for it Such concurrent judgments are however open to argument before the Committee as in this case MOUNG THA HNYEIN *v* MOUNG PAN NYO
I L R 28 Calc 1
L R 27 I A 166
4 C W N 808

7 ——— *Weight of evidence question as to* Where both the lower Courts had agreed as to the facts the Privy Council refused to examine the evidence the controversy being merely as to the weight to be attributed to it LALJI SAHU *v* COLLECTOR OF TIRHOOT
6 B L R 648 15 W R P C 23

8 ——— *Omission of reasons for affirmance of judgment on facts* Where the High Court affirmed the judgment of the Court below on the facts without giving reasons for such affirmance the Judicial Committee reviewed the facts and reversed the decree GUTHRIE *v* ABUL MAZAFFAR 7 B L R 630 15 W R P C 50
14 Moo I A 53

9 ——— *Question of boundary* Where there are concurrent decisions on a question of fact the Judicial Committee will not (specially on a question of fact as to boundaries) reverse the decision unless there was no evidence or there has been in the conduct of the trial or in the mode in which evidence was adduced or in the course of deciding the case a clear departure from the ordinary principles which regulate judicial proceedings. GANESWAR SING *v* DURGA DUTT
7 B L R 651

S C GUNESHUR SINGH *v* DOORGA DUTT
15 W R P C 37

PRIVY COUNCIL PRACTICE OF—*contd*

20 CONCURRENT JUDGMENTS ON FACT — *contd*

10 ——— *Balance of testimony* Where the decision of the first Court upon a question of fact has been affirmed on appeal their Lordships will not reverse such finding on a mere balance of testimony there must be so strong a preponderance of testimony that they can confidently pronounce it to be wrong SARAT SUNDARI DEBI *v* PARESNARAIN ROY
8 B L R 113 16 W R P C 9

11 ——— Question as to compromise —*Failure to show fraud or collusion* The Judicial Committee reversing the finding of the Courts below refused to set aside a compromise (confirmed by a decree of Court) by the former guardian of the plaintiff of a claim against his estate for debt after sixteen years the plaintiff having failed to prove that the suit was fictitious and the compromise fraudulent and collusive LEKRAJ ROY *v* MAHTABCHUND
10 B L R 35 17 W R P C 117
14 Moo I A 393

12 ——— Question as to amount of dower—*Refusal to ascertain amount* The Courts below without ascertaining the amount of the widow s dower decreed possession of the estates to the heirs Such decree was reversed on appeal and the amount of dower was ascertained. BACHUN *v* HAMID HOSSEIN
10 B L R 45 17 W R P C 113
14 Moo I A 377

13 ——— Question of dissolution of marriage A decree of a High Court confirming the decree of a District Judge for dissolution of marriage reversed so far as it affected the co respondent and condemned him in costs The circumstances of the case took it out of the general rule not to reverse the concurrent findings of two Courts on a question of fact HAY *v* GORDON
10 B L R 301 18 W R P C 480
L R I A Sup Vol. 106

14 ——— Mixed question of law and fact The rule of the Judicial Committee of the Privy Council not to permit the concurrent judgments of two Courts on a question of fact to be disputed may be relaxed in a case where the question of fact is closely mixed up with questions of law VALOO CHETTY *v* SOORAYAH CHETTY
I L R 1 Mad. 252 L R 4 I A 109

15 ——— Question as to property belonging to endowment—*Admissibility of evidence—Sthanam lands* A raja having made a perpetual lease of sthanam lands appertaining to the raj one of his successors sought to set it aside on the ground that the property was devaswam or the endowment of temples That it was devaswam was denied and after questions of the admissibility of evidence the construction of documents and the effect to be given to judgments had arisen the fact was found in the affirmative by two Courts concurrently Upon an examination of the evid

PRIVY COUNCIL PRACTICE OF—*contd*

20 CONCURRENT JUDGMENTS ON FACTS —*contd*

29 — — **Courts basing decision on different grounds**—*One Court relying on oral and the other on documentary evidence* The rule of the Judicial Committee not to disturb a concurrent finding of fact by two Courts unless it is clearly shown to be erroneous is none the less applicable although the Courts have not taken precisely the same view of the weight to be attached to each particular item of evidence A case where one Court has relied on the oral and the other on the documentary evidence is within the rule RAI ANUGRA NARAIN SINGH v CHOWDHRY HANUMAN SAHAI (1902) I L R 30 Calc 303 s c 7 C W N 225 L R 30 I A 41

30 ———————— *Privy Council—Concurrent decisions on fact—Disagreement of lower Court as to circumstances leading up to conclusions—Appellate Court not affirming decision of first Court on all issues in the case* Where both Courts below had come to the same conclusion on the two main questions of fact in the case which were sufficient to dispose of it but had not agreed on all the circumstances which led up to such conclusion and the Appellate Court had either differed from the first Court on other questions or had not decided them the Judicial Committee referring to the case of *Umrao Begum v Irsad Husain L R 21 I A 163 166 I L R 21 Calc 997* declined to depart from the general rule as to concurrent findings of fact by the lower Courts SANWAL SINGH v SATRUPA KUNWAR (1905)
I L R 28 All 215
s c 10 C W N 230
L R 33 I A 53

31. ———————— *Privy Council—Concurrent decisions on fact—Disagreement of lower Courts as to circumstances leading up to conclusions—Appellate Court not affirming decision of first Court on all issues in the case* Where there are concurrent conclusions by both the lower Courts on questions of fact sufficient for the disposal of the case the mere fact that the two Courts do not agree on all the steps which lead to one and the same con[illegible]

consideration in determining whether the evidence before the lower Courts should be reviewed in detail CHITPAL SINGH v BHAIRON BAKHSH SINGH (1906) I L R 28 All 219 s c 10 C W N 225

21 RE HEARING

1. —— Grounds for re hearing [illegible]

PRIVY COUNCIL PRACTICE OF—*contd*

21 RE HEARING—*contd*

part not been heard and the order has inadvertently been made as if he had been heard *In the matter of the appeal of* PERTAB NARAIN SINGH v SUBHAO KOOER
I L R 4 Calc 184 L R 5 I A 171

2 ———————— *Irregularity in trial* An irregularity in a trial is no ground of complaint to the party at whose instance it was caused The suspicion that a party who has failed to prove his case may prove more successful on a second and fuller investigation is no sufficient ground for directing a new trial NITRASUR SINGH v NUND LALL SINGH
1 W R P C 51 8 Moo I A 199

3 ———————— *Laches of petitioner* There were four respondents in an appeal to the Privy Council At the hearing the appeal was allowed *ex parte* against all the respondents [illegible]

On inquiry it appeared that the petitioner had inaccurately described the suit to his agents as an appeal against himself only without mentioning the names of the other respondents and the agents on being told at the Privy Council office that no appeal so entitled was pending had taken no further steps *Held* that there had been omission and [illegible]

12 Moo I A 44

4 ———————— *Party accidentally prevented from being heard* In a petition for re hearing of two appeals which had been fully heard upon their merits and in which judgment had been given and reported to Her Majesty and confirmed by regular orders in Council —*Held* that assuming a relevant case of new matter had been made out the decision was final and the petition must be refused There may be exceptional circumstances which will warrant this Board even after an order of Her Majesty in Council has been made in allowing a re hearing at the instance of one of the parties but this is an indulgence with a view mainly to doing justice when by some accident without blame the party has not been heard and an order has been made inadvertently as if the party has been heard *Rajunder Narain Rae v Bijai Govind Sing 2 Moo I A 181* referred to VENKATA NARASIMHA APPA ROW v COURT OF WARDS VENKATA RAMALAKSHMI GARU v GOPALA APPA ROW *Ex parte* GOPALA APPA ROW L R 13 I A 155 I L R 10 Mad 73

5 ———————— *Alleged want of notice to respondent—Appeal heard ex parte* There is no rule among those made by the High Court under the authority of law that the respondent

PRIVY COUNCIL PRACTICE OF—contd

21 RE HEARING—concld

in an appeal to the Queen in Council shall receive formal notice of the transmission of the record of the appeal of the pendency whereof he has had

to entitle them to a re hearing thereof LALTA PRASAD v AZIZ UD DIN I L R 19 All 209 L R 24 I A 49

6 ———— Infancy of party at the time of the hearing of appeal— Res noviter There may be exceptional circumstances which will warrant the Judicial Committee in allowing even after an order of Her Majesty in Council has issued upon their report a re hearing at the instance of one of the parties But this is an indulgence with a view mainly to doing justice when by some accident without any blame the party has not been heard and an order has been made inadvertently as if he had been heard In one of two ap

between the parties that the questions in both suits were the same After both judgments had been reported to Her Majesty and confirmed by her orders in Council a petition for a re hearing was presented. *Held* that even assuming that a case of *res noviter* had been made out (which was not however the fact) the orders were final and the petition must be rejected *In re* APPA RAO VENKATA NARASIMHA APPA ROW v COURT OF WARDS VENKATA PAMALAKSHMI GARU v GOLAP PA APPA ROW I L R 10 Mad 73 L R 13 I A 155

7 ———— *Res noviter* The judgment of the Judicial Committee reported to and confirmed by Her Majesty in Council cannot be re opened only for the reason that new evidence is forthcoming *In re Appa Rao I L R 10 Mad 73* referred to YARLAGADDU DURGA v MALLIKARJUNA I L R 14 Mad 439

22 LEAVE TO BRING FRESH SUIT

———— **Suit brought under misapprehension of law** The parties having acted under a misapprehension of the law leave was given to bring a new suit within three years GOOROO SWAMY PERRIA WOODIA TAVER v ANGA MOOTOO NATCHIAR 6 W R P C 50 3 Moo I A 278

23 EXECUTION OF DECREE OR ORDER

1 ———— **Application to enforce execution of order**—*Order for possession—Issue of peremptory order of enforcement* Where the Court in India having decided a suit for land in favour

PRIVY COUNCIL PRACTICE OF—contd

23 EXECUTION OF DECREE OR ORDER —concld

of *A* put him into possession of the estate without taking security as required by Madras Regulation VIII of 1818 s 4 and on appeal by *B* the decision was reversed and *B* ordered to be put in possession and in the meantime the Madras Board of Revenue had got into possession as purchasers of a portion of the estate at a sale for arrears of its revenue and the Court in India refused to carry into execution the order of the Privy Council the Judicial Committee on the application of *B* issued a peremptory order to the Madras Court to carry it into execution and put *B* into possession *In re* VASSAREDDY LUTCHMEPUTTY NAIDOO 5 Moo I A 300

2 ———— **Restoration of property alienated pending appeal to the Privy Council**—*Execution of decree—Privy Council—Proce*

sold as abovementioned by means of an application under s 244 read with s 610 of the Code of Civil Procedure and this right was not affected by the fact that the auction purchasers were not parties to the decree of the Privy Council. *Gulzari Lal v Madho Ram I L R 26 All 447* followed *Bhagwati Prasad v Jamna Prasad I L R 19 All 176* and *Sadiq Husain v Lala Prasad I L R 20 All 139* distinguished GARURDHUJ PRASAD SINGH v BAIJU MAL (1906) I L R 28 All 337

24 COSTS

1 ———— **Discretion as to costs**—*Appeal—Bom Reg II of 1800 s 7* When a discretion is vested in a Court as to cost the Privy

no discretion to exercise in the matter (as where a suit was instituted by parties who had no right to institute it as the person in whose name and on whose behalf they instituted it was dead at the time) costs must follow the decree according to s 7 Regulation II of 1800 of the Bombay Code KEEMEE BAEE v LUCHMAN DAS NARAIN DAS 5 W R P C 59 1 Moo I A 470

2 ———— **Improper admission of evidence**—*Penalty on parties to appeal* The Privy Council whilst lamenting the great latitude with which documentary evidence was received in India *held* that it would be contrary to justice in any particular case to visit upon an individual penal consequences by way of costs because the administration of justice was not more strictly conducted

PRIVY COUNCIL PRACTICE OF—*contd*

24 COSTS—*contd*

with reference to the admission of evidence BUNWAPREE LALL *v* HETNARAIN SINGH
4 W R P C 128 7 Moo I A 148

3 ———— Respondent's right to uphold judgment—*Reversal of decision.* Appeal by defendant against whom the suit was decreed in the Court of first instance which decree was confirmed on appeal by the Sudder Adawlut The Privy Council held that the plaintiff had not made out his case below and reversed the judgment but awarded to the defendant costs in the first Court only and not in either of the Appellate Courts on the ground that the plaintiff as respondent was defending the judgment. MADHO POW CHINTO PUNT GOLAY *v* BHOOKUN DAS BOOLAKI DAS
5 W R P C 33 1 Moo I A 351

4 ———— Respondents in same interest Where respondents were in the same interest but served in their defences only one set of costs was allowed and that to the respondent who first entered appearance WOOMATARA DEBIA *v* UNNOPOORNA DEBIA **11 B L R P C 158**
18 W R 163

5 ———— Delay in suing—*Disallowance of costs* Case in which the Privy Council affirmed the decision of the Sudder Court but as there had been delay in suing and as the case was attended with a considerable degree of suspicion refused to the respondent before it all costs and decreed further that the cost of the appeal to the Sudder Court should be disallowed ULRUK SINGH *v* BENY PERSAD **5 W R P C 77**

6 ———— Delay in appealing by which costs were incurred—*Set off of costs* Where in a suit to have accounts re opened the Court at Calcutta found that the accounts ought to be opened and referred the suit to the master and the defendant did not appeal at once from this interlocutory order but proceeded in the master's office in respect of the matters included in the account but before the general report was made by the master he appealed to England from such interlocutory decree —the Judicial Committee in reversing the decree ordered [illegible] the costs

consequent on his proceedings in the master's office should be set off one against the other and the balance paid to the party entitled to the same MCKELLAR *v* WALLACE **5 Moo I A 372**

7 ———— Slight modification of decree—*Alteration in rate of interest* Where in lieu of interest at 5 per cent on a loan made to a guardian of a minor in a transaction which was set aside the Privy Council made an order for 6 per cent interest —*Held* not to be such a modification of the decree of the Court below as was sufficient to deprive the respondent of the costs of appeal LALLA BUNSEEDHUR *v* BINDESEREE DUTT SINGH
10 Moo I A 454

8 ———— Leave to appeal granted on condition that appellant paid respondents costs if directed to do so—*Costs given at hearing against respondents* Special leave to appeal had been granted on terms that the appellant should be liable to pay the respondents costs in any event if directed so to do Costs were however directed to be paid by the respondents BENI RAM *v* KUNDAN LAL **I L R 21 All 496**
L R 26 I A 58
3 C W N 502

9 ———— Evidence—*Costs—Co sharer* One of two co sharers by ancestral title in the

mained entitled to claim that this possession was held partly for him The present suit was brought upon two agreements purporting to have been made in 1870 between the two co sharers while

the Appellate Court attributing too much to certain omissions and acts on the plaintiff's part which were more or less explained had erred in reversing the decree of the first Court which maintained the agreements depriving the plaintiff of his costs in that Court only MUHAMMAD YUSUF *v* MUHAMMAD HUSAIN **I L R 16 Calc 62**

10 ———— Appeal dismissed on [illegible]

its decision it was dismissed without costs FISCHER *v* KAMALA NAICKER
3 W R P C 33 8 Moo I A 170

11 ———— Misstatement in petition Where special leave to appeal to the Privy Council is granted upon a petition in which material misstatements are made objection should be taken by the respondent by preliminary motion to rescind the leave to appeal or at any rate before the hearing of the appeal when called on has been entered on. Where it was not clear that the material misstatements in the petition had been made with an intention to deceive and the objection to the appeal was only taken at a late stage of the hearing the Judicial Committee declined to dismiss the appeal but refused the appellant the cost of the appeal RAM SABUK BOSE *v* KAMINEE KOOMAREE DOSSEE **14 B L R 394**

S C RAM SABUK BOSE *v* MONMOHINI DOSSEE
L R 2 I A 71 23 W R 113

12 ———— *Petition for special leave to appeal* An Order in Council granting leave to appeal is liable at any time to be res

PRIVY COUNCIL, PRACTICE OF—*contd*

24 COSTS—*contd*

cinded with costs on its appearing that the petition upon which the order has been granted contains any misstatement or any concealment of facts which ought to have been disclosed. Even if there has been no intention to mislead a material misstatement having been made the order is still liable to be rescinded and to maintain it to clear the case of bad faith is not sufficient *Mohan Lall Sukul v Bebee Das 8 Moo I A 193* referred to and followed. Of three grounds on which special leave to appeal had been obtained two had been correctly stated but with the third was connected an error in the petition to which objection was taken at the hearing On its appearing that there had been no intention to mislead the appeal was heard and allowed but in regard to the above without costs *Ram Sabuk Bose v Monmohini Dossee L R 2 I A 71* referred to MUSSOORIE BANK v RAYNOR

I L R 4 All 500 L R 9 I A 70

13 ——— **Appeal brought contrary to agreement not to appeal.** A fixed sum *nomine expensarum* was given to each respondent in lieu of costs where an appeal was preferred contrary to an agreement not to appeal and the proceedings had been stayed AMIR ALI v INDURJIT KOER

9 B L R 460
14 Moo I A. 203

14 ——— **Suit for damages valued unnecessarily high**—*Decree for smaller amount* There being no grounds for a claim for damages amounting to the appealable sum of R10 000 and the amount actually recovered falling far short of that sum the Court directed the costs below to be apportioned according to the ordinary course in these Courts and gave neither party costs of the appeal. MUDUN MOHUN DOSS v GOKUL DOSS

10 Moo I A 563 5 W R P C 91

15 ——— **Charges by respondent of fraud forgery and perjury**—*Reversal of decree* Charges of fraud forgery and perjury having beed made by the respondents against the appellant the party who propounded the will costs of the Courts in India and upon appeal to England were upon the reversal of the decree of the Sudder Court ordered to be paid by the respondents NANA NARAIN RAO v HUREE PUNTH BHAO

9 Moo I A 96

16 ——— **Costs of respondents**—*Printed cases—Ex parte hearing* The respondents in four appeals which were consolidated and heard as one filed their printed case and did not appear at the hearing which was *ex parte* *Held* that the respondents notwithstanding their non appearance were on the dismissal of the appeal entitled to the costs thereof up to and including the filing of their printed case and also to the costs of applying for those costs SUMBHU NATH SANTRA MAHAPATRA v SURJAMONI DEBI

I L R 25 Calc 187
L R 24 I A 191
1 C W N 649

PRIVY COUNCIL PRACTICE OF—*contd*

24 COSTS—*concld*

17 ——— **Taxation of costs**—*Costs of appeal from India—Unnecessary expenses* In taxing the costs of an appeal from India the Privy Council will disallow all such costs and expenses as may have been unnecessarily occasioned by the inclusion in the transcript sent from India of matters which have been improperly introduced therein TARAKANT BANNERJEE v PUDDMONEY DOSSEE

5 W R P C 63 10 Moo I A 476

18 ——— — *Irrelevant matter—Directions as to taxation of costs* Where irrelevant matter had been introduced into the record the Registrar was directed to tax the costs as if the record had not contained what he might consider to have been inserted unnecessarily PITTAPUR RAJA v BUCHI SITAYYA

I L R 8 Mad. 219

S C RAJA OF PITTAPUR v ROW BUCHI SITTAYA GARU L R 12 I A 16

BISHENMUN SINGH v LAND MORTGAGE BANK OF INDIA I L R 11 Calc 244 L R 12 I A 7

19 ——— **Costs of printing record.** In consequence of reckless extravagance in the printing of the record their Lordships directed that only the costs of two volumes should be allowed limited in respect of them to what is fair and reasonable VENKAYYAMMA GARU v VENKATARAMANAYYAMMA (1902)

I L R 25 Mad 678
s c L R 29 I A 156
7 C W N 1

25 CRIMINAL CASES

1 ——— **Felony** *Semble* No appeal lies in cases of felony to the Queen in Council from any of the dominions of the Crown of Great Britain which are governed by the law of England QUEEN v EDULJEE BYRAMJEE

3 Moo I. A. 468

2 ——— **Irregularity in trial causing injustice**—*Prerogative of Crown* There is no right of appeal to the Privy Council in criminal cases. In a petition for leave to appeal against a conviction and sentence of the Sudder Nizamut Adawlut of Bengal on the ground of alleged irregularities in the proceedings causing great hardship and injustice —*Held* that assuming that the prerogative of the Crown extended to the granting of leave of appeal in such a case and was not curtailed by the operation of the Indian Act XXV of 1861 and that this was *primâ facie* a cause of great grievance yet the consequences of allowing appeals in criminal cases would be such as to justify their Lordships in advising Her Majesty in the exercise of her discretion to refuse to grant the prayer of the petition JOYKISSEN MOOKERJEE v QUEEN 1 Ind. Jur O S 61

1 W R P C 13; 9 Moo I A 168

PRIVY COUNCIL PRACTICE OF—*concld.*

25. CRIMINAL CASES—*concld*

3. ———— **Refusal of leave to appeal**—*General rule as to refusal of leave to appeal in criminal cases—Misdirection of a jury not of itself a ground* Although in very special and exceptional circumstances leave to appeal to Her Majesty in Council may be granted in a criminal case no countenance was given to the view that an appeal would be allowed merely on the ground that the Judge trying the case had misdirected the jury There was no reason to believe that there had been any misdirection by the Judge or that he had as he was alleged by the petitioner to have done misconstrued in charging the jury a section of the Penal Code Not only on the latter ground but on the broader ground above stated the petition was rejected. *In the matter of* MACCREA

I. L. R 15 All. 310
L. R 20 I. A 90

4. ———— ———— *Refusal of leave to appeal from a conviction and sentence—Alleged* [illegible] *Penal Code (Act XLV of*

with the rules hitherto guiding the Judicial Committee in recommending the grant of leave to appeal from convictions in criminal cases the petitioner s case was not one in which leave should be granted. BAL GANGADHAR TILAK *v* QUEEN EMPRESS I L R 22 Bom 528
L R 25 I A 1

5 ———— *Leave to appeal to the Privy Council in criminal case—Practice—Joinder of charges—Criminal Procedure Code (Act V of 1898) ss 235 234 235 236 237 and 239* Before granting a certificate for leave to appeal to the Privy Council the Court must be satisfied that there is reasonable ground for thinking that grave and substantial injustice may have been done by reason of some departure from the principles of natural justice *Ex parte Carew [1897] A C 719* and *Dinizulu* v *Attorney General of Zululand 61 L T 740* followed. *In re* BAL GANGADHAR TILAK (1908) I L R 33 Bom 221

26 ERRONEOUS INTERPRETATION OF ORDER IN COUNCIL

———— **Practice**—*Decision of High Court in execution of order in Council—Appeal from such decision—Erroneous interpretation of order in Council—Expression of opinion by Judicial Committee on petition pending appeal* Where the High Court in execution of an order in Council had interpreted the order in a manner not intended the Judicial Committee pending an appeal from the High Court decision expressed an opinion as to the intention of the order *In the matter of the petition of* YARLAGADDA DURGA PRASHAD NAYADU (1904) I L R 27 Mad 153
s c L R 31 I A 64

PROBABLE CAUSE

See REASONABLE AND PROBABLE CAUSE

PROBATE

See ADMINISTRATION I L R 26 Bom 267

See APPEAL—PROBATE

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE—DECREE WITHOUT CERTIFICATE I L R 4 Calc 645

See CIVIL PROCEDURE CODE 1877 s 50 I L R 6 Bom 73

See CIVIL PROCEDURE CODE WILL 8 C W N 197 821

See COSTS—SPECIAL CASES—PROBATE

See COURT FEES ACT s 19D I L R 29 Bom 161

See COURT FEES ACT SCH I CL 11

See EVIDENCE I L R 32 Calc 710

See EXECUTOR I L R 20 Bom. 227
I L R 21 Bom. 400
I L R 27 Bom 281
I. L R 27 Calc 683
I L R 36 Calc 799

See LETTERS OF ADMINISTRATION 1 Hyde 67
11 W R 413
I L R. 16 Mad 71
I. L R 19 Bom 123

See PLEADER S FEES I. L. R 33 Bom. 256

See PRACTICE I. L. R 33 Bom. 256

See PRACTICE—CIVIL CASES—PROBATE

See PROBATE AND ADMINISTRATION ACT (V OF 1881)

See WILL 9 C W N 49 769
I L R. 29 Bom. 530

See WILL—ATTESTATION 3 N W 32
13 B L R. 392
I L R 1 Calc 150

PROBATE—*contd*

See WILL—VALIDITY OF WILL.
I L R 23 All 472
I L R 31 Calc 186

See WILL—FORM OF WILL
2 B L R A C 79 10 W R 417
2 Ind Jur N S 6

——— appeal

See LETTERS PATENT HIGH COURTS 1865 CL. 15 5 C W N 781

——— application for—

See APPELLATE COURT
I L R 36 Calc 833

See DOMICILE I L R 4 Calc 106

See OFFICIAL TRUSTEE
I L R 35 Calc 156

See JURISDICTION—TESTAMENTARY AND INTESTATE JURISDICTION I Mad 59
8 W R 3
I L R 20 Bom 238
I L R 21 Bom 335

See LIMITATION ACT 1877 SCH II ART 178 I L R 19 Calc 48
I L R 17 Mad. 379

See PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION

See WILL—FORM OF WILL.
I L R 4 Calc 721
I L R 24 Calc 784

——— duty

See COURT FEES ACT SCH I ART 11

——— inquiry as to value of property—

See COURT FEES ACT S 19H
8 C W N 898

——— of will of Sikh grant of—

See PROBATE AND ADMINISTRATION ACT (V OF 1881) 7 C W N 895

——— second grant of—

See COURT FEES ACT SCH I CL. 11
I L R 3 Calc 733

1 POWER OF HIGH COURT TO GRANT AND FORM OF

1. ——— Power of High Court—*Testator having no assets within jurisdiction—British European born subject* The High Court granted probate of a will of a British European born subject who had no assets within the local limit of the ordinary civil jurisdiction of the Court *In the good of* REED 1 Ind. Jur N S 20

2. ——— *Testator dying out of jurisdiction with effects within it—Act XXVII of 1860* Where a Hindu testator died out of the jurisdiction of the Court but left effects within it, it was competent to the Court to grant probate there having been no certificate applied for in the Zillah Court under Act XXVII of 1860 *In the goods of* TARACHAND COONDOO CHOWDHRY
1 Ind. Jur N S 10 Bourke Test. 3

PROBATE—*contd*

1 POWER OF HIGH COURT TO GRANT AND FORM OF—*contd*

3 ——— *Act XIII of 1875—Rule 4 of Rules of High Court 22nd June 1875* Act XIII of 1875 does not empower the High Court to grant probate limited to property in any province or presidency in cases where an unlimited grant had been made extending only to property in another province or presidency before the passing of the Act *Per* MACPHERSON J—Rule 4 of the Rules of 22nd June 1875 as to grants of probate only applies to grants of the class mentioned in rule 1 i e only to cases in which the application for probate is made after 1st April 1875 and not to cases in which the application was made before that date *In the goods of* SHAMACHURN MULLICK *In the matter of the petition of* RAJRANEE DOSSEE
I L R 1 Calc 52 24 W R 206

4. ——— *Form of probate—Limited probate—Succession Act (X of 1865) ss 179 226* Probate limited to part of the estate cannot be granted in cases where under s 179 of the Succession Act (X of 1865) the whole estate is vested in the executor *In re* THAKER MADHAVJI
I L R 6 Bom. 460

5 ——— *Form of probate* ... *the Succession* ... *—Limi* ... *Maho-* ... *—Hindu* ... *18* In cases not governed by the Indian Succession Act (X of 1865) probates and letters of administration granted by the High Court of Bombay in respect of ... not usually ... and ... oring ... ccept ... II of 1860 and probate duty is only payable on the amount of such debts Cutchi Memons are not Hindus within the meaning of s 2 of the Hindu Wills Act (XXI of 1870) and therefore probate to ... cannot be granted in ... ator Cut ... Mahome ... ancient and invariable special custom to the contrary is established *In re* ISMAIL I L R 6 Bom. 452

See AHMEDBHOY HUBIBHOY *v* VULLEEBHOY CASSUMBHOY I. L. R. 6 Bom 703

6 ——— *Probate or Letters of Administration—Jurisdiction of High Court to grant—Estate of a deceased who had not dwelt or left goods within limits of Presidency—Succession Act (X of 1865) s 40—Letters Patent 1865 cl 34* The High Court of Madras has no jurisdiction to grant

PROBATE—*contd*

1 POWER OF HIGH COURT TO GRANT AND FORM OF—*concld*

probate of the will of a testator or letters of administration of the estate of an intestate who did not dwell and who did not leave assets within the limits of the Presidency *In the matter of* ROSE LEARMOUTH (1900) I. L. R 24 Mad 120

2 JURISDICTION IN PROBATE CASES

1. — — **Facts giving jurisdiction**—*Succession Act s 241—Property in possession of testator at his death—District Judge power of* In

of the testator at the time of his death RUN BAHADUR SINGH v RAJ RUP KOOER 4 C L R 498

2. ———— **Will made before Hindu Wills Act**—*Hindu Wills Act (XXI of 1870) s 2—District Judge power of* The only powers conferred on mofussil Courts being in respect of wills made on or after the 1st day of September 1870 probate of a will made by a Hindu prior to that date cannot be granted by a mofussil District Court LUCHMAN BHARTI v DUKHARAN BHARTI 6 C L R 138

3 ———— **Will of Hindu made before Hindu Wills Act (XXI of 1870)**—*Probate Act (V of 1881)—Succession Act s 187—Application for letters of administration* Since the passing of Act V of 1881 the District Courts have jurisdiction to entertain applications for the grant of probate or letters of administration in respect of wills of Hindus made before the 1st September 1870 that is to say wills of Hindus to which the Hindu Wills Act (XXI of 1870) did not apply KRISHNA KINKUR ROY v RAI MOHUN ROY I L R 14 Calc 37

4 ———— **Will of Mahomedan**—*District Judge power of* A District Court has no jurisdiction to admit the will of a Mahomedan to probate FATIMUNISSA BEGUM v HAMZA ALI 6 C L R 391

5 ———— **Will of Hindu woman of immoveable property in mofussil**—*District Judge power of—Execution in Bombay—Property in mofussil—Hindu Wills Act (XXI of 1870) s 2—Probate Act (V of 1881) ss 2 and 83—Code of Civil Procedure (Act XIV of 1882) s 177* *Held* that the District Judge of Thana had jurisdiction to grant probate of a will executed on 28th October 1881 by a Hindu woman in the town of Bombay devising immoveable property situated in Thana Where the caveator refuses to answer a question s 177 of the Code of Civil Procedure (Act IV of 1882) the provisions of which are extended to proceedings before the District Judge by s 83 of Act V of 1881 will not justify the Judge in dispensing

PROBATE—*contd*

2 JURISDICTION IN PROBATE CASES—*concld*

with the proof of the will set up and passing a decree in favour of the petitioner The Court of appeal will reverse such a decree if passed RANJI PANCHCHOD NAIK v VISHNU PANCHOD NAIK I L R 9 Bom 241

6 ———— **Application for probate where on appeal from District Court the High Court finds that the will was proved** Where on appeal from the District Court it was found by the High Court that a will was proved —*Held* that a subsequent application for probate should be made to the District Court BAYABAI v SARASVATIBAI I L R 17 Bom 686

7 ———— **Will executed at Baroda**—*Probate and Administration Act (V of 1881) ss 56 and 57—Testator subject of the Baroda State—Disposition of immoveable property in British India—Jurisdiction of Courts in British India* Under

of concurrent jurisdiction in India to which application for probate can be made

BHAURAO DADAJIRAO v LAKSMIBAI I L R 20 Bom. 607

8 ———— **Transfer of a probate case by the District Judge in whose Court it was instituted to that of a Subordinate Judge**—*The Bengal North Western Provinces and Assam Civil Courts Act (XII of 1887) s 23 sub s 2 cl (d)—Probate and Administration Act (V of 1881) s 52* An application was made for probate of the will of a deceased testator in the

case came within the scope of s 23 sub s 2 cl (d) of the Bengal North Western Provinces and Assam Civil Courts Act (XII of 1887) and therefore the Subordinate Judge had jurisdiction to try it. KUNJO BEHARI GOSSAMI v HEM CHUNDER LAHIRI I L R 25 Calc 340

3 APPLICATION FOR PROBATE AND PROCEDURE.

1. ———— **Minor**—*Special citation—Probate and Administration Act (V of 1881) ss 50 83—Service of summons—Code of Civil Procedure (Act XIV of 1882) ss 443 64* Where executors applied for probate and there was living a minor widow entitled to maintenance and residence under the will —*Held* that a special citation should

PROBATE—*contd*

3 APPLICATION FOR PROBATE AND PROCEDURE—*concld*

issue upon the widow and be served personally on her and on her father with whom she resided *In the goods of* AMRITA LAL MULLICK
I L R 27 Calc 350

2 ——— *Service of notice on minor—Appointment of guardian ad litem* If an application is made for the probate of a will which affects the interest of a minor the proper course is to serve the minor with a notice and have a proper guardian *ad litem* appointed for him REBELLS *v* REBELLS 2 C W N 100

3 ——— **Withdrawal of application before proceeding became contentious—**

[illegible]

leave to apply again—Civil Procedure Code s 373 Where a person applied for probate of a will but withdrew the application before the proceedings [illegible]

[illegible]

4 ——— Official Trustee—*Executor—Renunciation—Retraction—Probate and Administration Act (V of 1881) s 17* Where the Official Trustee expressed his intention of renouncing probate but subsequently retracted *Held* that no formal renunciation having been made he was not precluded from applying for probate *In the goods of Robert Morant L R 3 P & D 151 Golap Sundari Dassi 15 C W N (Notes) cli* followed *Held* also that there was nothing under the Official Trustees Act which precluded the Official Trustee from being appointed an executor and acting as such *In the goods of* MANICK LAL SEAL (1907)
I L R 35 Calc 156

4 OF WHAT DOCUMENTS GRANTED

1 ——— **Document partly testamentary**—*Gift deed of* If one part of a document is testamentary in its character it may be presumed that the remainder if the language is capable of that construction is also intended to be testamentary Under such circumstances where there is nothing inconsistent with the supposition that the arrangements made therein are to take effect from the death of the person executing it the document ought to be admitted to probate as a will *In the matter of* KOMOLA KANT BISWAS 4 C L R 401

2 ——— **Probate of part of a will**—*Probate and Administration Act (V of 1881) s 25*

PROBATE—*contd*

4 OF WHAT DOCUMENTS GRANTED—*contd*

Probate can be granted of a portion only of a will to the extent to which the contents are proved where the other portion is lost and there is nothing in s 25 of the Probate and Administration Act (V of 1881) to prohibit such a grant of probate *Sugden v Lord St Leonards L R 1 P D 154* referred to KEDAR NATH MITTER *v* SAROJINI DASI
I L R 26 Calc 634
3 C W N 617

3 ——— **Document in form of will passing no property and only appointing guardians**—*Probate and Administration Act (V of 1881) ss 2 4* A document in the form of a will which was presented for probate dealt with no property the petition stating that the family of which the testator had been managing member was undivided and that the testator s property had devolved by survivorship on his sons and nephews The document however appointed persons to [illegible]

[illegible] THAWAR MULL SOWCAR I L R 23 Mad [illegible]

4 ——— **Nuncupative will of a Mahomedan**—*Probate and Administration Act (V of 1881) ss 3 24 25 26 62—Succession Act (X of 1865) s 244 and Ch IX* Probate may be granted of a nuncupative will *In the matter of the will of* MAHOMED ABBAS *In re* MARIAMBAI
I L R 24 Bom 8

5 ——— **Nuncupative will of a Hindu**—*Probate and Administration Act (V of 1881) s 3* [illegible]

followed GOKUL CHAND *v* MANGAL SEN (1903)
I L R 25 All 313

6 ——— **Will with alterations in pencil**—*Practice—Application for probate of copy will with alterations in pencil—Codicil—Will pencil alterations in made before execution—Photographic facsimile of will attached to probate—Succession Act (X of 1865) s 58—Illegible portions of will* Where the executors applied for probate of a will consist[illegible] the first being a copy will [illegible] alterations made [illegible] time before [illegible] in the nature [illegible] altered the Court granted probate with a copy of the will showing the alterations and interlineations in red ink, and directed a photographic *facsimile* of the copy will taken in the presence of the Registrar and the executors to be attached as the pencil alterations were likely to fade in course of time *Gann v Gregory 3 De G M & G 77* and *Shea v Boschetti 18 Beav 321* relied upon. *In the goods of Hall L R 2 P and D 56* distinguished *Held* that the provisions of the Succession Act

ROBATE—*contd*

4. OF WHAT DOCUMENTS GRANTED—*concld*

s. 58, are inapplicable to this case *In the goods of* L. P D BROUGHTON (1902)
I L R 29 Calc 311
s c 6 C W N 477

5 TO WHOM GRANTED

1. ——— **Nephew**—*Brother—Hindu will* In this case the High Court directed probate of

CHUNDER SHIKUR MULLICK v SHAM CHAND MULLICK 18 W R 395

2 ——— **Executor by implication**—*Direction in will to get in and distribute estate* Where *A* under the terms of a will although not expressly appointed an executor was directed to receive and pay the testator s debts and to get in and distribute his personal estate —*Held* that *A* must be

3 ——— *Administration with will annexed—Succession Act (X of 186) s 18?* A Hindu died leaving a will whereby he bequeathed all his property whatever (including

sons were not entitled to probate of the will *Ex parte* VITTAL DOSS I L R 15 Mad 360

4 ——— **Universal legatee**—*Succession Act s 18?—Hindu Wills Act (XXI of 1870)* Probate granted of the will of a Hindu to his widow and heiress who was universal legatee under the will as executor by necessary implication there being no executor mentioned in the will *In the goods of* PADMICA MOHAN SETT
7 B L R 563

5 ——— ——— *Universal legatee*

6 ——— *Probate and Administration Act (V of 1881) ss 6 19—Universal legatee—Probate granted by mistake effect of* Under s 6 of the Probate and Administration Act probate can be granted only to an executor appointed by the will and an universal legatee is only entitled under s 19 to a grant of letters of administration

PROBATE—*contd*

5 TO WHOM GRANTED—*contd*

tuted an executor so as to be empowered to exercise any of the powers conferred on executors under the Act *Held* also that a mortgage executed by such a person without the Judge s permission is bad PUNDIT PRAYRAG RAJ v GOWKARAN PERSHAD TEWARI (190) 6 C W N 787

7 ——— **Wife**—*Appointment of wife as manager of all property and guardian of children* The testator by his will appointed *H* his wife guardian of his infant children in order that

sons their shares *Held* that *H* was by implication appointed sole executrix and that she alone to the exclusion of the testator s brothers was entitled to probate HAMABAI v BAMANJI NASARVANJI
7 Bom A C 64

8 ——— **Executrix**—*Probate and Administration Act (V of 1881) ss 5 4 6?—Letters of administration with will annexed* A petitioner prayed for a grant of probate of her deceased son s will No executrix had been appointed therein but the petitioner was directed that out of certain property she should pay certain

have been for letters of administration with the will annexed that the petition should state all assets likely
proof
testator
shown
tents of
YAMMAL v AMMANI AMMAL
I. L R 22 Mad. 345

9 ——— **Discretion of Court as to refusal to grant probate**—*Probate and Administration Act (V of 1881)—Executor* Where on application for probate by a person appointed executor by the will the genuineness of the will is not disputed and the applicant is a person not legally incapable the Court acting under the Probate and Administration Act (V of 1881) has no

I. L R 21 Calc 195

PROBATE—*contd*

5 TO WHOM GRANTED—*concld*

10 ———————— *Probate and Administration Act (V of 1881) s 9—Application for probate by an executor—Discretion of Court as to granting such application* Although under s 85 of the Probate and Administration Act 1881 it is within the discretion of the Court to refuse to grant an application for letters of administration no such discretion is given in regard to an application for probate by a person selected by a testator for the administration of his estate *Hara Coomar Sircar v Doorgamani Dassi I L R 21 Calc 195* referred to PRAN NATH GHOSE v JADO NATH BHATTACHARJI **I. L. R. 20 All. 189**

11 ———— **Probate in formâ pauperis** —*Executor without means to pay fees—Application by executor for probate in forma pauperis—Civil Procedure Code 1882 s 647* Where an executor is not in possession of the property of his testator and cannot get possession of it and where he has not himself the means of paying the necessary fees he may be allowed to petition for and if entitled thereto to obtain probate in *forma pauperis* *In the matter of the will of* DAWUBAI **I L R 18 Bom. 237**

12 ———— **Trustees**—*Executor according to the tenor—Probate to executor according to the tenor granted only where discharge of such duties as executors have to perform are included* Where property is left by a will to trustees they will not be entitled to probate as executors according to the tenor unless it appears from the will that they have to discharge such duties as executors have to perform APPACOOTY MUDALI v MUTHU KUMARAPPA MUDALI (1906) **I L R 30 Mad 191**

6 PROOF OF WILL

1. ———— **Evidence of execution of will**—*Hindu Wills Act 1870—Procedure* It is incumbent on persons propounding a will for the purpose of obtaining probate or letters of administration under the Hindu Wills Act to produce all the evidence which the circumstances of the case indicate as proper and necessary to prove the execution of the will TARA CHARAN CHUCKERBUTTY v DEB NATH ROY **10 C L R 550**

2. ———— **Evidence of testator's knowledge of contents of will** Proof of execution and of the consciousness of a testator is insufficient it should be further shown that he knew of and understood the contents of the document which he signed KUPPAYAMMAL v AMMANI AMMAL **I. L. R. 22 Mad 345**

3 ———— **Evidence** Probate is rightly granted where the Judge believes the witness who speaks to the execution of the will and the disposing mind of the testator The rule in *Tyrrell v Painton [1894] P 1 1* requiring proof that the testator actually knew and approved the contents of the will does not apply unless surrounding circumstances excite suspicion SHAMA CHARAN KUNDU v KHETTROMONI DASI **I L R 27 Calc. 521**
4 C W N 501

4 ———— **Genuineness of will**—*Appearance and signatures—Probate application for—Probate and Administration Act (V of 1881).* The High Court considering it to have been proved by the evidence that the alleged testator was incapable by reason of illness of signing the will as firmly as it purported to be signed found that the signatures were not genuine and reversed the decree of the first Court which had granted probate On appeal there was no view of the signatures neither party having applied to have the originals transmitted or to have photographs taken of them But their Lordships found that the evidence did not warrant the conclusion that on the day on which the will purported to have been executed the testator physically and mentally was unable to execute it but that there was sufficient evidence to establish the genuineness of the will and the capacity of the [illegible]

v TARASUNDARI DEBI [illegible]
L. R. 18 I. A 132

5 ———— **Sufficiency of proof of will** —*Proof of execution of will* Having regard to the fact that a grant of probate is not irrevocable and to the importance of a deceased testator's estate being represented as speedily as possible *primâ facie* proof of the execution of his will is sufficient to warrant the grant of a probate when the application for such probate is unopposed *In the matter of the petition of* NOBODOORGA **7 C L R. 367**

6 ———— **Proof of inofficious will**—*Knowledge of testator as to nature of his acts in making will* Where a will is inofficious in character it is incumbent on the parties propounding it to prove it not only affirmatively but completely and by circumstances showing not only that the testator signed the will but that he knew what he was doing that he was making a will and that he did all that he did with his eyes open SARODA SOONDUREE DOSSIA v MUDDUN MOHUN SHAHA **24 W R. 183**

7 ———— **Internal evidence in will**—*Grant of probate unopposed—Ground for refusal of probate* Where an application for probate was unopposed although a notice in the nature of a citation had been issued to the testator's widow the Judge was *held* not to have been justified in rejecting the application merely upon internal evidence contained in the will SHUSTEE CHURN PATUK v AUKHIL CHUNDER SEN **23 W R. 103**

8 ———— **Evidence of acknowledgment by testator**—*Ground for granting probate* That fact that a contested will bears an endorse

PROBATE—*contd*

6 PROOF OF WILL—*concld*

ment stating that it was acknowledged by the testator before the Registrar does not warrant a Judge in granting probate without any other evidence in support of the will even though the caveator does not produce any evidence to impeach the will OBHOY CHURN MUSTAFI v UMA CHURN MUSTAFI **1 C L R 362**

and *see* CASES UNDER PROBATE—OPPOSITION TO AND REVOCATION OF GRANT

9 ———— Consent of parties—*Will proof of—Compromise—Agent—Caveat—Evidence Act (I of 1872) s 41—Civil Procedure Code (Act XIV of 1882) ss 1 375* Unless a will is proved in some

proof of the will is not lawful within the meaning of s 375 of the Code of Civil Procedure *Evans v Saunders 20 L P J D A 184* distinguished *Norman v Strains L P 6 P D 219 Parji Ranchod Naik v Vishnu Ranchod Naik I L R 9 Bom 241* and *Ghellabhai v Nandubhai I L R 21 Bom 335* followed *Poadnight v Carter 3 Sw & Tr 421* referred to Any party to a suit has the right to repudiate the action of an agent compro

Sinha v Ramanath Ghose I L R 24 Calc 908 referred to MONMOHINI GUHA v BANGA CHANDRA DAS (1904) **I L R 31 Calc 357**

7 ADMINISTRATION BONDS

1. ———— Practice as to taking bond—*Bond form of—Succession Act (X of 1865) s 256—Practice* The Indian Succession Act s 256 requires that an administration bond should be taken in every case It may however be varied by special order of the Court in the case of a limited or special administration and follow the English form *In the goods of* GUBBOY **I L R 26 Calc 407**

2 ———————— *Succession Act s 256—Bond when probate is granted* A bond is not to be taken from a person to whom probate is granted under the Succession Act ANONYMOUS **3 Mad Ap 10**

3 ———————— *Succession Act ss 3 and 256* It having been the uniform practice of the Court to grant probate without taking a bond from executors named in the will —*Held* that it was unnecessary to depart from the practice notwithstanding the words of ss 3 and 256 of Act X of 1865 RUN BAHADUR SINGH v RAJ RUP KOER **4 C L R 498**

(*Contra*) *In the matter of the petition of* JUGGODISHARI DEBI **I L R 7 Calc 84 8 C L R 397**

PROBATE—*contd*

8 AMENDMENT OF ERROR IN PROBATE

———— Amendment allowed—*Will—Succession (Act X of 1865) s 237* Amendment of error in probate allowed *In the goods of* WHITE **I L R 4 Calc 582**

9 OPPOSITION TO AND REVOCATION OF GRANT

1 ———— Opposition to grant—*Succession Act s 261—Civil Procedure Code 1859 s 172—Proof of will* Where a will is contested the proceedings should take as nearly as may be the form of a regular suit as if brought by the party propounding the will and where a Judge granted a probate it was *held* to be a serious defect with reference to Act XXIII of 1861 s 38 and Act VIII of 1859 s 172 that he took down only memorandum of the evidence and not their testimony in the language in ordinary use in proceedings before the Court SARODA SOONDUREE DOSSIA v MUDDUN MOHUN SHAHA **24 W R 162**

2 ———————— *Probate Act 1881 s 50—Hindu widow—Interest—Revocation of probate—Locus standi* Where a will has been proved summarily proof in solemn form *per testes* will not as a rule be required on the application of a person who had had notice or had been aware of the previous proceedings before the grant of probate issued and had then abstained from coming forward The widow of a Hindu testator who has died leaving sons has sufficient interest to call upon the executor to prove the will in solemn form *per testes* BRINDA CHOWDHRAIN v RADHICA CHOWDHRAIN **I L R 11 Calc 594**

3 ———————— *Succession Act s 261—Procedure—Contested cases of application for probate of will* In cases where a will is contested the Court is bound to consider not only whether the alleged will was executed by the testator

probate of the will must be taken into account *Sarodu Sundoree Dassia v Muddaun Mohan Shaha 24 W R 162* cited ANNODA SUNDARI DABI v JUGUT MONI DABI **6 C L R 176**

4. ———————— *Procedure—Question as to power of disposition—Succession Act s 254* Upon a *bona fide* application for probate of a will it is not the province of the Court to which

Mohun Gossain I L R 4 Calc 1 2 C L R 4 followed *Komul Lochun Dutt v Nilrutton Mundle I L R 4 Calc 360 4 C L R 185* commented on NANHU KOER v SOMIRUN THAKUR **8 C L R 287**

5 ———————— *Question of title—Rights of persons claiming under will* Upon a

PROBATE—*contd*

9 OPPOSITION TO AND REVOCATION OF GRANT—*contd*

bona fide application for probate of a will it is not the province of the Court to which the application is made to go into questions of title with reference to the property of which the will purports to dispose The grant of probate does not prejudice the rights of any person who claims any such property BEHARY LALL SANDYAL v JUGO MOHUN GOSSAIN I L R 4 Calc 1 2 C L R 422

See TEEN COWREE DOSSEE v HUREEHUR MOOKERJEE 8 W R 308

6 ———— *Person having interest in estate—Person disputing right of testator to deal with property as his own—Probate and Administration Act (V of 1881) s 69* A person not claiming any of the property of the testator but disputing the right of the testator to deal with certain property as his own has not such an interest in the estate of the testator as entitles him to come in and oppose the grant of probate *Kamona Soondary Dassee* v *Hurro Lall Shaha I L R 8 Calc 570* dissented from *Behary Lall Sandyal* v *Juggo Mohun Gossain I L R 4 Calc 1 2 C L R 422* and *Nanhu Koer* v *Somirun Thakur 8 C L R 287* followed in principle ABHIRAM DASS v GOPAL DASS I L R 17 Calc 48

7 ———— *Interest entitling person to apply for revocation—Hindu law—Inheritance—Succession to property of degraded and outcast woman—Right of her husband s family in her property acquired while degraded* In an application for revocation of probate of the will of *K* which had been granted to *D* it appeared that *K* was a Hindu widow who many years ago left her husband s family dwelling house and became a woman of the town that she had lived under the protection of *D* for 35 years that when she came to *D* she had no property but that all the property she left had been acquired by her while in a degraded and outcast state *Held* that the applicant as her husband s sister s son had no interest in her estate entitling him to maintain the application The general rule that the tie of kindred between a woman s natural family and herself ceases when she becomes degraded and an outcast applies with even greater force as between her and the members of her husband s family Those members therefore have no right of inheritance in property acquired by a woman who leaves her husband s family and becomes degraded *In the good of* KAMINEY MONEY BEWAH I L R 21 Calc 697

8 ———— *Application to revoke probate—Jurisdiction of Civil Court—Right* [illegible]

[illegible]

PROBATE—*contd*

9 OPPOSITION TO AND REVOCATION OF GRANT—*contd*

an interest to entitle them to a *locus standi* in Court but the want of interest is an objection which should [illegible]

[illegible] force and coercion *Semble* That a legatee [illegible] a will has an interest sufficient to maintain a suit for the revocation of probate MAYHO v WILLIAMS 2 N W 268

9 ———— *Probate and Administration Act (V of 1881) ss 50 69—Revocation of probate—Party interested in applying for such revocation— Interest whether claim for maintenance is such an as entitles the claimant to apply for revocation* Where one of the two widows of the adoptive father of the testator who was entitled to maintenance out of her husband s estate applied for revocation of the probate of the will [illegible] cannot be [illegible]

her to make the application under s 50 of the Probate and Administration Act *Brinda Choudhrain* [illegible] *I L R 11 Calc 492* [illegible] *Das I L R* [illegible] *Pama Pam* [illegible] RABINI DASI v PRATAP CHANDRA SHAHA 4 C W N 602

10 ———— *Succession Act s 261—Procedure* As to procedure in opposing grants of probate *see* s 261 of the Succession Act, and KALEE TARA DOSSIA v NOBIN CHUNDER KER 21 W R 84

11 ———— *Right to oppose grant of probate* A person who is not the next of kin and who has no interest in the estate of a testator has no right to oppose the grant of the probate or dispute the validity of the will *In the matter of* MEE TSEE 15 W R 351

12 ———— *Application for revocation of probate—Jurisdiction—Interest of applicant in the estate—Reversioner—Special* [illegible] *Act (X of 1865) ss 23* [illegible]

[illegible]

terest in the property to entitle [illegible] suit in respect of such property and on the anther[illegible]

PROBATE—*contd.*

9 OPPOSITION TO AND REVOCATION OF GRANT—*contd*

ity of *Nobeen Chundra Sil* v *Bhobo Soonduri Dabee* *I L R 6 Calc 60* he is entitled to maintain a case for the revocation of probate In every case in which probate of a Hindu s will is applied for a special citation should be served upon those persons whose interests are directly affected by the will *In the matter of the pet t ons of* HURRO LALL SHAHA KAMONA SOONDURI DASSEE *v* HURRO LALL SHAHA

I. L. R. 8 Calc 570 10 C L. R 409

13 ———————— *Creditors of al leged heir—Hindu testator—Succession Act s 250 —Caveat* A Hindu te tator died leaving *B* al leged to be his adopted son and *C* who would be his heir in default of adoption On application made by *B* for probate of the will after the usual notices [illegible]

[illegible] *In the matter* [illegible] BAIJNATH

[illegible] 25 W R. 489

14. ———————— *Proceedings to revoke probate—Purchaser or assignee of next of kin—Succession Act ss 188 242* The grant of probate is the decree of a Court which no other Court can set aside except for fraud or want of jurisdiction Where it has been alleged that probate has been wrongly granted the proper course to be pursued is to apply to the Court whi h granted the probate to revoke the same Procedure upon such application discussed *Semble* A person in terested by assignment in the estate of the deceased may where a will has been set up and proved at variance to his intere ts apply for the revocation of probate of the will o set up KOMOLLOCHUN DUTT *v* NILPUTTUN MUNDLE

I L R 4 Calc 360 4 C L R 175

15 ———————— *Person having intere t in estate—Mortgagees—Application to revoke or withdraw probate* Mortgagees of the estate of a deceased person have an interest in such estate entitling them to intervene and be heard in opposition to an application made to withdraw pro bate KASHI CHUNDRA DEB *v* GOPI KRISHNA DEB

I L. R. 19 Calc 48

16 ———————— *Caveat—Interest of attaching creditor—Next of kin—Mortgagee—Suc cess on Act (X of 1865) s 231 il us (b) s 242—20 & 21 Vict c [illegible] s 61* A a judgment creditor attached certain property as belonging to *B* his debtor *B* was the next of kin of *C* deceased [illegible]

which the widow also alleged formed part of her husband s estate On caveat entered by *D* —*Held* also that he had such an interest as entitled him to oppose the grant *Per* FIELD *J*—Under s 242 of the Succe ion Act any person who can show that he is entitled to maintain a suit in respect of property over which probate would have effect possesses a sufficient interest to entitle him to enter a caveat and oppose the grant *In the matter of the petition of* BHOBOSOONDURI DABEE NOBEEN CHUNDER SIL *v* BHOBOSOONDURI DABEE

I L R 6 Calc 460

17 ———————— *Person claiming interest in the estate of the deceased—Interest suffi cient to support application to revoke probate—Revo cation of probate—Probate and Administration Act (V of 1881) s 69* Where the heir *ab inte tato* of a deceased person has entered into a contract to sell the property of the deceased and has received the greater part of the con ideration money the pur cha er from such heir is a person claiming to have an interest in the estate of the deceased within the meaning of s 69 of the Probate and Administration Act and is entitled upon a will being set up and proved at varian e with his interest to apply for revocation of the probate of the will so set up *Komollochun Dutt* v *Nilruttun Mundle I L R 4 Calc 360* followed MUDDUN MOHUN SIRCAR *v* KALI CHURN DEY I L R 20 Calc 37

18 ———————— *Application for order revoking probate—Succession Act (X of 1865) s 243—Locus standi of attaching creditor of next of kin to apply for revocation* A will on the evidence was held duly proved An application for revoca tion of probate was made by a judgment creditor who had attached his debtor s right title and interest in family estate whereof a one fourth share would but for this will which made othe dispo itions have been inherited by such debtor [illegible]

been obtained in fraud of creditors *Baijnath Sahai* v *De putt Singh I L R 2 Calc 208* referred to and *Komollochun Dutt* v *Nilruttun Mundle I L R 4 Calc 360* distinguished NILMONI SINGH DEO *v* UMANATH MOOKERJEE NILMONI SINGH *v* BHOY HARINI DEVI

I. L. R 10 Calc 19 13 C L R 31[illegible] L R 10 I. A. 80

[illegible] for a revo- [illegible] the will so [illegible] NILMONEY [illegible] NILMONEY SING

I. L. R. 6 Calc 429

PROBATE—*contd*

9 OPPOSITION TO AND REVOCATION OF GRANT—*contd*

19 ——————— *Caveat—Mortgagee—Attaching creditor—Fraud* A mortgaged

wife The mortgaged property was included in the

property from being sold in execution of a decree against himself *Held* that *B* was entitled to enter a caveat SURBOMONGALA DASSI *v* SHASHI BHOOSHUN BISWAS **I L R 10 Calc 413**

20 ——————— *Interest in testator s estate—Defendant in suit for probate of will—Legatee—Creditor of testator—Proof of former will* In a suit brought to obtain probate of a will the defendant before he can contest the will must show that he has some interest in the testator s estate The fact of being a legatee under the will or a creditor of the testator does not amount to such an interest But proof of a former will of the testator in which the defendant is interested is a sufficient interest to contest the will et up RAHAMTULLAH SAHIB *v* RAMA RAU **I L R 17 Mad 373**

21 ——————— *Will by a Hindu widow in respect of property inherited from her deceased husband—Invalid will—Ground for refusing probate* A Court is not justified in refusing to grant probate of a will because the testator had no power to dispose of some or even all of the property he purported to deal with BAPOT PARSHOTAM KALU *v* BAI MULI **I L R 18 Bom 749**

22 ——————— *Issue raised as to testator s title to property purporting to be dealt with by the will—Practice* It is not the duty of a

testator may have possessed over such property *Belary Lall Sandyal* v *Juggo Mohun Gossain I L R 4 Calc 1 Hormusji Navroji* v *Bai Dhanbaiji I L R 12 Bom 164 Arunamoyi Dasi* v *Mohendra Nath Wadadar I L R 20 Calc 888* and *Barot Parshotam Kalu* v *Bai Muli I L R 18 Bom 749* referred to *Thorp* v *Macdonald L R 3 P D C* and *Annoda Sundari Dasi* v *Jugutmani Dasi C C L R 1 6* distinguished BRIJ NATH DE *v* CHANDAR MOHUN BANERJI

I L R 19 All 458

PROBATE—*contd*

9 OPPOSITION TO AND REVOCATION OF GRANT—*contd*

23 ——————— *Probate nature and effect of—Act V of 1881 ss 16 and 50* S

son H N On J s death the testator s brother D applied for letters

issue it Letters of administration were then granted to *D* The appellant *H N* subsequently applied for probate of the testator s will The respondents filed caveats alleging that the will was void

tion HORMUSJI NAVROJI *v* BAI DHANBAIJI **I L R 12 Bom 164**

24 ——————— *Probate and Administration Act (V of 1881) ss 55 83—Application for revocation of probate whether a civil suit or a miscellaneous proceeding* S 3 of the Probate and Administration Act does not apply to an application for revocation of probate the section applicable is s 55 a proceeding instituted for revocation of probate cannot be regarded (for the purposes of costs and pleader s fees) as a regular civil suit but is a miscellaneous proceeding and pleader s fees should be fixed on that footing PRATAP CHANDRA SHAHA *v* KALI BHANJAN SHAHA **4 C W N 600**

GARABINI DASSI *v* PRATAP CHANDRA SHAHA **4 C W N 602**

25 ——————— *Opposition to grant—Caveat—Judgment creditor—Fraudulent creditor—Probate and Administration Act (V of 1 81) s 69* The words interest in the estate of the deceased Probate and Administration

that the will has been set up for the purpose of defrauding the creditors is a person claiming an interest in the estate of the deceased and such has a *locus standi* in opposing the grant of probate of the will *Umanath Mookhopadhya* v *Nilmoney Singh Deo* *Sing I L R 6 Calc* 4 9 and *Nilmoni Singh Deo*

PROBATE—*contd*

9 OPPOSITION TO AND REVOCATION OF GRANT—*contd*

v *Umanath Mookerjee I L R 10 Calc 19* referred to KRISHEN DAI v SATYENDRA NATH DUTT (1901) I L R 28 Calc 441

26 — — Revocation of grant—*Succession Act (X of 1865) s 234—Practice—Practice in testamentary matter* S 234 of the Succession Act (X of 1865) applies to Hindus and an application to revoke probate of the will of a Hindu may be made under that section When once probate in solemn form has been granted no one who has been cited or has taken part in the proceedings or who was cognizant of them can afterwards seek to have it cancelled *Quære* Whether a review may not be granted *The practice in India in testamentary* matter previously to Act V of 1881 was the same as that of the Ecclesiastical Court in England except so far as that practice might be inconsistent with the Civil Procedure Code *In the matter of* PITAMBER GIRDHAR I L R 5 Bom 638

27 ——— *Removal of mohunt claiming under a will—Succession Act s 234* By his will the mohunt of an akra or religious endowment appointed A to be the malik of the properties comprised in the endowment and to receive the dues and pay the debts and to do everything necessary connected therewith and provided that if any act was done prejudicial to any of those purposes or to any property set apart therefor or contrary to the Hindu practice and religion or usages the property should vest in such disciple of his who should be competent and virtuous A obtained probate of the will and entered upon the properties mentioned therein *Held* that the Court had no power under s 234 of the Succession Act to revoke the probate upon the ground that A had since he took charge of the office taken to an immoral course of conduct and in consequence had been excluded from the community of mohunts The proper course to take for depriving such a person of his office would be to bring a suit under the Religious Endowment Act or any other suit for a declaration that he had disqualified himself and if in that suit a decree was obtained and duly certified to the Court which granted probate that Court would no doubt direct the revocation of the probate *In the matter of the petition of* MOHUN DASS MOHUN DASS v LUTCHMUN DASS I L R 6 Calc 11 6 C L R 265

28 ——— *Procedure—Succession Act (X of 1865) s 234—Onus probandi* Upon a petition under s 234 of the Succession Act praying that the probate of a will alleged to have been made by the petitioner s husband should be revoked upon the grounds that no citation was duly published that the petitioner was a minor living under the care of the person to whom probate had been granted and had no opportunity of understanding his *mala fides* and improper acts and that the will was a forgery the District Judge held that the burden of proof in respect of the whole case was on the petitioner and dismissed her petition *Held*

when the person propounding it would have to prove it in the ordinary way *In the matter of the petition of* DINTARINI DEBI DINTARINI DEBI v DOIBO CHUNDER ROY I L R 8 Calc 880 11 C L R 190

29 ——— *Succession Act (X of 1865) s 234—Just cause—Revocation of probate—Citation upon the heirs of the deceased without citing minor* If a will which affects the interest of an infant be admitted to probate without the infant being cited when he attains his majority he is entitled to require the executor to prove the will in his presence and the absence of citation upon the infant would be just cause within the meaning of s 234 of the Succession Act for revoking the probate as the grant was made without citing parties who ought to have been cited PEBELLS v REBELLS 2 C W N 100

See *In the goods of* GUNGA BISSEN MUNDRA 2 C W N 607

30 ——— *Just cause for revocation—Probate and Administration Act (V of 1881) s 50* The mere absence of a special citation in proceedings in which probate of a will is granted is not where the person to whom a citation has not been issued is otherwise aware of the pro

31 ——— *Ground for revocation of probate—Probate and Administration Act (V of 1881) s 50 expl (4)—Just cause—Mismanagement by executor* Mismanagement by the executor of an estate is not under s 50 expl 4 of the Probate and Administration Act a just cause for revoking the probate *Held* therefore that the order of revocation made by the District Judge for that cause was made without jurisdiction and must be set aside The words just cause as explained in s 50 of the Probate and Administration Act are not illustrative merely but exhaustive ANNODA PROSAD CHATTERJEE v KALLIKRISHNA CHATTERJEE I L R 24 Calc 95

32. ——— *Right to have proceedings re-opened and grant revoked—Person cognizant of proceedings and not objecting—Caveator* A party cognizant of proceedings in an action for probate or letters of administration and not objecting to the grant is not as a rule entitled to have the matter re-opened and the grant revoked. In this case he was allowed to re open the case under

PROBATE—*contd*

9 OPPOSITION TO AND REVOCATION OF GRANT—*contd*

certain circumstances and upon certain conditions *In the goods of* BHUGGOBUTTY DASI
I L R 27 Calc 927
4 C W N 757

33 ———————— *Succession Act s 187—Power of executors or administrators* Sem

take out probate or letters of administration in order to establish their rights in a Court of justice KRISHNA KINKUR ROY *v* RAI MOHUN ROY
I L R 14 Calc 37

34 ———————— *Executor power of before Hindu Wills Act—Evidence Act (I of 1872) s 41—Probate Act (V of 1881) ss 2 149* S 41 of the Evidence Act is applicable to probates granted prior to the passing of the Hindu Wills Act GRISH CHUNDER ROY *v* BROUGHTON
I L R 14 Calc 861

35 ———————— *Succession Act (X of 1865) s 187—Hindu Wills Act (XXI of 1870) s 2—Probate and Administration Act (V of 1881) Chs II to XII—Probate or administration to wills of Hindus executed before 1st September 1870* S 187 of the Succession Act which by s 2 of the Hindu Wills Act was made applicable to wills executed subsequent to the 1st September 1870 has not been incorporated in Act V of 1881 and although it is competent to a Court to grant probate or letters of administration in respect of wills antecedent to the 1st September 1870 still it is not obligatory upon executors or persons claiming probate or administration to obtain such probate or letters of administration before they can establish their right in respect to any property subject to such wills KRISHNA KINKUR ROY *v* PANCHURAM MUNDUL
I L R 17 Calc 272

36 ———— Revocation of grant—*Probate and Administration Act (V of 1881) ss 50 and 83—Revocation of probate—Procedure—Practice—Motion on notice—Rule nisi—Jurisdiction—High Court meaning of in s 87* To revoke a grant of probate on the ground of forgery the proper course is to make an application under s 50 of the Probate and Administration Act and not to bring a suit *Komol Lochun Dutt v Nilruttun Mundle I L R 4 Calc 360* followed The expression High Court in s. 87 of the Probate and Administration Act is not merely confined to the Appellate Jurisdiction of that Court but includes its Original Jurisdiction and under that section the High Court exercising its Original Jurisdiction has concurrent jurisdiction with the District Judge for the purpose of exercising all powers provided by the Act. Proceedings of this description should be initiated by motion on notice and not by rule. The procedure by rule nisi should be confined to applications which are urgent and where relief in the shape of an injunction is required *In the goods of* MOHENDRA NARAIN ROY (1900)
5 C W N 377

37 ———————— *Probate and Administration Act (V of 1881) ss 50 and 83—Revocation of probate—Procedure—Practice—Motion on notice—Suit to set aside probate—Rule nisi—Will invalidity of—Grant of probate irregularity in—Civil Procedure Code (Act XIV of 1882) Sch IV*

motion on notice *Komol Lochun Dutt v Nilruttun Mundle I L R 4 Calc 360* distinguished When it is sought to revoke the grant of probate of a valid will on the ground of some irregularity in making the grant the proceedings should be by motion on notice Proceedings of this description should not be initiated by a rule nisi *In the goods of Mohendra Narain Roy 5 C W N 377* referred to *In the goods of* HARENDRA KRISHNA MUKERJEE (1900)
5 C W N 383

38 ———————— *Effect of probate—Revocation of probate—Grounds of refusal or revocation of probate—Filing of inventory and account—Probate and Administration Act (V of 1881) ss 50 and 98* On the 7th August 189[illegible] one Baba Maharaj died at Poona leaving his widow pregnant. By his will he appointed Bal Gangadhar Tilak (the appellant) and three others to be his

continue to manage the property on behalf of that ... A posthumous

quently viz on 29th July 1901 the widow applied to the District Court for revocation of the probate granted to the executors on the grounds (i) that the will had become inoperative by the birth of her son who had succeeded to the pro[illegible]

granted the application and revoked the probate On appeal to the High Court *Held* that ... of revocation could not be made. The circumstances which had supervened with regard to the devolution of the property would not have justified the refusal of probate if they had existed at the time at which it was granted and they were therefore no grounds for its revocation. *Held* also

PROBATE—*contd*

9 OPPOSITION TO AND REVOCATION OF GRANT—*concld*

that the mere omission by the executors to file the inventory and account required by s 98 of the Probate Act (V of 1881) was not a ground for revocation. There was no circumstance in the case from which wilful omission on the part of the executors could be inferred. The grant of probate is decisive only of the genuineness of the will propounded, and of the right of the executors thereby appointed to represent the estate of the testator It in no respect decides any question as to the disposing power of the testator or as to the existence of any disposable property The words

quent discovery that the will was forged or that the alleged testator is still living BAL GANGADHAR TILAK *v* SAKWARBAI (1902)

I L R 26 Bom 792

39 ———— *Letters of administration—Revocation of grant of probate or letters of administration—Just cause—Grant obtained fraudulently—Probate and Administration Act (V of 1881) s 50—Res judicata—Parties—Same parties or their representatives—Decree against Hindu widow—Reversioners—Fraud* After the grant of probate or letters of administration with the will attached has been made the only procedure provided by the law for the revocation of such a grant is that laid down in s 50 of the Probate and Administration Act

10 EFFECT OF PROBATE

1 ———— Appointment of executors—*Validity and contents of will* Probate is only conclusive as to the appointment of executors and the validity and contents of the will HORMUSJI NAVROJI *v* BAI DHANBAIJI I L R 12 Bom 164

2 ———— Executor position of—*Will of Hindu—Evidence of title* Grant of probate of

PROBATE—*contd*

10 EFFECT OF PROBATE—*contd*

the will of a Hindu confers no title upon the executor

1 B L R O C 24

3 ———— *Liability of person acting as executor of forged will* Government promissory notes belonging to the estate of a deceased Hindu were endorsed over without consideration by A (who had taken out probate of a forged will and was acting under the same as executor) to *B* who received the same *bond fide* but

promissory notes as assets of the deceased come into his hands The property in the moveable estate of a Hindu does not pass to his executor as such. JAYKALI DEBI *v* SHIBNATH CHATTERJEE

2 B L R O C 1

4 ———— Evidence of will—*Will—Evidence—Hindu Wills Act (XXI of 1870)—Succession Act (X of 1865) ss 180 242* The effect of the Hindu Wills Act which makes (among others) ss. 180 and 242 of the Succession Act applicable to Hindus is to make the probate of the will evidence of the will against all persons interested under the will BRAJANATH DEY SIRKAR *v* ANANDAMAYI DASI

8 B L R 208

5 ———— Probate as giving person right to sue under will—*Succession Act s 187*

tended by s 187 is a copy of the will certified and sealed by a Court of competent jurisdiction and it may be taken out by a legatee MON MOHUN GHOSSAL *v* PURESHNATH ROY 22 W R 174

6 ———— Probate as giving right to sue under will—*Probate Act (V of 1881) ss 92 154—Probate when necessary in cases of Hindu and Mahomedan will—Executor—Act XXI of 1870—*

by such wills as fell within the Hindu Wills Act (XXI of 1870) acquired the same estate and interest in the property of their deceased testator with the same restrictions in representing the estate in a Court of justice as obtained under English law All the sections of the Succession Act (X of 1865) relating to grants of probate and letters of administration which were formerly incorporated in the

PROBATE—*contd*

10 EFFECT OF PROBATE—*contd*

Hindu Wills Act (XXI of 1870) are now (with the exc ption of s 187) removed from that Act by s 154 of Act V of 1881 but are with the exception of s 187 re enacted verbatim in Act V of 1881 S 187 however still remains incorporated by reference with the Hindu Wills Act (see s 154 of Act V of 1881) The result is that probate is necessary in case of such Hindu wills as fall within the Hindu Wills Act But the omission from Act V of 1881 (which applies to all Mahomedans and Hindus) of any section corresponding to s 187 of the Indian Succession Act and the retention of that section in

of justice without taking out probate In cases however falling within the provisions of Act XXVII of 1860 debtors have still the right (under s 2 of that Act) of insisting upon a plaintiff executor taking out probate Where *A* one of three executors of a Mahomedan will none of whom had taken out probate desired to carry on a suit originally instituted by their testator to recover a share of an estate all the other parties to the suit being desirous that the suit should be dismissed — *Held* that *A* under s 92 of the Probate Act (V of 1881) being only one of three executors could not carry on the suit without first taking out probate of the testator s will. *Held* further that *A* being an executor had a right to carry on the suit and get in the assets of his testator in order to meet possible claims on the estate The other parties to the suit who were beneficially interested in the estate and who desired that the suit should terminate had the remedy in their hands by putting the executor in funds to discharge the debts MOOSA v ESSA

I L R. 8 Bom 241

7 ———— Necessity of probate—*Probate and Administration Act 1881—Mahomedan will* An executor of the will of a deceased Mahomedan since the 1st April 1881 the date of the coming into force of the Probate and Administration Act (V of 1881) cannot claim to represent the estate of his testator until he has taken out probate FATMA v ESSA I L R 7 Bom 266

8 ———— *Guardian appointed under a will—Whether probate is a condition precedent to certificate of guardianship under Guardians and Wards Act (VIII of 1890)* It is

I L R 18 Bom 652

9 ———— *Will made by Hindu—Suit by legatee for legacy—Hindu Wills Act 1870* Save where the Hindu Wills Act 1870 is in force it is not obligatory on a person claiming under the will of a Hindu to obtain probate of the will before instituting his claim *Krishna Kinkur Roy v Panchuram Mundul I L R 1 Calc* ... and *Thakurain v Ram Charan All Weekly Notes (1895) 87* followed. KANHAIYA LAL v MUNNI

I L R 18 All 260

10 ———— Effect of probate of Parsi will before Succession Act—*Probate in 1866 —Act XXVII of 1860—Construction of will—Executrix also trustee—Suit against executrix—Representation of the estate—Civil Procedure Code s 437* The will of a Parsi testator in Bombay affecting lands in the mofussil made before the 1st January 1866 when the Indian Succession Act (X of 1865) came into force and proved subsequently—viz on the 25th day of January 1866—but before Act XXIV of 1867 came into operation is governed by Act XXVII of 1860 *Held* that such probate has the same effect as probate in respect of the property of British subjects but for the purpose only of collecting debts It did not confer a title on the executrix to represent the testator s estate except for the above mentioned limited purpose or to exercise the usual powers of an executrix where the testator s intention to be gathered from the whole of the will to vest his property with the entire management of and control over it in a series of persons in succession as trustees the first of whom was the executrix. *Held* also that having regard to s 437 of the Code of Civil Procedure the persons acting as such trustees in succession under the said will adequately represented all persons beneficially interested in the estate in all suits relating to it ARDESIR JEHANGIR FRAMJI v HIRABAI

I L R 8 Bom 474

11 ———— Hindu will made outside Bombay relating to property situate partly within and partly outside Bombay—*Will—Hindu Wills Act (XXI of 1870)—Succession Act (X of 1865) s 179—Probate and Administration Act (V of 1881) s 4—Probate of such will effect of—Representation of the estate—Parties to suit* One *L* died at Surat in 1868 possessed of ancestral property situate partly in Bombay and partly in Surat district He left a widow *B* and a minor son *M* At his death he made a will bequeathing his property to his son and appointing certain executors to manage the property during the son s minority The son died in 1877 leaving a minor widow *M G* In 1879 one of the executors obtained probate of *L* s will from the High Court In 1884 a suit was filed on behalf of the minor *M G* against her mother in law *B* to recover possession of the property covered by the will of *L* One of the defences to this suit was that the property in dispute had vested in the executor who had obtained probate of the will and that as the defendant held the estate under the executor the suit was not maintainable without impleading the executor *Held* that the executor was not a necessary party to the suit S 179 of the Indian Succession Act (X of 1865) as incorporated into the Hindu Wills Act (XXI of 1870) did not apply so far as it related to property outside Bombay The property in

PROBATE—*contd*

10 EFFECT OF PROBATE—*contd*

di pute was ituate in the Surat district It was joint ancestral property On the fath r s death it ve ted in the on by urvivorship and on the son s death it ve ted in the son s widow the plaintiff in the pre ent uit Under the provi s on therefore of the Probate and Administration Act (V of 1881) s 4 (if that Act can be held to operate at all in the m fu il before a notification is i ued under 2) the e tate could not vest in the executor as it had pa ed by urvivorship to an other per on long before the Act came into oper ation BAI HARKOR v MANEKLAL PASIK DAS
I L R 12 Bom. 621

12 ———— Mahomedan will—*Effe t of probate—Will—W ll of Mahomedan lady—Probate and Administration Act (V of 1881)—Executor of Mahomedan will—W ll of Mahomedan lady con firming release obtained from h r by undue influence—*

probates when granted the Engli h doctrines as to the operation of probate Under that system a Hindu or Mahomedan executor took no title to property merely as such by virtue of the probate In the case of Mahomedan executors such a title was created for the first time by the Probate and Administration Act (V of 1881) Since by Maho ... of ... io ... V ... 70

thirds of the estate when realized and an active trustee as to one third for the purpo es of the will and of these trusts one is created by the Act and the Probate irrespective of the will and the other by the will establi hed by the probate The effect of probate of a Mahomedan will granted under that Act is limited to the effect given to it by the terms

Mahomedan lady widow of the late King of Oudh confirmed a release which she had executed in favour of the principal defendant who had been for some years in her household as her confidential agent and manager of her affairs by which he declared that certain property he had obtained from her was a free and absolute gift and that neither

the release and prayed for an account and for two thirds of the property of the testatrix. *Held* reversing the decision of the High Court that the grant of probate did not under the provisions of the Probate and Administration Act create any such e toppel as to prevent the plaintiffs from denying the validity of the confirmation of the relea e to the defendant contained in the will It

cient evidence to support the estoppel KURRUTULAIN BAHADUR v NUZBAT UD DOWLA ABBAS HOSSEIN KHAN (1905) I L R 33 Calc 116

PROBATE AND ADMINISTRATION ACT (V OF 1881)

See ADMINISTRATOR GENERAL S ACT 1874 s 31 I L R 21 Calc 732
I L R 22 Calc 788
L R 22 I A 107

See EXECUTOR 13 C W N 557

See LETTERS OF ADMINISTRATION

See PROBATE

See WILL.

———————— *Application to Sikhs —Sikhs if Hindus—Hindu law—Will—Proof of execution—Brahmos if Hindus—Interpretation of* ... *ed in* ... *ictice* ... *ng of* ... d the ... obate ... inted ... word ... and Charter and in modern Acts discussed. *Sheo Singh Rai* v *Mussumut Dakho L R 5 I A 87 Chotay Lall* v *Chunno Lall 6 I A 15 Doe dem Kissinchunder Shaw* v *Baidam Beebee 2 Morley s Digest 22 Abraham* v *Abraham 9 Moo I A 195* referred to A *Sikh* or Hindu by becoming a

the religious communion in which he was born. BHAGWAN KUAR v BOSE (1903)
7 C W N 895 I. L. R. 31 Calc 11
s c L. R. 30 I. A 249

———— s 2—

See PROBATE I L R 31 Calc 11

———————— *Hindu — Sikh — Application for probate of will of Sikh— Succession Act (X of 1865) ss 331 332—Effect of Hindu or Sikh becoming a Brahmo—*

PROBATE—*contd*

10 EFFECT OF PPOBATE—*contd*

Hindu Wills Act (XXI of 1870) are now (with the exc ption of s 187) removed from that Act by 154 of Act V of 1881 but are with the exception of 187 re enacted verbatim in Act V of 1881 S 187 however still remains incorporated by reference with the Hindu Wills Act (ee s 154 of Act V of 1881) The result is that probate is necessary in case of such Hindu wills as fall within the Hindu Wills Act. But the omission from Act V of 1881 (which applies to all Mahomedans and Hindus) of any section corre ponding to s 187 of the Indian Succe sion Act and the retention of that ection in the Hindu Wills Act shows that it was the intention of the Legi lature that except in ca es falling under the Hindu Wills Act an executor of any Hindu or Mahomedan will may establish his right in a Court of justice without taking out probate In ca es however falling within the provi ions of Act XXVII of 1860 debtors have still the right (under s. 2 of that Act) of in isting upon a plaintiff executor taking out probate Where *A* one of three executors of a Mahomedan will none of whom had taken out probate de ired to carry on a suit originally instituted by their te tator to recover a hare of an estate all the other parties to the suit being desirous that the suit should be dismissed —*Held* that *A* under s 92 of the Probate Act (V of 1881) being only one of three executors could not *carry on the uit without first taking out probate of* the testator s will. *Held* further that *A* bein an executor had a right to carry on the suit and get in the assets of his testator in order to meet po ible claims on the estate The other parties to the suit who were beneficially interested in the estate and who desired that the suit should terminate had the remedy in their hands by putting the executor in funds to discharge the debts MOOSA v E SA

I. L. R. 8 Bom. 241

7 ———— Necessity of probate—*Probate and Administration Act 1881—Mahomedan will* An executor of the will of a decea ed Mahomedan since the 1st April 1881 the date of the coming into force of the Probate and Administration Act (V of 1881) cannot claim to repre ent the estate of his testator until he has tal en out probate FATMA v ESSA I. L. R 7 Bom. 266

8 ———————— *Guardian appointed under a will—Whether probate s a condition precedent to certificate of guardianship under Guardians and Wards Act (VIII of 1890)* It is not incumbent on a person who has been appointed guardian of a minor under a will to take out probate as a condition precedent to his obtaining a certificate of guardianship under Act VIII of 1890 PATHAN ALIKHAN BADLUKHAN v BAI PANIBAI

I. L. R 19 Bom 832

9 ———————— *Will made by Hindu—Suit by legatee for legacy—Hindu Wills Act 1870* Save where the Hindu Wills Act 1870 is in force it is not obligatory on a person claiming under the will of a Hindu to obtain probate of the will before instituting his claim. *Krishna Kinkur Roy v Panchuram Mundul I L R* ... and *Thakurain v Ram Charan All Weekly Notes (1895) 87* followed. KANHAIYA LAL v MUNNI

I. L. R. 18 All. 260

10 ———— Effect of probate of Parsi will before Succession Act—*Probate in 1866 —Act XXVII of 1860—Construction of will—Executrix also trustee—Suit against executrix—Representation of the estate—Civil Procedure Code s 437* The will of a Parsi testator in Bombay affecting lands in the mofu il made before the 1 t January 1866 when the Indian Succe ion Act (X of 1865) came into force and proved ubsequently—viz on the 25th day of January 1866—but before Act XXIV of 1867 came into operation is governed by Act XXVII of 1860 *Held* that such probate has the same effect as probate in re pect of the property of Briti h subjects but for the purpose only of collecting debts It did not confer a title on the executrix to repres nt the te tator s estate except for the above mentioned limited purpose or to exercise the usual powers of an executrix where the testator s intention to be gathered from the whole of the will to ve t his property with the entire management of and control over it in a series of persons in succe ion as trustees the first of whom was the executrix. *Held* also that having regard to s 437 of the Code of Civil Procedure the persons acting as such tru tees in ucce ion under the said will adequately represented all person beneficially interested in the e tate in all suits relating to it. ARDESIR JEHANGIR FRAMJI v HIRABAI

I. L. R 8 Bom. 474

11 ———— Hindu will made outside Bombay relating to property situate partly within and partly outside Bombay—*Will—Hindu Wills Act (XXI of 1870)—Succession Act (X of 1865) s 179—Probate and Administration Act (V of 1881) s 4—Probate of such will effect of—Representation of the estate—Parties to suit.* One *L* died at Surat in 1878 po e ed of ancestral property ituate partly in Bombay and partly in ... [illegible] had vested in the executor who had ... probate of the will and that as the defendant held the estate under the executor the suit was not maintainable without impleading the executor *Held* that the executor was not a necessary party to the suit S 179 of the Indian Succession Act (X of 1865) as incorporated into the Hindu Wills Act (XXI of 1870) did not apply so far as it related to property outside Bombay The property in

PROBATE—*cont'd*

10 EFFECT OF PROBATE—*contd*

dispute was situate in the Surat district It was joint ancestral property On the father's death it vested in the son by survivorship and on the son's death it vested in the son's widow the plaintiff in the present suit Under the provisions therefore of the Probate and Administration Act (V of 1881) s 4 (if that Act can be held to operate at all in the mofussil before a notification is issued under s 2) the estate could not vest in the executor as it had passed by survivorship to another person long before the Act came into operation BAI HARKOR v MANEKLAL PASIK DAS

I L R 12 Bom 621

12 ———— Mahomedan will—*Effect of probate—Will—Will of Mahomedan lady—Probate and Administration Act (V of 1881)—Executor of Mahomedan will—Will of Mahomedan lady confirming release obtained from her by undue influence—Suit by heirs to set aside release—Release—Res judicata—Civil Procedure Code (Act XIV of 1882) s 13—Estoppel—Act V of 1881 ss 4 59 and 88* The Supreme Courts in India never applied the English rules as to the necessity for probate to Hindu or Mahomedan wills nor did they attribute to such probates when granted the English doctrines as to the operation of probate Under that system a Hindu or Mahomedan executor took no title to property merely as such by virtue of the probate In the case of Mahomedan executors such a title was created for the first time by the Probate and Administration Act (V of 1881) Since by Mahomedan law a testator has power only to dispose of one third of his property an executor of a Mahomedan will who had obtained probate under Act V of 1881 is a bare trustee for the heirs as to two thirds of the estate when realized and an active

Act is limited to the effect given to it by the terms

favour of the principal defendant who had been for some years in her household as her confidential agent and manager of her affairs by which she declared that certain property he had obtained from her was a free and absolute gift and that neither she nor her heirs had any claim or demand on him in respect of it Probate of the will was granted to the Administrator General the executor appointed by it the grant being opposed by her heirs the plaintiffs who pending the probate proceedings instituted a suit in which they claimed to set aside the release and prayed for an account and for two thirds of the property of the testatrix *Held* reversing the decision of the High Court that the grant of probate did not under the provisions of the Probate and Administration Act create any such estoppel as to prevent the plaintiffs from denying the validity of the confirmation of the release to the defendant contained in the will It was also contended that an estoppel arose from the decision in the proceedings for probate which constituted a *res judicata* under s 13 of the Civil Procedure Code (Act XIV of 1882) but the probate proceedings were not in evidence and their Lordships held that in their absence there was no sufficient evidence to support the estoppel KURRUTULAIN BAHADUR v NUZBAT UD DOWLA ABBAS HOSSEIN KHAN (1905) I L R 33 Calc 116

PROBATE AND ADMINISTRATION ACT (V OF 1881)

See ADMINISTRATOR GENERAL'S ACT 1874 s 31 I L R 21 Calc 732
I L R 22 Calc 788
L R 22 I A 107

See EXECUTOR 13 C W N 557

See LETTERS OF ADMINISTRATION

See PROBATE

See WILL

———— *Application to Sikhs—Sikhs if Hindus—Hindu law—Will—Proof of execution—Brahmos if Hindus—Interpretation of Statutes—Meaning of the word Hindu as used in old and new Acts—Lapses from orthodox practice effect of* A *Sikh* is a Hindu within the meaning of the Probate and Administration Act s. 2 and the Indian Succession Act 1865 s 331 and probate of the will of a deceased *Sikh* can be be granted under the former Act The meaning of the word Hindu as used in old Acts Regulations and Charter and in modern Acts discussed *Sheo Singh Rai* v *Musumut Dakho L R 5 I A 87 Cholay Lall* v *Chunno Lall 6 I A 15 Doe dem Kissenchunder Shaw* v *Baidam Beebee 2 Morley's Digest 2*, *Abraham* v *Abraham 9 Moo I A 195* referred to A *Sikh* or Hindu by becoming a *Brahmo* does not necessarily cease to belong to the community in which he was born Certain lapses from orthodox practice in matters of diet and ceremonial observance held not to have the effect of excluding from the term Hindu in the Probate

7 C W N 895 I L R 31 Calc 11
s c L R 30 I A 249

———— s 2—

See PROBATE I L R 31 Calc 11

———— *Hindu — Sikh — Application for probate of will of Sikh—Succession Act (X of 1865) ss 331 332—Effect of Hindu or Sikh becoming a Brahmo—*

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

———— s 2—*concld*

Unorthodox practices effect of—Evidence of execution of will A Sikh is a Hindu within the meaning of that term as used in s. 2 of the Probate and Administration Act (V of 1881) An application therefore for probate of the will of a Sikh testator was held to have been rightly granted under that Act Since the case of *Doe dem Kishenchunder Shaw v Baidam Beebee 2 Morley s Digest 22* the view that Sikhs are Hindus has always been acted upon by the Courts in India ... is in ... ying ... a od ... the meaning of the early legislation on the subject and not upon the alternative rule of justice equity and good conscience also sanctioned by that legislation In s 331 of the Indian Succession Act (X of 1865) the term Hindu is used in the same wide sense as in the earlier enactments and includes Sikhs A Sikh or Hindu by becoming a member of the Brahmo Samaj does not necessarily cease to belong to the community in which he was born In this case however it was found on the evidence that the testator a Sikh by birth never became a professed Brahmo Departures by the testator from the standard of orthodoxy binding upon him in matters of diet and ceremonial observances assuming them to be established were *held* not to have the effect of excluding him from the category of Hindu in the Probate and Administration Act he having been born within such category and never having become otherwise separated from the religious communion in which he was born Objections having been taken that the will had not been duly executed and that alterations had been made in it since its execution the Judicial Committee (affirming the decision of the Chief) decided on the evidence in favour of its due execution in the form in which it was produced to the Court on the application for probate BHAGWAN KOER v J C BOSE (1903)

I L R 31 Calc 11

———— s 3—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL

I L R 24 Calc 30

See PROBATE I L R 32 Calc 1082

See PROBATE—OF WHAT DOCUMENTS GRANTED I L R 25 All 313

———— *Of what documents granted —Document appointing successor to sebaitship—Will* ...

... other ...

———— s 3—*concld*

to probate CHAITANYA GOBINDA PUJARI ADHIKARI v DAYAL GOBINDA ADHIKARI (1905)

I L R 32 Calc 1082
s c 9 C W N 1091

———— ss 3 7—*Executor by implication—Bequest to an idol—Right of shebait to take out probate* Where a testator had bequeathed the bulk of his estate for the sheba of a thakur and made certain other dispositions in regard to the rest of the property *Held* on the construction of the will that his wife whom he had appointed *shebait*, having been confided with the execution of the will was executor by implication and as such entitled to take out probate of the will. *Brojo Chunder Gosuami v Raj Kumar Roy 6 C W N 310* referred to KRIPAMOYEE DASSI v MOHIM CHANDRA DUTT (1906) 10 C W N 232

———— ss 4 12 14 15 19 38 82 187—

See REPRESENTATIVE OF DECEASED PERSON I L R 30 Calc 1044

———— ss 4 12 59 88 90—

See MAHOMEDAN LAW 9 C W N 938

———— s 7—

See WILL CONSTRUCTION 6 C W N 310

———— s 11—

See WILL 13 C W N 557

———— s 12—

See RES JUDICATA—ESTOPPEL BY JUDGMENTS I L R 21 Bom 563

———— ss 12 14 15—

See ante ss 4 12 ETC

———— s 17—

See PROBATE I L R 35 Calc 156

———— ss 18 to 23 37 44, 45 46 83 and 86—*Debutter property administration in respect of—Idol— Beneficiary —Trustee with power of appointment—Administration grant of letters of to idol s property where probate has been previously granted of will dedicating the property* A testatrix by her will dedicated certain immoveable property to the sheba of an idol and appointed an executrix whom she also constituted shebait and to whom she gave power to appoint the next shebait The executrix died without having made any such appointment and thereupon an application was ... for letters ... will annexed, ... the debutter ... ate and Ad... ministration Act authorized such a grant to be made inasmuch as no shebait having been appointed there still remained some portion of the

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

——— s 18—*concld*

e tate of the testatrix to be administered *Held* al o that the idol being the *cestui que trust* was a beneficiary within the meaning of that term as used in 3" of the Act and that as it could not undertake the management of the estate under that ection admini tration might be granted to some person on its behalf *Held* further that the applicant the si ter s on of the te tatrix being the heir in the ab ence of other nearer heirs as such was entitled to letters of admini tration a the original grant in respect of the debutter property might have been made to him RANJIT SING *v* JAGANNATH PROSAD GUPTA GUNGADHUR DASS PAL *v* JAGANNATH PROSAD GUPTA
I L R 12 Calc 375

——— s 19—

See ante ss 4 12 ETC

See PROBATE—TO WHOM GRANTED
6 C W N 787

See RES JUDICATA—ESTOPPEL BY JUDGMENT I L R 20 Calc 888

——— ss 20 24—

See WILL I L R 31 Calc 885

——— s 24—

See WILL 8 C W N 821

——— s 33—*Grant for the use and benefit of minor—Minor wife—Husband grant to—Guardian—Practice* Where a husband appli d under s 33 for the Probate and Admini tration Act for letters of administration for the u e and benefit for his minor wife —*Held* that su h application was not maintainable until the applicant had been appointed guardian of his minor wife NIROJINI DEBI, *In the goods of* (190)
I L R 34 Calc 706

——— s 34—

See ADMINISTRATION SUIT FOR.
1 C W N 336

——— s 38—

See ante ss 4 19 ETC

——— s 41—*Application for letters of Administration—Bonâ fide —Discretion of Court to refuse* Where a person made a will devoting the whole of his estate to an idol and appointing his wives and a lopted son as *shebaits* executrices and executor but none of them applie l for probate and the son who was an executor mortgaged the property as if there was no will *Held* on an application for probate or letters of administration by the minor sons of the adopted son (in whom the *shebaitship* was to be continued under the will) through their mother as next friend that they were not entitled to probate as they were not executors That the application was not a *bonâ fide* one and the Court in its discretion under s 41 of the Probate and Administration Act would refuse to grant the letters of administration prayed for NORENDRA

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

——— s 41—*concld*

KUMAR PRAMANIK *v* CHARU CHANDRA PRAMANIK (1909) 12 C W N 747

——— s 45—

See LETTERS OF ADMINISTRATION
10 C W N 432

——— s 47—*Unadministered estate—Letters of Admini tration de bonis non* Where letters of administration to the deceased s estate were granted to the widow limited during the minority of her infant son and the son died before attaining majority and before the estate was fully admin i tered *Held* that letters of administration *de bonis non* to the estate of the deceased husband may be granted to the widow under s 47 of the Probate and Admini tration Act and that her being the heir to the son s estate is no bar to such grant *In the goods of* GIRIS CHANDRA MITTER (1902) 6 C W N 581

——— s 50—

See s 98 8 C W N 578

See LETTERS OF ADMINISTRATION
6 C W N 912

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT
5 C W N 377 383
I L R 26 Bom. 792

See WILL I L R 31 Calc 914

See WILL—EXECUTION

See WILL PROOF OF 9 C W N 49

1 ——— *Just cause—Revocation of probate—Omission to file inventory—Special citation—Onus—Procedure* To successfully maintain an application for revocation of probate under s 50 of the Probate and Administration [illegible]

[illegible]

knowledge of the application for [illegible] onus of proving that he had such [illegible] on the party who alleges it and [illegible] for the party who applies for the [illegible] grant to prove not only that [illegible] was served on him but also [illegible] ledge of the proceedings [illegible] fied that a summary grant [illegible] of special citation ought [illegible] he ought not to order [illegible] should call upon [illegible] prove in solemn f[illegible] SURENDRA NATH SAHA [illegible]

2 ——— [illegible] probate or letters of [illegible]

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

———— s 50—*concld*

proceeding—Practice—Just cause—Hindu widow order against binds reversioner Where an application was made for revocation of letters of administration with the will of the deceased annexed and it was prayed that the will should be proved before the applicant *Held* that until the applicant made out a case for revocation the question of the genuineness of the will could not be gone into English practice and practice of mofussil Courts in India distinguished *Held* further that a previous application for revocation by the widow of the deceased having failed that decision bound reversioner and the latter s application for revocation could not succeed except upon proof that the previous proceeding had been collusive and fraudulent *Katama Natchier* v *Raja of Shivagunga* 9 *Moo I A* 539 604 *Pertab Narain Singh* v *Triloki Nath Singh I L R 11 Calc 186* relied on DURGAGATI DEBI v SOURABINI DEBI (1906)

I L R 33 Calc 1001
s c 10 C W N 955

3 ———— *Citation on minor —Minor represented by applicant as guardian—Proceeding defective—Revocation application for—Applicant acting in concert with another* Where an applicant for probate of a will took out citation upon a minor who was represented by the applicant herself as guardian *Held* that the proceedings to obtain the grant were defective in substance and the grant should be revoked The fact that the petitioner for revocation of probate was acting in concert with somebody else could not take away the right which she otherwise possessed of applying for revocation. SHOROSHIBALA DEBI v ANONDAMOYEE DEBI (1906) 12 C W N 6

———— ss 50 55 69 83—*Civil Procedure Code (Act XIV of 1882) s 588—Order or decree—Purchaser from widow of deceased—Locus standi of such person to apply for revocation of probate—Appeal right of* A person interested in the estate of the deceased by assignment from his widow (who is his next heir) may where a will has been set up and proved at variance with his interests apply for the revocation of probate under s 50 of the Probate and Administration Act The expression order in s 86 of the Probate and Administration Act does not mean such an order only as is referred to in s 588 of the Civil Procedure Code An application under s 50 of the Probate and Administration Act must be treated under the provisions of ss 55 and 83 as a suit and when such a

———— ss 50 76 83—

See PROBATE I L R 31 Calc 357

———— ss 50 98—

See PROBATE REVOCATION OF
I L R 31 Calc 628

———— ss 51 52 and 86—*Bombay Civil Courts Act (XIV of 1869) s 16—Amending Act (Bombay Act I of 1900) s 2—Indian Councils Act 1892 ss 55 & 56 Vic c 14—Application for probate—Value of the subject matter not exceeding R5 000—Order of the Assistant Judge—Appeal—District Judge—Jurisdiction* The Probate and Administration Act (V of 1881) being made by an authority in India is subject to the powers of repeal and amendment granted to the Local Legislature by s 5 of the Indian Councils Act 1892 55 and 56 Vic c 14 Therefore the provision of the Bombay Civil Courts Act (XIV of 1869) by which a probate matter can be tried in the first instance by the Assistant Judge and by which the appeal in cases where the amount of the subject matter does not exceed R5 000 will lie to the District Court is one which the Local Legislature was competent to make In so far as the provisions of the Probate and Administration Act are inconsistent with those of the amendments introduced into the Bombay Civil Courts Act by Bombay Act I of 1900 the provisions of the first mentioned Act must be taken to have been impliedly repealed for this Presidency LAXMI v ABA (1908) I L R 32 Bom. 634

———— ss 51 78—

See SURETY—DISCHARGE OF SURETY
I L R 29 Calc 68

———— ss 51 86 90—

See APPEAL I L R 28 Calc 149

———— s 53—

See APPEAL—PROBATE
I L R 21 Calc 539

———— ss 55 69 83—

See ante s 50 8 C W N 748

———— ss 59 83—

See RES JUDICATA—ESTOPPEL BY JUDGMENT
I L R 20 Calc 888
I L R 21 Bom. 563

———— s 62—

See RES JUDICATA—ESTOPPEL BY JUDGMENT I L R 16 Mad. 380

———— s. 69—

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT
I L R. 28 Calc 441

———— s. 78—

See ante ss. 51 78

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

——— s 78—*concld*

1. ——— *Security bond* Under s. 78 of the Probate and Administration Act a Di trict Judge i not competent to call upon the executor (to whom probate has already been granted) to furn h security at any time after the grant of the probate GIRIBALA DASSI v BIJOY KRI HNA HALDAR (1904) I. L. R. 31 Calc 688

2. ——— *Admin stration bond entered into by surety—Allegations by surety against admini tratrix of waste and mismanagement —Suit by urety aga n t admini tratrix seeking to be d charged from liability regarding future acts of ad mini tratrix—Ma ntainabil ty—Contract Act (IX of 18 ?) s 130—Revocation of continuing guarantee —Appl cation to a contract of suretysl ip under ad mini tration bond* First defendant was adminis tratrix of her husband s estate Plaintiff became one of her sureties under s. 78 of the Probate and

part of the administratrix that in the alternative the administratrix might be directed to complete her administration of the estate and that his surety bond might then be vacated *Held* that the plaintiff was not entitled to the relief a ked for *Held* also that s. 130 of the Indian Contract Act does not apply to the special contract of urety ship
i trat
Kuma
Bai S
19 Bom 245 followed and approved SUBROYA CHETTY v RAGAMMAL (1905)
I L R 28 Mad 161

3 ——— *Contract Act (IX of 18 ?) 129—Administration —Surety—Conti nuing guarantee* When a per on becomes surety that an administrator will duly get in and adminis ter the estate of a decea ed person this is not a continuing guarantee within the meaning of s. 129 of the Indian Contract Act 1872 Such a surety cannot of his own free will withdraw from his suretyship *Subroya Chetty v Ragammal I L R 28 Mad 161* followed *Raj Narain Mookerjee v Ful Kumari Debi I L R 29 Calc 68* di ented from KANHYA LAL v MANKI (1908)
I L R. 31 All. 56

——— s 81—

See MALICIOUS PROSECUTION
I L. R 31 Calc 397 993

——— *Suit for damages—Death of plaintiff before tria —Survival of causes of action—Legal representatives—Probate and Adminis tration Act (V of 1881) s 89—Act XII of 1855* A brought a suit for malicious pro ecution claiming damages on the ground that he had suffered pecu niary loss in consequence of the costs incurred in defending the prosecution. Subsequently *A* died

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

——— s 81—*concld*

while the suit was pending The legal repre ent atives of *A* then applied for and obtained leave from the Court to place their names upon the record in the place of *A* At the hearing of the suit the question arose as to whether the cause of action survived *Held* that the cause of action does not survive to the legal representative of *A* inasmuch as the pecuniary loss which *A* suffered by reason of expenses incurred in defending the pro ecution is not an injury to his estate and cannot be treated as eparate and di tinct from the original cause of action *London v London Road Car Co 4 T L R 448* referred to KRISHNA BEHARI SEN v THE CORPORATION OF CALCUTTA (1904)
I L R 31 Calc 406
s c 8 C W N 329 745

——— s 82—

See ante ss 4 12 ETC

See EXECUTOR I L. R 27 Calc 683

——— s 83—

See PROBATE—OPPOSITION TO AND RE VOCATION OF GRANT 5 C W N 383

——— s 84—

See WILL—VALIDITY OF WILL
6 C W N 787

——— s 86—

See ante ss 51 86 90

See APPEAL—PROBATE
I L. R 17 Calc 48
I L R 21 Calc 539
I L R 27 Calc 5

See LETTERS PATENT HIGH COURT N W P CL. 10 I L. R 17 All 475

——— s 87—

See PROBATE—OPPOSITION TO AND RE VOCATION OF GRANT 5 C W N 377

——— s 90—

See ante ss 51 86 90

See EXECUTOR
I L. R 23 Calc 580 908
I L R 23 Bom. 342
3 C W N 403

See LETTERS PATENT HIGH COURT CL. 15
I L R 23 Calc 580
I. L R 24 Calc 350

See RIGHT OF SUIT—INTEREST TO SUP PORT RIGHT I. L. R 23 Calc 446

1 ——— s 90 and s 40—*Letters of administration—Effect of transfer of immoveable property by a Hindu widow with the Judge s sanct on on obtaining letters of administration—Legal neces sity—Fraudulent representation.* An alienation made with the permission of the District Judge

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

———— s 90—*concld*

by a Hindu widow who had obtained letters of ad ministration in respect of the estate is valid as an absolute alienation under s 90 of the Probate and Administration Act (V of 1881) irrespective of the existence of legal necessity KAMIKHYA NATH MUKERJEE *v* HARI CHARN SEN

I L R 26 Calc 607

2 ———— *Letters of administration—Administratrix application by for leave to mortgage—Estate fully administered* Application by the widow and administratrix for leave to mortgage certain premises left by the deceased The estate had been fully administered and there were no debts or legacies of the deceased to be paid. *Held* that applications of this nature should not be granted unless it is necessary for the purposes of administration and not when the estate has been fully administered That the estate having been administered the widow was in possession as heiress and she can sell or mortgage for purposes for which a widow is entitled to sell or mortgage under the law and no leave of Court is necessary *In the goods of* NURSING CHUNDER BYSACK

3 C W N 635

3 ———— A lease for a term exceeding five years granted by an administrator is as between the lessor and lessee a good lease SUBHADRA DASSYA *v* CHANDRA KUMAR NAG (1904) 8 C W N 54

4 ———— *Power given by will to executor to sell testator s property—Power to mortgage if withheld thereby—Purdanashin—Independent advice* Where a will gave the executor power to sell the testator s property to pay off the debts incurred by him or if the property was a losing concern *Held* that there being no prohibition in the will against the executor mortgaging the property he had power under s 90 of the Probate and Administration Act to mortgage such property *Kanti Chandra Chattopadhyay* v *Kristo Churn Acharjee 3 C W N 515* distinguished. *In the goods of Nundo Lall Mullil I L R 23 Calc 908* and *Rajani Nath Mukhopadhaya* v *Ramanath Mukherjee 3 C W N 483* referred to PURNA CHANDRA BAKSHI and RAM BRAHMO BAKSHI *v* NOBIN CHANDRA GANGOPADHYA (1904)

8 C W N 362

———— s 91—

See WILL 13 C W N 557

———— s 92—

See EXECUTOR I L R 27 Calc 683

———— s 98—

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT

I L R 26 Bom 792

1 ———— *Act VI of 1889 s 15 amending Act V of 1881—Construction of Act—Meaning of the words an account* The provisions of s 98 of the Probate and Administration Act that an executor shall within one year from the grant of probate or letters of administration or within such further time as the Court may from time to time appoint exhibit an account of the estate mean that one account is to be exhibited and not a series of accounts from time to time the words from time to time appoint relating to an extension of the period within which an account is to be exhibited MOHESH CHANDRA BHUTTACHARJEE *v* BISWA NATH BHUTTACHARJEE

I L R 25 Calc 250

1 C W N 648

2. ———— *Sanction to prosecute without finding if omission to file accounts is intentional or accounts intentionally false—Jurisdiction of District Judge to call for accounts after revocation of probate* A was executor to an estate The probate was revoked He had not filed an account during his executorship After the revocation of the probate he was ordered to submit accounts He failed to do so within the time appointed Sanction was given to prosecute him under s 98 cl (c) of Act V of 1881 The accounts were subsequently filed whereupon the Court kept the order in abeyance but after examination of the accounts and suspecting its genuineness the Court restored the sanction for prosecution. *Held* that the Judge was not right in making the order depend on the examination of the accounts themselves and that the Judge ought not to have made an order sanctioning the prosecution under s 1[illegible] without an enquiry whether the omission to produce the accounts was intentional or the accounts filed were intentionally false NABA CHANDRA CHOWDHURY *v* TRIPURA CHARAN CHOWDHURY 2 C W N 597

3 ———— *Executor—Inventory—Account—Commission—District Judge powers of* A District Judge has no power to institute an audit of the inventory and account submitted by an executor under s 98 of the Probate and Administration Act undertaking elaborate and expensive proceedings for that purpose nor does the section empower him to hold of his own motion a judicial inquiry into that matter and make the executor pay the costs of each nor can such an authority be implied from the provisions of the Civil Procedure Code as to the appointment of a Commissioner to examine such accounts All that the District Judge has to do under the section is to see that the inventory and account *primâ facie* satisfy its requirements. In 1899 an executor exhibited in the Court of the District Judge under s. 98 of the Probate and Administration Act an account of the estate of the testator for one year from the grant of probate and the then District Judge recorded the order— Accounts checked and reported to be correct —on it No further action was taken with regard to it until 190[illegible] when a new District Judge ordered the executor to file a revised

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*contd*

——— s 98—*concld*

account for that year and al o further accounts for the sub equent years *Held* that the proceed ings of the new District Judge to reopen the matter in 190- in connection with the accounts were *ultra vires* and illegal A Di trict Judge has no power to commence proceedings to revoke a probate under s 50 of the Probate and Administration Act on his own motion SARAT SUNDARI BARMANI v UMA PRASAD ROY CHOWDHRY (1904)
I L R 31 Calc 628

——— s 104—

See ADMINISTRATOR GENERAL S ACT 1874
I L R 25 Calc 54

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES
I L R 22 Mad 194

——— ss 105 108—*Specific legacy mortgage of—Charge—Debts* When a person takes a legacy under a will she takes subject to the debts due from the estate but a mortgage of the property created by the legatee is not necessarily invalid even if there are debts due from the deceased *P* by a will appointed *A* his widow as his executrix

a decree obtained against *P* s representatives (*A* having died in the meantime) on account of a debt due from *P* s estate and the property was pur cha ed by defendant No 2 Plaintiff asked relief against this defendant The lower Appellate Court held that the mortgage by *A* was invalid having regard to the provisions of s 105 of the Probate Act *Held* that the mortgage was not necessarily invalid That the decree in execution of which the property was sold and purchased by defendant No 2 was simply a money decree and no charge upon the property bequeathed was created thereby and the purchaser in execution could not claim a valid charge upon the property in question as against the mortgagee AMBIKA CHARAN DUTT v MUKTO KISORI (1905)
10 C W N 38

——— ss 128 130 131—*Interest allowable on demonstrative legacies—Demonstrative legatee right of— Act*

cable where debt not the whole consideration The word Labham is generic and covers different kinds of profit and in its ordinary and comprehen sive sense means profit gain or income as opposed to the corpus yielding the same and includes in terest and dividends and income from immoveable property especially where other portions of the will show such to have been the intention of the testator The exception in paragraph (*b*) of s 135 of the Transfer of Property Act will apply only where the whole of the consideration for the trans fer is a debt due by the transferor The rule that

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*concld*

——— s 128—*concld*

Under the English law interest is payable on de monstrative legacies from the expiry of one year from the testator s death *Mullins* v *Smith 1 Dr & Sm 204 Lord Londesborough* v *Somerville 19 Beav 295* approved and followed The same is the law in India and the absence of a distinct provision in s 128 130 and 131 of the Probate and Administration Act with respect to interest on such legacies does not imply an intention to dis allow interest in such cases CHINNAM RAJAMAN NAR v TADIKONDA RAMACHANDRA RAO (1905)
I L R 29 Mad 155

——— s 131—

See SUCCESSION ACT s 96
I L R 16 Calc 549

——— s 187—

See ante ss 4 12 ETC

PROBATE AND ADMINISTRATION AMENDMENT ACT (VI OF 1889)

——— s 14—

See EXECUTOR I L R 23 Bom 342

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT I L R 23 Calc 446

PROBATE DUTY

See COURT FEES ACT s 19 D
I L R 29 Bom 161

See COURT FEES ACT SCH I ART 11

PROCEDURE

See ACCOUNT 12 C W N 28

See AGRA TENANCY ACT s 20
I L R 27 All 167

See APPEAL I L R 30 All 136 319

See BENGAL REGULATION XVII OF 1806 s 8 I L R 29 All 145

See BENGAL TENANCY ACT (VIII OF 1885) s 103 12 C W N 122

See CIVIL PROCEDURE CODE 1882 s 202
I L R 31 All 153

See CIVIL PROCEDURE CODE 1882 ss 244 318 319 I L R 21 All 82

See CIVIL PROCEDURE CODE 1882 s 440
I L R 31 All 7

See DECREE.

See DISPUTE RELATING TO LAND
I L R 35 Calc 774

See EXECUTION OF DECREE
I L R 30 All 476

See POSSESSION I L R 33 Calc 68

PROCEDURE—*concld*

See PRACTICE I L R 30 Bom 109

See SUCCESSION CERTIFICATE ACT s 1 cl. (4) I L R 31 All 236

See TRANSFER OF PROPERTY ACT ss 88 89 I L R 31 All. 114

——— civil—

See CIVIL PROCEDURE CODE

See ALSO THE PARTICULAR HEAD WHICH IS APPLICABLE

——— criminal—

See CRIMINAL PROCEDURE CODE

See ALSO THE PARTICULAR HEAD WHICH IS APPLICABLE

1 ——— *Refusal of Court of first instance to examine all the plaintiff s witnesses—Appeal by defendant decreed—Remand* Owing to the direction of the Court of first instance only a portion of the evidence available in support of the plaintiff s case was recorded by that Court which decreed the plaintiff s suit On appeal however the lower Appellate Court took a different view of the plaintiff s evidence and dismissed the suit *Held* that the plaintiff should be given an opportunity of producing the evidence which had not been recorded owing to the attitude taken up by the Court of first instance *Kifayat ullah Mondol* v *Sakina Bibi 11 C W N p xcii* and *Kalyani Prasad* v *Bishnath All Weekly Notes (1905) 266* referred to PABITRA KUNWAR v MAHARAJA OF BENARES (1908)

I L R 30 All 367

2 ——— *Relief granted which was not asked for by the plaintiff —Appeal—Court fee* The plaintiffs in a suit for sale on a mortgage were granted by the first Court a relief for which they had not asked and which could not properly have been granted to them without an amendment of the plaint On appeal by one of the defendants the appellant was made to pay an additional Court fee corresponding to the relief granted to the plaintiffs The plaintiffs respondents were also required to make good the deficiency in the Court fee paid in the first Court This the plaintiffs declined to do unless the decree was confirmed in its entirety *Held* that the plaintiffs were not entitled to retain the full benefit of the first Court s decree nor liable to pay the [illegible]

"PROCEEDINGS" MEANING OF

See CIVIL PROCEDURE CODE 1882 s 3 (1877 s 3) I L R 3 Calc 662
I L R 8 Bom. 287

"PROCEEDINGS," MEANING OF—*concld*

See GENERAL CLAUSES CONSOLIDATION ACT s 6 I L R 3 Calc 662 727
3 C L R 208 391
I L R 8 Bom 340
9 C L R 281
I L R 13 Calc 86
I L R 16 Calc 267

PROCEEDS OF SALE

See SALE PROCEEDS

PROCESS

See COURT FEES ACT 1870 s 20 I L R 17 Calc 281

See CRIMINAL PROCEDURE CODE s 145 I L R 32 Calc 1093

See WITNESSES I L R 32 Calc 1093

——— non payment of fees for—

See LIMITATION ACT 1877 ART 179—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE HOLDER I L R 16 Mad. 452

See MAINTENANCE ORDER OF CRIMINAL COURT AS TO I L R 16 Mad. 234

——— payment of fees for—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE I L R 26 Mad. 421

See LIMITATION ACT 1877 ART 179—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE HOLDER I L R 22 Calc 827
I L R 23 Calc 196 374
I L R 20 Bom 179
I L R 22 Bom 722
I L R 22 All 358

——— refusal to issue—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES I L R 30 Calc 508 508n

——— resistance to—

See CONTEMPT OF COURT—CONTEMPTS GENERALLY 2 B L R F B 21

——— service of—

See COMPANY—WINDING UP—GENERAL CASES I L R 11 Bom 241

See SUMMONS SERVICE OF

——— to compel attendence of witness—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES I L R 30 Calc 121

1 ——— *Cost of service of process—Act XXIII of 1861 s 2—Civil Procedure Code 1877 1882 s 93—Talabana.* A plaintiff in the

PROCESS—*contd*

Munsif s Court filed a list of witnesse but failed to depo it talabana or cost of the service of sum mon for their attendance The Court failed to fix a time for the ervice of talabana The processes were not erved and the Court di mis ed the suit because the plaintiff had produced no evidence in upport of his claim *Held* that under Act XXIII of 1861 s 2 the lower Court hould first have fixed a time for the deposit of talabana Case remanded LALA PRASADI LAL v LALA AMBIKA PRASAD 3 B L R Ap 25

S.C. PURSHADEE LALL v UMBIKA PERSHED LALL 11 W R 290

2 ——— Substituted service—*Native woman of rank* Where by the custom of India the re pondent being a Hindu woman of rank could not be per onally erved with an order of revivor the Judicial Committee allowed service to be sub stituted on her dewan or chief servant CLARK v POUPLAL MULLICK. CLARK v DOORGAMONEY DOSSEE 2 Moo I A 263

3 ——— Sufficiency of service—*Act VIII of 1859 s 39—Service of prohibitory order Sufficiency of* Where ervice of the prohibitory order was effected by affixing it to the wall of the dwelling house of the person on whom it was in tended to serve it —*Held* it was not a sufficient service under s 239 of Act VIII of 1859 It ought to have been served by delivery or by registered letter GOBIND CHUNDER DUTT v KHERODE CHUNDER MITTER 10 B L R Ap 12

4 ——— *Attachment—Private alienation* Where an attachment of land was made by written order under s 235 of Act VIII of 1859 the conditions in s 239 had to be fulfilled in order to render any private alienation of the property attached null and void under s 240 INDRA CHUNDRA BABU v AGRA AND MASTERMAN S BANK 1 B L R S N 20

S C. INDRO CHUNDER BAPOO v DUNLOP 10 W R 264

NUR AHMAD v ALTAF ALI I L R 2 All. 58

5 ——— *Service on attorney s clerk* Service upon an attorney s clerk of an order direct to be served upon an attorney is not good service EMRITLALL SALIGRAM v KIDD 2 Hyde 116

6 ——— *Service on pleader —Order under s 165 Civil Procedure Code 1859* An order under s 165 of the Civil Procedure Code requiring a party to a suit to attend and give evid ence might be served on such party s pleader and not nece sarily personally SHIVRUDRAPPA v KASHINATH VISHNU 6 Bom. A C 141

7 ——— *Service of notice*

[illegible]

8 ——— Service in foreign territory —*Service of notice of appeal—Civil Procedure Code*

PROCESS—*concld*

1859 s 60 Where a respondent resides in Chandernagore i e out of British territory the summons or notice of appeal should be forwarded to him by post under a registered cover and if he does not appear a verified statement should be put in to show that he is at present or has recently been residing there SONATUN BUKSHEE v GOPAL CHUNDER SHAMUNTO 15 W R 31

9 ——— Fresh notice application for —*Failure for long time to serve notice of appeal—Sufficiency of service* Where an appellant failed for twelve months to serve notice of appeal upon his respondent the Court refused to allow him the opportunity to have a fresh summons issued and served Where the party serving a notice of appeal finds the respondent abs nt from home and is told where he is and yet affixes the notice to the door of his hou e such servi e is void and of no effect DOOLEE CHUND v NIRBAN SINGH 20 W R 62

10 ——— Inability to trace party for

[illegible]

analogy to the procedure in respect to summons under s 57 of the Code of Civil Procedure BEDHOO KOOLANEE v BONOMALEE GURAIN 11 W R 496

11 ——— Proof of service—*Return of service of notice* The return of service of notice with the name of the officer who effected the service on the back of it is *primâ facie* evidence of the service of the notice LOOTF ALI v ABOO BIBEE 15 W R 203

MOOKOONDONATH BHADOORY v SHIB CHUNDER BHADOORY 19 W R 102

12 ——— Service of notice of appeal —*Civil Procedure Code 1882 ss 79 80 8 —Respondent s refusal to sign acknowledgment of service—Ex parte decree against respondent* Where a re spondent refused to sign the acknowledgment of service endorsed on the original notice of the appeal and the serving officer instead of affixing a copy of the notice on the outer door of the house in which the respondent was residing returned the notice to the Court with an affidavit stating the respondent s refusal to sign the acknowledgment

[illegible]

PROCESSION

——— in highway—

See PUBLIC ROAD HIGHWAY STREET OR THOROUGHFARE I L R 26 Mad. 376

See RELIGION OFFENCES RELATING TO I. L. R 26 Mad. 554

PROCESSION—*contd*

——— in public road—

See JURISDICTIONS OF CIVIL COURT—PROCESSIONS I L R 24 Calc 524
I L R 16 Bom 693

See PUBLIC STREET
I L R 32 Mad 478, 527

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY 1 Mad 50
I L R 2 Bom 457
I L R 5 Mad 304
I L R 6 Mad 203
I L R 18 Bom 693
I L R 24 Calc 524

——— powers of police in dealing with—

See MADRAS POLICE ACT s 21
I L R 17 Mad 37

——— *Public worship of idol—Claim to exclusive right to have procession in*

Presumptive dedication to idol The plaintiffs members of the community of the Vadagalai sect of Vaishnava Brahmins claimed the exclusive right to public worship of their idol and processions in its honour in the public streets of the village where they resided and to prohibit the defendants members of the Tengalai sect in the same village from publicly worshipping the Tengalai idol or

streets formed subject to the reservation that no worship or procession of a Tengalai idol should be allowed in them thus dedicating them to their own idol (u) that in the alternative they had by

of the village by the Vadagalais was not proved nor any dedication of the streets exclusively to their idol and that no such custom as alleged had been establishe[illegible]

under th[illegible]

V of 18[illegible]

the public had an equal right in them If the Vadagalais had any objection to the streets being so vested they had had the opportunity when the Act was passed of raising the objection by appeal to the Governor General in accordance with the provisions of the Act Not having done so it was now too late to set up any claim *Held also that the former sui[illegible]* [illegible] ing property binding the T[illegible] suit against certain persons alleged to be wrong

doers in their individual capacity the decision in it was therefore not *res judicata* in the present suit SADAGOPA CHARIAR v KRISHNAMOORTHY RAO (1907) I L R 30 Mad 185
L R 34 I A 93

PROCLAMATION

See ABSCONDING OFFENDER
I L R 29 Calc 417

See CIVIL PROCEDURE CODE, 1882 s 287

See FORFEITURE OF PROPERTY
2 Ind Jur N S 124

See SALE 8 C W N 686

——— of sale—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY—GENERAL CASES

——— right of Government to withdraw—

See FOREST ACT ss 75 AND 76
I L R 18 Bom 670

——— *Change of jurisdiction—Sambalpore—Jurisdiction of High Court to entertain appeal—Authority of the Governor General in Council to transfer a territory to the jurisdiction of the High Court from that which was not under the jurisdiction of a High Court—Proclamation under Statute 28 & 29 Vict Chap 15* *Held* that the Proclamation No 2833 issued by the Governor General in Council on the 1st September 1905

Vict Ch 15 to issue this proclamation so as to transfer a portion of the territory originally comprised within the jurisdiction of the Court of the Judicial Commissioner of the Central Provinces and place it within the jurisdiction of the High Court BALESHWAR BAGARTI v BHAGIRATHI DASS (1908) I L R 35 Calc 701
s c 12 C W N 657

PRODUCTION OF DOCUMENTS

See CIVIL PROCEDURE CODE 1882 ss 138 139

See CONTEMPT OF COURT—PENAL CODE s 175 I L R 13 Mad. 24

See INTERROGATORIES
I L R 23 Calc 117

See PLAINT—REJECTION OF PLAINT
2 Bom 391 2nd Ed. 369

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS

1. ——— Summons to produce document—*Civil Procedure Code 1859 ss 159 152—1882 ss 163 164—Verbal order to pleader to pro-*

PRODUCTION OF DOCUMENTS—contd

duce A written summons distinctly describing the nature of the document required must be issued on a party to a suit required to produce a document A verbal order to his pleader is not sufficient and is not such a summons as is contemplated by law DOORGAMONEE DOSSEE v BENODE MONEE DOSSEE W R 1864 164

2 ——— Production of documents with plaint—*Ground for non production* Plaintiffs must on the presentation of their plaint produce in Court the originals of the document relied on by them in support of their claim When a plaintiff can satisfy the Court at the hearing that some document on which he desires to rely was not presented with the plaint because he was ignorant of its existence at the time the Court will probably allow it to be received as evidence CAMPBELL v KEITH 1 Hyde 287

s c PITCHIE STEWART & Co v GLADSTONE WYLLIE & Co 1 Ind Jur O S 125

See MAHABEER DOSS v LALLA DOSS 1 W R 12

3 ——— *Civil Procedure Code 1859 s 39* Under s 39 of the Civil Procedure Code 1859 the plaintiff was bound to produce at the time the plaint is filed all the documents on which he relied. PREMSOOKH CHUNDER v RAJ KISTO MITTER 1 Hyde 145

s c. ANONYMOUS 1 Ind Jur O S 14

4. ——— Where a plaintiff sues upon title deeds as evidence of his claim he is bound to file them with his plaint or else have them ready to produce at the time of the first hearing otherwise he is bound to show good cause for not having done so LEKHRAJ ROY v MUTTY MADHUB SEN 14 W R 95

5 ——— *Civil Procedure Code (Act XIV of 1882) ss 58 6 63 64—Rejec* [illegible]

plaint was presented and was numbered and [illegible]

with the books whereupon the Subordinate Judge rejected the plaint holding that no summons could be issued unless the copy extract annexed to the plaint was found to be correct *Held* (reversing [illegible]

which the plaintiff incurred for not producing his original accounts was that prescribed in s 63 viz not being able to put in that account without the special leave of the Judge GOPAL GUNDAPA NAIK v VISHNU KRISHNA NAIK I L R 22 Bom 971

6 ——— *Civil Procedure Code 1859 s 39—Document given to witness to refresh his memory* A document given to a witness as a script to refresh his memory is not received in evidence within the meaning of s 39 of Act VIII of 1859 and need not therefore have been produced when the plaint was filed RAMJI MADAUJI v PANGAYYA CHETTI 1 Mad. 168

7 ——— *Civil Procedure Code 1859 s 39* The plaintiff sued to recover certain jewels and one of her witnesses being examined by her counsel with reference to a list of the jewels which was in his possession the defendant s counsel objected to the document being referred to at all as it had not been filed with the [illegible]

of the case KAMENEE DOSSEE v HURROMONEY DOSSEE Bourke O C 91 Cor 151

MANOORAM SHAW v HURRYPERSAUD ROY Bourke O C 162

8 ——— *Civil Procedure Code (Act XIV of 1882) ss 59 140—Madras High Court Rules Nos 39 43 44 and 47* A defendant is entitled under the High Court Rules to be furnished with a copy of documents sued on which are deposited with the plaint MAHOMED ABDUL AZIZ v SUBBA NAIDU I L R 21 Mad 490

9 ——— *Discretion to receive documents after filing of plaint* Act VIII of 1859 gave a discretionary power to receive documents after the filing of the plaint LOPEZ v DRIBERG W R 1864 Act X 67

10 ——— *Reception of documents after filing of plaint—Ground of appeal* Pe[illegible]

been tendered with the plaint GOSAIN TOTA RAM v RUKINIBALLAB 3 B L R. P C 34 12 W R P C 32 13 Moo I A 77

ATTA OOLLAH MUNDLE v SUKEEOODDEEN TURUPDAR W R 1864 271

11 ——— *Civil Procedure Code 1882 ss 59 6— Appeal—Rejection of docu* [illegible]

had not recorded any reason for admitting them.

PRODUCTION OF DOCUMENTS—*contd*

Held that as the documents had been admitted in evidence by the lower Court the Appellate Court was bound to consider them MINAKSHI v VELU
I L R 8 Mad 373

12 ———————— *Civil Procedure Code 1882 ss 59 63* *Held* that the refusal to admit in evidence a registered certificate of sale under s 63 of the Code of Civil Procedure 1882 on the ground that it had not been produced with the plaint as required by s 59 of the Code was improper there having been no doubt of its existence at the date of suit DEVIDAS JAGJIVAN v PIRJADA BEGAM
I L R 8 Bom 377

13 ———————— *Second certificate of sale obtained after first rejected as unregistered* *Quære* Whether where the original certificate of sale had been rejected by the Court as being unregistered and the plaintiff had obtained a second one the Court of first instance ought to have received the second one in evidence if issued and tendered in evidence subsequently to the filing of the suit but previously to the original hearing LALBHAI LALHMIDAS v KAMULUDIN HUSEN KHAN
12 Bom 247

14 ———————— *Omission to put copy on record* In a suit brought on a promissory note where the note was produced when the plaint was presented and was marked by the officer of the Court but the Judge at the hearing refused to receive it when tendered in evidence because he found that there was no copy of the note among the papers and the plaintiff s counsel was unable to explain the omission and there being no application made to withdraw the suit was dismissed —*Held* that the Judge ought to have received a note in evidence which was produced in Court by the plaintiff when the plaint was presented (s 39 of the Civil Procedure Code 1859) that the plaintiff s counsel was not bound under the circumstances to apply to withdraw the suit and the Judge was not justified in dismissing the suit which was accordingly remanded under s 351 of the Code with a direction that it should be restored to its original place on the register and be tried by one of the Judges of the Court THOMPSON v JEHANGIR HORMASJI
3 Bom O C 66

15 ———————— *Dismissal of claim for non compliance with Civil Procedure Code* The Judges decision disallowing a claim because the provisions of s 39 of Act VIII of 1859 had not been complied with was held to be incorrect under the circumstances *Ex parte* PAYACHAND AMICHAND
2 Bom 369

16 ———————— *Civil Procedure Code s 1 4—Court s jurisdiction to punish a witness for refusing to produce a document—Procedure —Indian Penal Code (Act XLV of 1860) s 175—Criminal Procedure Code (Act X of 1882) s 480* A witness was summoned to produce a document in Court in connection with a certain suit He attended the Court but did not produce the document stating on oath that it was not in his possession But his statement was disbelieved and the Court fined him R75 under s 1.4 of the Code of Civil Procedure (Act XIV of 1882) *Held* that the fine was illegally levied The jurisdiction of the Court to punish under s 374 of the Civil Procedure Code exists only in the case of a witness who n having attended on summons has been arrested and brought before the Court The case of a witness who having a document will not produce it is provided for by s 175 of the Penal Code (Act XLV of 1860) and s 480 of the Code of Criminal Procedure (Act X of 1882) *In re* PREMCHAND DOWLATRAM
I L R 12 Bom. 63

PRODUCTION OF PROPERTY.

See PROPERTY

———————— *Criminal Procedure Code (Act V of 1898) ss 94 96 517 5?—Security required for production of ornaments—Penal Code (Act XLV of 1860) s 401 Executive order* When a Magistrate thinks that there are in a person s possession articles in respect of which some criminal offence has been committed he should in order to secure their production proceed under s 94 or 96 or any other appropriate section of the Criminal Procedure Code No section of the Code enables him to demand security from the person in possession of the articles for their production when required Where on a complaint made by one *BM* the Magistrate ordered a preliminary inquiry into it by a Subordinate Magistrate and after receiving that report passed an order to the following effect *PB* is to exe u e a surety bond to the extent of R400 and to hold the ornaments in deposit with him as trust and to produce them when required In the meantime the complainant should have his claim proved by a competent Court *Held* that the order having been made in a matter which had come before the Magistrate in his judicial capacity could not be regarded as an executive order merely and that as a judicial order it was made without jurisdiction *Held* also that if the Magistrate did not think fit to take proper steps under the law to secure the production of the property before the Court the only course which was open to him when the [illegible] Court was to [illegible] s as it [illegible] ody of [illegible] ANDRA [illegible] 903) BANDOPADHYA v SASI BHUSAN MULLICK
7 C W N 523

PROFESSIONAL MISCONDUCT

See ADVOCATE **I L R 33 Calc. 151**

See MOOKTEAR.

See PLEADER.

PROMISSORY NOTE—*contd*

——— assignment of—

See ATTORNEY AND CLIENT
I L R 36 Calc 493

——— issue of—

See COMPANY—POWERS DUTIES AND LIABILITIES OF DIRECTORS
1 B L R O C 14

——— payable by instalments—

See LIMITATION ACT 1877 SCH II ART 75

——— payable on demand—

See CONSIDERATION 7 Bom. O C 9

See INTEREST—CASES UNDER ACT XXXII OF 1839 1 B L R O C 41

See LIMITATION ACT 1877 ART 73 (1871 ART 72)

——— registered under s 52 Act XX of 1866—

See MERGER 1 B L R O C 35

——— suit on—

See ASSIGNMENT OF CHOSE IN ACTION
1 Mad. 150
4 Mad 176
I L R 1 All 732

See ATTORNEY AND CLIENT
I L R 28 Calc 595

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE
I L R 17 Mad 108

See COMPANY—WINDING UP—DUTIES AND POWERS OF LIQUIDATORS
I L R 18 Mad. 498

See CONTRACT—WAGERING CONTRACTS
I L R 22 Bom 899
I L R 29 Calc 461

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—GENERALLY
I L R 20 Mad 84

See CONTRIBUTION SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR
I L R 26 Mad 322

See HINDU LAW I L R 28 All 288

See HUSBAND AND WIFE
8 B L R 372

See INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE
I L R 30 Calc 446

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS I L R 24 Mad 259

See LETTERS OF ADMINISTRATION
I L R 17 Mad 147

PROMISSORY NOTE—*contd*

——— suit on—*concld*

See MAJORITY ACT s 3
I L R 17 Calc 944
8 C L R 419
I L R 21 Bom 281

See NEGOTIABLE INSTRUMENTS—SUMMARY PROCEDURE ON

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND I L R 3 Calc 539

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS I L R 30 Calc 827

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS I L R 17 Mad 20[illegible]

1 FORM OF

1 ——— Document without express promise to pay A document is not a promissory note if it does not contain an express promise to pay GOVIND GOPAL *v* BALWANTRAO
I L R 22 Bom 986

2 ——— Document proposing to borrow on certain conditions—*Stamp Act 18[illegible]* —*Proposal* —*Contract Act (IX of 18[illegible]2)* [illegible] A letter containing a request to borrow a certain sum of money promising that the same should be repaid [illegible]

[illegible]

NARAYANASAMI MUDALIAR *v* LOKAMBALAMMAL
I L R 23 Mad. 156 note

3 ——— Acknowledgment The plaintiff sued on two documents, signed by the defendant in one of which a sum of R203 was stated to be due to you and payable on the 16th July and in the other a sum of R515 was mentioned for which I give you this writing, the whole amount of which will be paid up in full on the 3rd of August. *Held* to be not mere acknowledgments but promissory notes. MANICK CHUND *v* JOMOONA DOSS
I L R 8 Calc 645

[illegible] agreement. *Held* [illegible]

a promissory note [illegible] promise to pay at Allahabad to the manager of the Agra Savings Bank Limited the sum of R10 on or before the 15th day of October 1876 and a similar sum monthly every succeeding month for full value and consideration received dated the 5th September 1876 CAPTER *v* AGRA SAVINGS BANK
I L R 5 All 582

5 ——— Promissory note payable to bearer on demand —*Note payable who ever dhani (i e the owner) may demand—Dhani note equivalent to bearer —Not a negotiable instrument—Paper Currency Act (XX of 18[illegible]) s [illegible]—Negotiable Instruments Act (XXVI of 1881) ss [illegible] and 13* The plaintiffs brought a suit on an alleged

PROMISSORY NOTE—*contd*

1 FORM OF—*contd*

promissory note of the defendants for R2 125 The note was in Gujarati in the form of an account on a loose sheet of paper After reciting that the defendant had borrowed the said sum of R2 125 on personal security and that interest was to run there on at a specified rate the document continued as follows The same (i e the sum borrowed with interest) are payable whenever *dhani* (the owner or lender) may demand payment thereof The defendant contended that the note in question was in form one payable to bearer on demand and as such illegal and void as being in contravention of the provisions of s 25 of the Paper Currency Act (XX of 1882) *Held* that *dhani* was not in the ordinary or the commercial language of the Bombay Presidency equivalent to bearer in the sense

former Act and there was no objection to a suit founded upon it JETHA PARKHA *v* RAMCHANDRA VITHOBA I L R 16 Bom. 689

6 ——— Proposal for a loan—*Contract Act (IX of 18)* s —*Stamp Act* s 3 A letter reciting a request for a loan calling on the addressee to pay the amount to the bearer of the letter and continuing this sum I shall repay with interest and get back this letter I request you will not neglect to pay the amount on the strength of this letter is a promissory note and not a mere proposal for a loan CHANNAMMA *v* AYYANNA I L R 16 Mad. 283

7 ——— Negotiable Instruments Act

executed on by to /
The amount which I have this day received from you in cash is R 00 This sum I am bound to pay you Therefore adding to this sum interest at 8 annas per cent per mensem I am liable to pay This is the account in this manner executed with my consent *Held* that the document was not a promissory note and was admissible in evidence TIRUPATHI GOUNDAN *v* RAMA REDDI

I L R 21 Mad. 49

8 ——— Contract or obligation A promissory note was held to be a contract or obligation under s 16 of the Registration Act of 1864 for the purposes of limitation PYARI CHAND MITTER *v* FRAZER 6 B L R Ap. 40

s c OFFICIAL ASSIGNEE *v* FRAZER
14 W R O C 51

S c LESLIE *v* PUNCHANUN MITTER
6 B L R 668
15 W R O C 1

9 ——— Necessity of delivery of note —*Making of note* The making of a promissory note is altogether the act of the maker and delivery to the promisee is requisite to render it complete WINTER *v* ROUND 1 Mad 202

2 EXECUTION

——— Evidence as to execution—*Probabilities* Case in which it was held on the evidence and a discussion of surrounding probabilities that the first Court was in error in finding that a promissory note sued on had been executed by the defendant HURRICHURN BOSE *v* MONINDRA NATH GHOSE L R 19 I A 4

3 CONSIDERATION

1 ——— Note given in payment of loss on wagering contract—*Act XXI of 1848* —*Bom Act III of 1865* A promissory note which

2 ——— Note given partly for balance of bets and lotteries —*Lottery Act (V of 1844)* The defendant agreed with the plaintiff to take the plaintiff s mare Bridesmaid on racing terms —all winnings to be divided equally between them and the plaintiff to have the option of claiming a one fourth share of any lottery in which she might be bought by or on account of the defendant the plaintiff to keep and train Bridesmaid for R60 a month Subsequently the plaintiff agreed to keep and train for a like sum for each horse five horses belonging to the defendant The defendant having been posted as a defaulter the plaintiff at the defendant s request advanced certain sums to the Secretary of the Calcutta Races to enable the defendant s horses to run As

vertised the horses for sale On the same day the defendant wrote and gave to the plaintiff a letter stating that in consideration of the plaintiff s withdrawing the advertisement and withholding the sale for a certain period he would give the plaintiff a promissory note for the balance of his claim. A

headed cash received from the Secretary of the Calcutta Races balance of racing account and under which was included the following I O U deducted from lottery account On receiving information of the error the defend

PROMISSORY NOTE—contd

3 CONSIDERATION—concld

ant gave the plaintiff another promissory note for R744 In an action on the notes brought under Act V of 1866 the plaintiff obtained a decree which was set aside on the defendant's application and leave was given to him to appear and defend Written statements were then filed on the plaintiff's application *Held* by MACPHERSON J that the two promissory notes were given as security for the whole of the plaintiff's claim that the items for balance of bets and lotteries and for the Secundra Raffle being rendered illegal by the Lottery Act (V of 1844) part of the consideration for the notes was illegal and no action was maintainable upon them His Lordship therefore dismissed the plaintiff's suit On appeal held by COUCH C J that the promissory note for R7 000 was not vitiated by the R1 149 being part of the consideration for it although that portion of the latter sum which was won by lotteries was obtained by an illegal transaction it was not illegal for the defendant to receive the money and having done so to pay the plaintiff his share or to promise to do so But the money paid in respect of the Secundra Raffle being money paid in execution of an illegal purpose was an illegal consideration which did entitled the plaintiff to recover on the note *Held* further that the note for R744 was given upon good consideration All the facts of the case being stated in the plaintiff's written statement the Court might allow the plaint to be amended and frame an issue as to what amount was due to the plaintiff in respect of the consideration for the note for R7 000 *Held* by MARKBY J that

a separate agreement JOSEPH v SOLANO
9 B L R 441 18 W R 424

3 ——— Promissory note on account of pre existing loan—*Action maintainable on original consideration even if note unstamped and inadmissible* Where a bill or note is not itself the original contract but is executed on account of a pre existing independent obligation complete in itself an action on the original obligation is maintainable without regard to such bill or note if it is not paid at maturity provided the party taking the bill or note has done nothing with it which would render the debtor liable on it to third parties

Sheikh Akbar v Sheikh Khan I L R 7 Calc 256 followed *Pothi Reddi v Velayudasivan I L R 10 Mad 94* distinguished YARLAGADDA VEERA RAGAVAYYA v CORANTLA RAMAYYA (1905)
I L R 29 Mad 111

4 ASSIGNMENT OF AND SUITS ON PROMISSORY NOTES

1 ——— Endorsement to a third person for purpose of allowing him to sue

PROMISSORY NOTE—contd

4 ASSIGNMENT OF AND SUITS ON PROMISSORY NOTES—contd

—*Assignment of negotiable instrument* There is nothing illegal in the true holder of a promissory note endorsing it to another person with the express object of allowing him to sue upon it RAMLAL MOOKERJEE v HARAN CHANDRA DHAR
3 B L R O C 130 12 W R O C 9

2 ——— Benami transaction—*Right of benamidar to sue on note* The payee and holder of a promissory note is not debarred from suing on it by reason of the fact that a third person is really interested in it BOJJAMMA v VENKATARAMAYYA
I L R 21 Mad 30

3 ——— *Minor's suit by another next friend—Right to sue on note not*

dorsed the note *Held* that the suit ... able in the absence of an endorsement CTRUMUPTI v SIVAYYA I L R 21 Mad 391

4 ——— Assignment of promissory note by endorsement—*Negotiable Instruments Act (XXVI of 1882) s 8—Right of suit—Benamidar* An endorsement legally made of a promissory note followed by delivery of it to the endorsee makes him the holder of it within the meaning of s 8 of the Negotiable Instruments Act and he can sue upon the note although he may be a benamidar of the real owner of the note SARAT CHUNDER DUTT v KEDAR NATH DAS
2 C W N 286

5 ——— Suit by endorsee against maker—*Endorsement of overdue note* In a suit by endorsee against the maker of a promissory note payable on demand the defence was that there were dealings in skins between the defendant and the ... and an agreement was made by which the ...

sory note sued on was made and ... the money and as ...

showed a balance in favour of the ... notice to the plaintiff of these facts was alleged ... two years and although the ... the plaintiff ... the note and ... then state of ... e defendant ... MEERAH
7 Mad 271

SAIB

6 ——— Endorsement of note overdue—*Note on demand—Re endorsement* Before a promissory note on demand can be treated as overdue in the hands of an endorsee there must be some evidence of demand The re-endorsement of a dis

PROMISSORY NOTE—*contd*

4 ASSIGNMENT OF AND SUITS ON PROMISSORY NOTES—*contd*

charged promissory note cannot revive the liability of the maker *Commundun Moh i en Sa? v Oree Veerah Sa? Mad [illegible]* followed The fact that the endorsee of a promissory note becomes one of the members of a firm which has undertaken to discharge the liability created by the maker of the note does not discharge the obligation on the note so as to invalidate re-endorsement for value VAN INGEN v DHUNNA LALL LALLAH

I L R 5 Mad 108

7 ———— **Receipt endorsed on note**—*Presumption of payment* Though a receipt on the back of a bill of exchange or promissory note *prima facie* imports that the bill or note has been paid yet the receipt is capable of being explained and if it appears that the bill or note has not been paid and that another bill or note was substituted for it the Court will not be justified in concluding that the party who gave up the note in that way meant that the debt secured by the note was to be considered to have been paid. STEWART v DELHI AND LONDON BANK

17 W R 201

8 ———— **Suit to recover money due on a promissory note by assignee of rights of payee not being endorsee**—*Negotiable Instrument Act 1881 ss 8 9* K executed a promissory note on demand for Rs 000 in favour of *S* in 1882. In 1884 S by an agreement in writing assigned all her property including the promissory note to *M* but did not endorse over the promissory note to *M* *M* assigned his rights in the promissory note to a bank in payment of a debt In a suit by *M* and the bank against K and S to recover the principal and interest due on the note —*Held* that the plaintiffs could not maintain the suit LATTAT AMBADI MARAR v KRISHNAN

I L R 11 Mad 290

9 ———— **Suit by assignee by invalid endorsement**—*Claim also on the original debt in respect of which note was given*—*Maintainability of suit* The purchaser of the assets of a bank in liquidation which assets included a debt due by defendants to the late bank and a promissory note given in respect of that debt sued defendants on the promissory note as well as on the original debt in respect of which the note had been given The note had not been endorsed until after the bank had been wound up and had ceased to exist and the endorsement had been held to be invalid *Held* that plaintiffs were entitled to sue for the original debt even though they were not entitled to sue on the promissory note *Jothi R ldi v Velayudasivan I L R 10 Mad 94* referred to RAMACHANDRA RAO v VENKATARAMANA AYYAR

I L R 23 Mad 527

10 ———— **Bill of exchange**—*Endorser of note or bill rights of*—*Right to securities deposited* [illegible]

is entitled to the benefit of the securities given by the maker in the one case the acceptor in the other which the holder has in his hands at the time of the payment and upon which he has no claim except for the note or bill *Duncan Fox & Co v North and South Wales Bank L R 6 Ap Ca 1* referred to Promissory notes made by an agent acting for himself and for his principal were secured by the deposit of title-deeds of property belonging to the principal in the hands of a bank which discounted the notes, and the latter were paid at maturity by an endorser *Held* that the endorser was entitled to a transfer of the deeds to him as security without further assent from the owner *Held* also that he was entitled to have them transferred to him on the ground that as a fact the agent acting within the principal s authority had agreed that in consideration of his paying the amount of the notes to the holder he should have this security the bank assenting AGA AHMED ISPAHANI v CRISP I L R 19 Calc 242

L R 19 I A 24

11 ———— **Liability of maker discharge of**—*Failure to present note at due date* *Semble* The maker of a promissory note is not discharged by the holder s failure to present it at due date RAMAKISTNAYYA v KASSIM

I L R 13 Mad 172

12 ———— **Promissory note not presented for payment at maturity**—*Negotiable Instruments Act (XXVI of 1881) ss 64 66*—*Effect of non presentment* *Held* that the non presentment for payment at maturity of a promissory [illegible] -ed by s 66 [illegible] has not [illegible] maker of [illegible] *Bank All* [illegible] *stnay a v Kassim I L R 13 Mad 172* followed PHUL CHAND v GANGA GHULAM I L R 21 All 450

13 ———— **Effect of an invalid endorsement of a promissory note by payee**—*Negotiable Instruments Act (XXVI of 1881) s 46*—*Note recovered by but not re endorsed to the payee.* The defendant gave plaintiffs a promissory note payable on demand The plaintiff endorsed the note to a third party a creditor of his who sued the defendant on the note on his refusal to pay the defendant pleaded that it had been agreed between the payee and himself that the note should not take effect until the payee had performed certain conditions which remained unperformed The suit was accordingly dismissed The plaintiff thereupon paid the endorsee and took back the note which however was not re indorsed and instituted [illegible]

PROMISSORY NOTE—*contd*

4 ASSIGNMENT OF AND SUITS ON PROMISSORY NOTES—*contd*

to order on demand passes by endorsement and delivery (Act XXVI of 1881 s 46) the endorsement in this case had been declared invalid in the ... must therefore be treated as ... rty in the note ... ate of the suit MARIMUTHU PILLAI v KRISHNASAMI CHETTI I L R 17 Mad 197

... ment by payee of all ...

I L R ... Mad ...

15 ———— Contemporaneous collateral agreement ... onsistent with the terms of the promissory note—*Right of suit under Ch XXXIX Civil Procedure Code* The plaintiffs advanced money to defendant for the supply of certain goods On defendant s failure to supply the ... for repayment and a pro ...

... cedure Code *Held* that the suit ... that the agreement to liquidate the amount due by fortnightly consignments ... with the ... pro ... t was ... and ... IMON ... 368

16 ———— Promissory note by member of an undivided Hindu family—*Liability of other member—Negotiable Instruments Act (XXVI of 1881) ss 4 26 27* The maker of a promissory note (executed in plaintiff s favour) being a ... had bor ... the ... nefit ... aker ... The ... uncle had always recognized the debt as a family debt and the land purchased with the money bor ... division of property ... ad also ... would ... against ... and his ... HMANIA

AYYAR JJ (DAVIES J dissenting) that all the members of the undivided family were liable *Per* ... that the ...

... property ... Whether ... ct Act ... a nego ... s own ... he suit ... which ... r mem ... able as ... nd that ... se of a ... the latter represented them ... no such ... he persons ... on the face ... of only one person appears on a promissory note and he does not purport to make it on behalf of any one but himself none but the maker can be held liable to discharge it KRISHNA AYYAR v KRISHNASAMI AYYAR I L R 23 Mad 597

17 ———— Endorsement—*Negotiable Instruments Act (XXVI of 1881) s 51—Promissory note in favour of two payees—Endorsement by one in favour of the other—Suit by endorsee as such—Maintainability—Suit by endorsee as assignee of chose in action—Endorsement evidence of assignment* Where a promissory note has been made in favour of two payees one of whom endorses it to the other the endorsee cannot sue on the note as endorsee or as one of two joint payees He may however maintain a suit in respect of the amount due under the note as assignee of the chose in action Though such an endorsement cannot operate as an endorsement under the law merchant it may be relied on as evidence of an assignment by way of release in favour of the endorsee Rule 428 of the Rules of Procedure of the Presidency Small Cause Court is not ultra vires MUHAMMAD KUMARHALLY v PANGA RAO (1901) I L R 24 Mad 654

18 ———— False or forged note—*Debt ... Promissory note false or forged ... roof of loan* ... r recovery of ... efendant had ... money ... executing a note taken from the plaintiffs a loan ... in favour of one of the plaintiffs —*Held* that even if the promissory note be a forgery the plaintiffs would succeed if they could prove the loan by independent evidence MOTI LAL SAHA v MONMOHAN GOSSAMI (1900) 5 C W N 56

PROMISSORY NOTE—contd

4 ASSIGNMENT OF AND SUITS ON PROMISSORY NOTES—contd

19 ———— Presumption of payment—*Presumption of payment arising from possession of note by debtor—Evidence rebutting presumption—Books of account kept in course of business—Evidence Act (I of 1872) s 34* In a suit on a promissory note where the note and the security for its payment were in the possession of the defendant — *Held* that under the circumstances of this case as shown by the evidence the *primâ facie* presumption that the note had been paid was rebutted Books regularly kept in the course of business can under the Evidence Act be used not only for the purpose of refreshing the memory of a witness but also as corroborative evidence of the story he tells LEKHRAJ KUAR v RAMANATHAN CHETTY (1902) I L R 29 Calc 334
s.c 6 C W N 401
L R 29 I A 43

20 ———— Collateral covenant not to sue for limited time no bar to suit on—*Indorsee with notice of covenant may sue* A collateral covenant not to sue for a limited time on a promissory note does not suspend the right of action on the note and cannot be pleaded in bar to an action on the note *Thimbleby v Barron 3 M & W 210* referred to and followed *Pay v Jones 9 C B P N 416* referred to and followed The payee of the promissory note executed an agreement in the following terms — You will ever from the 1st of May be paying interest to me on account of the (promissory) note for R5,000 executed this day by you in my favour the interest for every month being sent on the first of the next month. I shall take the above rupees five thousand from you after giving jivanam am (maintenance money) to my mother in law and obtaining a release bond or I will take the said rupees five thousand after the lifetime of my mother in law *Held* that this agreement was only a collateral covenant not to sue for a limited time and was no bar to an action by an indorsee with notice of the agreement SOMASUNDARAM CHETTIAR v NARASIMHA CHARIAR (1905)
I L R 29 Mad 212

PROOF

See BURDEN OF PROOF

See ONUS OF PROOF

———— of custom—

See HINDU LAW I L R 36 Calc 590

———— of deposition—

See DEPOSITION 13 C W N 409

PROPERTY

See ATTACHMENT—SUBJECTS OF ATTACHMENT

PROPERTY—contd

See CRIMINAL PROCEDURE CODE ss 517 520 I L R 27 All 630

See IMMOVEABLE PROPERTY

See JOINT PROPERTY

See MOVEABLE PROPERTY

———— at disposal of Government —

See RIGHT OF SUIT—PROPERTY AT DISPOSAL OF GOVERNMENT
I L R 19 Bom 668

See TREASURE TROVE.
I L R 19 Bom. 668

———— decreed to plaintiff order for production of—

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY ETC
3 N W 319

———— description of—

See REGISTRATION ACT s 21

———— disposal of—

See CONFISCATION I L R 34 Calc 986

———— divesting of—

See HINDU LAW—

ADOPTION—EFFECT OF ADOPTION

INHERITANCE—DIVESTING OF EXCLUSION FROM AND FORFEITURE OF INHERITANCE

WIDOW—DISQUALIFICATION—UNCHASTITY

See WILL—CONSTRUCTION
I L R 4 Calc 420
1 Ind. Jur N S 375
I L R 6 All. 583
I L R 15 Mad 448

———— found on accused—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE
I L R 30 Calc 690

See CRIMINAL PROCEDURE CODE s 517
I L R 24 Calc 499
1 C W N 438 561

———— in different districts—

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS

———— injury or obstruction to enjoyment of—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY

PROPERTY—*concld*

——— in the soil—

See Fishery right of 24 W R 200
W R 1864 63
I L R 9 Calc 183
I L R 10 Calc 50
1 W R 79
Marsh 334 2 Hay 568

See Ownership Presumption of
I L R 9 Mad. 175 285

See Sanad I L R. 1 Bom. 523

——— not in esse, pledge of—

See Stamp Act 1869 s 3
I L R. 2 Calc 58

——— on which duty has been paid in England—

See Court Fees Act Sch. 1, cl. 11
I L R. 4 Calc 725

——— on which there is a mortgage or incumbrance—

See Court Fees Act Sch. 1 cl 11
8 B L R Ap 43
6 N W 214
I L R. 1 Bom. 118

——— preservation of pending litigation—

See Execution of Decree—Stay of Execution 5 C W N 781

——— production of—

See Production of Property

——— restitution of—

See Criminal Procedure Code s 522
5 C W N 250

——— seized by police—

See Criminal Procedure Code s 523
I L R 17 Bom. 748
I L R 22 Calc 761

——— subject to a trust—

See Court Fees Act Sch. I Art 11
8 B L R. Ap 138
7 B L R 57
11 B L R Ap 39
14 B L R 184
I L R 20 Calc 575

——— Restitution of *order for*—*Execution of decree*—*Possession under decree*—*Reversal of decree*—*Restitution of property after reversal of decree*—*Mesne profits*—*Civil Procedure Code 1882 s 244* A Court reversing a decree under which possession of property has been taken has power to order restitution of the property taken possession of and with it any mesne profits which may have accrued during such possession Mookoond Lal Pal Chowdhry v Mahomed Sami Meah
I. L. R. 14 Calc. 484

PROPINQUITY

See Hindu Law—Inheritance
I L. R. 35 Calc. 721

PROPRIETARY RIGHT

See Boundary 8 W R. 343
9 W R. 428

——— exercise of—

See Contract—Breach of Contract
7 C W N 583

——— Proprietary right—*Mofussil Courts* ... *Legal and equitable rights to property* In mofussil ...

Khan v Ojoodhya Pam Khan Monsour ...
Khan v Ojoodhya Pam Khan 8 W R. 389

PROPRIETOR

See Babuana Grant 13 C W N 118

See Trespass I L. R 36 Calc 29

PROSECUTION

See Abatement of Prosecution
4 Mad Ap 55

See Criminal Procedure Code s 4.3

See Evidence concoction of
13 C W N 693

See Jurisdiction of Criminal Court
11 C W N 833

See Malicious Prosecution

See Sanction for Prosecution

——— commencement of—

See Complaint—Institution of Complaint and Necessary Preliminaries.

——— of witness—

See Defamation I L R. 29 All. 685

——— order for—

See Criminal Procedure Code (Act V of 1898) s 476
I. L. R. 34 Calc 551

——— revival of—

See Complaint—Revival of Complaint

See Criminal Procedure Code, s. 43

See Revision—Criminal Cases Discharge of Accused

See Revision—Criminal Cases—Revival of Complaint and Retrial

——— stale—

See Rioting 7 C W N 245 301

PROSECUTION—*concld*

——— withdrawal from—

See PUBLIC PROSECUTOR.
I L R 8 All 291

1. ——— Limitation—*Prosecution—Limitation—Calcutta Municipal Act (Bengal III of 1899) ss 408 419 574 and 631—Bustee improvement—Notice—Date of offence—Subsequent notice under s 419—Extension of time by Corporation* Where a notice under s 408 of the Calcutta Municipal Act was served on the owner of a *bustee* on the 3rd March 1906 directing certain improvements within three months from its date but the owner failed to comply with it and served a notice under s 419 of the Act on the 2nd July whereupon the Corporation gave her further time till the 2nd January 1907 and instituted a complaint on the 23rd January for non compliance with the terms of the notice of the 3rd March 1906 —*Held* that the three months having expired on the 2nd June 1906 the offence was committed on the next day and the prosecution was therefore barred under s. 631 and that the notice under s. 419 and the extension of time by the Corporation both being after the date of the offence were ineffectual in extending the period of limitation KUMUD KUMARI DASI *v* CORPORATION OF CALCUTTA (1907) I. L R. 34 Calc 909

2 ——— Jurisdiction—*Criminal Procedure Code (Act V of 1898) s 476—Prosecution for offence committed before predecessor in office—Practice.* The petitioner swore an affidavit making certain allegations against a peon in a suit pending in the Court of the Additional Munsif of *R* who ordered an enquiry On the transfer of that officer the suit was made over to the 2nd Munsif and the enquiry was continued by the 1st Munsif of the place who under s 476 of the Criminal Procedure Code ordered the prosecution of the petitioner for making a false affidavit *Held* that the affidavit having been filed before the additional Munsif the first Munsif had no jurisdiction to make the order *Begu Singh v Emperor I L R 34 Cal 551* followed *Ranga Ayyar v Emperor I L R 29 Mad 338* not followed KARTIK RAM BHAKAT *v* EMPEROR (1907) I. L. R. 35 Calc 114

3. ——— *Criminal Procedure Code (Act V of 1898) s 476—Penal Code (Act XLV of 1860) ss 114 119 193 and 210—Cognizance in the course of a judicial proceeding—Jurisdiction—Judicial proceedings—Execution proceeding* The powers conferred by s. 476 of the Criminal Procedure Code can only be exercised if the offence in respect of which a prosecution is ordered have come to the cognizance of the Court in a judicial proceeding Execution proceedings subsequent to the trial of a suit are not judicial proceedings. *Hara Charn Mookerjee v Emperor I L R. 32 Calc 367* followed *Begu Singh v Emperor I L. R. 34 Calc 551 Dharm adas Kamar v Sagore Santra 11 C W N 189* and *Emperor v Molla Fulla Karim I L R 33 Calc 193* referred to KANTO RAM DAS *v* COBARDHAN DAS (1907) I. L. R. 35 Calc 133

PROSECUTOR

See MALICIOUS PROSECUTION
I L R. 30 All 525
12 C W N 817

PROSPECTUS

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS
I. L R 1 Bom. 320

PROSTITUTE

See MAHOMEDAN LAW—GUARDIAN
I. L. R 1 All 598

——— suit for rent of lodgings let to—

See LANDLORD AND TENANT—TENANCY FOR IMMORAL PURPOSES
9 B L. R. Ap 37

——— adoption by—

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT
I. L R. 26 Bom 491
I L. R. 36 Calc. 824

——— removal of—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE—REMOVAL OF PROSTITUTES

1. ——— Registration of prostitutes—*Act XIV of 1868 ss 11 and 21—Jurisdiction of Magistrates to entertain pleas of irregularity in the registry—Possession of registry ticket* Under Act XIV of 1868 the police are not empowered to put a woman on the register of common prostitutes against her will The penalty prescribed by s 11 Act XIV of 1868 for disobedience of any of its rules is for a woman who voluntarily registers herself as a common prostitute A Magistrate has authority to hear any objection urged by a woman charged with disobedience of the rules under Act XIV of 1868 against the legality of her registry or that she is not a common prostitute The possession of a registry ticket is not sufficient evidence of being a common prostitute *In the case of* LAKHIMANI PAUR 3 B L. R A. Cr 70

s c. QUEEN *v* LUKHIMONEE RAUR
12 W. R. Cr 55

2. ——— *Act XIV of 1868 ss 11 21—Rules 13 and 7 passed under the Act—Magistrate Competency of—Jurisdiction* Any woman desirous of ceasing to carry on the business of a common prostitute is under the provisions of the Contagious Diseases Act 1868 absolutely entitled to have her name removed from the register and any rule or portion of a rule purporting to have been framed under the provisions of that Act which places any obstacle in the way of her doing so is *ultra vires* and therefore void. Where a woman is prosecuted before a Magistrate under s. 11 of Act XIV of 1868 she is not precluded from pleading that she has ceased to be a common prostitute and that she has taken steps under s. 21 and the rules framed thereunder for the removal of her name from the register and the Magistrate is

PROSTITUTE—concld

competent to entertain such a defence EMPRESS v NISTAR RAUR
I L R 6 Calc 163 7 C L R 197

PROSTITUTION

See HINDU LAW—INHERITANCE

———— obtaining possession or disposal of minor for purposes of—

See PENAL CODE ss 332 373

PROTECTED INTEREST

See BENGAL TENANCY ACT s 160
13 C W N 1025

PROTECTION OF JUDICIAL OFFICERS ACT (XVIII OF 1850)

———— s 1—

See TRESPASS I L R 36 Calc 433

PROTECTOR OF LABOURERS

See BENGAL ACT VI OF 1865
3 B L R A Cr 39

PROVIDENT FUND OF CORPORATION OF CALCUTTA

See ATTACHMENT I L R 35 Calc 641

PROVIDENT FUNDS ACT (IX OF 1897 AS AMENDED BY ACT IV OF 1903)

———— ss 2 (4) 4—*Compulsory deposit —Provident Fund—Contributions by a servant —Liability of the contributions to be attached on the servants leaving the Railway Company s service —Attachment—Civil Procedure Code (Act XIV of 1882) 278* The contribution which the employé of a Railway Company makes towards the Railway Provident Fund governed by the provisions of the Provident Fund Act (IX of 1897) is a compulsory deposit within the meaning of s 4 of the Provident Funds Act (IX of 1897 as amended by Act IV of 1903) The deposit does not cease to be compulsory when the employe leaves the service of the Company since it was not when made repayable on demand and was therefore at that time a compulsory deposit and having once acquired that character with the attendant consequences it continued to retain it A compulsory deposit of the above description does not become liable to be attached under s 268 of the Civil Procedure Code (Act XIV of 1882) on the subscriber s leaving the Company s service The expression compulsory deposit as used in the Provident Funds Act (IX of 1897 [illegible]

[illegible]

any contribution which may have been credited in respect of and any interest or increment which may have accrued on such subscription or deposit under

PROVIDENT FUNDS ACT (IX OF 1897 AS AMENDED BY ACT IV OF 1903)—concld

———— s 2—contd

the rules of the fund VERCHAND v B B & C I RAILWAY COMPANY (1905)
I L R 29 Bom 259

———— ss 2 (4) 4 6—

See ATTACHMENT
I L R 35 Calc 641

———— s 4—*Insolvent Debtors Act (11 & 12 Vict c 21) ss 7 30—Vesting order—Sum due to an insolvent from a Provident Institution—Right of Official Assignee to claim—Construction of Statutes —Distinction between enactments affecting vested rights and those regulating procedure* A member of a Railway Provident Institution who had made compulsory deposits therein became insolvent and the usual vesting order was made under s. 7 of the Act for the Relief of Insolvent Debtors By the rules of that Institution a member is to be paid on his retirement from service the sum of money standing to his credit At the date of the vesting order the insolvent had not yet retired from service Subsequently to the date of the vesting order but before the retirement of the insolvent the Provident Funds Act 1897 came into force s 4 of which [illegible] that Act [illegible]

[illegible] vident Fund On a claim being made by the Official Assignee to the amount on the ground that when the Act came into force the interest of the insolvent in the Fund had become vested in the Official Assignee *Held* that by s 4 of the Provident Funds Act all the right and title of the Official Assignee was determined as from the commencement operation of the Act and that its operation was not limited to cases where the vesting order had been made after its commencement The distinction between the construction of enactments affecting vested rights and those which merely affect procedure recognized *Javanmal Jitmal v Muktabai I L R 14 Bom 516* referred to Under s of the Insolvent Debtor s Act the right of the insolvent to be paid the sum standing to his credit in the fund on his retirement from service vested in the Official Assignee OFFICIAL ASSIGNEE OF MADRAS v DALGAIRNS (1902) I. L. R. 26 Mad. 440

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)

See CIVIL PROCEDURE CODE 1882 s 104
8 C W N 355

See CIVIL PROCEDURE CODE 1882 s 586
I. L. R 32 Bom. 560

See MUNSIF JURISDICTION OF
I. L. R. 20 Mad. 155

See SMALL CAUSE COURT MOFUSSIL

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—SUIT FOR CONTRIBUTION
I. L. R. 28 All. 293

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*contd*

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—DAMAGES
I L R 26 Mad. 176

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS

———— s 15—

See SMALL CAUSE COURTS MOFUSSIL—JURISDICTION—RENT
I L R 24 Mad 356

See VALUATION OF SUIT—SUITS
I L R 24 Calc 661

———— s 15 and Sch II Art 35 (j)—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT
I L R 25 Mad 540

———— s 16—

See MUNSIF JURISDICTION OF
I L R 19 Mad 477
I L R 26 Mad 212

See REFERENCE TO HIGH COURT—CIVIL CASES I L R 21 Calc 249

———— s 17—

See CIVIL PROCEDURE CODE 1882 s 108
2 C W N 693

———— ss 17 32—*Civil Procedure Code (Act XIV of 1882) s 203 paras (1) and (2)—Court invested with Small Cause Court powers—Decision—Reasons* The judgment of a Court invested with Small Cause Court powers need not contain more than the points for determination and the decision thereupon the practice and procedure of such Courts being determined in the matter of judgments by paragraph (1) of s 203 of the Civil Procedure Code (Act XIV of 188) *Ramchandra v Ganesh I L R 23 Bom 383* dissented from NARAYAN v BHAGU (1907)
I L R 31 Bom 314

———— s 18—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—GENERAL CASES I L R 25 Bom 528

———— s 23—

See MUNSIF JURISDICTION OF
I L R 23 Calc 425

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—TITLE QUESTION OF
I L R 25 Bom. 625
6 C W N 687

1 ———— *Exercise of power under s 23 gives Court jurisdiction to try suit as an original suit.* Where a question of title which a Court of Small Causes cannot finally determine is involved in a small cause suit the Court has discretionary power under s. 23 of Act IX of 1887 to return the plaint to be presented to a Court having

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*contd*

———— s 23—*concld*

such jurisdiction The latter Court thereupon ac

GANGAYYA (1906) I L R 29 Mad. 529

2 ———— ———— *Provincial Small Causes Court Act (IX of 1887) ss 23 and 25—Order returning a plaint under s 23 whether falls within s 25* The order of a Court of Small Causes under s 23 of Act IX of 1887 returning a plaint is not an order made in a case decided by the Court of Small Causes within the meaning of s 25 of the Act and therefore cannot be interfered with by the High Court under the powers conferred upon it by that section SUBAL RAM DUTT v JAGADANUNDA MAZUMDAR (1909) 13 C W N 403

———— s 24—

See APPEAL ORDERS I L R 15 Mad 89

———— s 25—

See DISTRICT JUDGE JURISDICTION OF
I L R 24 Bom 311

See JUDGMENT—CIVIL CASES—FORM AND CONTENTS OF JUDGMENT
I L R 13 All. 533

See LETTERS PATENT HIGH COURT N W P cl. 10 I L R 15 All 373

See REVISION—CIVIL CASES—SMALL CAUSE COURT CASES

———— ss 25 and 27—

See LETTERS PATENT HIGH COURT cl. 15 I L R 17 Mad 100
I L R 23 Mad 169

———— s 32—

See MUNSIF I. L. R. 26 Mad. 212

———— s 32 (2)—*Civil Procedure Code (Act XIV of 1882) s 646 B—Institution of a suit before a Munsif exercising Small Cause Court power up to a certain value—Trial by his successor invested with higher powers* Where a suit for recovery of a sum of R70 was instituted in the Court of a Munsif exercising Small Cause Court powers up to R 50 and subsequently during the pendency of the suit the Munsif was transferred and the substantive Munsif who succeeded him had powers of a Small Cause Court up to R100 —*Held* that the suit should be tried as if the powers of the Court remained the same as they were when the suit was instituted. MAHIMA CHANDRA SIRDAR v KALI MANDOL (1907)
12 C W N 167

———— s 33—

See SUBORDINATE JUDGE JURISDICTION OF I. L. R. 14 Bom. 371

———— s. 35—

See MUNSIF JURISDICTION OF
I L R 19 Mad. 445

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*contd*

——— s 35—*concld*

See TRANSFER OF CIVIL CASES—GENERAL CASES I L R 13 All 324
I L R 23 Bom. 382

——— *Application under to be made in Court having jurisdiction at time of application* Where a Court of Small Causes is abolished after having passed a decree the Court in which under s 35 of Act IX of 1887 proceedings are to be taken in respect of such decree is the Court in which the suit is instituted at the time of such application would have to be instituted Where the jurisdiction in such a case is to be determined by considering the place of residence of the defendant his residence at the time of the application is to be considered as his place of residence KURELLA CHENCHAYYA v POLISETTI SITAPAMASWAMY (1906)
I L R 30 Mad 217

——— Sch II cl (6)—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS
I L R 14 All. 30

——— Sch. II cl. (8)—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—RENT
I L R 24 Mad 356

——— Sch II cl 8 and ss 15 (*1*) 32—*Suit for recovery of rent of homestead land—Juris*

expression the Judge of the Court of Small Causes in clause 8 of the Second Schedule must be taken to apply either to a Court of Small Causes constituted under the Act or to a Court invested

——— cl (13)—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—IMMOVABLE PROPERTY
I L R 23 All 437

1. ——— *Dues to which a person is entitled by reason of his interest in a religious institution—Suit for a share of presents made to a religious institution—Maintainability* A suit by a member of religious association to recover his share of the voluntary payments made to the association is a suit within the meaning of Art 13 Sch 2 of the Provincial Small Cause Court Act for dues to which a person is entitled by reason of his interest in a religious institution and as such it is excepted from the cognisance of a Court of Small Causes *Mahadeo* v *Budhai Ram I L R 26 All 360* commented on BHAVADASAN v NARAYANA SOMAYAJIPAD (1905)
I. L R 28 Mad. 202

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concld*

——— cl. (13)—*concld*

2 ——— *Suit for account what is* A suit for an account within Art 31 of the Provincial Small Cause Courts Act does not mean every case in which accounts have to be looked into to ascertain the amount due to the plaintiff A suit for an account is a special form of suit in which a special process is required to take an account KONDURU RUNGA PEDDI v SUBBIAH SETTY AND KUMBAHALA SUBBAMMA (1905)
I L R 28 Mad. 394

——— cl (18)—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—TRUSTS
I L R 24 All 208
I. L. R 26 Mad 200 368

——— cl. (21)—

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD I. L R. 28 Calc. 935

——— cl (31)—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—

IMMOVEABLE PROPERTY

MESNE PROFITS

——— cl. (35) (j)—

See ante s 15 AND SCH II ART 35/j

——— cl. (35) (k)—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—ATTACHMENT
I. L R 26 Mad. 504

——— cl. (38)—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—MAINTENANCE
I L R 23 All. 495

——— cl (41) —

See CONTRIBUTION SUIT FOR
I. L. R. 30 Mad. 213

PROVOCATION

See CULPABLE HOMICIDE

See DAMAGES—SUITS FOR DAMAGES—TORT 6 C W N 915

See MURDER I. L. R. 28 Calc. 571

PROXY

See COMPANY—MEETINGS AND VOTING
I. L. R. 27 Bom. 113

——— *Company—Articles of Association—Meeting of shareholders to alter Memorandum of Association—Validity of votes given by proxy—Act VI of 1895* By a power-of-attorney dated 14th October 1881 some of the shareholders in the appellant Company appointed and authorized certain specified persons and all persons who at any time during the continuance of

PROXY—*concld*

these powers of attorney may be partners in the firm of Messrs Wallace & Co of Bombay however that firm may be constituted and in the absence from Bombay of all the said persons then the person or persons for the time being holding the procuration of the said firm and managing the said business to vote as proxy for them at meetings of the Company Art 60 of the Articles of Association of the Company provided that no person shall be appointed or have authority to act as a proxy who is not a shareholder in the Company At meetings in May and June 1902 the right of proxy was exercised by a person who had become a shareholder in the Company in March 1889 and was manager of the firm of Wallace & Co and holding its procuration from 1st April 1889 but who was neither a member of the firm nor a shareholder in the Company when the power of attorney was executed *Held* by the Judicial Committee (reversing the decision of the High Court) that on the true construction of Art 60 the proxy was not necessarily required to be a shareholder when the power of attorney was signed the article was complied with by his being so qualified at the time when he was called upon to act as a proxy *Held* also that although the proxy was not expressly named in the power of attorney he was sufficiently described in it for all business purposes and the articles of association required nothing more BOMBAY BURMA TRADING CORPORATION *v* DORABJI (1905)
I L R 29 Bom 126
L R 32 I A 99

PUBLIC BENEFIT

See LIBEL I L R 35 Calc 495

PUBLIC BODY

———— delegation of powers to—

See PORTS ACT s 6
I L R 17 Mad 118

———— protection of—

See MADRAS CITY MUNICIPAL ACT 1884 ss 392 433 AND 458
I L R 25 Mad 118

PUBLIC CHARITY

See CIVIL PROCEDURE CODE 1882 s 539
I L R 30 Bom 603

PUBLIC CONVEYANCES

See HACKNEY CARRIAGE ACT

PUBLIC DEMANDS RECOVERY ACT (BENG VII OF 1868)

———— s 2—*Bengal Act VII of 1868 s 2—Suit to set aside sale in execution of a certificate—Act XI of 1859—Civil Procedure Code s 244 31 Held* by the Full Bench (PRINSEP J dissenting) that an appeal to the Commissioner under s 2 of Bengal Act VII of 1868 is not the only remedy open to the party whose property has been sold in enforcement of a certificate issued

PUBLIC DEMANDS RECOVERY ACT (BENG VII OF 1868)—*concld*

under the Public Demands Recovery Act and [illegible]

I and *Troylukho Nath Mozumdar v Pahar Khan I L R 23 Calc 641* in so far as they decide otherwise overruled RAM TARUCK HAZRA *v* DILWAR ALI (1901) I L R 29 Calc 73
s c 5 C W N 621

s 11—

See SALE FOR ARREARS OF REVENUE
I L R 31 Calc 1036

PUBLIC DEMANDS RECOVERY ACT (BENG VII OF 1880)

See APPEAL—ORDERS
I L R 22 Calc 419

See CERTIFICATE I L R 33 Calc 84

See LIMITATION ACT 1877 s 14
I L R 20 Calc 264

See LIMITATION ACT 1877 SCH II ART 12
I L R 23 Calc 775
L R 23 I A 45

See REVIEW—POWER TO REVIEW
I L R 22 Calc 419

See SALE 13 C W N 750

———— *Sale in execution of a certificate against the recorded tenant alone whether it passes the entire holding* A certificate under the Public Demands Recovery Act can only be enforced against the person whose name is entered in such certificate as if it were a personal debt of his So where in execution of a certificate taken against the recorded tenant the landlord put the holding to sale —*Held* that the right title and interest of the recorded tenant alone and not the entire holding passed by the sale The interest of the other joint tenants was not affected by the sale *Shekant Hossein v Sasi Kar I L R 19 Calc 783* referred to *Jeolal Singh v Canga Pershad I L R 10 Calc 996* and *Nitayi Behari v Hargovind I L R 26 Calc 677* distinguished RUPRAM NAMASUDRA *v* ISWAR NAMASUDRA (1902) 6 C W N 302

1. ———— s 2—*Bengal Act VII of 1868 s 8—Certificate of sale—Evidence of sufficiency of service of notice of sale—Act XI of 1859* S 2 of the Public Demands Recovery Act (Bengal Act VII of 1880) which enacts that that Act so far as is consistent with the tenor thereof shall be construed as one with Act XI of 1859 and Bengal Act VII of 1868 does not extend the effect of s 8 of Bengal Act VII of 1868 to a sale-certificate granted under s. 19 of Bengal Act VII of 1880 so as to make such a certificate conclusive evidence of the sufficiency of the service of the notices of sale under the last named Act PULIN CHANDRA POY *v* AKBAR HOSSEIN I L R 21 Calc 350

PUBLIC DEMANDS RECOVERY ACT (BENG VII OF 1880)—*contd*

——— s 2—*contd*

BHOLA NATH MAITI *v* MAHINUDDIN MOHOMED
I L R 21 Calc 350 note

2 ——— and s 7—*Bengal Act VII of 1868 s 8—Certificate of sale—Evidence of sufficiency of service of notice—Act XI of 1859 s 28—Sale for arrears of rent* S 8 of Bengal Act VII of 1868 does not apply to a certificate of title granted to a purchaser at a sale in execution of a certificate issued under s 7 of Bengal Act VII of 1880 for arrears of rent alleged to be due to an estate under the Court of Wards but it is limited in its application to the two descriptions of certificates of title therein referred to namely certificates granted under s 28 of Act XI of 1889 and those granted under s 11 of Bengal Act VII of 1868 *Pulin Chandra Roy* v *Akbar Hossein I L R 21 Calc 350* and *Bhola Nath Maiti* v *Mohinuddin Mahomed I L R 21 Calc 350 note* approved BISHAMBER HALDER *v* BONOMALI HALDER
I L R 26 Calc 414
3 C W N 233

3 ——— and ss 8 10 19—*Beng Act VII of 1868 s 2—Sale for arrears of road cess—Suit to set aside sale—Ground for setting aside sale under certificate—Act XI of 1859 s 33—Civil Procedure Code ss 290 311 312* Neither the provisions of s 33 of Act XI of 1859 nor those of s 2 Bengal Act VII of 1868 affect the jurisdiction of the Civil Court to entertain a suit to set aside a sale under a certificate on any of the following grounds namely that no arrears were due at all that no notice was served in accordance with the provisions of Bengal Act VII of 1880 or that the provisions of s 290 of the Civil Procedure Code were infringed The words in respect of sales in execution of decrees in s 19 of Bengal Act VII of 1880 do not include any proceedings instituted after the sale for setting it aside Ss 311 and 312 therefore of the Civil Procedure Code do not apply to sales under a certificate The infringement of the provisions of s 290 of the Civil Procedure Code is not a mere irregularity but vitiates the sale *Bakshi Nand Kishore* v *Malak Chand I L R 7 All 289* The provision in s 8 of Bengal Act VII of 1880 as to the certificate becoming absolute and acquiring the force and effect of a final decree does not come into operation unless the notice required by s 10 is actually served The only remedy of a judgment debtor where property has been sold in execution of a certificate issued under Bengal Act VII of 1880 and who has sustained substantial injury by reason of a material irregularity in publishing or conducting the sale is by way of an appeal under s 2 of Bengal Act VII of 1868 The effect of s 2 of Bengal Act VII of 1880 is that Act XI of 1859 and Bengal Act VII of 1868 and Bengal Act VII of 1880 are to be considered as if the provisions contained in them were contained in one Act so far as such construction is consistent with the tenor of the last mentioned Act By the force therefore of s 2 of the Act of 1880 the provisions of s 2 of the Act of 1868 became applicable to a sale under an execution issued upon a certificate made under the Act of 1880 Bengal Act VII of 1880 is an Act for the recovery of all kinds of public demands and therefore applies to cases of road or other public cesses. SADHUSARAN SINGH *v* PANCHDEO LAL
I L R 14 Calc 1

4. ——— and s 8—*Beng Act VII of 1868 s 2—Suit to set aside certificate and sale for arrears of cesses—Right of suit—Appeal* No suit will lie to set aside the sale of a property sold in execution [illegible]

The only remedy of the judgment-debtor whose property has been sold is by way of an appeal to the Commissioner under s 2 of Bengal Act VII of 1868 *Sadhusaran Singh* v *Panchdeo Lal, I L R 14 Calc 1* followed TROYLUCKHO NATH MOZUMDAR *v* PAHAR KHAN I L R 23 Calc 611

5 ——— *Beng Act VII of 1868 s 2—Sale in execution of certificate under Public Demands Recovery Act—Appeal to Commissioner to set aside sale* In an appeal to the Commissioner under s 2 of Bengal Act VII of 1868 to set aside a sale in execution of a certificate under the Public Demands Recovery Act (VII of 1880) —*Held* that s 2 of Bengal Act VII of 1868 [illegible] Act VII of 1880 and the [illegible] der [illegible] *Lal,* [illegible] 769

GONESH DASS [illegible]

6 ——— and s 20—*Act XI of 1859 s 31—Limitation* S 2 of the Public Demands Recovery Act (Bengal Act VII of 1880) does [illegible] 24 of Act XI [illegible] decree [illegible] *I of 1859* [illegible] alc. 253
2 C W N 89

——— ss 2 7 (*1*) 8 (*b*) 10 19—*Agriculturists Loans Act (XII of 1884) s 5—Taccavi—What passes at a sale under the Public Demands Recovery Act—Right title and interest of the judgment debtor—Hypothecation of land—Mortgage—Transfer of Property Act (IV of 1882) ss 6 59—Bengal Act VII of 1868 s 1 Act XI of 1859 s —Bengal Act VII of 1868 —Revenue sale law* When property is sold in execution under Bengal Act VII of [illegible] amount [illegible] sale under [illegible] the judg [illegible] the property at the date of service of the notice under s 10 of Bengal Act VII of 1880 can pass to the purchaser Such a sale has not the effect of a sale for arrears of

PUBLIC DEMANDS RECOVERY ACT (BENG VII OF 1880)—*contd*

——— s 2—*concld*

land revenue or of an assignment to the purchaser of the mortgage interest created in favour of the Government by the bond executed by the judgment-debtor under the Agriculturists Loans Act LACHMI NARAIN SINGH v NAND KISHORE LAL DAS (1902) I L R 29 Calc 537
s c 6 C W N 484

——— ss 2 17 24—*Sale in execution of certificate—Jurisdiction of Revenue Courts—Appeal to Commissioner—Limitation—Suit in Civil Courts to set aside sale—Remedy of purchaser when sale is set aside by Revenue authorities without hearing him* A certificate granted by the Revenue Court in respect of a fine imposed on the respondent for failure to comply with a notice issued under s 16 of the Bengal Cess Act (Bengal Act IX of 1880)

1894 after the expiry of the sixty days allowed for that purpose appealed to the Commissioner to cancel the sale as irregular fraudulent and collusive The Commissioner ordered an enquiry whether the respondent had been prevented by fraud from taking any steps in the matter and against that order the appellant appealed to the Board of Revenue who on 9th May 1895 acting under the powers of revision given them by Act

jurisdiction to make the orders on which decrees

——— ss 3 7—*Executor by implication—Bequest to an idol—Right of shebait to take out probate* Where a testator had bequeathed the bulk of his estate for the sheba of a thakur and made certain other dispositions in regard to the rest of the property *Held* on the construction of the will that his wife whom he had appointed *shebait* having been confided with the execution of the will was executor by implication and as such entitled to take out probate of the will *Brojo Chunder Goswami* v *Raj Kumar Roy 6 C W N 310* referred to KRIPAMOYEE DASSI v MOHIM CHANDRA DUTT (1905) 10 C W N 232

——— s 6 (b) and s 10—*Suit to set aside certificate—Mode of service of notice* Although no

provided for similar processes under the Civil Procedure Code Before therefore a service under Bengal Act VII of 1880 can be effected by posting it on the residence of the party on whom it is wished to serve it it must be shown that some attempt has been made to effect personal service and that such personal service for reasons stated could not be made In such a case when the fact of service of notice is denied the onus is on the party alleging service to prove it PAKHAL CHANDRA RAI CHOWDHURI v SECRETARY OF STATE FOR INDIA I L R 12 Calc 603

——— ss 7 8—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY
I L R 18 Calc 125

——— ss 7 10—*Sale for arrears of cesses—Collector's certificate effect of after notice of it* According to the true construction of s 7 of Bengal Act VII of 1880 there is no foundation for a sale thereunder until a certificate has been made by the Collector strictly in the manner prescribed thereby specifying the sum due and the person from whom it is due *Held* that such certificate when duly made has after service of notice thereof

——— ss 7 15 31—*Civil Procedure Code (Act XIV of 1882) s 244—Certificate-sale—Irregularity—Right of suit* The mere fact that a greater sum is claimed as due in a certificate than is in fact due does not make the certificate and notice bad S 244 of the Civil Procedure Code is applicable when the only grounds alleged for setting aside a sale are irregularities not in the proceedings anterior to the certificate or in the certificate which is sought to be executed but in the execution proceedings subsequent to it UMED ALI BHUYA v RAJ LAKSHMI DEBYA (1905)
10 C W N 130

PUBLIC DEMANDS RECOVERY ACT (BENG VII OF 1880)—*contd*

1 ——— s 8 (b) cl 3 and s 10—*Certificate Suit to set a ide—Amount not ' due* Where rent was payable jointly to certain wards of Court and another [illegible] the Court of [illegible] issued a certif[illegible] for a proport[illegible] wards —*Held* that there being no right at law to claim any separate share of the rent there was no sum due and therefore under s. 8 of the Act the certificate was invalid and must be cancelled GIRJANATH ROY CHOWDHURY v RAM NARAIN DAS I L R 20 Calc. 264

2 ——— and s 12—*Suit to set aside certificate and sal —Limitation* A certificate was issued under the Public Demands Recovery Act (Bengal Act VII of 1880) and notice under s 10 of the Act was served on the 12th December 1895 The debtor objected under s 12 on the ground that no arrears were due but the objection was over ruled on his failure to produce evidence on the 7th August 1895 and the sale took place on the 10th August 1895 In a suit brought on the 8th August 1896 to set aside the certificate and the sale —*Held* that the terms of s 8 cl (b) pro viding the limitation of one year from the date of service of notice are peremptory and in no way controlled by the provisions of s 12 and the suit in respect of the certificate was therefore barred by limitation *Held* also that if the certificate cannot be cancelled the sale held in execution of it also cannot be cancelled PAJI UNS SAHAI v KAMESHAR PROSAD I. L R 26 Calc 172

——— ss 8 10 12—*Ben Act I of 1895 s 15—Sale set ing aside—Notice under s 10 non service effect of—Limitation* When the notice under s 10 of Bengal Act VII of 1880 is not served the certificate does not acquire the force of a decree and is not binding upon the judgment debtor and the sale held in execution of such a *certificate* is necessarily bad in law and may be set aside by a suit if brought within the statutory period allowed by the Limitation Act S 15 of Ben Act I of 1895 refers to a suit to have a certificate cancelled or modified and it has no application to a suit to have a sale held in execution of such a certificate set aside If a person is entitled under Ben Act VII of 1880 to bring his suit within one year or if other wise the suit is within time the *mere facts* of his pre enting an appeal to the Commissioner and the Commissioner having rejected his appeal under Ben Act I of 1895 would not deprive *him* of the full period of limitation which having regard to the provisions of Bengal Act VII of 1880 under which the sale was held is entitled to GOPAL DAS v HARDEO DAS (1900) 5 C W N 86

——— s 9—

See SALE FOR ARREARS OF REVENUE—SETTING A IDE SALE—IRREGULARITY I C W N 516

PUBLIC DEMANDS RECOVERY ACT (BENG VII OF 1880)—*contd*

——— s 10—

See ante—
s 2 7 (*1*) 8 (*b*) 10 19
ss 8 10 12

See CESS I L R 19 Calc 783

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY I. L R 16 Calc 125 I C W N 516

1 ——— *Act XI of 1859 ss 5 17—Sale for arrears of revenue notification of —Attachment under certificate procedure* Where a notice under s 10 of Bengal Act VII of 1880 was served and a certificate issued by the Collector for default of payment of road cess of a revenue paying estate and the Government revenue being in arrears no notification under s 5 of Act XI of 1859 was issued and the estate was subsequently sold for arrears of Government revenue —*Held* that the sale was valid and ss 5 and 17 of Act XI of 1859 did not apply the certificate issued by the Collector being not an attachment as contemplated by s 5 *Ram Narain v Koer v Mahabir Pershad Singh I L R 13 Calc 208* referred to RITOO MURDAN SINGH v RAM REKHA LAL I. L. R. 20 Calc 395

2 ——— *Bengal Act VII of 1868 ss 2 and 8—Notice—Sale for arrears of—Certificate of sale* A sale for arrears of public demands recoverable under Bengal Act VII of 1880 cannot [illegible] the certificate upon which the [illegible] be issued by the Collector in whose [illegible] certificate is required to be filed Even supposing that s 8 of Act VII of 1868 read with s 9 of the said Act makes a certificate of sale conclusive evidence that all notices have been duly served and posted in the case of a sale under Bengal Act VII of 1880 as well the question when the notice was served would still remain open The certificate [illegible] conclusive evi[illegible]

KARTICK CHANDER GHOSH [illegible]

3 ——— s 10 and s 23—*Attachment under certificate procedure* The certificate and notice referred to in s 10 Bengal Act VII 1880 are executive acts and an attachment which is the result of those acts is not a judicial but an executive proceeding The meaning of s. [illegible] of that Act which lays down that a Collector in the discharge of his functions shall be deemed to be a person acting judicially within the meaning of Act XVIII of 1850 is that for the purpose of protecting him from personal liability his action is to be regarded as judicial RAM NARAIN KOER v MAHABIR PERSHAD SINGH I. L. R. 13 Calc. 208

——— s 12—

See ante ss 8 10 12

PUBLIC DEMANDS RECOVERY ACT (BENG VII OF 1880)—*contd*

——— s 17—

See SALE 10 C W N 969

——— s 19—

See ante s 2 7 (*1*) 8 (*6*) 10 19

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY
I L R 18 Calc 125

1 ——— *Suit to set aside a sale in execution of a certificate—Ben Act I of 1895 ss 19 20—Act XI of 1859—Civil Procedure Code ss 11 244 28 311 312 316 588 (16) 59)* A suit to set aside a sale held in enforcement of a certificate under the Public Demands Recovery Act is a suit of a civil nature which is barred neither by s 244 nor by s 312 of the Code of Civil Procedure RAM TARUCK HAZRA v DILWAR ALI (1901) I L R 29 Calc 94
s c 6 C W N 246

2 ——— *Certificate procedure—Civil Procedure Code (Act XIV of 1882) ss 311 312* A suit will lie in a Civil Court to set aside a sale held under Bengal Act VII of 1880 where the sale proclamation is issued against the whole sixteen annas of the estate but a sale held only of a portion thereof The effect of s 19 of that Act is that it relates to the practice and procedure in respect of sales that is to the practice and procedure of executing Courts in the carrying out of sales RAM LOGAN OJHA v BHAWANI OJHA
I L R 14 Calc 9

——— ss 21 and 22—*Sale in execution of a certificate under the Act—Procedure—Satisfied certificate—Act XI of 1859* The Collector having received a report from the Tehsildar that arrears of road cess (Bengal Act IX of 1880) were due in respect of villages took proceedings purporting to be in pursuance of Bengal Act VII of 1880 In the certificate of unpaid demand the names of the persons described as debtors were those not of the present proprietors but of former proprietors and [illegible]
Held [illegible]
down [illegible]
follo [illegible]
on the Courts when considering the validity of sales under that Act to rigidly require an exact [illegible]

[illegible]

Singh 8 B L R 93) referred to *Semble* Demands in respect of cess under Bengal Act VII of 1880 are not on the same footing as revenue demands to which Act XI of 1859 applies and therefore the procedure prescribed by Act XI of 1859 for the recovery of the latter is not applicable to the recovery of the former GUJRAJ SAHAI v SECRETARY OF STATE FOR INDIA
I L R 17 Calc 414

Held on appeal by the Privy Council affirming the decision of the High Court that even if the certificate and the proceedings following it had been duly authenticated and intimated to the present proprietor which had not been the case they could not affect his right of property in the villages inasmuch as the Act only authorized the attachment and sale of the property of the persons who are described as debtors This of itself was a ground for cancelling the sale Their Lordships also concurred in the view taken by the High Court that there was no evidence showing that the certificate had been duly signed and were of opinion [illegible]

PUBLIC DEMANDS RECOVERY ACT (BENG I OF 1895)

——— *Certificate sale—Suit to partially set aside sale—Maintainability* The owner of a portion of property sold in execution of a certificate under the Public Demands Recovery Act cannot sue to have the sale set aside as to his portion only His remedy is either to pay for setting aside the sale of the whole property or to allow the sale to stand and pray that his co sharers who were the purchasers at the sale should reconvey his share to him *Bhooban Chandra Sen v Ram Soondar Surmah I L R 3 Calc 300* referred to BIDESHAR JHA v SRI KISHEN JHA (1905) 9 C W N 805

——— ss 3 19 cl. (2) and 20—*Suit to set aside a sale on the ground of fraud whether maintainable—Civil Procedure Code (Act XIV of 1882) ss 244 312 and 424—Secretary of State notice upon* A suit to set aside a sale under the Public Demands Recovery Act on the ground of fraud [illegible]

[illegible]

for India it is not necessary to serve a notice under s 424 of the Civil Procedure Code upon him as it would be impossible to serve a notice fulfilling the requirements of that section *Saheb-adee Shahunshah Begum v Fergusson I L R 7 Calc 499* *Muhammad Saddiq Ahmad v Panna Lal I L R 26 All 220* referred to RAGHUBANS SAHAI v

PUBLIC DEMANDS RECOVERY ACT (BENG I OF 1895)—*contd*

——— s 3—*contd*

PHOOL KUMARI AND SECRETARY OF STATE FOR INDIA (1905) I L R 32 Calc 1130

——— s 7—

See BENGAL TENANCY ACT s 107
I L R 28 Calc 676

See LAND REGISTRATION ACT (BEN ACT VII OF 1876) s 82 7 C W N 568

——— ss 7, 8—

See PARTIES I L R 31 Calc 159

——— ss 7 8 19 22—

See PENAL CODE s 206
I L R 28 Calc 217

——— ss 7 10 16 19 31—

See CERTIFICATE I L R 32 Calc 691

——— ss 8 10—*Notice—Limitation Act (XV of 1877) Sch II Arts 12 142—Sale in execution of certificates—Suit to set aside sale—Possession—Certificate effect of* When notice has not been served under s 10 of the Public Demands Recovery Act 1895 and a suit is brought to set aside the sale and to recover possession of the property sold Art 142 and not Art 12 of Sch II of the Limitation Act is applicable Under s 8 of the Public Demands Recovery Act a certificate duly made and filed has in so far as regard the ... and effect of a

(1907)

——— s 10—*Sale setting aside of—Service of notice—Civil Procedure Code (Act XIV of 1882) s 244* Where the certificate was not duly served under the provisions of s 10 of the Public Demands Recovery Act —*Held* that there could be no execution and that the proceedings held under such certificate were bad S 244 Civil Procedure Code does not apply to the case of execution proceedings held under the Public Demands Recovery Act *Ram Taral Hazra* v *Mosahebali Khan* 6 C W N 246 and *Janki Das* v *Ram Golam Sahu* 6 C W N 531 relied upon PAMRUP SAHAY v KHUSHAL MISSER (1902) 6 C W N 630

——— ss 10 12 15 17 24, 26—

See SALE 13 C W N 710

——— ss 10 12 31—

See NOTICE SERVICE OF
I L R 35 Calc 286

——— ss 10 17 and 21—*Sale for arrears of cesses—Suit to set aside sale on the ground that no notice was issued under s 10 of the Act whether maintainable—Civil Procedure Code (Act XIV of 1882) s 244 applicability of* A suit to set aside a sale held for arrears of cesses on the ground that no notice of the certificate under s 10 of the Public Demands Recovery Act (Ben Act I of 1895) was served upon the plaintiff is maintainable in the Civil Court even if the certificate has become absolute Under the provisions of s 21 of the Public Demands Recovery Act (Ben Act I of 1895) before its amendment by Bengal Act I of 1897 s 244 of the Civil Procedure Code (Act XIV of 1882) is not applicable in its entirety and does not apply so as to bar a separate suit for setting aside a sale for arrears of cesses it applies only so far as the procedure to be followed in execution proceedings to enforce the certificate and realise the amount thereunder is concerned *Chunder Kumar Mukerjee* v *Secretary of State I L R* ... *Calc 698* and *Ram Taruck Hazra* v *Dilwar Ali 5 C W N 521* followed JANKI DASS v RAM GOLAM SAHU (1901) I L R 28 Calc 813
s c 6 C W N 331

——— ss 10 31—*Notice—Non service of notice effect of— Adult —Sale—Suit to set aside sale—Procedure—Limitation—Civil Procedure Code (Act XIV of 1882) ss 244 312—Limitation Act (XV of 1877) Sch II Art 12 (b)* Where it is alleged that notice has not been served under s 10 of the Public Demands Recovery Act the onus is on the party alleging want of notice *Rakhal Chandra Pai Choudhuri* v *Secretary of State I L R 12 Calc 603* referred to It is not sufficient that such notice should be actually served it must be served in accordance with the provisions of 31 of the Act Adult in that section does not mean a person who has attained majority ... Act but a ... sponsible ... ce to the ... led A member of the family ... duly made certificate has on its filing the force and effect of a decree Until however service of notice under s 10 which has the effect of an attachment, no particular property is bound by the decree A sale without prior attachment is irregular but not a nullity *Kishory Mohun Roy* v *Mahomed Mujaffar Hossein I L R 18 Calc 188* referred to The due making and filing of the certificate gives it the effect of a decree and therefore non service of notice under s 10 does not affect the validity of the certificate itself A suit to set aside a sale on the sole ground that the decree under which it was held was an invalid decree simply because of absence of notice under s 10 fails because the absence of notice does not affect the validity of the decree *Baijnath Sahai* v *Ramgut Singh I L R 23 Calc 775* followed *Saroda Charan Bandopadhya* v *Kista Mohun Bhattacharje 1 C W N 516* *Chunder Kumar Mukerjee* v *The Secretary of State I L R 27 Calc 693* *Gopal Das* v *Hari Gopal Das 5 C W N 86* *Ambica Prosad* v *Gopal*

PUBLIC DEMANDS RECOVERY ACT (BENG I OF 1895)—*contd*

——— s 10—*concld*

Bulsh Das 1 C L J 550 Pamrup Sahay v Khushal Misser 6 C W N 631 Srinath Hore v Bishan Chandra Das 2 C L J 504 Umed Ali Bhuyan v Rai Lakshmi Debya I L R 33 Calc 84 Pamrup Sahai v Khushal Misser 2 C L J 280 Sham Lal Mandal v Nilmani Das C L J 385 387 not followed The Certificate Officer has jurisdiction to transfer the execution of the decree The Collector of the 24 Parganas is *ex officio* Collector of Calcutta The Collector of the 24 ... to Officer ... s 244 and ... execution ... Recovery Act Art 12 (b) Sch II of the Limitation Act bars the suit HARI CHARAN SINGH v CHANDRA KUMAR DEY (1907) I. L R. 34 Calc 767

——— s 15—

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880) ss 8 10 12
5 C W N 86

——— ss 15 19 32 and 33—*Sale in execution of certificat — Final meaning of—Appeal —Review—Revision—Power of revision by Commissioner* A suit to set aside a sale in execution of a certificate under the Public Demands Recovery Act is maintainable in the Civil Court *Ram Taruck Hazra v Dilwar Ali I L R 29 Calc 73* referred to An order made by a Certificate Officer under s 19 of Bengal Act I of 1895 is final only in the sense that it shall not be open to appeal as provided by s 32 of that Act but not in the sense that it shall not be open to review or revision by the Commissioner under s 33 of the same Act *Nasiruddin Khan v Indronarayan Chowdhry B L R Sup Vol 367 Badacharya v Ramchandra Gopal Savant I L R 19 Bom 113* and *Ramsing v Babu Kisansing I L R 19 Bom 116* relied upon MATANGINI DEBI v GIRISH CHUNDER CHOWDHRY (1903)
I. L R 30 Calc 619
s c 7 C W N 433

——— s 17—

See ante SS 10 17 AND 21

——— s 19—

See ante—

SS 7 8 19 22
SS 15 19 32 AND 33

——— ss 19 20—

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880) s 19
I. L. R 29 Calc 84

——— s 21—

See ante SS 10 17 AND 21

——— s 21—*Suit to set aside a sale in execution of a certificate—Civil Procedure Code (Act XIV of 1882) ss 223 311 312—Material irregularity—*

PUBLIC DEMANDS RECOVERY ACT (BENG I OF 1895)—*concld*

——— s 21—*concld*

Order sending certificate to another Court for execution—Void sale Where an order sending a certificate made under the Public Demands Recovery Act to another Court for execution was not authorized by s 223 of the Code of Civil Procedure and ... s 312 of the Code of Civil Procedure does not apply to proceedings in execution of certificates under *Bengal Act I of 1895 Ramrup Sahay v Khusal Misser 6 C W N 610 Janki Das v Ramgolam Sahu 6 C W N 381 Raghubans Sahai v Phool Kumari I L R 32 Calc 1130* referred to Observations in *Ram Taruck Hazra v Dilwar Ali I L R 29 Calc 94 footnote* approved GIRISH CHANDRA v GOLAM KARIM (1906)
I. L. R 33 Calc 451
s c 10 C W N 347

——— s 22—

See ante SS 7 8 19 22

——— ss 32 and 33—

See ante SS 15 19 32 AND 33

PUBLIC DOCUMENT

See EVIDENCE ACT s 74

See EVIDENCE I L. R 34 Calc 293

——— *Inspection of document* ... *th Pu* ... *ss 74* ... *1891)* Office in the Bank of Bengal is a public document within the meaning of s 74 of the Evidence Act and under s 76 of the Act any person having an interest in the document is entitled to inspect the same and obtain certified copies thereof *Queen Empress v Arumuga I L R. 20 Mad 189* followed *Mutter v Midlands Railway Co L R 38 Ch D 92 Rex v Justices of Staffordshire 6 Ad & E 4* referred to CHANDI CHARAN DHAR v BOISTAB CHARAN DHAR (1904)
I L. R 31 Calc 284
s c 8 C W N 125

PUBLIC DUTY

See LIBEL I L. R. 27 Bom 585

See MALICIOUS SEARCH
I L R 27 Bom. 590

——— enforcement of—

See HIGH COURT JURISDICTION OF—CALCUTTA—CIVIL I L. R. 17 Calc. 329
I. L. R. 21 Calc 348

PUBLIC FUNCTIONS

See Penal Code s 186
I L R 22 Calc 286 596
I L R 23 Calc 896
1 C W N 74

PUBLIC HEALTH OFFENCE AFFECTING

1 ——— Penal Code, s 269—*Travelling* ... *K* knowing ... ntered a train ... the railway ... *M* knowing of K s condition bought K s ticket and travelled with him *Held* that K was properly convicted under s 269 of the Penal Code of negligently doing an act which was and which he had rea on to believe was likely to spread infection of a disea e dangerous to life and *M* of abetment of K s offence QUEEN EMPRESS v KRISHNAPPA
I L R 7 Mad 276

2 ——— ——— *Communicating syphilis by the act of sexual intercourse—Cheating* A prostitute who while suffering from syphilis *communicates the di ease* to a person who has sexual intercourse with her is not liable to punishment under s 269 of the Indian Penal Code (Act XLV *of 1860*) for a negligent act and one likely to spread infection of any di ease dangerous to life QUEEN EMPRESS v RAKHMA
I L R 11 Bom. 59

3 ——— ——— *Negligent act—Refusal to allow person suffering from infectious* ...

... unless she accompanied her and was convicted of an offence under s 269 of the Penal Code by the District Magi trate —*Held* that no unlawful or negligent act had been committed within the meaning of s 269 of the Penal Code CAHOON v MATHEWS
I L R 24 Calc 494
1 C W N 274

PUBLIC HIGHWAY

See Public Road Highway Street or Thoroughfare.

PUBLIC INTEREST

See Privileged Communication
7 C W N 246

PUBLIC NAVIGABLE RIVER

See Fishery 12 C W N 559

PUBLIC NUISANCE

See Nuisance I L R 31 All 444

See Nuisance—Under Criminal Procedure Code

See Nuisance—Public Nuisance under Penal Code.

See Penal Code ss 268 290 291

PUBLIC NUISANCE—*contd*

See Public Road Highway etc Obstruction or Nuisance on Procession in

1 ——— Obstruction of ford by erection of bund—*Prescriptive right of public to user of ford—Desuetude of right to erect bund—Use of one s right so as not to cause obstruction or nuisance—Criminal Procedure Code* (*Act V of 1898*), *s 133* Where the petitioner erected a *bund* in a river the effect of which was to render it unfordable at a place where the stream had been fordable throughout the year except for a few days during the freshets and claimed the right to do so but it was proved that for a period exceeding 20 years the public had used the ford and had never been so obstructed in crossing the river on foot or on vehicles —*Held* that the public had acquired a prescriptive right of way through the river and that the petitioner had lost his right of erecting a *bund* by long desuetude that even if the petitioner had a subsisting right to dam the river by a *bund* such right was subject to the maxim *sic utere tuo ut alienum non lædas* that his action had caused an obstruction which was not justifiable to the public who were in the lawful enjoyment of a right-of way and that the order of the Magistrate to remove the obstruction was not illegal ZAFFER NAWAB v EMPEROR (1905) I L R 32 Calc 930

2 ——— Offensive smells—*Indian Penal Code* (*Act XLV of 1860*) *ss 268 and 290* In order to constitute an offence under s. 268 of the Penal Code it is not necessary that the alleged nuisance should produce smells injurious to health it is sufficient if they be offensive to the senses. *Rex* v *Neil 2 C & P 485* approved of To allow a large stack of bones to remain uncovered in the open for a long time so as to become rotten and to emit a smell noxious to people living in or passing by the vicinity is not an act which a bone mill ... on his trade ...

3 ——— Killing of cows by Mahomedans—*Custom* Under certain limitations the slaughtering of kine by Mahomedans is not illegal It is the legal right of every person to make such use of his own property as he may think fit provided that in so doing he does not cause real injury to others or offend against the law even though he may thereby hurt the susceptibilities of others The right of Mahomedans to slaughter kine is one to which they are legally entitled irrespective of custom and it is only when they abuse the right that its exercise can be interfered with *Muttumira* v *Queen Empress I L R* ... *Queen Empress* v *Imam* ... *I L R 10 All 43* *Queen Empress* v *Zakiuddin I L R 10 All 44* *Queen Empress* v *Imam Ali I L R 10 All 150* *Romesh Chandra Sanyal* v *Hiru Mondal I L R 17 Calc 852* and *Hadjee Mu hur Ali* v *Gunda* ...

PUBLIC NUISANCE—concld

Sahu 25 *W P* (*Cr*) 7? referred to SHAHBAZ KHAN *v* UMRAO PURI (1908)
I L R 30 All. 181

4 ———— Obstruction or nuisance on land—*Claim of title to land—Bona fides of claim—Limitation question of—Criminal Procedure Code (Act V of 1898) s 133* Where a party against whom a conditional order under s. 133 of the Criminal Procedure Code is passed for an alleged obstruction or nuisance on land raises a claim of title to such land the Magistrate must come to a proper finding as to the question of *bona fides* of the claim and he is not competent to decide whether it is barred by limitation KAMINI KUMAR BISWAS *v* EMPEROR (1907)
I L R 35 Calc 283

PUBLIC OFFICER

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY I L R 24 Calc 102

See COLLECTOR I L R 3 All. 2

See OFFICIAL TRUSTEE
I L R 7 Calc 499
I L R 12 Mad. 250

See PUBLIC SERVANT

See STAMP ACT SCH I ART 22
I L R 19 All 293

———— money lent to—

See SUBORDINATE JUDGE JURISDICTION OF I L R 22 Bom 170

———— offer of bribe to—

See ACCOMPLICE I L R 14 Bom 331
I L R 27 Calc 144 925

———— power of Government over—

See SECRETARY OF STATE
I L R 27 Bom 189

———— suit againt—

See CIVIL PROCEDURE CODE s 424
13 C L R 195
I L R 24 Calc 584
I L R 20 Bom 697
I L R 25 Calc 239

See PRIVILEGED COMMUNICATION
7 C W N 246

See PUBLIC OFFICER
I L R 29 All. 567

See SECRETARY OF STATE.
I L R 26 Mad. 263

See SUBORDINATE JUDGE JURISDICTION OF I L R 15 Bom 441
I L R 21 Bom 754 773
I L R 22 Bom. 170

———— suit to set aside order of—

See LIMITATION ACT 1877 SCH II ART 14

PUBLIC OFFICER—concld

1 ———— Notice of suit—*Civil Procedure Code (Act XIV of 1882) ss 2 and 424—Notice of suit—Official Assignee—Practice—Procedure* The Official Assignee is a public officer within the meaning of s 2 of the Civil Procedure Code (Act XIV of 188) and is therefore entitled to the notice prescribed by s 424 of the Code before a suit is filed against him in respect of acts done by him in his official capacity YOOSUB HAJI ALLI *v* KEMP (1902) I L R 26 Bom 809

2 ———————— *Civil Procedure Code 1882 s 424—Talukhdari settlement officer managing estate under Act XXI of 1881—Broach and Kaira Encumbered Estates Act* The plaintiff sued for a declaration that he was entitled to succeed on his father s death to a talukhdari estate to the exclusion of defendant 1 who he alleged was a supposititious child set up by his stepmother to defeat the plaintiff s right of inheritance. It appeared that defendant 1 had obtained a decree against the plaintiff s father establishing his legitimacy and declaring him entitled to receive maintenance out of the estate in question. In accordance with that decree the talukhdari settlement officer (defendant 2) who was manager of the estates under the Broach and Kaira Encumbered Estates Act (XXI of 1881) paid defendant 1 an [illegible]

[illegible] that the suit was bad because notice had not been given to the talukhdari settlement officer as re[illegible]

[illegible] arising out of acts done by him in his official capacity SARDARSINGJI *v* GANPATSINGJI
I L R. 14 Bom. 395

3 Suit to recover articles seized by police during a search—*Suit against public officer* The plaintiff sued to recover from the defendant three account books which he alleged that the defendant a Sub Inspector of Police had seized during a search apparently in pursuance of the provisions of 165 of the Code of Criminal Procedure of the plaintiff s house *Held* that the defendant if he seized the books which was denied, did so in his capacity as a police officer and that the suit was not maintainable in the absence of the notice [illegible]
cedure [illegible]
I L [illegible]
Nath I [illegible]
referred [illegible]
(1907) [illegible]

PUBLIC PATHWAY

See PUBLIC ROAD HIGHWAY ETC.

PUBLIC PATHWAY—*concld*

See Public Street

See Public Thoroughfare

——— obstruction of—

See Criminal Procedure Code s 133
13 C W N 367

PUBLIC PLACE

See Gambling I L R. 29 Bom 386

See Gambling Act (III of 1867) ss 11 13

See Penal Code s 159
I L R 17 All. 166

PUBLIC POLICY

See Vendor and Purchaser
I L R 27 All 271

——— agreements contrary to—

See Bengal Excise Act (VII of 1878)
I L R 16 Calc 436

See Champerty and Maintenance

See Contract Act s 23—Illegal Contracts—Against Public Policy

See Costs—Taxation of Costs
I L R 17 Mad. 162

See Endowment I L R. 26 Mad 31

See Executor I L R 22 Calc 14

See Hindu Law—Husband and Wife.
I L R 28 Calc 751

See Madras Abkari Act
I L R 24 Mad. 401

——— contract with public servant—

See Contract 13 C W N 59

See Contract Act s 27
13 C W N 388

——— custom contrary to—

See Hindu Law—Coustom—Endowments I L R. 14 Bom. 90

See Hindu Law—Custom—Immoral Customs I L R. 1 Mad 168 356

See Hindu Law—Marriage—Validity or otherwise of Marriages
I L R 17 Bom 400

PUBLIC PROSECUTOR

See Criminal Proceedings
8 Bom Cr 126

——— discretion of—

See Witness—Criminal Cases—Examination of Witnesses—General Cases I L R 7 All. 904
I L R 16 All. 84

——— Government pleader—*Withdrawal from prosecution—Criminal Procedure Code 188 s 494* *Held* by the Full Bench that a person appointed by the Magistrate of the district under s 492 of the Criminal Procedure Code to be Public Prosecutor for the purpose of a particular case tried in the Court of Session has not the power of a Public Prosecutor with regard to withdrawal from prosecution under s 494 Queen Empress v Madho I L R 8 All 291

PUBLIC RECORD

See Evidence Act s 35

PUBLIC RELIGIOUS TRUST

See Civil Procedure Code (Act XIV of 1882) ss 10 539
I L R 33 Calc 769

PUBLIC ROAD HIGHWAY, STREET OR THOROUGHFARE

See Bengal Municipal Act 1864 ss 10 to 16 57 58 I L R. 2 Calc 495

See Bengal Municipal Act 1884 s 15
I L R 20 Calc [illegible]

See Bombay District Municipal Act 1873 s 17 I L R 12 Bom. 490
I L R 20 Bom. 148

See Land Acquisition Act 1870 s 13 and 24 I L R 25 Calc 194
L R 24 I A 177

See Ownership Prescription of
I L R 7 All. 36[illegible]

See Public Street

See Res Judicata—Estoppel by Judgment I L R 20 Calc 733

——— allowing water to remain on—

See Bombay District Municipal Act 1873 s 54 I L R. 20 Bom. 63

——— encroachment on—

See Limitation Act Art 149
I L R 19 Mad. 1[illegible]

——— obstruction to or nuisance on—

See Bench of Magistrates
I L R 13 Mad. 149

See Bengal Municipal Act 1884 s [illegible]
I L R 17 Cal 694

See Bombay District Municipal Act 1873 s 42 I L R. 19 Bom. 2[illegible]

See Declaratory Decree Suit for—Orders of Criminal Courts
I L R. 17 Bom 293

See Jurisdiction of Civil Court—Magistrate's Orders Interference with

See Jurisdiction of Civil Court—Processions I L R 24 Cal [illegible]
I L R 18 Bom. 693

See Jurisdiction of Civil Court—Public Ways Obstruction of

PUBLIC ROAD HIGHWAY STREET OR THOROUGHFARE—contd

——— obstruction to or nuisance on—concld

See JURY—JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE I L R 18 All 158
I L R 22 All 267

See MADRAS POLICE ACT 1888 s 71 I L R 14 Mad 223

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I L R 20 Mad 433

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE

See OBSTRUCTION—TO PUBLIC WAY

See RIGHT OF SUIT—OBSTRUCTION OF PUBLIC HIGHWAY

——— procession in—

See RELIGION OFFENCES RELATING TO I L R 26 Mad 554
I L R 32 Mad 478 527

——— rash riding on—

See PENAL CODE s 279
14 W R Cr 32
I L R 19 Bom. 715

——— regular line of street—

See BOMBAY CITY MUNICIPAL ACT (BOMBAY ACT III OF 1888) s 297
I L R 25 Bom 107

——— what constitutes a public street —

See BOMBAY DISTRICT MUNICIPAL ACT (BOM VI OF 1873) ss 17 48 64
I L R 25 Bom. 315

1 ——— User of road by public—*Evidence that a road is public* In order to establish that a road is a public road it is sufficient if acts of user by the public are shown to have been acquiesced in by the owner of the land over which the road passes and that those acts are of such a character as to [illegible]

2 ——— Suit to remove trees planted on public road—*Space on sides of road* A public road includes a fair margin on either side of the road which may be used for various purposes in connection with the road itself Where trees [illegible] road [illegible] land [illegible] TARA [illegible] R 272

3 ——— Diversion of road—*Right of owners of land adjoining old road—Grant by municipality of land forming old road—N W P and Oudh Municipalities Act (XV of 1873) s 38—Power of municipality over public highway* There is a presumption that a highway or waste land adjoining thereto belongs to the owners of the soil of the adjoining land S 38 of Act XV of 1873 (N W P and Oudh Municipalities Act) was not intended to deprive persons of any private right of property they have in the land used as a public highway or to confer such rights on the municipality nor has the section any such effect In a case where such land ceased to be used as a public highway and was granted by the municipality to third persons who proceeded to build thereon —*Held* that the owners had a good cause of action against such persons for the demolition of the buildings and restoration of the property to its original condition NIHAL CHAND *v* AZMAT ALI KHAN
I L R 7 All. 362

4 ——— Obstruction by owner of abutting property—*Madras District Municipalities Act (Mad Act IV of 1884 as amended by Mad Act III of 1897 s 5) s 3 cl 9—Street — Effect of vesting in municipality—Obstruction by owner of property abutting on street—Suit for injunc*

[illegible]

rights of the owner in the site or soil over which the street exists It does not own the soil from the centre of the earth *usque ad calum* but it has the exclusive right to manage and control the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it adequately to maintain the street as a street It [illegible]

Municipal Commissioners for the City of Madras v Sarangapani Moodaliar I L R 19 Mad 154 commented on SUNDARAM AYYAR *v* MUNICIPAL COUNCIL OF MADURA (1901)
I L R 25 Mad. 635

5 ——— Processions—*Right to conduct through public street* The right to conduct religious processions through the public streets is a [illegible]

its exercise to show some law or custom having the force of law depriving him of the privilege SADAGOPACHARIAR *v* RAMA RAO (1902)
I. L. R. 26 Mad. 376

PUBLIC SAFETY, OFFENCE AFFECTING

See CHARGE—FORM OF CHARGE—SPECIAL CASES—PUBLIC SAFETY 1 Bom 137

PUBLIC SERVANT

See ABSCONDING OFFENDER
I L R 29 Calc 417

See ASSAULT ON PUBLIC SERVANT
13 W R Cr 49
I L R 9 Bom 558
I L R 26 Calc 630
3 C W N 605 627

See ESCAPE FROM CUSTODY
I L R 6 All 129

See EVIDENCE ACT s 74
I L R 18 Calc 534

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE

See ILLEGAL GRATIFICATION
3 W R Cr 10
I L R 21 Bom 517

See LAND MARKS
I L R 30 Calc 1084

See PENAL CODE ss 21 186
I L R 33 Bom 213

See PENAL CODE ss 170 186 434

See PENAL CODE s 221
I L R 3 All 60

See PUBLIC OFFICER

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
I L R 3 Calc 758 2 C L R 520
I L R 23 Mad 540

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—GOVERNMENT SUITS AGAINST I L R 16 Mad 395

——— acts done by—

See MUNSIF JURISDICTION OF
1 Bom 144

See PENAL CODE s 217
I L R 3 Calc 412

——— assaulting—

See ASSAULT ON PUBLIC SERVANT

See POLICE ACT (V of 1861) ss 17 19
I L R 28 Calc 411

See THUMB IMPRESSIONS
I L R 30 Calc 97

——— assaulting in execution of his duty—

See PENAL CODE s 332
I L R 18 All 246

See SENTENCE—CUMULATIVE SENTENCES
4 C W N 245

——— contempt of authority of—

See CONTEMPT OF COURT

PUBLIC SERVANT—contd

——— contract with—

See CONTRACT 13 C W N 59

——— disobedience of direction of law by—

See CRIMINAL PROCEDURE CODES s 4[illegible] (1872 s 90) I L R 1 Mad 286

See PENAL CODE s 217
I L R 1 Mad 286
I L R 3 Calc 412

——— disobedience of order of—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE 5 C W N 399

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I L R 8 All 99
I L R 19 Mad 464

See PENAL CODE s 188

——— giving false information to—

See PENAL CODE s 182

——— obstruction of—

See PENAL CODE 186
8 C W N 130
I L R 30 Calc 285

——— obstruction of in execution of his duty

See ESCAPE FROM CUSTODY
2 Bom 134 2nd Ed 128

See PENAL CODE s 152
I L R 19 Calc 105

See PENAL CODE s 183
I L R 15 Bom 564
I L R 25 Calc 274
I L R 21 Mad 78

See PENAL CODE s 186

See WRONGFUL RESTRAINT
I L R 12 Bom 377

——— offering bribe to—

See ACCOMPLICE I L R 28 Bom 193

——— personating—

See SENTENCE—CUMULATIVE SENTENCES
I L R 10 All 58

——— prosecution of—

See ADMINISTRATOR GENERAL
I L R 30 Calc 927

See SANCTION FOR PROSECUTION—NATURE FORM AND SUFFICIENCY OF SANCTION
I L R 16 Mad 468

——— sanction of—

See SANCTION FOR PROSECUTION

1. ——— Municipal Commissioner—*Act XXVI of 1850—Bom. Reg II of 1827 s 43*
A municipal commissioner appointed under Act

PUBLIC SERVANT—*contd*

XXVI of 1860 was a public servant within the meaning of Regulation II of 1827 s 43 and consequently a Munsif had no jurisdiction to try a suit brought against him for acts done in his public capacity CREAVES v BHAGVAN TULSI
4 Bom A C 93

REG v PURSHOTAM VALJI 5 Bom. Cr 33

2 ———— **Person performing public duties**—*Penal Code s 21* Any person whether receiving pay or not who choose to take upon him self duties and responsibilities belonging to the position of a public servant and performs those duties and accepts those responsibilities and is recognized as filling the position of a public servant must be regarded as one and it does not lie in his mouth to [illegible]

Code QUEEN EMPRESS v PARMESHAR DAT
I L R 8 All 201

3 ———— **Engineer receiving municipal pay**—*Penal Code s 21* An engineer who [illegible]

6 Bom Cr 64

4. ———— **Izaphatdar**—*Penal Code s 21*—*Lessee of village undertaking to keep forest account*—*Officer* The word officer in 21 cl 9 of the Penal Code means a person employed to exercise to some extent a delegated function of Government he must be either himself armed with some authority or representative character or his duties must be immediately auxiliary to those of some one who is so armed Hence an izaphatdar—i e a lessee of a village who has undertaken to keep an account of its forest revenue and pay a certain proportion to the Government keeping the remainder for himself—is not an officer and therefore not a public servant within the meaning of 21 REG v PAMAJIRAV JIVBAJIRAV 12 Bom 1

5 ———— **Surveyor employed by the Collector**—*Penal Code (Act XLV of 1860) ss 21 and 186* The Collector acting in the management of a khas mehal the property of the Government is as much the Government within the meaning of s. 17 of the Penal Code as when he is exercising any other of the duties of his official position A surveyor employed by the Collector in the khas mehal department to make a survey of a certain portion of a watercourse is a public servant within the meaning of s 21 of the Penal Code *Reg* v *Pamajirav 12 Bom 1* and *Chatter Lal* v *Thacoor Pershad I L R 18 Calc 518* referred to BAJOO SINGH v QUEEN EMPRESS
I L R 26 Calc 158
3 C W N 115

6 ———— **Labourer employed by Government**—*Penal Code s 21* A carter employed by Government is not a public servant within the meaning of s 21 of the Penal Code QUEEN v NACHIMUTTU I L R 7 Mad. 18

7 ———— **Mohurrir appointed under Beng Act IX of 1862**—*Money received for registering deeds* Money received by a mohurrir appointed under the Registration Act Bengal Act IX of 1862 by way of fee for registering deeds is money entrusted to him as a public servant QUEEN v DWARKANATH GHOSE 20 W R Cr 49

8 ———— **Court of Wards peon**—*Penal Code s 21* A peon employed by the manager of an estate under the charge of the Court of Wards is not a public servant within the meaning of s 21 of the Penal Code QUEEN v ARAYI
I L R 7 Mad. 17

9 ———— **Manager employed under the Court of Wards**—*Penal Code (Act XLV of 1860) ss 21 161*— *Public servant* *Held* that the manager of an estate employed under the Court of Wards is a public servant within the meaning of s. 21 of the Penal Code *Queen Empress* v *Arayi I L R 7 Mad 17* referred to QUEEN EMPRESS v MATHURA PRASAD
I L R. 21 All. 127

10 ———— **Person appointed by Government Solicitor to act as Prosecutor in the Police Court**—*Penal Code 21* A per [illegible]
vant within the meaning of 21 of the Penal Code EMPRESS v BUTIO KRISHTO DOSS
I L R 3 Calc 497

11. ———— **Public servant Peon attached to the office of the Superintendent of the Salt Department whether a**—*Penal Code (Act XLV of 1850) s 21 cl (9) s 161*— [illegible]

in the service and pay of the Government and attached to a Government office is an officer of Government and a public servant within the meaning of s. 21 cl. (9) of the Penal Code *Reg* v *Ramajirav Jivbajirai 12 Bom 1* explained and distinguished *Queen* v *Arayi I L R 7 Mad 17* and *Queen Empress* v *Mathura Prasad I L R 21 All. 127* disapproved of *In the matter of* NAJAMADDIN 4 C W N 748

12. ———— **Civil Surgeon**—*Penal Code ss 116 and 161*—*Abetment of illegal gratification* Where the accused was charged under s. 116 Penal Code with having abetted the commission of an offence punishable under s. 161 of that Code the person abetted having been a Civil Surgeon of a sudder station it was *held* that the enhanced imprisonment prescribed by the latter part of s 116 could not be awarded as the Civil Surgeon was not a public servant within the words of the section

PUBLIC SERVANT—*contd*

who e duty it is to prevent the commission of such offence QUEEN v RAMNATH SARMA BISWAS 21 W R Cr 9

13 ———— Peon of Collector s Court—*Penal Code s 21 cl 9 and s 161—Illegal gratification—Peon remunerated by fees* A peon of the Collector s Court who received no fixed pay from the Government but was remunerated by fees whenever employed to serve any process and was placed on the register of supernumerary peons had been ordered by the Magistrate to do duty on a particular day at the office of the Special Sub Registrar where he was detected receiving an eight anna piece from a person and was prosecuted for receiving an illegal gratification as a public servant *Held* that the peon was a public servant under the definition in the 9th clau e of s 21 of the Penal Code and the trial of the charge against him must be proceeded with. QUEEN v RAM KRISHNA DAS 7 B L R 446

s c QUEEN v PEMKISTO DASS 16 W R Cr 27

14 ———— Officer employed in Criminal Court—*Obtaining valuable thing without consideration—Illegal gratification—Penal Code s 165* K a police officer employed in a Criminal Court to read the diaries of cases investigated by the police and to bring up in order each case for trial with the accused and witnesses after a case of theft had been decided by the Court in which the persons accused were convicted and a sum of money the proceeds of the theft had been made over by the order of the Court to the prosecutor in the case asked for and received from the pro ecutor a portion of such money not as a motive or reward for any of the objects described in s. 161 of the Penal Code but as dasturi. *Held* that K was not under these circumstances punishable under s 161 of the Penal Code but under s 165 of that Code EMPRESS OF INDIA v KAMPTA PRASAD I. L R 1 All. 530

15 ———— Poddar of Bank of Bengal—*Illegal gratification—Penal Code ss 21 and 161* The manager of a Court of Wards estate paid into a bank, carrying on the treasury bu iness of the Government a sum of money on behalf of Government B a poddar in the bank, demanded and [illegible]

the accu ed and that the poddar was a servant of the bank only and not a public servant within the meaing of cl 9 s. 21 of the Penal Code *In the matter of the petition of* MODUN MOHUN I L R, 4 Calc 376

16 ———— Convict warders—*Penal Code s 223—Suffering* [illegible] warders are [illegible] of s. 223 [illegible] CHAND MO[illegible]

17 ———— Municipal Inspector—*District Municipalities Act (Mad Act IV of 1884) s 41* A Municipal inspector is a public servant within the meaning of s 41 of the Madras District Municipalities Act QUEEN EMPRESS v PAMASAMI I L R 13 Mad 131

18 ———— Duties of zamindari karnam—Accounts—*Penal Code s 176—Mad Reg XXIX of 1802 s 12* A zamindari karnam is a publ c servant and is bound by law to produce accounts to the proprietor or farmer of a zamindari. SUBRAMANYA v SOMASUNDARA I L R 15 Mad. 197

19 ———— Sanitary Inspector—*Madras Local Boards Act (Mad Act V of 1884)* A Sanitary Inspector appointed by the local board [illegible]

20 ———— Party called upon to attend and witness a search—*Penal Code (Act XLV of 1860) s 187—Rendering assistance to a public servant—Refusal to sign search list by person who attended search under Abkari law—Liability—Criminal Procedure Code (Act V of 1898) s 103 (1)* A person was called upon by an Abkari Inspector to attend a search held under s 103 of the Code of Criminal Procedure and did so He however refused to sign the earch li t when it was prepared. On a charge being preferred against him under s 187 of the Indian Penal Code of intentionally omitting to as ist a public servant in the execut on of his duty —*Held* that the accused was not guilty [illegible] that a person

search list [illegible] bound by the earlier part of s 187 of the Penal Code to render is *ejusdem generis* with the various forms of assistance referred to in the latter part of the section It mu t have some direct personal relation to the execution of the duty by the pub[illegible]

21 ———— Illegal gratification—*Penal Code (Act XLV of 1860) s 161 [illegible]—Receiving [illegible] public servant—Gratification on another—[illegible] separate offences [illegible] ney is paid to [illegible] n on one day for the same [illegible] gratification* [illegible] tion becomes a continuous offence [illegible] there ought not to be separate convictions for offences under ss 161 and 165 of the Penal Code for the same

PUBLIC SERVANT—*contd*

offence JAGAT CHANDRA SARMA v. LAL CHAND DAS (1901) 5 C W N 332

of the Penal Code is one who is appointed to some office for the performance of some public duty

to *Queen Empress v Mathura Prasad I L R 21 All 1*, dissented from NAZAMUDDIN v. QUEEN EMPRESS (1900) I. L. R 28 Calc 344

23 ———— **Receiver appointed under Land Registration Act (Ben Act VII of**

duly promulgated by public servant—Persuasion to

servant legally competent to issue an order directing persons to attend before the Collector with their collection papers and rent receipts and that disobedience to such an order did not constitute an offence under either s 174 or s 175 of the Penal Code *Held* also that an order by such a Receiver forbidding persons to pay rent to any person other than the Receiver was not an order promulgated by a public servant lawfully empowered to promulgate such order and that disobedience to such order was not an offence within the terms of s 188 of the Penal Code *Held* further that persuasion addressed to tenants in the absence of such Receiver not to pay rent to him was not an obstruction of the Receiver within the provisions of s 186 of the Penal Code EBRAHIM SIRCAR v. EMPEROR (1901) I. L. R 29 Calc 236 s c 6 C W N 141

24 ———— **Time-expired warrant**—*Penal Code ss 119 & 353—Civil Procedure Code (Act XIV of 1882) s 251—Criminal force by members of an unlawful assembly to deter public servant from discharge of duty* S 251 of the Code of Civil Procedure requires the Court to specify in a warrant execution for decree the day on or before which the warrant must be executed A Commissioner attempting to give possession under a time expired warrant has no authority to go upon land in the possession of the party who resists the execution. ABINASH CHANDRA ADITYA v. ANANDA CHANDRA PAL (1904) I L R 31 Calc 424

PUBLIC SERVANT—*concld*

25 ———— **Constable**—*Penal Code s 353—Using criminal force to deter a public servant—Entry by police on premises of suspected person at night—Assault on police* A police constable at midnight entered upon the premises of a person who was regarded by the police as a suspicious character and knocked at his door to ascertain if he was there whereupon he came out and abused and pushed the constable and lifted a stick as if he were about to hit the constable with it On a complaint being preferred under s 353 of using criminal force to deter a public servant in the execution of his duty —*Held* that the offence had not been committed The constable was not engaged in the execution of his duty as a public servant and was technically guilty of house trespass and his action was calculated to cause annoyance to the inmates of the house and was insulting to the accused who was justified in causing the slight harm which he had inflicted on the constable The latter could not be regarded under s 99 as acting in good faith under colour of his office as his action was not authorized by any police circular or order DORASAMY PILLAI v EMPEROR (1904) I L R 27 Mad. 52

26 ———— **Clerk to a Sub Registrar**—*Illegal gratification—Penal Code (Act XLV of 1860) ss 21 161—Registration Act (III of 1877)* ... Sub ... en to ... ant ... Code

... 664

PUBLIC SPRING

See PENAL CODE s 277
I L R 2 Calc 383
I. L R 4 Mad 229

PUBLIC STREET

See PROCESSION

See PUBLIC ROAD HIGHWAY STREET OR THOROUGHFARE

1 ———— **Right to carry religious processions in—Custom**—*Right to obstruct such processions not claimable on the ground of usage or custom—When proof of damage necessary in suit brought for obstruction of procession* Persons of all sects and creeds are equally entitled to carry religious processions along public streets and thoroughfares and no particular sect can claim on the ground of custom or immemorial use an exclusive right to carry processions through such streets The exercise of such right must not interfere with the ordinary use of such streets by the public and must

at 190 referred to An action for obst... a procession may not be maintainable wi... f

PUBLIC STREET—concld

of special damage Where however an illegal order of the Magistrate has been procured restraining such procession a suit to declare the right to carry such procession is sustainable without such proof the cause of action being the improper order so obtained by the defendants KANDASAMI MUDALI v SUBBOYA MUDALI (1909)

I L R 32 Mad 478

2 ——— *Right to carry religious processions in* Continued use by the ... that way ... been dedi... *arquhar* v ... *6 at page* ... *59*6 referred to All members of the public have a right to carry religious processions through such public way in a lawful manner irrespective of the religion to which they may belong MANNADA MUDALI v NALLAYA GOUNDEN (1909)

I L R 32 Mad. 527

PUBLIC THOROUGHFARE

See NUISANCE I L R 31 All 444

See PUBLIC ROAD HIGHWAY STREET OR THOROUGHFARE

PUBLIC TRUSTS

See CIVIL PROCEDURE CODE 1882 s 539

See RIGHT OF SUIT

I L R. 32 Calc 273

1 ——— *Public trust—Sanction of the Advocate General when necessary under the Civil Procedure Code* S 539 of the Civil Procedure Code contemplates the existence of a dispute of such a *public nature* that the intervention of the Advocate General is necessary to decide if and by whom a suit should be brought to establish a public right *Sajedur Raja* v *Gour Mohun Das I L R 24 Calc 418 425* referred to MONI JAN BIBEE v KHADEM HOSSEIN (1905)

9 C W N 151

2 ——— *Suit by an individual to establish a common right to a public religious trust—Other persons associated as co plaintiff—If such suit falls within s 30 or s 539—Ss 539 and 30 if mutually exclusive—S 539 construction of* The word of s 539 of the Civil Procedure Code contemplate the existence of persons other than those permitted to sue who may be affected The existence of such other persons or the joinder of some of them as co plaintiffs does not take away the right of an individual to sue under that section provided his rights as contemplated in that section have been infringed The Chinese community of Calcutta are divided into two classes the Puntis and the Hakalus The Puntis being excluded from the Chinese temple and cemetery five of them after obtaining the sanction of the Advocate General under s 539 of the Civil Procedure Code instituted this suit for a declaration that the temple and cemetery were public religious and charitable trusts for the benefit of the said community and as such the

PUBLIC TRUSTS—concld

Puntis ... were entitled to the benefits ... as frame ... s 30 of ... s 539 ... MacMoc ...

PUBLIC WORKS IRRIGATION DEPARTMENT

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 34 Calc 207

PUBLIC WORSHIP

See HINDU LAW—WORSHIP

See MADRAS MUNICIPAL ACT 1878 s 119
I L R 6 Mad. 287

See MAHOMEDAN LAW—CUSTOM
I L R 18 Calc 448
L R 18 I A. 59

See MAHOMEDAN LAW—WORSHIP

See RIGHT OF SUIT—PUBLIC WORSHIP SUITS REGARDING RIGHT OF

PUBLICATION

See DEFAMATION LIBEL

See PRIVILEGED COMMUNICATION
7 C W N 246

——— of banns of marriage—

See BIGAMY I L R. 1 All 316

PUBLISHER.

See LOTTERY I L R 10 Bom 97

See PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867) ss 3 1? I L R 23 Calc. 414

PUISNE MORTGAGEE

See MORTGAGE

——— *Prior mortgage—Suit by prior mortgagee for sale—Puisne mortgagee not made a party—Sale in execution—Rights of the puisne mortgagee* Where a prior mortgagee sues his mortgagor for the sale of the mortgaged property without making the puisne mortgagee a party to the ... the suit or its suit ... resul ... execu ... persc ... precisely the same rights ... against his mortgagor and the prior mortga... the purchaser ... ...

... 112

PUJA KHARACH

See ABWAB I L R. 33 Calc. 693

PUNCHAYET

See CONFESSION 1 C W N 904

PUNDITS OPINIONS OF

1. ———— Weight to be attached to

Observations of the Privy Council as to the weight to be attached to the opinions of pundits COLLECTOR OF MADURA v MUTU RAMALINGA SATHUPATHY
1 B L R P C 1 12 Moo I A 397
10 W R P C 17

2. ———— *Pundit disagreeing with current authorities* The opinions of pundits must not be taken on their authority to be a correct exposition of the law when such opinions are discordant from works of current and established authority COLLECTOR OF MASULIPATAM v CAVALY VENCATA NARAINAPAH
2 W R P C 61 1 Moo I A. 529

3 ———— Reference to pundits—*Statement of cases* Every reference in a suit to law officers likely to bind a right should embrace all important facts proved or admitted in the cause

2 W R P C 4 8 Moo I A. 400

PUNISHMENT

———— effect of non publication of notification—

See EMBANKMENT 7 C W N 286

———— enhancement of—

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
I. L R 1 Mad 54 289
I. L R 4 Mad. 233

See REVISION—CRIMINAL CASES—SENTENCES B L R Sup Vol. 443
I. L R 6 All 622
I L R 11 Calc 530
20 W R Cr 15 22

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—ENHANCEMENT

———— form of—

See OFFENCE COMMITTED ON THE HIGH SEAS 1 B L R O Cr 1
8 Bom Cr 63
I L R 14 Bom. 227

See SENTENCE

PUNJAB LAWS ACT

———— IV of 1872 (as amended by Act XII of 1878) ss 10 12 14—

———— *Pre emption— Village community —Occupancy tenants in a mindari village* The expression village community in the Punjab Laws Act (XII of 1878) is not used to denote a village community of the typical sort consisting of members of one family or one clan holding the village lands in common and dividing between them the agricultural lands according to the custom of the village but is used to denote a

village Occupancy tenants are members within the meaning of the Punjab Laws Act and so are all persons in any inferior position who belong to the village though they may be unconnected with the land and not entitled to any right of pre emption under the Act RAHIMUDDIN v PEWAL (1903)
I L R 30 Calc 635
s c 7 C W N 498
L R 30 I A 69

PURCHASE

See BENGAL TENANCY ACT s 167
13 C W N 412

See EXECUTOR 13 C W N 557

———— speculative—

See SALE 13 C W N 710

PURCHASE MONEY

See PRE EMPTION—PURCHASE MONEY

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER 7 W R 317
I L R. 5 Bom 554
I L R 3 All. 77

———— construction of agreement to reconvey on re payment of—

See VENDOR AND PURCHASER—MISCELLANEOUS CASES 6 C W N 192

———— failure to pay—

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER
I L R 2 Bom 547

See VENDOR AND PURCHASER—CONSIDERATION

See VENDOR AND PURCHASER—VENDOR RIGHTS AND LIABILITIES OF

———— refund of—

See ACT XL OF 1858 s 18
15 B L R. 350

See DECREE—FORM OF DECREE—GENERAL CASES 1 B L R. A C 50

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS 7 B L R 90
7 N W 201

See HINDU LAW—ALIENATION—ALIENATION BY FATHER
I L R 11 Calc. 396
B L R. Sup Vol. 1018
11 B L R. Ap 28
4 B L R. A C 15
I L R. 22 Mad. 312

PURCHASE MONEY—*concld*

———— *refund of*—*concld*

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD
I L R 29 Calc 370

SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE MONEY

See VENDOR AND PURCHASER—PURCHASE MONEY ETC

———— refund of application for—

See LIMITATION ACT 1877 ART 178
I L R 11 All 372

———— source of—

See BENAMI TRANSACTION—SOURCE OF PURCHASE MONEY

See HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY

———— suit to *recover*—

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE 7 C W N 105

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE MONEY

See SHIP SALE OF
I L R 21 Mad 395

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—PURCHASE MONEY
I L R 11 Mad 269
4 C W N 63

See VENDOR AND PURCHASER—PURCHASE MONEY AND OTHER PAYMENTS BY PURCHASERS

PURCHASER

See AUCTION PURCHASER

See BENAMI TRANSACTION—CERTIFIED PURCHASERS

See CIVIL PROCEDURE CODE 1882 s 244—PARTIES TO SUIT 6 C W N 127
7 C W N 54

See DECREE I L R 32 Bom. 181

See HINDU LAW 13 C W N 815

See LIS PENDENS I L R 23 All. 331
I L R 27 Bom 266

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS

See PARTIES—PARTIES TO SUITS—BENAMIDARS

See PARTIES—PARTIES TO SUIT—MORTGAGES SUITS CONCERNING
I L R 30 Calc 755

See PARTIES—PARTIES TO SUITS—PURCHASERS

PURCHASER—*contd*

See SALE FOR ARREARS OF RENT

See SALE FOR ARREARS OF REVENUE

See SALE IN EXECUTION OF DECREE—

JOINT PROPERTY
I L R 23 All 355

PURCHASERS TITLE OF

SETTING ASIDE SALE—RIGHTS OF PURCHASERS

See VENDOR AND PURCHASER.

———— at sale for arrears of revenue—

See RES JUDICATA
I L R 34 Calc 668

———— bonâ fide—

See DEBUTTER 13 C W N 605

See LIMITATION ACT 1877 SCH II ART 134

See ONUS OF PROOF—HINDU LAW—ALIENATION

See VENDOR AND PURCHASER—NOTICE

———— effect of introduction of into joint family—

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION AND RIGHTS OF PURCHASERS

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO PARCENERS

See HINDU LAW—PARTITION—SHARES ON PARTITION—PURCHASERS

———— enquiry by—

See HINDU LAW 13 C W N 931

———— from guardian—

See ACT XL OF 1858 s 18

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS

See HINDU LAW—GUARDIAN—DUTIES AND POWERS OF GUARDIANS

See MAHOMEDAN LAW—GUARDIAN
3 B L R A C 423

———— from heir—

See LETTERS OF ADMINISTRATION
I L R 28 Calc 587

———— from Hindu widow—

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW

———— from members of Hindu family—

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION AND RIGHTS OF PURCHASERS

PURCHASER—*contd*

——— ignorant and unwary—

See TRADE MARK I L R 34 Calc 495

——— liabilities of—

See BENGAL REGULATION VIII OF 1819 s 9 7 C W N 111

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT 7 C W N 203

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS

——— of ancestral property—

See MAHOMEDAN LAW I L R 31 Bom 143

——— of endowed property—

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY

——— of equity of redemption—

See EQUITY OF REDEMPTION 5 B L R 380 450 460 note 10 B L R 60 note

See MORTGAGE 12 C W N 745

See MORTGAGE—SALE OF MORTGAGED PROPERTY

See TRANSFER OF PROPERTY ACT s 99 I L R 30 Calc 463

See VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY

——— of joint family property—

See DECREE—FORM OF DECREE—POSSESSION

See HINDU LAW—ALIENATION

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION AND RIGHTS OF PURCHASERS

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY

——— of portion of holding—

See BENGAL TENANCY ACT s 67 13 C W N 963

——— of right title and interest of widow—

See HINDU LAW—WIDOW—DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY

——— of tenure—

See ADMINISTRATION BOND 10 C W N 673

See BENGAL TENANCY ACT s 1 0 10 C W N 438

PURCHASER—*concld*

——— of tenure—*concld*

See HINDU LAW—MAINTENANCE 10 C W N 1074

See REVENUE SALE LAW s 3 10 C W N 497

——— rights of—

See HINDU LAW—

ALIENATION—ALIENATION BY FATHER.

JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION AND RIGHTS OF PURCHASERS

PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO PARCENER

WIDOW—DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY

See MAHOMEDAN LAW—DEBTS

See MORTGAGE—SALE OF MORTGAGED PROPERTY

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE 7 C W N 105

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859 I L R 30 Calc 1071

PURCHASERS RIGHTS AND LIABILITIES OF

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS

See VENDOR AND PURCHASER.

——— title of—

See LIMITATION I L R 34 Calc 711

See SALE IN EXECUTION OF DECREE—PURCHASERS TITLE OF

See VENDOR AND PURCHASER—NOTICE

——— *Contract Act (IX of 1872) s 69—Money paid by purchaser towards an incumbrance subject to which he buys not recoverable under* Where a purchaser of property at a Court sale purchase it subject to a charge for maintenance such purchaser cannot under s 69 of the Contract Act recover from the owner in whose hands it was so liable payments made by him (the purchaser) towards maintenance to prevent the sale of the property MANGALATHAMMAL v NARAYANSWAMI AIYAR (1907) I L R 30 Mad. 461

PURDANASHIN LADY

See PARDANASHIN WOMEN

PUTNIDAR

See CHAUKIDARI CHAKRAN LAND
I L R 35 Calc 346

See PATNI TENURE

———— right of, of small share to claim partition—

See PARTITION SUIT FOR.
I L R 34 Calc 1026

PUTNI LEASE

See CHAUKIDARI CHAKRAN LANDS
I L R 34 Calc 109 564

See HINDU LAW—ALIENATION
I L R 31 Calc 698

See PATNI TENURE

PUTNI SALE LAW REGULATION VIII OF 1819

See LIMITATION ACT ss 7 9
9 C W N 795

PUTNI SALE

See LIMITATION ACT 1877 SCH II ART 109
13 C W N 15

1 ———— *Putni Regulation (VIII of 1819)—Notice—Irregularity—Sale setting aside* In a suit to set aside a sale held under the Putni Regulation it was found that the notices were stuck up in the Collector s Office Board outside the Court from 10 A M to 5 P M and were not put up at all on Sundays *Held* that this was a sufficient compliance with the terms of the Regulation *Bejoy Chand Mahatap* v *Atulya Charan Bose I L R 32 Calc 953* explained and distinguished SACHI NANDAN DUTTA v BEJOY CHAND MAHATAP (1906)
11 C W N 729

2 ———— *Suit to set aside sale—Jurisdiction—Return of plaint—Appeal* A suit is to be brought A *putni* was sold in the Burdwan Collectorate and a suit was instituted to set aside the sale in the Court of the Sub-Judge of Hughly in whose juri diction a portion of the pro perty was situate The Court returned the plaint for presentation to the proper Court the plaintiff took back his pla nt and presented it to the Burdwan Court *Held* that having regard to the action of the plaintiff in presenting the plaint to the Burdwan Court *i e* in accepting and acting under the order of the Hughly Court it is not open to him to appe l from the order returning the plaint BENI MADHUB DAS v JOTINDRA MOHUN TAGORE (1907)
11 C W N 765

PUTNI TALUK

See CONTRACT ACT s 69
I L R 32 Calc 643

PUTNI TENURE

See PATNI TENURE

Q

QUANTUM MERUIT

See PRINCIPAL AND AGENT
8 C W N 831

QUARRIES

See CONTRACT—CONSTRUCTION OF CONTRACTS
I L R 13 Bom 630

See LAND ACQUISITION ACT (I OF 1894) s 23
I L R 33 Bom 483

See LAND ACQUISITION ACT s 24
I L R 18 Mad 369
L R 20 I A 80

———— suit for rent of—

See RENT SUIT FOR.
3 B L R A C 61

QUASI EXECUTOR DE SON TORT

See HINDU LAW—ADMINISTRATION
I L R 35 Calc 276

QUESTION OF FACT

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—CONCURRENT JUDGMENTS ON FACTS

See CHARGE TO JURY—SPECIAL CASES—QUESTION OF FACT 21 W R Cr 40

See PRIVY COUNCIL PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS

See PRIVY COUNCIL PRACTICE OF—QUESTION OF FACT

See REVISION—CRIMINAL CASES—QUESTIONS OF FACT

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTION OF FACT

QUESTION OF LAW

See ADMISSION—ADMISSION IN STATEMENTS OR PLEADINGS
I L R 21 All 285

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL
I L R 11 Calc 740

See ESTOPPEL—ESTOPPEL BY JUDGMENT
I L R 28 Calc 318

———— and fact—

See CHARGE TO JURY—SPECIAL CASES—QUESTION OF LAW AND FACT
8 W R Cr 60

See PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS.
I L R 1 Mad 252

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE MODE OF DEALING WITH.

QUESTION REFERRED TO FULL BENCH

See PRIVY COUNCIL PRACTICE OF—PRACTICE AS TO OBJECTIONS
I L R 1 Calc 226
L R 3 I A 7

See REFERENCE TO FULL BENCH

QUIA TIMET ACTION

———— *Easement—Ancient lights—Injunction to restrain defendant from interfering with ancient light* There are at least two necessary ingredients for a *quia timet* action There [illegible]

688 followed GANGABAI *v* PURSHOTAM (1907)
I L R 32 Bom 146

QUO WARRANTO WRIT OF

See CALCUTTA MUNICIPAL CONSOLIDATION ACT s 31 I L R 22 Calc 717

R

RACE COURSE ENCLOSURE

See BOMBAY POLICE ACT 1890 s. 47
I L R 22 Bom 746

RAILWAY

———— cattle straying on—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT 1890
I L R 18 Mad 228

RAILWAY COMPANY

See BOMBAY MUNICIPAL ACT 1865 s 2
9 Bom 217

See CONTRACT—PRIVITY OF CONTRACT
17 W R 240
18 W R 145
I L R 29 All 228

See LIMITATION ACT 1877 SCH II ART 30
I L R 3 Mad 240
I L R 7 Bom 478
I L R 19 Bom 165

See NEGLIGENCE 9 W R 73
I L R 1 All 60

See PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890) s. 3
I L R 26 Bom 609

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL I L R 5 Bom 371

See RAILWAYS ACT

———— bye laws and rules of—

See CARRIERS I L R 31 Calc 951

See RAILWAYS ACT s 72
8 C W N 725

RAILWAY COMPANY—*contd*

1. ———— **Liability for nuisance caused by works**—*Statutory powers—Beng Reg I of 1824—Act XLII of 1850—Land taken for public purposes—Suit for injunction to restrain nuisance* The plaintiffs the owners and occupiers of a house and premises in Howrah sued for an injunction to restrain a nuisance caused by certain workshops forges and furnaces erected by the defendants and for damages for the injury done thereby The de[illegible]

and other works (connected with making maintaining and working the railways) as the East India Company might deem necessary or expedient The workshops complained of were erected in 1867 under the sanction of the Bengal Government on land purchased by the Government in 1854 for the purposes of the railway under Regulation I of 1824 and Act XLII of 1850 and which had been made over to the defendants *Held* that a nuisance having been proved to exist—that is to say such annoyance as materially interfered with the ordinary comfort of human existence in the house and caused [illegible]

complaining in May 1870 the defendants had admitted that there was a nuisance and had up to June 1871 made various efforts to abate it Nor [illegible]

was reserved in the decree On a motion by the defendant supported by an affidavit showing the alterations which they proposed to make with the [illegible]

workshops and would occasion great [illegible] the Court granted the time asked for on [illegible] tions that the defendants paid the costs of the application and did all they possibly could in the meanwhile to prevent annoyance to the [illegible] RAJ MOHUN BOSE *v* EAST INDIAN RAILWAY COMPANY 10 B L R 241

2 ———— **Fire caused by spark from engine**—*Action for damages—[illegible] tory powers* The East Indian Railway Company was incorporated under 12 & 13 Vict c XCIII for the purpose of making and [illegible] working and maintaining the East Indian Railway including all necessary [illegible] nient extensions branches [illegible] upon between the Railway Company and the East India Company and by [illegible] the Railway Company and the East India Company dated 17th August 1849 the Railway Com[illegible]

RAILWAY COMPANY—*contd*

was authorized and directed to make and main tain such stations offices machinery and other works and conveniences connected with the making maintaining and working the Railway and to provide a good and sufficient working stock of en gines carriages and other plant and machinery for working the said railway The plaintiff was the ... the railway line at ... Com ... bunga In the ... railway ... images ... one of ... d want ... in the ... of due care on the par ... of the line by allowing dry gras of ... ilway bank ... line without ... at the expul sion of sparks ... ndant Com pany was authorized to run locomotive engines on the lines of railway constructed by the Company under the statutory powers given to it and there fore the Company was not liable for damage caused in working the line under such a statutory powers without proof of negligence *Held* also on the ... the construction of their en

HALFORD *v* EAST INDIAN RAILWAY COMPANY 14 B L R 1

See also MADRAS RAILWAY COMPANY *v* ZAMINDAR OF CARVETINAGARAM 14 B L R 209 22 W R 279 L R 1 I A 364

3 ———— Liability of company—*Loss of articles not declared or insured—Liability between arrival and delivery* A railway company is not liable for non delivery of articles specified in s 10 Act XVIII of 1854 the value of which has neither been declared nor insured The protection con ferred by that section extends till such time as the consignee takes delivery and does not terminate on the arrival of the articles at their destination ILLOOR KRISTNIAH *v* GREAT INDIAN PENINSULA RAILWAY COMPANY ILLOOR KRISTNIAH *v* MADRAS RAILWAY COMPANY I L R 2 Mad 310

4 ———— *Railway Act 1854 s 10—Declaration of nature of goods—Silver—* ... company's servants S 10 ...

articles de ... of that se ... has been ... pany s se ... made by the sender of an excepted article entitling ... charge

merely giving an account of the quantity and description of the goods delivered for carriage when ... booking clerk To estab ...

the special risk and is willing to pay the ... rates VENKATACHALA *v* SOUTH INDIAN RAILWAY COMPANY I L R 5 Mad 208

5 ———— *Negligence—Liability for injury—Act XVIII of 1854 s 11* A railway company is liable for injury sustained by goods committed to their care if they have been guilty of gross negligence ASSAM TEA COMPANY *v* EAST INDIAN RAILWAY COMPANY Bourke O C 39

6 ———— *Damage done not covered by risk note—Onus probandi* A company ... risk note ... h the com ... INDIAN RAIL WAY COMPANY ... Agra 200

7 ———— *Liability of company—Carriers of goods—Act XVIII of 1854 s 11—Negligence* The East Indian Railway Company cannot under s. 11 of Act XVIII of 1854 limit ... of ordinary ... injury caused ... possibly ... nment limit ... loss arising their liability by contract ... otherwise than by gross neglect EAST INDIAN RAILWAY COMPANY *v* JORDAN 4 B L R O C 97 14 W R O C 11

8 ———— *Carriers—Insufficiency of evidence* The consignees of two bundles of cow hides which had been carried by a railway company having refused to take delivery on the ground of shortness in the number of pieces the railway company pleaded that they were not indebted as he had contracted to carry such and such a number of bundles and had done so The bills of lading showed so many bundles said to contain such a number of pieces The company also contested the plaintiff s enumeration of pieces *Held* that the railway company was not liable there being no evidence that the bundles had been broken or the hides counted by piece SCHLAEPFER PUTZ & CO. *v* EASTERN BENGAL RAILWAY COMPANY 21 W R 830

9 ———— *Carriers—Evidence—Burden of proof of negligence—Misdescription of goods—Carriers Act (III of 1865) s 9—Act XVIII of 1854 s 11* The plaintiff caused to be delivered to the defendants for carriage from Bombay to Oojein certain goods among which were twelve bags of sugar candy His agent when signing the consignment note at the railway station stated erroneously but without fraudulent intent stated

RAILWAY COMPANY—*contd*

the contents of the twelve bags to be alum for which a lower freight was charged by the defendant The railway clerk received the goods and gave a receipt note on which the following condition was printed The company give notice that they are not responsible for loss or damage arising from fire the act of God or civil commotion In the course of the journey a fire broke out in the train and a large portion of the plaintiff s goods including ten bags of the sugar candy was destroyed In an action for damages for non delivery —*Held* (i) that under the provisions of 9 of the Carriers Act (III of 1865) the burden of proving negligence on the part of the defendants did not rest upon the plaintiff notwithstanding the condition in the receipt note (ii) that the misdescription by the plaintiff s agent of the twelve bags of sugar candy as alum did not exonerate the defendants from all liability to the plaintiff in respect of these bags The plaintiff however was only entitled to recover in respect of the ten lost bags the value of alum only and not sugar candy while the defendants on the other hand could not in respect of the said ten bags charge freight as for sugar candy ISHVARDAS GULASCHAND v G I P RAILWAY COMPANY

I L R 3 Bom 120

10 ———— *Act XVIII of 1854 ss 11 and 43—Carriers* The defendants

con ignment note which was signed by the plaintiff s agent at Poona contained the following condition of which he had due notice The Company receive goods for conveyance to stations on other railways with which they have made arrangements to book through *subject to the rules and regulations and rates and fares of the respective companies over whose lines the goods may pass* On reaching Raichore the bags of jowari were transferred from the defendants wagon in which they had left Poona into wagon of the Madras Railway Company One bag was subsequently lost but the remaining twenty nine arrived and were unloaded in good condition at Bellary on the 19th September 18..

instant the bags were unloaded at Bellary and (ii) that the plaintiff s agent at Bellary did not apply for the good but allowed them to remain in the

RAILWAY COMPANY—*contd*

by give public notice that they will not be responsible for loss of or damage to grain after it has been unloaded from the Company s wagons The defendants sought to incorporate this notice into their contract with the plaintiff by virtue of the condition printed in their goods consignment note *Held* that the said public notice afforded no protection to the defendant on the ground that it was invalid as a regulation for non com

agent had such knowledge at the time of making the consignment the notice would have constituted such a stipulation as to contravene s 11 of Act XVIII of 1854 or whether it might be read together with that section and treated as effectual except so far as its operation would be limited in its scope by that section. *Held* also that the arrival of the

stipulation to escape from liability for loss or negligence or

SUBUTRAM

3 Bom 98

11 ———— *Carriers liability of—Contract Act (IX of 1872) ss 151 152—Act XVIII of 1854—Act III of 1865* The English common law rule under which common carriers are held liable as insurance of goods against all risks except the act of God or the King s enemies is not now in force in India In cases not met by the special provisions of the Act relating to railways and carriers the liability of carriers for loss or damage to goods entrusted to them is prescribed by ss 151 and 152 of the Contract Act (IX of 1872) The plaintiff's good were being carried in a train of the defendants from Nandgaon to Egatpuri. During the journey the train was plundered by robber and the plaintiff's goods were stolen *Held* that the defendants were entitled to the benefit of s 152 of the Contract Act and should be permitted ...

RAILWAY COMPANY—*contd*

compartment notwithstanding the fact that such carriage of fireworks is an offence and that every one is presumed to know the law The maxim that every man is presumed to know the law is limited to the determination of the civil or criminal liability of the person who e knowledge is in question. *It* cannot legitimately be made use of where (as in the present ca e) the parties are different and dis tinct from him EAST INDIAN RAILWAY Co v KALLY DASS MOOKERJEE I L R 26 Calc 465 2 C W N 609 3 C W N 781

19 ———— **Negligence of Railway Company in leaving door of railway carriage open or unfastened**—*Hurt caused to passenger while trying to secure door* Leaving the door of a railway carriage open or unfastened amounts to negligence on the part of a Railway Company *and the Company is liable for any in*jury caused thereby to a pas enger If any incon venience or danger is caused by the negligence of the Company a passenger may lawfully attempt to get rid of such inconvenience or danger pro vided that in doing o he runs no obvious risk *disproportionate to the inconvenience or danger* and is not himself guilty of any negligence and if in such attempt he is injured the Company is

asleep in the carriage He sub equently awoke when the train was pas ing through a tunnel and found that the whole of the door which opened outwards had been torn away from its hinges ... flap ... de of ... In ... tiff s ... f his ... were caused by the negligence of the Railway Company and that the plaintiff was entitled to damages BROMLEY v GREAT INDIAN PENINSULA RAILWAY Co I L R 24 Bom 1

20 ———— **Interchange of traffic be tween two Railway Companies**—*Agency* When two Railway Companies interchange traffic goods and passengers with through tickets rates and invoices payment being made at either end and profits share l by mileage the receiving Com pany by granting a receipt note for goods to be ... the deli ... contract ... nt of the ... MAIORAJ

I L R 3 Mad 240

21 ———— **Responsibility of a Railway Company in the care of passengers**—*Pas sengers—Injury to the latter by the illegal act of a fellow passenger—Indian Railways Act (IX of 1890) s 59—Negligence* The legal obligation upon a Railway Company to exercise due care and skill in

RAILWAY COMPANY—*contd*

carrying passengers does not extend so far that the Company can be held responsible under all circumstances for not carrying them safely Negligence alleged against them must be proved affirmatively where denied It was not the duty ... every parcel that

Railway Company 16 Q B 984 as to the duty to carry safely explained As no act or omis sion of neglect had been proved against the Com pany or their ervants the decrees below were re commended for reversal and the suit for dismi sal EAST INDIAN RAILWAY COMPANY v KALIDAS MUKERJI (1901) I L R 28 Calc 401 s c 5 C W N 449 L R 28 I A 144

22 ———— **Responsibility of Railway Company for goods left on its premises without a receipt being obtained for them**—*Railways Act (IX of 1890) s 47 (b)—Rules framed by the Company under the Act Held* that a rule by which a Railway Company disclaimed all responsibility for goods left on the Company s premises unless certain conditions were *fulfilled* the p inciple of which was that the goods should ... receipt given for them by ... was a ... of the ... Indian Railways Act 1890 and ... suit in res ... merely deposited upon the ... a receipt bei ... med *Shea* v ... *14 C B 64* referred to BANNA MAL v SECRETARY OF STATE FOR INDIA (1901) I L R 23 All 367

23 ———— **Re booking of goods after arrival at original destination**—*Carriage of goods—Contract—Formation of contract—Rules of Company for consignment of goods—Instructions to Station master to re book* The rules of a Railway Company prescribed certain procedure for the booking of goods In accordance with those rules certain goods were booked from Trichinopoly to Bagalkot The plaintiff requested *A* the goods ... master at Hotgi (on defendants ... om Ba al ... d him the ... on which ... form of con ignment used ... service ... asking ... or there ... delivered ... y Com ... *Held* ... tracted ... agalkot ... got ... ice tel ... tract to ... (190) ... m 126

I L ...

RAILWAY COMPANY—*contd*

24 ———— Negligence in construction of railway—*Suit for damage to land by causing water to flood it—Indian Railways Act (IX of 1890) ss 31?—Acting in excess of statutory powers in construction of railway—Suit for damages* The defendant by the negligent construction of a railway made in exercise of their powers under the Indian Railways Act (IX of 1890) caused the plaintiff s land to be flooded in the rainy season and consequently damaged That Act provides that a suit shall not lie to recover compensation for damage caused by the exercise of the powers thereby conferred but that the amount of such compensation shall be determined in accordance with the Land Acquisition Act 1870 *Held* it being shown that the defendant had exceeded or abused their statutory power that the plaintiff s remedy was by suit for damages and not for compensation under the Act Statutory powers under such an Act are to be exercised with ordinary care and skill and with some regard to the property and rights of others they are granted on the condition sometimes expressed and sometimes understood—expressed in the Railways Act of 1890 but if not expressed always understood—that the undertakers shall do as little damage as possible in the exercise of their statutory powers The injunction should be in general terms restraining the defendants from flooding and should not direct the execution of specified work *Lawrence* v *Great Northern Railway Company 16 Q B 643* *Broadbent* v *Imperial Gas Company 7 D G M & G 436* *Bagnall* v *London and North Western Railway Company* ? H & N 423 I H L C 544 *Pickel* v *Metropolitan Railway Company L R 2 E & I App 175 ?0?* and *Geddis* v *Proprietors of the Bann Reservoir L R 3 A C 4 0 455* referred to GAEKWAR SARKAR OF BARODA v GANDHI KACHRABHAI (1903) **I L R 27 Bom 344**
L R 30 I A 60
7 C W N 393

—*Second appeal—Plea of want of notice whether allowable—Practice* *G* booked a consignment of goods from the Sakrigali Ghat Station on the East Indian Railway to *P* at Kamptee a station on the Bengal Nagpur Railway Whilst the consignment was *en route* to Kamptee *G* directed the railway servants at Sakrigali Ghat station to notify to the Station master at Kamptee to deliver the consignment to plaintiff at Nargaon This direction was given but disregarding the order the Station master at Kamptee delivered the consignment to *P* at Kamptee The plaintiff sued the East Indian Railway to recover compensation for loss of goods. *Held* that the Railway Company was liable in damages the case was a simple case of breach of contract the defendant contracted to carry the goods and deliver them at Nargaon to the plaintiff and failed to do so *Held* further that the liability of the Railway Company was not affected by the fact that the Station master at Kamptee acted wrongly in disregarding the instructions which he had received from Sakrigali Ghat station *Held* further that a plea of failure

CHHAGANLAL SHALIGRAM SHET v EAST INDIAN RAILWAY COMPANY (1903) **I L R 27 Bom 597**

26 ———— Criminal offence—*Railways Act (IX of 1890) s 47—Rules under the Act* Neither s 47 of the Railways Act nor the rules made by a Railway Company under that section create any criminal offence The section merely gives the Company power to frame rules and to enforce them by imposing fines on its own officers BASANTA KUMAR BANERJEE *In re* (1907) **11 C W N 583**

27 ———— Reserved accommodation—*Railways Act (IX of 1890) s 67—Benefit of section not waived by Railway Company when they grant reserved accommodation under the rules* The provision in s 67 of the Indian Railways Act that "fares shall be deemed to be accepted and tickets deemed to be issued subject to the condition of there being room available in the train for which the tickets are issued is introduced for the benefit of Railway Companies and can be waived by them One of the rules under which reserved accommodation is granted is Reserved carriages in mail trains can be provided when the load of the train permits In granting reserve accommodation on the terms em

KOMMIREDDY SURAYANARAYANAMURTY v THE MADRAS RAILWAY COMPANY (1907) **I L R 30 Mad 417**

28 ———— Receipt of goods by one company for carriage over its own and another company s line—*Contract—Liability in respect of overcharge made by delivering company—Bye laws—Power of Railway Company to alter the*

manded payment of higher rates calculated per maund and refused delivery until such rates were paid The consignees paid under protest and sued both Railway Companies for a refund of the excess charges *Held* that the contract for carriage of the goods for the whole distance was one entire contract with the receiving company who were liable for the overcharge if any wrongfully demanded from the consignees. *Muschamp* v *Lancaster and Preston*

RAILWAY COMPANY—*concld*

Junction Railway Company, 8 M & W 421 58 R R 758 Webber v The Great Western Railway Company 3 H & C 771 and *Kalu Ram Maigraj v The Madras Railway Company I L R 3 Mad 240* followed. *Held* also that a bye law of the Great Indian Peninsula Railway Company which reserved to the Railway the right of remeasurement reweighment recalculation and re classification of rates terminals and other charges at the place of destination and of collecting before the goods are delivered any amount that may have been omitted or undercharged did not authorize the Great Indian Peninsula Railway Company to alter the contract between the parties and charge at the place of destination maund rates instead of wagon rate CHUNI LAL v THE NIZAM S GUARANTEED STATE RAILWAY COMPANY LD (1906) **I L R 29 All 228**

28 ————Luggage loss of—*Passenger s luggage—Merchandise booked as Luggage loss of—Railways Act (IX of 1890) ss 47 72—General Rules of Railway Companies—Damages suit for* A passenger took a journey on a railway and booked as his luggage a package containing merchandise The package was lost and consequently not delivered at the end of his journey He thereupon sued the Railway Company for damages caused by its loss —*Held* that the case was governed by s 72 of the Indian Railways Act (IX of 1890) and the section of the Contract Act referred to therein and that the Railway Company was liable for the loss of the package VELAYAT HOSSEIN v BENGAL AND NORTH WESTERN RAILWAY CO (1909) **I L R 36 Calc 819**

RAILWAY, INJURIES ON

See CIVIL PROCEDURE CODE 1882 ss 568 623 **I L R 31 Bom 381**

RAILWAY RECEIPT

See CONTRACT—BREACH OF CONTRACT **8 B L R 581**

See VENDOR AND PURCHASER—VENDOR RIGHTS AND LIABILITIES OF **I L R 14 Bom 57**

———— possession of—

See OPIUM ILLEGAL POSSESSION OF **I. L. R. 36 Calc 1016**

RAILWAY SERVANTS

See ATTACHMENT SUBJECTS OF ATTACHMENT—SALARY **I L R 30 Calc 712**

RAILWAYS ACT (XVIII OF 1854)

See RAILWAY COMPANY

———— s 10—

See RAILWAYS ACT 1879 s 11 **4 Bom. O C 129**

———— s 15—

See NEGLIGENCE **I L R 1 All. 60**

RAILWAYS ACT (XVIII OF 1854)—*concld*

———— s 17—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT 1854 **3 Bom Cr 51**

———— s 26—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT 1854 **3 Bom Cr 10** **4 Mad. Ap 9** **6 Mad. Ap 41** **7 Mad Ap 8**

See SESSIONS JUDGE JURISDICTION OF **6 Mad Ap 41**

———— ss 26, 29—Duty of guard—*Injury to coolies getting on train when in motion* Where some coolies were employed in a s[illegible] ballast train into motion at a railway station and one of them after pushing the train in getting up on the train or in attempting to do so fell and was so injured that he afterwards lost his life —*Held* that that evidence did not show that it was the duty of the guard to see that no one got up on the train when in motion QUEEN v FLOOD **8 W R Cr 4**

———— s 27—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED DURING JOURNEY **1 Mad 193**

———— s 34—

See SENTENCES AND FINE **6 Mad Ap 37**

———— s 35—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT **3 Bom Cr 54**

RAILWAYS ACT (XXV OF 1871)

———— s 2—*Act XVIII of 1854 s 1—Refusal to produce ticket—Fraudulent intention—Trespass*—[illegible] entered a carriage [illegible]

[illegible]

he applied to the station master for a ticket [illegible] allowed bay but was refused he was however allowed [illegible] to the same [illegible] a ticket [illegible] by the [illegible] and [illegible] out and [illegible] Dum[illegible]

[illegible] applied for a ticket to the station master [illegible] and [illegible] a discussion between the plaintiff s master and the station master the plaintiff at the direction of the [illegible] Ultimately the sta[illegible] ticket and [illegible] on his [illegible] sepoy who [illegible] carriage [illegible] [illegible]

RAILWAYS ACT (XXV OF 1871)—*concld*

———— s 2—*concld*

the forcible and illegal removal of the plaintiff from the carriage and for the illegal detention of the plaintiff at the station at Dhandu and for the illegal refusal of the defendants to allow the plaintiff to proceed in the train to Bombay —*Held* (i) that the latter portion of s 2 of Act XXV of 1871 amending s 1 of Act XVIII of 1854 which provides for payments to be made by persons failing to produce their tickets when demanded by the servants of the company applies only to the case of a person who has received a ticket and will not or cannot produce it and not to a person travelling without having obtained a ticket with no intention to defraud (ii) that the absence of a fraudulent intention did not make the entry into the carriage less unlawful and consequently that the plaintiff started from Surat as a trespasser (iii) that the conduct of the railway officials at the stations intermediate between Surat and Dhandu if it amounted at all to leave and licence to the plaintiff to proceed without a ticket could only operate as such until the train stopped at the next station (iv) that there was no legal obligation on the station master to issue a ticket to the plaintiff to enable him to proceed from Dhandu PRATAB DAJI v BOMBAY BARODA AND CENTRAL INDIA RAILWAY COMPANY

I L R 1 Bom 25

———— s 21—*Allowing cattle to stray on the line—Fences to line* On the 10th April 1874 prisoner s cow strayed on a railway line provided with a fence On the 13th June following the Government published rules under s 21 of the Railway Act Amendment Act 1871 determining what kind of fences should be deemed to be suitable for the exclusion of cattle On the date of the offence there were no such rules No evidence was offered of the state of the fence and the prisoner was convicted solely on his admission that he was the owner of the cow *Held* that the state of the fences required specific proof in the absence of which the conviction could not be sustained ANONYMOUS 8 Mad Ap 1

———— s 29—*Endangering life by negligence —Precaution taken by others to avoid danger* The

victed and punished under s 29 of Act XXV of 1871 QUEEN v MANPHOOL 5 N W 240

RAILWAYS ACT (IV OF 1879)

See CARRIERS

See RAILWAY COMPANY

RAILWAYS ACT (IV OF 1879)—*concld.*

———— s 11—

See LIMITATION ACT 1877 ART 30

I L R 19 Bom 165

1 ———— and Sch II (1)—*Silks—Insurance—Loss of goods by railway company* The term silks in a manufactured state and whether wrought up or not wrought up with other materials used in the second Schedule of the Railways Act 1879 does not apply to all classes of goods in which silk may be introduced A cloth composed of silk and cotton thread one eighth

WAY COMPANY I L R 6 Mad 420

2 ———— Railways Act 1854 s 10—*Silk—Question of fact* Whether or not cotton fabrics bordered with silk or having a portion of silk otherwise used in their manufacture are silks in a manufactured or unmanufactured state wrought up or not wrought up with other materials within the meaning of Act XVIII of 1854 s 10 is a question of fact to be decided on the evidence not a question of law to be reserved for the opinion of the High Court under Act IX of 1850 s 55 and Act XXVI of 1864 s 7 *Semble* The proper test for a Judge to apply in such cases is to determine whether or not the value of the silk wrought up with other materials is more than half the value of the fabric If it be not the fabric cannot be considered to be silk within the meaning of the Act LAKHMIDAS HIRACHAND v G I P RAILWAY COMPANY

4 Bom O C 129

———— ss 17 31—*Passenger not producing season ticket when called upon—Travelling without a ticket—Order for recovery of fare* A passenger who has obtained a monthly ticket is liable to be called upon to produce it at any time on the journey which it covers and if he does not so produce it he is liable under ss 17 and 31 of the Railways Act to pay the fare for the journey between the stations for which his ticket was issued The order under s 31 in case of his refusal to pay it should be one merely for recovery of the amount due as the fare and not an order to pay such or any other sum as if it were a fine A passenger who has such a ticket which is still in force and in his possession cannot be said to be travelling without a ticket within the meaning of s 31 merely because he does not happen to have the ticket with him and therefore cannot produce it when called upon to do so *In the matter of the petition of* BUSKIN *In the matter of the petition of* THOMAS. HART v BUSKIN HART v THOMAS I L R. 12 Calc 192

———— s 26—*Disobedience of rule—Accident —Liability* Liability to conviction under s. 26 of

I L R. 6 Mad. 201

RAILWAYS ACT (IX OF 1890)

See CARRIERS

See PENAL CODE s 304A,
8 C W N 645

See RAILWAY COMPANY

——— ss 3, 6 77 and 140—*Notification of claim for refund as condition precedent to suit—To whom such notification must be given* Where the plaintiff sued a Railway Company for recovery of money alleged to have been taken by the defendant as freight upon certain goods in excess of what was legally due and before filing the suit gave notice of her claim for a refund to the General Traffic Manager it was *held* that this was not a compliance with the provisions of the Indian Railways Act 1890 and the suit could not be maintained *Periannan Chetti v South Indian Railway Company I L R 22 Mad 137 The Secretary of State for India in Council v Dipchand Poddar I L R 24 Calc 306 East Indian Railway Company v Jeth Mull Ramanand I L R 26 Bom 669 and Bombay Baroda and Central India Railway Company v Sauti Lal I L R 20 All 207* followed GREAT INDIAN PENINSULA RAILWAY COMPANY *v* CHANDRA BAI (1906) **I L R 28 All 552**

——— ss 7 to 12—

See RAILWAY COMPANY
I L R 27 Bom 344

——— ss 7, 10 and 11—*Compensation for damage caused by railway works—Suit to enforce construction of a channel to irrigate land—Maintainability* Plaintiff alleged that the execution of certain works by a Railway Company under s 7 of the Indian Railways Act had interfered with his right to the flow of water to his land He did not suggest that the Company had exceeded the powers conferred on them by that section but claimed that they had failed to discharge the obligation imposed by s. 11 (*b*) of the Act to make the neces[illegible]

[illegible]

I L R [illegible] Mad 632

——— s 10—

See COMPENSATION
I L R 34 Calc 470

——— s 12—*Municipality of Bombay—Right to enter on land* [illegible]

[illegible] 1888) the Corporation of Bombay has the right for the purpose of supplying the city with water to enter upon land belonging to other owners to make connections between the mains and to lay the pipes forming the connections through or under such lands without the owners permission though not without giving them reasonable notice in

RAILWAYS ACT (IX OF 1890)—*contd*

——— s 12—*contd*

writing *Held* also that s 12 of the Railways Act (IX of 1890) does not exclude the above right of the Corporation of Bombay to enter on land belonging to the Great Indian Peninsula Railway Company for the said purposes. GREAT INDIAN PENINSULA RAILWAY CO *v* MUNICIPAL CORPORATION OF BOMBAY **I L R 23 Bom 358**

——— s 47—

See RAILWAY COMPANY
I L R 23 All. 367
11 C W N 583

——— ss 47 72—

See RAILWAY COMPANY
I L R 36 Calc 819

——— s 59—

See RAILWAY COMPANY—LIABILITY OF COMPANY **I L R 28 Calc. 401**

——— s 67—

See RAILWAY COMPANY
I L R 30 Mad. 417

1 ——— s 72—Risk Note Form B—*Indian Contract Act (IX of 1872) ss 151 to 161—Railway Company—Goods loss of—Bailee—Suit for compensation* A special agreement known as Risk Note Form B sanctioned by the Governor General in Council under 72 cl. (2), of the Indian Railways Act absolves a Railway Company from all liability for loss of goods from any cause whatsoever The Company in such a case is not a bailee under the Indian Contract Act TOONYA RAM *v* EAST INDIAN RAILWAY COMPANY (1902)
I L R 30 Calc 257
s c 7 C W N 370

2 ——— *Contract exempting liability of Company for loss of goods carried by it—Risk note* The contract embodied in what is commonly known as a risk note i e. a contract whereby in consideration of goods being carried by a Railway Company at a reduced rate the consignor agrees that the Company shall be free of all responsibility for any loss or damage to the goods is a valid and legal contract within the terms of s [illegible] of Act IX of 1890 *Suntokh Rai v East Indian Railway Co 2 Agra 200* distinguished EAST INDIAN RAILWAY CO *v* BUNYAD ALI
I L R. 18 All 4[illegible]

3 ——— Railway Company liability of as carriers—*Delivery meaning of—Railway bye laws and conditions under ss 47 54 of Act IX of 1890 reasonableness of— Delivered* [illegible] Delivered in s 72 of the Indian Railways Act refers merely to a physical event and is a word devoid of any legal significance. A Railway Company has cast upon it by s. 72 the duties of an ordi[illegible] the conditi[illegible] [illegible] nd in parti[illegible] [illegible] which they [illegible] 54 These [illegible] rules however must be consistent with the Act and reasonable Where a consignor had delivered

RAILWAYS ACT (IX OF 1890)—*contd*

——— s 72—*contd*

goods to a Railway Company for transmis ion and had had the forwarding note in respect thereof duly regi tered and marked by the Pailway Company but had obtained no receipt from the Railway Com pany and the goods were lo t *Held* that rules framed by the Pailway Company under s 47 and 54 whereby goods were to stand at owner s risk and the Railway Company were not to be liable therefor until a receipt had been granted by them were incon istent with the Act and unrea onable and that the Railway Company were liable to pay compensation for the lo s incurred JALIM SINGH KOTARY *v* SECRETARY OF STATE FOR INDIA (1904)
I L R 31 Calc 951
s c 8 C W N 725

——— s 75—

See CARRIERS LIABILITY OF
I L R 34 Calc 419
11 C W N 1076

1 ——— *Liability of Rail way Company for loss of goods* (i) The words lo s destruction or deterioration in s 75 of the Indian Railways Act (IX of 1890) include loss cau ed by the criminal mi appropriation of the parcel by a servant of the Pailway Admini tration in charge thereof. (ii) Under s 75 of that Act it is neces ary that both the value and contents of a parcel (if over R100 in value) should be declared before the Pailway Administration can be held liable in re pect thereof (iii) The payment by a con ignor of silver coin of the specie rate required by the general regulations of a Pailway Company to be paid for the carriage of uch goods is not uch a payment as satisfies the requirements of 75 of the Indian Pailways Act (IX of 1890) BALARAM HARICHAND *v* SOUTH MAHRATTA RAIL WAY CO
I L R 19 Bom 159

2 ——— *Sch II cl (l)—Parcel containing articles liable to be insured and also not l able to be insured—Loss of the parcel in transit on Railway lin —Suit again t Railway Company to recover damages with respect to goods not liable to be insured—Railway Company not liable—Articles—Package* Plaintiff s agent at Poona consigned a parcel to plaintiff at Dharwar The

liable The words of s 75 of the Railways Act (IX of 1890) draw a distinction between articles mentioned in Sch II of the Act and the parcel or package in which they are contained and provides that the Pailway Administration shall not be responsible for the loss destruction or deterio ration of the parcel or package PUNDALIK *v* S M RAILWAY COMPANY (1909)
I L R 33 Bom 703

RAILWAYS ACT (IX OF 1890)—*contd*

——— s 77—

See RAILWAY COMPANY
I L R 27 Bom 597

1 ——— Notice of claim—*Goods lost in transit—Sufficient notice* Notice of claim for goods lost in transit given to Pailway Company A with whom they were originally booked is not sufficient notice within ss 77 and 140 of the Pail ways Act to Railway Company B on whose line the goods were subsequently lost *The East Indian Railway Company* v *Jethmull Ramanand I L R 6 Bom 169* followed TILAK CHAND LAHUTHY *v* EAST INDIA PAILWAY COMPANY (1907)
12 C W N 165

2 ——— *Notice of suit—Agent of Manager—Traffic Superintendent—Civil Procedure Code 188 s 14 and 149—Practice—Pleading* The Traffic Superintendent is not the Manager s agent and notice to him is not notice to the Pailway Administration within s 77 of the Indian Pailways Act (IX of 1890) Under s 77 of the Indian Pailways Act it is not nece ary for the

3 ——— ss 77 and 80—*Suit again t Pailway Company—Notice of claim—Notice to be given to the Company which it is intend d to sue* Under s 80 of the Indian Railways Act 1890 when goods are booked through or over the lines of two or more railway administrations and are lost or damaged in tran it it i at the option of the person damnified to sue either the railway administration to which the goods were delivered by the consignor or the railway adminis tration on whose line the loss occurred But under s 77 of the Act it is a condition precedent to the bringing of such a suit that notice of the plaint iff s claim must be given within six months from the date of the delivery of the goods for carriage to the railway administration which the plaintiff seeks to render liable In default of such notice the plaintiff will not be entitled to a decree against the defendant company BOMBAY BARODA AND CEN TRAL INDIA RAILWAY COMPANY *v* SAUTI LAL (1904)
I L R 26 All 207

4 ——— ss 77 and 140—*Notice of su t to Railway Administration—Service on Traffic Manager* In a su t again t the South Indian Railway Company to recover the value of a parcel delivered to the de endant company for carriage it appeared that the plaintiff had within two months of the delivery given notice of the suit to the Traffic Manager of the defendant company at Trichinopoly *Held* that the notice was a good notice f it in fact reached the agent of the defendant company with n the period of six months PERIANNAN CHETTI *v* SOUTH INDIAN PAILWAY CO
I L R 22 Mad 137

5 ——— *Claim against Pailway Company—Notice of clai n* The plaintiff sued the Bombay Baroda and Central India Pail-

RAILWAYS ACT (IX OF 1890)—*contd*

——— s 77—*contd*

way Company and the East Indian Railway Company for damages for non delivery of goods alleged to have been delivered at Ghaziabad for conveyance to Bombay on the 16th May 1898 From Ghaziabad to Delhi the railway line belongs to the East Indian Railway Company and from Delhi to Bombay the line is that of the Bombay Baroda and Central India Railway Company Both Companies were therefore made defendants in the suit On the merits the suit was dismissed as against the Bombay Baroda and Central India Railway Company but a decree was passed against the East Indian Railway Company for R4 617 It appeared that no notice of plaintiff s claim under s 140 of the Indian Railways Act (IX of 1890) had ever been directly addressed to the East Indian Railway Company The plaintiff relied on a notice dated the 28th July 1898 which he had addressed to the Bombay Baroda and Central India Railway Company making a claim against that Company The latter Company had at once informed the East Indian Railway Company of the plaintiff s claim and had given notice that in case the plaintiff sued them they would expect the East Indian Railway Company to bear all the expenses Further correspondence took place between the two Companies with reference to the plaintiff s claim and on the 31st October 1898 the Solicitors of the East Indian Railway Company wrote to the plaintiff s Solicitors as follows

DEAR SIRS —Your letter of the 21st instant to the address of the General Traffic Manager Bombay Baroda and Central India Railway Bombay has been handed to us by our clients the East Indian Railway Calcutta claiming on behalf of your clients a sum of R7 437 being the amount of loss alleged to have been sustained in respect of short delivery of 500 and 125 bags of wheat The file of papers has just been handed to us and we will write to you further as soon as we have had an opportunity of going through same Yours faithfully (*Signed*) MORGAN & Co The lower Court held that in this letter the Solicitors of the East Indian Railway Company treated the communication sent to them by the Bombay Baroda and Central India Railway Company as a communication affecting themselves and that they could not afterwards say that the notice of claim [illegible] to the Bombay Baroda and [illegible]

[illegible]

to have given the notice through the Bombay [illegible] and [illegible] *Held* that [illegible] East Indian Railway Company under ss. 77 and 140 of Act IX of 1890 EAST INDIAN RAILWAY COMPANY v JETHMULL RAMANAND (1902)

I L R 26 Bom 669

6 ——— ss 77 140—*Claim for compensation for short delivery—Notice of claim on whom to be served—Service on Traffic Manager* The notice of claim under s 77 Railways Act must be se[illegible] the [illegible] the [illegible] Ager[illegible] the [illegible] and [illegible] of Railway Company it appeared that the Traffic Manager in the Claims department settles all such claims and the Agent also refers to him claims for disposal —*Held* that the notice to the Traffic Manager was sufficient WOODS v MEHER ALI BEPARI (1908) 13 C W N 64

7 ——— ss 77 140—*Refund of an overcharge—Notice—Letter—Manner of service—Statement of fact not a proof of fact* Plaintiffs who were merchants residing at Poona entered into an agreement with the Great Indian Peninsula Railway Company that the latter should deliver consignments of goods despatched from Wadi at Poona at a certain rate. Several consignments were accordingly delivered by the Railway Company at Poona and they were paid for according to the agreed rate At the time of the delivery of the last consignment the Railway Company refused to deliver it unless all the consignments including those already delivered and paid for were paid for at a higher rate. The plaintiffs thereupon paid the higher rate under protest and sued the Railway Company in the Court of Small Causes at Poona for the recovery of the overcharges claimed and received by the defendant The defendant contended that the suit was not maintainable inasmuch as no notice of the claim was served by the plaintiffs according to s 77 of the Indian Railways Act (IX of 1890) The Judge overruled the defendant s contention and allowed the claim holding that a notice under s. 77 of the Act was not necessary because the section contemplated overcharges recovered before the delivery of the goods to the consignee and not to overcharges recovered after the delivery as was the present case He further held that if notice was necessary it was given by the plaintiff inasmuch as there was an allegation that a notice had been sent in a letter addressed to the Agent of the Company care of the Station Master Poona, by the plaintiffs The defendant having applied under revisional jurisdiction *Held* that notice was necessary The overcharge referred to in the section is not confined in its meaning to an overcharge recovered before the delivery of the goods to the consignee at their destination *Held* further that the delivery of a letter under s. 140 of the Act must be in exact compliance with the terms of the section and it must be delivered to the Agent at his office The statement of a fact in a letter is no proof of the fact itself GREAT INDIAN PENINSULA RAILWAY COMPANY v DEWASI (1907) I. L. R. 31 Bom. 534

8 ——— ss 77 140—*Notice of claim—May be directed —Claim against Railway al-*

RAILWAYS ACT (IX OF 1890)—*contd*

——— s 77—*concld*

ministered by a Railway Company A notice of ... affic ... way ... uch ... the provisions of s 77 and 140 of the Indian Railways Act *Secretary of State for India* v *Dip Chand Poddar I L R 24 Calc 306* referred to The word may in s 40 of the Indian Railways Act mean that if a plaintiff is desirous of serving an effective notice of claim the notice *must* be directed to the Manager or Agent as the case may be *Great Indian Peninsula Railway Company* v *Chandra Bai I L R 28 All 552* followed *Periannan Chetti* v *South Indian Railway Company I L R 22 Mad 13* dissented from NADIAR CHAND SHAHA v WOOD (1907) I L R 35 Calc 194 s c 12 C W N 450

——— s 101—

See COLLISION 11 C W N 173

——— *Endangering safety of persons—Death by rash or negligent act—Contributory negligence—Penal Code (Act XLV of 1860) s 304A* The Bengal Nagpur Railway is worked on the line clear and caution message system no train being allowed to leave a station without a line clear certificate in a prescribed form to the effect that the line is clear up to the next station The petitioner the assistant station master of Gomharria Station who was on duty and busy

senger at Gomharria line will be cleared for No 80 up goods train from Gomharria to Sini All the particulars required by the rule were not filled in no number was entered on it nor was the time of arrival of the train filled in The form book was left in the station master s room The guard of No 80 up goods train which was waiting at Gohmarria entered the station master s room in his absence

s 101 of the Indian Railways Act of 1890 and

(1905) I L R 32 Calc 73
8 C W N 645

——— s 110— *Compartment —Meaning of the word—Offence of smoking in compartments of railway carriage without consent of fellow passengers* Per JENKINS C J and CANDY J —Good sense requires that to the word compartment in certain sections of the Indian Railways Act (IX of 1890) the quality of complete separation should be attributed and it is with that force that it is used in s 110 *Per* RANADE J —The word compartment is used in s 110 of Act IX of 1890 in the same sense in which it is used throughout the Act and does not necessarily mean a completely partitioned division *In re* DADABHAI JAMSEDJI
I L R 24 Bom 293

——— s 112—*Offence—Separate sentence—General Clauses Act (X of 1897) s 26—Indian Railways Act (IX of 1890) ss 68 112—Travelling without ticket—Attempt to cheat—Indian Penal Code (Act XLV of 1860) ss 417 511—Dishonest or fraudulent intention* The essence of an offence under s 112 of the Indian Railways Act is dishonest or fraudulent intention the intention to defraud the Railway Administration of its just

or dishonest intention is an offence under s 112 (*a*) of the Railways Act Facts which form the basis of a conviction and sentence under one charge cannot form the basis of a conviction and also a separate sentence under another charge There cannot be cumulative sentences though a conviction might take place on an alternative charge or even both charges It is ordinarily desirable that when an act or omission is made penal by two Acts one general and the other special the sentence should be passed under the Special Act *Quære* Whether in this country a special penal law repeals by implication in every case a previously existing general law relating to an offence of the same nature KULODA PROSAD MAJUMDAR v EMPEROR (1906)
11 C W N 100

1 ——— s 113—*Excess charge and fare non payment of—Power of Magistrate to impose imprisonment in default—Fine—Imprisonment* S 113 sub s 4 of the Indian Railways Act (IX of 1890) which directs that on failure to pay on demand excess charge and fare when due the amount shall on application be recovered by a Magistrate as if it were a fine does not authorize the Magistrate to impose imprisonment in default The excess charge and fare referred to in the section is not a fine though it may be recovered as such QUEEN EMPRESS v KUTRAPA
I L R 18 Bom 440

QUEEN EMPRESS v SUBRAMANIA AYYAR
I L R 20 Mad 385

2 ——— and s 132—*Penal Code (Act XLV of 1860) ss 40 64—Criminal Procedure Code s 33— Offence —Travelling on a railway without a proper ticket—Imprisonment* A passenger who travels in a train without having a proper pass or ticket with him has not committed

RAILWAYS ACT (IX OF 1890)—*concld*

——— s 113—*concld*

an offence He cannot therefore be legally sentenced to imprisonment in default of payment of

——— s 122—

See EASEMENT I L R 22 Bom 525

——— s 125—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT 1890 I L R 18 Mad 228

——— s 128—

See JOINDER OF CHARGES I L R 29 Calc 385

——— s 140—

See ante ss 77 AND 140

RAIYAT

See BENGAL TENANCY ACT ss 5 49 8 C W N 454

See BENGAL TENANCY ACT

See ENHANCEMENT OF RENT

See LANDLORD AND TENANT

See RIGHT OF OCCUPANCY

——— definition of—

See BENGAL TENANCY ACT s 5 CL 2 I L R 20 Calc 708 I L R 21 Calc 129

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT I L R 24 Calc 272 L R 23 I A 158

——— and tenure holder distinction between—

See BENGAL CESS ACT s 4 5 C W N 535

——— at fixed rates if incumbrance—

See BENGAL TENANCY ACT s 160 13 C W N 1025

——— interest of—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION 5 C W N 83

——— non occupancy—

See BENGAL TENANCY ACT s 20 I L R 24 Calc 207

——— non occupancy suit by for recovery of possession—

See LIMITATION ACT 1877 SCH II ART 3 7 C W N 218

——— status of question as to—

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL I L R 21 Calc 776

RAIYATWARI TENURE

See LIMITATION ACT 1877 SCH. II ART 149

——— *Grant of bed of tidal and navigable river on raiyatwari tenure—Power of Government to determine such tenure—Limitation Act (XV of 1877) Sch II Art 149—Decree in the alternative legality of* Land forming ... the absolute

of State join him as a co plaintiff with ... in a suit the period of limitation will not be 60 years under Art 149 Sch II of the Limitation Act such article applying only to suits brought on behalf of the Secretary of State The only ...

assignees when the right ... mitted PULLANAPPALLY SANKARAN NAMBUDRI *v* VITTIL THALAKAT MUHAMED (1905) I L R 28 Mad. 505

RAJ

——— confiscation of—

See CONFISCATION 11 C W N 655

——— succession to—

See HINDU LAW—ALIENATION—RESTRAINT ON ALIENATION I L R 8 Calc 199 I L R 10 All ... L R 15 I A 51

See HINDU LAW—CUSTOM—IMPARTIBILITY

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION 3 B L R P C 13 12 Moo I A 503 9 B L R 310 note 6 W R P C 1 2 Moo I A 344 2 W R 932 W R F B 97 I L R 1 Calc 186

PRIMOGENITURE I L R 29 Calc 341

INHERITANCE—IMPARTIBLE PROPERTY

RAPE

See ADULTERY I L R 29 Calc 415

See CHARGE TO JURY—SPECIAL CASES—RAPE I L R 25 Calc 230

See PENAL CODE ss 375 3 6

See SENTENCE—GENERAL CASES 6 W R Cr 59

See SENTENCE—TRANSPORTATION 1 B L R A Cr 5

RAPE—*concld*

1 ———— **Consent**—*Consent through fear of injury* Sexual intercourse by a man with a woman without her free consent—i e a consent obtained without putting her in fear of injury—amounts to rape and the Judge should leave the question to the jury and not direct them to find that the woman s consent after a considerable struggle renders the charge of rape nugatory QUEEN v AKBAR KAZEE 1 W R Cr 21

2 ———— **Attempt to commit rape**—*Indecent as ault—Penal Code ss 354 3/5 and 511* An indecent assault upon a woman does not

C & P 318 followed EMPRESS v SHANKER I L R 5 Bom. 403

RASH AND NEGLIGENT ACT

See CULPABLE HOMICIDE

See DEATH BY RASH OR NEGLIGENT ACT I. L R. 36 Calc 302

See HURT—GRIEVOUS HURT I L R 18 Calc 49

See PENAL CODE s 304 A I L R 31 All 290

———— **Swinging by hooks inserted in the flesh**—*Pena Code (Act XLV of 1860) s 336—Rash and negligent act likely to endanger human life or personal safety of others—License to conduct swinging on a Hindu festive occasion—Swinging*

RATEABLE DISTRIBUTION

See CIVIL PROCEDURE CODE 1882 ss 244 295 6??

I L R 36 Calc 130

———— *Civil Procedure Code (Act XIV of 1882) s 295—Assets—First decree again t three judgment debtors—Sub equent decree again t only one of them* S 295 of the Civil Procedure Code (Act XIV of 188) governs where the first decree is against three judgment debtors and the decree on which the petitioner relie is against one of those three *Nimbaji v Vadia Venkati I L R 16 Bom 683* not followed CHHOTALAL v NABIBHAI (1905)

I L R. 29 Bom 528

RATIFICATION

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE I L R 24 Calc. 469

RATIFICATION—*contd*

See COMPANY—POWERS DUTIES AND LIABILITIES OF DIRECTORS I L R 3 Calc 280
I L R 9 Calc 14

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS I L R 10 Mad 272

See GUARANTEE I L R 5 Calc 421
L R 6 I A 238

See GUARDIAN—RATIFICATION

See HINDU LAW—ALIENATION—ALIENATION BY FATHER 2 Bom 301

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS 6 C W N 905

See HINDU LAW—WIDOW I L R 30 All 1

See MASTER AND SERVANT 2 B L R O C 140

See PRINCIPAL AND AGENT I L R 29 All 730

See PRINCIPAL AND AGENT—RATIFICATION

See SPECIFIC PERFORMANCE—SPECIAL CASES I L R 17 Calc 223
L R 16 I A 221

———— **by reversioner**—

See HINDU LAW 13 C W N 201

———— **of lease**—

See LANDLORD AND TENANT—NATURE OF TENANCY I L R 27 Bom 515

———— **of transactions**—

See CHAMPERTY AND MAINTENANCE I L R 35 Calc 420

1 ———— **Doctrine of ratification**—*Criminal case* The doctrine of subsequent ratification does not apply in a criminal ca e REG v RAMA BIN GOPAL 1 Bom. 107

2 ———— **Delay in repudiating contract**—*Consent* Where a party to a contract seeks release from its obligations on the ground that for some reason or another he is entitled to repudiate it he must assert this right as soon after

3 ———— **Delay in repudiat**

RATIFICATION—*concld*

an amuldustuck to enter upon the property as le see and gave no notice at the time to the pro prietors but subsequently informed them of it — *Held* that the proprietors were not under obligation to take early steps to di avow the act of their agent and their not doing so did not amount to ratification of his act MUHBOOL BUKSH v SUHEEDUN 14 W R 378

READINESS AND WILLINGNESS

See CONTRACT—CONDITIONS PRECEDENT 3 Mad 125 209

See CONTRACT—CONTRACTS FOR GOVERN MENT SECURITIES OR SHARES
I L R 9 Calc 791
3 Bom O C 79
1 Ind Jur N S 17
2 Bom 260 267 272
2nd Ed 246 253 258

See CONTRACT ACT s 51
I L R 4 Calc 252

READMISSION

See DISMISSAL FOR DEFAULT
I L R 34 Calc 403

REASONABLE AND PROBABLE CAUSE

See ARREST—CIVIL ARREST
I L R 4 Calc 583

See CHAMPERTY I L R 2 Calc 233
13 B L R 530

See DEFAMATION

See MALICE 2 N W 353
4 N W 42

See MALICIOUS PROSECUTION

REASONABLE CAUSE FOR SUSPEN SION

See ADVOCATE.
I L R 29 All. 95 L R 34 I A 41

REASONABLE DOUBT

See CIVIL PROCEDURE CODE 1882 s 617
I L R 30 Bom. 226

RECAPTURE.

See WILD ANIMALS
I L R 35 Calc 413

RECEIPT

See PROMISSORY NOTES—ASSIGNMENT OF AND SUITS ON PROMISSORY NOTES
17 W R 201

See REGISTRATION ACT 1877 s 17 CL. (c) AND CL. (n)

See STAMP ACT 1869 SCH II CL. 7
I L R 4 Calc 829

See STAMP ACT 1869 SCH II CL. 11
23 W R 403

RECEIPT—*concld*

See STAMP ACT 1879 s 61
I L R 8 Mad. 11
I L R 11 Mad 399
I L R 23 Bom. 54
I L R 27 Calc 394

See STAMP ACT 1879 SCH I ART 52.
I L R 6 All. 253
I L R 11 Calc 271
I L R 12 Bom. 103

See STAMP ACT 1879 SCH II ART 15
I L R 10 Mad. 64

See STAMP ACT (II OF 1899) s 35 AND 42
I L R 24 All. 374

See STAMP ACT (II OF 1899) SCH. I ART 53 (c)
I L R 31 All. 38

——— for counsel's fees—

See STAMP ACT SCH II ART 15
I L R 9 Mad. 140
I L R 16 All. 133

——— for money deposited with banks.

See CONTRACT—CONDITIONS PRECEDENT
I L R 14 Bom. 493

——— for rent—

See BENGAL TENANCY ACT s 88.
I L R 16 Cal. 155
I L R 25 Calc 531 533 note

See EVIDENCE—CIVIL CASES—RENT RE CEIPTS

——— given by secretary of club to member for club bill—

See STAMP ACT 1879 SCH. II ART 15
I L R 10 Mad. 65

——— of rent from various tenant for one holding—

See BENGAL TENANCY ACT s 88.
6 C W N 803

——— refusal to give—

See PENAL CODE s. 173
I L R 3 Calc. 601
5 Bom. Cr 34
I L R 5 Mad. 199 200n to
I L R 20 Calc 358

See STAMP ACT 1879 s 64
I L R 9 Bom. °

RECEIVER

12 C W N 1035

See ACCOUNT

See ADMINISTRATION
I L R 10 Calc 713
I L R 31 Calc 498

See APPEAL

See APPEAL—RECEIVERS

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—PARTIES
12 W R 117

RECEIVER—*contd*

See CIVIL PROCEDURE CODE 1882 ss 351 355 357 503
I L R 28 Mad 152 157

See CIVIL PROCEDURE CODE 1882 s 503
8 C W N 605
I L R 35 Calc 393 568

See CIVIL PROCEDURE CODE 1882 ss 503 505 588 I L R 33 Bom 104

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT I L R 21 Calc 85

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE
I L R 7 Bom 455
I L R 12 Bom 272
I L R 15 Calc 762
I L R 14 All 358
5 C W N 91

See LETTERS PATENT HIGH COURTS 1865 CL 15 I L R 24 Mad 511

See LIMITATION ACT 1877 s 19
10 C W N 959

See PARTIES—PARTIES TO SUITS—RECEIVER.

See PLAINT—AMENDMENT OF PLAINT
I L R 30 Calc 699

See PRACTICE—CIVIL CASES—APPLICATION BY PERSON NOT PARTY TO SUIT
I L R 17 Calc 285

See PRACTICE—CIVIL CASES—SALE BY RECEIVER I L R 21 Calc 479

——— account of—

See CIVIL PROCEDURE CODE 1882 s 503 (f) I L R 35 Calc 566

See RECEIVER I L R 36 Calc 52

——— application to restrain from parting with fund—

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS I L R 21 Calc 581

——— appointed under Land Registration Act (Ben Act VII of 1876)—

See PUBLIC SERVANT
I L R 29 Calc 236

——— appointment of—

See DECREE—FORM OF DECREE—MAINTENANCE I L R 26 Calc 441

See PARTIES—PARTIES TO SUITS—EXECUTORS I L R 19 Bom. 83

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS
I L R 26 Calc 771

——— attachment of money in hands of—

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT
I L R 21 Calc 85

RECEIVER—*contd*

——— liability of to account—

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER.
I L R 22 Calc 1011
L R 22 I A 203

——— lien of—

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.
I L R 22 Calc 960

——— order on to sell—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS
I L R 1 Calc 403

——— *power to appoint*—

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND BY INHERITANCE
I L R 19 All 235

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—RECEIVER
I L R 2 Bom 558

——— sale by—

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY
5 C W N 408

——— withdrawal of money by—

See TRANSFER OF PROPERTY ACT (IV OF 1882) ss 83 84
I L R 36 Calc 840

1 ——— Appointment—*Civil Procedure Code 1882 s 503—Discretion* The appointment of receiver is a matter resting in the discretion of the Court The powers of appointing a receiver conferred by s 503 of the Code of Civil Procedure must be exercised with a sound discretion upon a view of the whole circumstances of the case not merely the circumstances which might make the appointment expedient for the protection of the property but all the circumstances connected with the right which is asserted and has to be established. The Court will not interfere by appointing a receiver where a right is asserted to property in the possession of a defendant claiming to hold it under a legal title unless a strong case is made out *Owen v Homan 4 H L C 99 1032* and *Clayton v Attorney General 1 Cooper s Cases 97* referred to SIDHESWARI DABI *v* ABHOYESWARI DABI
I L R 15 Calc. 818

2 ——— *Temporary injunction—Civil Procedure Code 1882 ss 492 and 503* The distinction between a case in which a temporary injunction may be granted and a case in which a receiver may be appointed is that while in either case it must be shown that the property should be preserved from waste or alienation in the former case it would be sufficient if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged while

RECEIVER—*contd*

in the latter case a good *primâ facie* title has to be made out *Sidheswari Dabi* v *Abhoyeswari Dabi* *I L R 15 Calc 818* approved An order of the lower Court for appointment of a receiver under s 503 of the Civil Procedure Code Act XIV of 1882 was set aside and an order for a temporary injunction under s 492 of the Code granted CHANDIDAT JHA v PADMANAND SINGH

I L R 22 Calc 459

3 ——— *Civil Procedure Code (1882) s 503—Waste or misappropriation of property as a ground for appointing a receiver* The fact that the acts complained of amount to misappropriation rather than waste makes no difference for the purposes of s 503 of the Code of Civil Procedure HANUMAYYA v VENKATASUBBAYYA

I L R 18 Mad. 23

4 ——— *Administration Suit for—Receiver appointed where executor is in possession—Suit against executor where will not proved—Will of Mahomedan testator* The rule of the Court of Chancery that a receiver will not be appointed against an executor unless gross misconduct was shown is not applicable to the case of an executor of the will of a Mahomedan HAFIZA BAI v ABDUL KARIM I L R 19 Bom. 83

appoint a receiver of property situate at Bombay ISMAIL HADJEE HUBEEB v MAHOMED HADJEE JOOSUB ROHIMA BYE v MAHOMED HADJEE JOOSUB 13 B L R 91 21 W R 303

6 ——— *Receiver in testamentary suit—High Court Power of—Succession*

I L R 17 Bom 508

7 ——— *Pending suit* It is not a matter of course but when the circumstances are such that a special case is made out the Court will appoint a receiver pending litigation to set aside probate JOYKALLY DABEE v SHIB NATH CHATTERJEE Bourke Test 5

8 ——— *Power of Principal Sudder Ameen. Semble* A Principal Sudder Ameen cannot like the Court of Chancery appoint a receiver in a case where the defendant has kept the plaintiff for a considerable time out of assets to which he is jointly entitled with the defendant JOYNARAIN GEEREE v SHIBPERSHAD GEEREE

6 W R. Mis 1

9 ——— *Grounds for appointment—Civil Procedure Code 1882 s 503—Waste by Hindu widow* The powers conferred by s 503 of the Civil Procedure Code are not to be exercised as a matter of course and it is not a ... for allowing an application for the appoint-

caution Because a plaintiff in his plaint makes violent and wholesale charges of waste and malversation ... possession of ...

such appointment should ... case where the sons of a Hindu widow in possession of her husband s estate under a will sued their mother as reversioners under the will for possession of the estate on the ground of mis- ... the same grounds

I L R ...

10 ——— *Power of Subordinate Judge—Civil Procedure Code 18.. ss 503 505* A Subordinate Judge if he has good grounds ... even after he has ... the District ... DULMIR ... L R 467

11 ——— *Receiver in suit for arrears of rent and ejectment—Beng Act VIII of 1869 ss 23 52—Civil Procedure Code (Act XIV of 1882) ss 503 505* Although having regard to ... of Bengal Act VIII ... would ... Act VIII ... no provision of ... of the s 503 when suit is brought for ... tenure itself When therefore a suit was brought under Bengal Act VIII of 1869 for arrears of rent ... defendant —*Held* that a ... ure might ... visions of ... NATH

... Calc 496

12 ——— *Ground for appointment of receiver—Civil Procedure Code (Act XIV of 1882) s 503—Discretion of Court—Waste* The removal of a large amount of property by the defendant and under circumstances which might fairly give rise to suspicion during the pendency of the suit in which the question of title to that property would be determined is a sufficiently strong ground for the appointment of a receiver *Sidheswari Dabi* v *Abhoyeswari Dabi I L R 15 Calc. 818* *Chandidat Jha* v *Padmanand Singh* *I L R 22 Calc. 459* and *Sham Chand Giri* v *Bhairam Pandey Suit No 1.9 of 1893* referred to. SIA RAM DAS v MAHABIR DAS

I L R. 27 Calc 279

13 ——— *Joint estate—Mortgage—Jurisdiction—Civil Procedure Code (Act XIV of 1882) s 503* In a suit for partition of a joint estate the words property the subject of a suit in s 503 of the Civil Procedure Code mean the whole joint estate In such a case the owner

RECEIVER—*contd*

in s. 503 (*d*) means the whole body of owners to whom the joint estate belongs The Court has jurisdiction to place the whole of a joint estate out of which a plaintiff seeks to have his share partitioned in the hands of a receiver and to order that a receiver so appointed shall be at liberty to raise money on the security of the whole of such joint estate PORESH NATH MOOKERJEE v OMERTO NAUTH MITTER I L R 17 Calc 614

14. ———————— *Receiver of mortgaged property appointed at instance of mortgagee —Receiver appointed by Appeal Court—Practice* In a suit by a mortgagee for foreclosure or sale in default of payment of his mortgage debt the Court of first instance when passing a decree for the plaintiff refused on the plaintiff s application to appoint a receiver of the rents and profits of the mortgaged property The plaintiff appealed against the latter part of the decree and after filing a memorandum of appeal obtained a rule for the appointment of a receiver until the hearing of the appeal The Court of appeal after argument made the rule absolute and appointed a receiver

pointment of a receiver as are possessed and exercised by the Courts in England under the Judicature Act JAIKISSONDAS GANGADAS v ZENABAI I L R 14 Bom. 431

15 ———————— *Receiver in insolvency proceedings under Civil Procedure Code—Civil Procedure Code 188' s 356—Commission of receiver how computed* A receiver appointed in insolvency proceedings under the Civil Procedure

I L R 15 Mad. 233

16 ———————— *Jurisdiction of District Judge to appoint receiver—Civil Procedure Code 1882 ss 503 and 505* A District Judge has no jurisdiction to appoint a receiver of properties which are the subject of a suit or attachment in other Courts even though such Courts may have been subordinate to his Court (Ss 503 and 505 of the Civil Procedure Code reviewed). In a suit upon a mortgage the mortgaged property was directed to be sold and the time of grace had expired An application was then made by the

receiver of properties other than the subject matter of the suit and as regards the mortgaged property a receiver could be appointed on the mere ground that the property would not fetch so much by forced sale as it would by sale under a private contract LATAFUT HOSSEIN v ANUNT CHOWDHRY I L R 23 Calc 517

17 ———————— *Civil Procedure Code 1882 s 505—Power of District Court under s 505 as to appointment of receiver* The concluding words of s 505 of the Code of Civil Procedure—

I L R 15 All. 453

18 ———————— *Nomination by—Subordinate Courts with grounds of nomination—Sanction of the District Judge—Order passed by the District Judge—Power to review—Civil Procedure Code 1882 s 505* The District Judge made an

the conditional appointment of a receiver which the District Judge can accept or reject or modify CHUNILAL HAJARIMAL v SONIBAI I L R 21 Bom 328

19 ———————— *Subordinate Judge power of to appoint—Civil Procedure Code (Act XIV of 1882) ss 503 and 505* A Subordinate Judge when considering the expediency of

to take the necessary step preliminary to appointment his order is also made under that section An appeal lies from such an order made by a Subordinate Judge. Circumstances under which a receiver is appointed considered. *John v John* [1898] *2 Ch. 573* referred to SANGAPPA v SHIVBASAWA I L R 24 Bom. 38

20 ———————— *Civil Procedure Code 1882 s 505—Criminal Procedure Code 188 s 145—Order of Magistrate for maintenance of possession —Effect of or power of appointment of a receiver by a Civil Court* The fact that there exists in respect of any immoveable property an

RECEIVER—*contd*

a receiver in respect of the same property BARKAT UN NISSA v ABDULLA AZIZ I L R 22 All 214

21 ———— *Duration of receivership—Discretion of Court—Practice—Variance between judgment and decree—Civil Procedure Code s 206* It is within the discretion of a Court appointing a receiver in a suit to order that the office should continue permanently after the decree when such continuance is necessary or for so long as it may be so A decree of the High Court declared it to be necessary that a permanent appointment should be made of a receiver and manager of the estate allotted by the Government to the family of the deceased Maharajah of Tanjore and directed that fresh appointments to the receivership should be made from time to time as occasion might require during the life of the senior widow under whose management the estate had been originally placed and the lives of the co widows surviving her or for so long as the Court might consider necessary *Held* that the decree directing the permanent receivership was not in variation of the judgment which it purported to follow that the Court had a discretion to make such an order when necessary for the preservation of the estate and that so doing was in accordance with the practice there being nothing to prevent the Court from giving the management to the senior widow living at the time if she should be fit to manage the estate on behalf of all interested in it MATHUSRI UMAMBA BOYI SAIBA v MATHUSRI DIPAMBA BOYI SAIBA I L R 19 Mad. 120 L R 23 I A 28

22 ———— *Civil Procedure Code 1882 s 503—Appointment of receiver after decree* In a suit brought in 1880 by the widow of a deceased partner to wind up a partnership the surviving partner was prohibited by the Court at the instance of the plaintiff from collecting debts due to the firm but leave was given to apply for [illegible]

ing debts for the purpose of executing the decree The receiver having sued in 1883 to recover a debt which was due to the firm in 1879 the suit was [illegible] that the [illegible] was *ultra* [illegible] the receiver [illegible]

I L R 8 Mad. 229

23 ———— *Civil Procedure Code 1882 ss 267 268 and 503—Execution—Practice—Garnishee—Attachment by a judgment creditor of a debt due to judgment-debtor by a third party—Order upon third party to pay where debt admitted—Procedure where existence of debt not admitted* When a debt alleged to be due by a third party to a judgment debtor has been attached by the judgment creditor the Court may under s 268 of the Civil Procedure Code (Act XIV of 1882) make an order upon the garnishee for the payment of such debt to the judgment-creditor in case the former admits it to be due to the judgment debtor [illegible]

cedure Code TOOLSA GOOLAL v ANTONE I L R 11 Bom. 449

24 ———— Receiver of High Court—*Position of—Right to sue and defend suits* The Receiver of the High Court does not represent the estate for which he is receiver but is merely an officer of the Court and as such cannot sue and be sued except with the permission of the Court. MILLER v RAM RANJAN CHAKRAVARTI I L R 10 Calc 1014

25 ———— *Position and* [illegible] *performance* [illegible]

preserve the subject matter of the suit *pendente lite* and the possession of the receiver is simply the possession of the Court He has no personal rights in the property nor can he take any steps with regard to it without the sanction of the Court If it is necessary for him to take action of any sort [illegible] the Court on th[illegible]

plaint praying for specific performance [illegible] purchaser for refusing to complete the contract was admitted with the receiver as co plaintiff he having obtained leave to sue WHEATON v GANGADHAR SIRKAR 6 B L R 498

26 ———— *Right of suit as receiver and right to possession of property—Sale of Supreme Court* In a suit by K against B and others the Supreme Court ordered that the estate of R (deceased) should be applied to the payment of his debts legacies etc and appointed a receiver of the rents and profits of his real property [illegible]

Subsequently [illegible] declared that K was entitled to a moiety of the estate of R after payment of costs and legacies and directed the estate to be sold and the proceeds brought into Court Afterwards the receiver brought a suit in his own name against P and one S alleging that though the property had been decreed to K and himself jointly yet K had by collusion obtained sole possession of it and that in execution of a money decree against him it had been sold to S *Held* that as receiver of the High Court plaintiff had no title as of right to the immediate possession of the property and no right to sue in another Court in his own person to

RECEIVER—*contd*

receive po session thereof The rule on the Original Side of the Court taken from the practice of the English Court of Chancery is not to compel a party to a suit to give up to the receiver posses sion of property unless an order of Court to that effect has previously been made upon him the proper course being by proceedings in Court to fix an occupation rent and to order the party in pos session to pay the same RAM LOCHUN SIRCAR v HOGG 10 W R 430

27 ———— **Power of receiver**—*Power to question title of third party* A receiver appointed by order of the Supreme Court can only sue for possession and has no right to question the title of a third party in a suit with respect to the pro perty put under his management DINONATH SREEMONEE v HOGG 2 Hay 395

28 ———— *Civil Procedure Code 1882 s 503—Right to sue* A zamindari was attached in execution of certain decrees against the zamindar and the plaintiff was appointed receiver with full power under s. 503 of the Code of Civil Procedure to manage the zamindari Before the

attached in execution of a decree against him *Held* that the receiver could maintain the suit SUNDARAM v SANKARA I L R 9 Mad 334

29 ———— *Power of Court to allow receiver to sue in his own name—Code of Civil Procedure (Act XIV of 1882) s 503* The Court has authority under s 503 of the Civil Pro cedure Code to confer on a receiver the power to sue in his own name and if the order appointing the receiver gives him liberty he may do so FINK v MOHARAJ BAHADUR SINGH I L R 25 Calc 642 2 C W N 469

30 ———— *Suit to eject tenant claiming permanent tenure without leave of Court—Civil Procedure Code 1882 s 503* D was appointed receiver in a partition suit pending in the High Court by an order which amongst other things gave him power to let and set the im moveable property or any part thereof as he should think fit and to take and use all such lawful and equitable means and remedies for re covering

rent issu

property

by action

dient D without special leave of the Court

order appointing him did not give him power to serve such notice or to institute such suit without

RECEIVER—*contd*

the special leave of the Court and that as he was appointed under the provisions of s 503 of the Code of Civil Procedure and not vested with the general powers referred to in that section but only

Court the suit must be dismissed DROBOMOYI GUPTA v DAVIS I L R 14 Calc 323

31 ———— *Right to sue without permission of Court—Suit for ejectment—Monthly tenant holding over after expiry of notice to quit* The order appointing a receiver gave him power to let and set the immoveable property or any part thereof as he shall think fit and to take and use all such lawful and equitable means and remedies for recovering realizing and obtaining payment of the rents issues and profits of the said immoveable property and of the outstandings debts and claims by action suit or otherwise as shall be expedient *Held* under the terms of such order the receiver had power to sue to eject without obtaining permission of the Court a monthly tenant whose tenancy was determinable by a notice to quit which had been duly served *Drobomayi Gupta v Davis I L R 14 Calc 323* distinguished HURI DASS KUNDU v MACGREGOR I L R 18 Calc 477

32 ———— *Appearance of receiver in applications for payment of money by him* In all applications for payment of money by a receiver the receiver ought to appear and give information to the Court if required about funds in his hands and whether there are any attachments or claims on them. CHAITAN CHARAN MULLICK v GOCOOL CHANDRA MULLICK 1 C W N 303

33 ———— *Position and power of receiver—Agreements entered into with one party to a suit—Contempt of Court—Attorney improper conduct of* A receiver appointed by the Court entered into two private agreements one prior to the other subsequent to the date of his appointment with one of the defendants in the

A receiver is a servant of the Court and has only such power and authority as the Court may choose to give him. MANICK LALL SEAL v SURRUT COOMAREE DASSEE I. L. R 22 Calc 648

34 ———— *Powers of receiver pending final decree.* A receiver appointed

35 ———— *Civil Procedure Code 1882 s 503* In 1879 a zamindar granted a lease of part of the zamindari for twenty years,

RECEIVER—*contd*

reserving a rent of R18 000 per annum In 1881 the zamindari having been attached by a creditor the zamindar granted a new lease in perpetuity in lieu of the former lease reserving a rent of R12 000 a year A receiver of the zamindari having subsequently been appointed with full powers under the provisions of s 503 of the Code of Civil Procedure sued the lessee to recover rent at the rate reserved in the first lea e from 1881 *Held* that the receiver was entitled to recover the rent claimed The provisions of s 503 of the Code of Civil Procedure were intended to declare that the receiver in respect of all property which was or could be attached had the powers of the owner as they existed at the time the property was brought under the orders of the Court by attachment provided that they have not ceased by operation of law GOPALASAMI *v* SANKARA

I L R 8 Mad 418

36 ——— **Parties to conveyance**—*Sale by receiver under order of Court* Where certain property the subject matter of a suit in which the Court receiver had been appointed receiver was sold in pursuance of an order of Court made by con ent of parties *Held* that an application by the Court receiver for an order that the purchaser do complete the purcha e according to the conditions of sale must be refu ed as not being made in proper form A sale of property under an order of Court by a person appointed receiver in a suit is not a sale by the Court The fact that such person is the Court receiver does not place him in a different position. When the receiver sells under such an order it is neces ary that he being in po es ion of the property should be a party to the conveyance CHANDRA NATH BISWAS *v* BISWANATH BISWAS　　6 B L R 492 note

37 ——— **Mode of questioning acts of receiver**—*Seizure of property by Collector as receiver* Where property is seized and retained by a Collector in his capacity of receiver his acts cannot be disputed by way of motion to discharge or get rid of the attachment BISSESSUREE DEBIA *v* SOOKRAM DOSS　　15 W R 347

38 ——— **Firm in hands of receiver claims on**—*Civil Procedure Code 1877 s 503—Management of business by receiver—Claim by servant for prior arrears of wages on assets of firm* A servant of a firm the business of which is being managed by a receiver appointed under s 503 of the Code of Civil Procedure 1877 has no preferen [illegible]

[illegible]

39 ——— **Refusal to remove a receiver and manager of the estate of Hindu widows**—*Discretion of Court* Case in which rights and proceedings rendering a Court s order refusing to remove an appointed receiver and manager of the e tate of which the widowed ranis of the late Maharaja of Tanjore had become possessed by grant from the Government were considered and such order held to be entirely a matter for the discretion of the Court which had exercised its discretion soundly *Ex parte* JIJAI AMBA

I L R 13 Mad 390

40 ——— **Partnership funds in hands of receiver**—*Attachment by some of many creditors—Leave of Court for attachment necessary—Terms on which leave is granted* Where a fund such as the assets of a partnership is in the hands of the Court through its officer the receiver one out of the whole body of creditors against the fund will not be allowed to gain priority over the remainder by the expedient of attaching the moneys [illegible]

terms as will ensure equality between the creditors. KAHN *v* ALI MAHOMED HAJI UMEF

I L R 16 Bom 5[illegible]7

See MAHOMMED ZOHURUDDEEN *v* MAHOMMED NOOROODDEEN　　I L R 21 Calc 85

41 ——— **Money in hands of Receiver**—*Estate administered by Court—Pr[illegible] claims against estate or part owners thereof—Power to order Receiver to pay—High Court power of* Plaintiff was admittedly enti led to a half share of an estate which this suit was brought to divide A decree had been made referring it to the Commissioner to ascertain and divide the said estate and a Receiver had been appointed No power had been especially reserved by the decree to the Receiver to pay pres ing or other debts due by the estate or the part owners thereof Some time [illegible] taken in [illegible] claim would be more than sufficient to pay [illegible] of these creditors The plaintiff appli d to the Court for an order to the Receiver to pay these two debts out of the plaintiff's half share of the moneys in his hands leaving the plaintiff to prove his right to debit the estate with such payments [illegible] *Held* that the Court had power to make the order asked for though such an order would only be made in special cases and on special conditions *Held* further that the present was a case in which the order asked for might properly be made MOTIVAHU *v* PREMVAHU　　I L R 16 Bom 511

42 ——— **Execution of mortgage decree by sale of properties in the possession of the Receiver**—*Mortgage decree—Attachment* A judgment creditor can sell properties in the hands of a Receiver of the Court in execution of a mortgage decree althou h he can not execute a decree against such properties by [illegible] of attachment and sal *Semble* A proceeding by way of attachment is an interference with the

RECEIVER—*contd*

po se ion of the Receiver *Hem Chunder Chunder v Prankristo Chunder I L R 1 Calc 403* distinguished. JOGENDRA NATH GOSSAIN v DEBENDRA NATH GOSSAIN I L R 28 Calc 127
3 C W N 90

43 ———— **Duties and liability of receiver**—*Civil Procedure Code 1882 s 503—Costs* A receiver appointed under s 503 of the Civil Procedure Code (Act XIV of 1882) to collect the rents of an estate is bound to make good a loss caused to it by a breach of his duties A receiver is not justified in delegating or entrusting to another a duty entrusted to him by the Court He should in all important matters apply for and obtain the direction of the Judge who appoints him A receiver is entitled to his costs charges and expenses properly incurred in the discharge of his duties BALAJI NARAYAN PATVARDHAN v RAMCHANDRA GOVIND KANADE
I L R 19 Bom 660

44. ———————— *Receiver appointed by Court under s 503 of Civil Procedure Code 1882—Misappropriation by receiver of money collected by him—Liability for loss so caused—Civil Procedure Code 1882 s ' 8—Effect of as to satisfaction of decree and discharge of judgment debtor* In execution of a decree a receiver was appointed to collect certain rents due to the judgment debtor [illegible]

a receiver appointed at the instance of the judgment creditor under s 503 of the Code of Civil Procedure misappropriates moneys collected by him [illegible] the loss the re[illegible]

[illegible] Mad 501

Held on appeal under the Letters Patent *per* SHEPHARD J that the payment by the tenants to the receiver did not *pro tanto* discharge the judgment debtor from liability under the decree *Held per* DAVIES J that payment by the tenants to the receiver *pro tanto* discharged the judgment-debtor from liability under the decree MUTHIA CHETTI v ORR I L R 20 Mad 224

[The Judges differing in opinion the case was referred under s 575 of the Code to COLLINS C J who agreed with the decision of SHEPHARD J]

45 ———— **Accounts**—*Exceptions to accounts—Mofussil accounts—Receiver liability of—Procedure—Practice—Costs—Civil Procedure Code (Act XIV of 1882) 503* A Receiver is responsible for all properties which come into his custody or management and he is responsible not only for actual sums received by him but for tho e which [illegible]

arises on an application by a Receiver to pass his accounts is as to the items of the particular account and it involves the inquiry whether all his collections made on behalf of the property of which he is the Receiver are duly entered in the accounts and next whether all his disbursements are payments properly made in respect of that property A Receiver s liability is not restricted [illegible]

of management adopted by a Receiver or charges of wilful default or neglect are not matters that can be disposed of in the shape of exceptions to accounts Even where a *primâ facie* case of the responsibility of the Receiver for malpractices of his servants is made out an inquiry into such practices is foreign to an application to pass Receiver s accounts The objection that a Receiver has not included in his accounts collections made in the mofussil [illegible]
to pass
made o[illegible]
for the
either to postpone the passing of the accounts until the question of the Receiver s liability is established by suit or to pass the accounts reserving the right of the parties to establish any claim they may make against the Receiver in a suit properly framed for the purpose SATTYA SANKAR GHOSAL v GOLAPMONEE DEBEE (1900) 5 C W N 223

46 ———— **Appointment**—*Title to property—Removal of property* In an application for the appointment of a Receiver it is sufficient if a *primâ facie* title to the property over which the Receiver is sought to be appointed is made out The fact that a large amount of property is removed by the defendant under circumstances which may fairly give rise to suspicion during the pendency of a suit in which the question of title to that property is to be determined is in itself a sufficient ground for the appointment of a Receiver SHAM CHAND GIRI v BHAYA RAM PANDAY (1894)
5 C W N 365

47 ———— **Waste by mohunt**—The suit relates to a certain *mohuntship* which became vacant by the death of one *J* the former *mohunt* who died on the 8th September 1899 *M* who [illegible]

circumstances that it was a fit case in which a Receiver should be appointed In an application

RECEIVER—*contd*

for the appointment of a Receiver in a suit where the title to certain properties in the possession of the defendant is in dispute it is not necessary that a strong case should be made out it is sufficient if a fair *prima facie* case is made out *Sidheswari Debi* v *Abhoyeswari Debi I L R 15 Calc 818 Chandidat Jha* v *Padmanand Singh I L R 22 Calc 459 Sham Chand Giri* v *Bhaya Ram Pandey 5 C W N 365* referred to MOHUNT SIARAM DAS *v* MOHUNT MOHABIR DAS (1899)

5 C W N 362

48 ———— **Practice**—*Application for appointment of Receiver whether to be made in Chambers or in Court* An application for the appointment of a Receiver on the retirement of another Receiver should be made in Court and not in Chambers STALKARTT *v* STALKARTT (1900)

I L R 28 Calc 250

49 ———— **Mortgage suit**—*Civil Procedure Code (Act XIV of 1882) s 503—Appointment of Receiver in a mortgage suit* A Receiver can be appointed under s 503 of the Civil Procedure Code in a suit to enforce a mortgage *Womda Khanum* v *Rajroop Koer I L R 3 Calc 335* explained GHANASHYAM MISSER *v* GOBINDA MONI DASI (1902) **7 C W N 452**

50 ———— **Contempt**—*Contempt proceedings—Appeal—Receiver appointed pending appeal—Appeal no longer pending—Discharge of Receiver—Jurisdiction of Court* There is nothing to prevent the Receiver of a property appointed by the

and the Appellate Court has jurisdiction to deal with matters relating to the Receiver including proceedings for contempt until he has had his accounts passed by it GREY *v* WOOGRAMOHUN THAKUR (1901) **I L R 28 Calc 790**

51. ———— **Debt incurred by Receiver**—*Creditor right of suit by—Estate liability of—Receiver personal liability of—Executor or Trustee Creditor nature of liability of* A creditor is entitled to

as the acts of a Receiver acting within his authority are the acts of the Court the estate can not be permitted to enjoy the benefit of those acts without being held responsible for the obligations arising out of them *Burt Boulton & Hayward* v *Bull [1895] 1 Q B 276* referred to and explained A Receiver occupies a position towards an estate in his hands different from that of an executor or trustee the latter not acting through or under directions of the Court do not and cannot under ordinary circumstances create obligations

RECEIVER—*contd*

binding on the estate in favour of creditors MOHARI BIBI *v* SHYAMA BIBI (1903)

I L R 30 Calc. 937
s c 7 C W N 799

52 ———— **Discharge**—*Administration suit—Discharge of Receiver before completion of administration decree* No order can be made for the discharge of a Receiver appointed in an administration suit and directing him to make over possession of the estate to the plaintiff before the completion of the administration decree BHUGWAN DAS SUREKA *v* HEERA LAL (1901) **5 C W N 417**

53 ———— **Leave to sue**—*Making Receiver party to a suit* When a Receiver has been appointed for property the leave of the Court should be taken to bring a suit in respect of it But in a suit for declaration of title when the beneficial owner has been made a party it is not necessary to join the Receiver *Chartered Bank of India Australia and China* v *Hurish Chunder Neogy 4 C W N xv* explained and distinguished PODGER *v* ASHUTOSH MUKERJI (1902)

6 C W N 829

54. ———— *Party—Jurisdiction—Proceedings under s 145 of the Code of Criminal Procedure (Act V of 1898)—Possession of Receiver* A Receiver appointed by the High Court cannot be made a party to a proceeding under s 145 of the Code of Criminal Procedure merely in his capacity of Receiver and a Magistrate has no jurisdiction to interfere with him in respect of his possession of the estate without the sanction of the Court —his possession being the possession of the Court *Ex parte Cochrane L R 20 Eq 28 William Russell* v *The East Anglian Railway Company 3 Mac & G 104* and *Ames* v *The Trustees of the Birkenhead Docks 20 Beav 332* referred to. *Semble* The Receiver can neither sue nor be sued without the leave of the Court *Miller* v *Ram Ranjan Chakravarti I L R 10 Calc 1014* referred to DUNNE *v* CHANDRA KISHORE (1902)

I L R 30 Calc 583
s c 7 C W N 390

55 ———— *Suit against Receiver to recover amount not recovered by Receiver owing to alleged negligence—Necessity for leave of the Court* When a party feels aggrieved at the conduct of a Receiver he should seek redress

lings be taken
elsewhere ther
t under whose
KAMATCHI

I L R 26 Mad. 493

56 ———— *Party to criminal proceedings—Leave of Court— Owner —Calcutta Municipal Act (Bengal Act III of 1899) ss 3 3 5 4* A Receiver appointed by the High Court is not the owner of the property of which he has been appointed Receiver within the meaning of s 3 cl (37) of Bengal Act III of 1899 nor can he be made a party to any suit or proceeding without

RECEIVER—*contd*

the leave of the Court appointing him *Dunne* v *Chandra Kisore I L R 30 Calc 593* referred to FINK v CORPORATION OF CALCUTTA (1903)
I L R 30 Calc 721
s c 7 C W N 706

57 ———— Remuneration—*Agreement to pay salary of Receiver—Position of Receiver—Civil Procedure Code (Act XIV of 1882) s 503* A promise to pay the salary of a Receiver without leave from the Court even if unconditional being in contravention of the law is not binding on the promisor A Receiver being an officer of the Court the Court only is to determine his fees or remuneration and the parties cannot by any act of theirs add to or derogate from the functions of the Court without its authority *Maniel Lall Seal* v *Surrut Coomaree Dassee I L R 22 Calc 648* referred to PROKASH CHANDRA SARKAR v ADLAM (1903)
I L R 30 Calc 696

58 ———— Receiver appointment of—*Pending suit for recovery of property* Where in a suit pending before a first Subordinate Judge for recovery of property an application has been made for the appointment of a Receiver and granted *Held* on appeal that it is inadvisable to go into the merits of a case which is pending before a Court where the appointment of a Receiver is under consideration Such a course is undesirable and tends to prejudge the case RAM SUNDER DASS v KAMAL JHA *alias* KAMAL DAS (1905)
I L R 32 Calc 741

59 ———— New Receiver—*Appointment of new Receiver in place of original Receiver—Civil proceedings instituted by original Receiver and pending at date of appointment of new Receiver—Necessity for making new Receiver a party* When a Receiver appointed under s 503 of the Code of Civil Procedure institutes civil proceedings and is then replaced by another Receiver it is necessary that the new Receiver should be made a party to those proceedings Observations on the mode and circumstances in which a new Receiver will be made a party AKULA PARADESI *v* DHELLI JAGANNADHA ROW (1905) I L R 28 Mad 157

60 ———— Suit against Receiver without leave of Court—*Application for such leave after filing of suit—Practice* The consent of the Court to an action against a Receiver appointed by the Court is a condition precedent to the right of the party to sue and cannot be rectified by a subsequent application for ...

s c 9 C W N 247

61 ———— Suit in ejectment by Receiver—*Practice—Discharge of Receiver before termination of suit—Devolution of interest—Civil Procedure Code (Act XIV of 1882) s 372—Mortgage—Accession to mortgaged property—Transfer of Property Act (IV of 1882) ss 8 70—Lease by mortgagor—Sub*

RECEIVER—*contd*

lease pendente lite—Rights of mortgagee Somjee a Khoja merchant died in 1885 leaving as his survivors four sons by his first wife (who predeceased him) his second wife Labai and four sons by Labai. By his will Somjee gave the whole of his moveable and immoveable property to his sons by his first wife directing them out of such property to give to Labai and his sons R30 000 within six years of his death On the 19th January 1899 Somjee s sons by his first wife mortgaged certain of the properties to the Bank of Bombay In 1903 the Bank having advertised such properties for sale under a power reserved to them by the mortgage deed Somjee s sons by Labai (who had since died) brought a suit No 554 of 1903 against Somjee s sons by his first wife and the Bank of Bombay claiming that the properties could only be sold subject to the charge in their favour On the 14th January 1904 the Bank assigned the mortgage to Dwarkadas On the 26th January 1904 Mr Macleod was appointed a Receiver by the Court On the 24th February 1904 the Receiver was authorised to file an ejectment suit where necessary On the 18th March 1904 the Receiver as plaintiff No 1 and Dwarkadas as plaintiff No 2 filed the present suit to eject Kissan the first defendant from a portion of the property mortgaged to the Bank Kissan claimed to be in possession under a lease from Goolam the second defendant one of the four sons of Somjee by his first wife After the commencement of the suit suit No 554 of 1903 was disposed of in favour of the Bank of Bombay and the Receiver was discharged The first defendant contended that Dwarkadas had no right to join the Receiver in bringing the suit that the moment the Receiver was discharged his power to sue and with it the suit itself came to an end *Held* that the Bank or its assignee Dwarkadas had a right to come in under s 372 of the Code of Civil Procedure and apply that the suit be continued by one or the other of them. No such application was in fact made because Dwarkadas was already on the record as plaintiff No 2 The joinder of Dwarkadas as a co plaintiff with the Receiver though it was not perhaps strictly speaking legal at the time did not constitute a misjoinder *Held* also that a theatre erected by the mortgagors on the land after the execution of the mortgage was in the absence of a contract to the contrary included in the mortgage The Transfer of Property Act makes no distinction between freehold and leasehold for the purposes of the rule of law embodied in ss 8 and 70 of the Act In this respect the Act reproduces the English law which is that all things which are annexed to the property mortgaged are part of the mortgage security and therefore the deed need contain no mention of structures or fixtures unless a contrary intention can be collected from the deed *Held* also ...

gagor who granted it the paramount title of the

RECEIVER—*contd*

mortgagee may be asserted against both of them MACLEOD v KISSAN (1904)
I L R 30 Bom 250

62 ———— **Mortgage by Receiver**—*Money decree against joint owners—Attachment—Decree—Attaching creditor's right to property over mortgagee* Where a receiver of joint property mortgaged that property to another after a money decree had been obtained against the owners but had executed the mortgage previous to the attachment *Held* that the attaching creditors were not entitled to priority over the mortgagee HERUMBO NATH BANERJEE v SATISH CHANDRA MUKERJEE (1905) **I L R 33 Calc 1175**

63 ———— **Receiver whether he can sue in his own name** —*Civil Procedure Code (Act XIV of 1882) ss 503 and 505—Appointment of Receiver by a subordinate Court without sanction of the District Court validity of* Where a suit was instituted by a Receiver at a time when he had been appointed by a Subordinate Judge to act temporarily but without the previous sanction of the District Judge which however was subsequently obtained —*Held* that such a suit was validly instituted by the Receiver *Benode Behary Mookerjee* v *Raj Narain Mitter I L R 30 Calc 699* distinguished *Harakumar Pal Chowdhary* v *Safatulla 2 C L J 70* and *Padmanand Singh* v *Anant Lal Misser 4 C L J 421* referred to A Court may authorise a Receiver to sue in his own name and a Receiver who is authorised to sue though not expressly in his own name may do so by virtue of his appointment with full powers under s 503 of the Code of Civil Procedure *William Robert Fink* v *Moharaj Bahadur Singh I L R 25 Calc 642* and *The Oriental Bank Corporation* v *Gobin Loll Seal I L R 10 Calc 713* relied upon *Shunmugam* v *Moidin I L R 8 Mad 229* *Gopala ami* v *Sankara I L R 8 Mad 418* *Sundaram* v *Sankara I L R 9 Mad 334* *Drobomoyi Gupta* v *C T Davis I L R 14 Calc 323* *Haridass Kundu* v *J C Macgregor I L R 18 Calc 4,7* and *W R Fink* v *Buldeo Das I L R 26 Calc 715* referred to JAGAT TARINI DASI v NABA GOPAL CHAKI (1907)
I L R 34 Calc 305

64. ———— **Application by Receiver for liberty to sell after dismissal of suit**—*Practice—Dismissal of suit—Application by Receiver for liberty to sell—Power of Court—Costs* When a suit in which a Receiver has been appointed has been dismissed the Court has no jurisdiction to give the Receiver any fresh power as for instance liberty to sell RABEHOLME v SMITH (1907)
I L R 34 Calc 338

65 ———— **Sale by Receiver**—*Right of a party to suit to challenge validity of sale in a separate suit—Shebait of Thakur a party—Right of succeeding shebait to recover property sold—Representation of Thakur by shebait—Continuing representation—Application in suit to set aside sale—Maintainability* A sale of properties the subject matter of a suit by the Receiver under the order of the Court cannot in the absence of fraud be attacked collaterally by persons who were parties thereto or their representatives. *Williamson* v *Gangadhar Sirkar, 6 B L R 486* referred to. Where one member of a joint Hindu family sued for partition of certain properties on the allegation that they were secular properties of the [illegible]

[illegible]

of the properties to meet the costs of the suit —*Held* in a suit brought to recover the properties [illegible]

[illegible]

The succeeding *shebaits* forming a continuing representation of the *Thakur's* property were bound by the order for sale which it was not open to them to challenge in an independent action *Pramanno Kumari* v *Golab Chand L R 2 I A 145 15* *Moharanee Shibessuaree Debia* v *Mathura Nath Acharjo 13 Moo I A 270 275* *Jagadindra Nath* v *Hemantha Kumari 8 C W N 809 L R 31 I A 203 210* *Benode Behari* v *Nistarini 9 C W N 961 L R 32 I A 193* [illegible] relied on *Quære* Whether having regard to the purpose for which the properties were sold an application in the former suit to set aside the order would have succeeded GORA CHAND LUKKI v MAKHAN LAL CHAKRAVARTTI (1907)
11 C W N 489

66 ———— **Receiver's account**—*Directions as to if appealable—Civil Procedure Code (Act XIV of 1882) ss 503 cl (f) and 588 cl [illegible]* Directions given by a Court in passing Receiver's accounts are not appealable KESHOBATI KUMARI v MACGREGOR (1908) **I. L. R 35 Calc 868**
s c 12 C W N 643

67 ———— **Lease by Receiver**—*Application to set aside—Summary jurisdiction—Practice—Lessee suo—Receiver's account—Action—Practice* No summary order can be passed to set aside a lease already executed and granted by a Receiver The proper remedy of the aggrieved parties is to institute a regular suit to set aside the lease against the Receiver and also the lessee if it is alleged that the lease was obtained by collusion *Surendra Keshab Roy* v *Durga Sundari Dassee I L R 15 Calc 253* distinguished No order can be made [illegible] for arrears of rent [illegible] A result [illegible] them The [illegible] up arrears of [illegible] granted by [illegible] dealt with [illegible]

an interlocutory application in the suit. Court —Whether the Court can go into such matters on the passing of the Receiver's accounts or the parties must file a suit in respect of them against the

RECEIVER—*contd*

Receiver Krista Chundra Ghose v Krista Sakha Ghose (1908) 12 C W N 1023

68 —— ———— *Lease—Summary jurisdiction—Remedy—Interest—Receiver s accounts—Practice.* Where a lease had been already granted by a Receiver acting under an order of Court and possession of the property had been given to the lessee and subsequently certain parties applied to the Court for a declaration that the lease was invalid, and for certain other relief against the Receiver and the lessee —*Held* that no summary order could be passed to set aside the lease The proper remedy would be by suit against the Receiver and also against the lessee if it was alleged that the lease was obtained by collusion *Surendro Keshub Roy* v *Doorga Soondery Dossee I L R 15 Calc 253* distinguished *Held* further that on this application no order could be made against the lessee for interest on arrears of rent nor could any order be passed against the Receiver in respect of the same as this was a matter touching the Receiver s account Krista Chandra Ghose v Krista Sakha Ghose (1908)
I L R 38 Calc 52

69 ———— Suit for account against officer employed by Receiver—*Discharge of Receiver—Right of proprietor to sue for account—Agent and sub agent* Where a receiver was appointed in respect of certain properties about which there was a litigation in which plaintiff was found to be the proprietor —*Held* that a suit for account

70 ——— Rights of stranger against Receiver—*Appeal—Civil Procedure Code (Act XIV of 1882) ss 503 cl (b) 588 cl (24)—Stranger in possession of property in suit—Lien on property—Jurisdiction of Court when ousted—Possessory lien—Possession by Receiver* Where in a mortgage suit a Receiver appointed by Court was directed to take possession of the property in custody of a person not a party to the suit —*Held* that such an order was made under s 503 cl (b) of the

circumstances but upon proof of the actual existence of such circumstance and upon judicial investigation *Budh Singh Dhudhuria* v *Niradbaran Roy 2 C L J 431* and *Mahomed Mehdi Calistana* v *Joharra Begam I L R 17 Calc 285* followed *Hurree Pershad Malee* v *Koonjo Behary Shaha Marsh 99 Chunder Koomar Mundul* v *Bakur Ali Khan 9 W R 598 Shashti Charan Chatterjee* v *Tarak Chunder Chatterjee 8 B L R 315 15 W R 9 (F B) Mahomed Wahiduddin* v *Hakiman I L R 25 Calc 757* and *Mayor of London* v *Cox L R 2 H L 239* referred to The possessory

RECEIVER—*concld*

Manningford v *Toleman 1 Coll 670 66 P R 9 In re Llewellin [1891] 3 Ch 145* and *Peat* v *Clayton [1906] 1 Ch 659* referred to Hudson v Morgan (1909) I L R 36 Calc 713
13 C W N 654

RECEIVING OFFICER

See Bombay District Municipal Act
I L R 30 Bom 409

RECITALS IN DOCUMENTS

See Bengal Tenancy Act s 1?0
13 C W N 135

See Construction of Document

See Contract—Construction of Contracts I L R 2 Mad 239

See Evidence—Civil Cases—Recitals in Document

See Evidence—Parol Evidence—Varying or Contradicting Written Instrument 5 C W N 158

See Onus of Proof—Documents relating to Loans Execution of and Consideration for etc 8 W N 215
19 W R 149
4 B L R F B 54
10 W R 407
1 B L R A C 92

See Registration Act (III of 1877) ss 50 and 1? I L R 27 Bom 452

See Transfer of Property
L R 28 I A 46

RECOGNIZANCE TO APPEAR

See Criminal Procedure Code 1898 s 476
8 C W N 779

1 ———— Case made over to police for investigation—*Criminal Procedure Code 1861 s 151—Particulars of recognizance* In a case which is made over for investigation to the police the prosecutor and his witnesses should be required to enter into recognizances to attend and give evidence A recognizance binding over an accused

11 W R Cr 47

2 ———— Power to take recognizances—*Witness—Power of Magistrate* A Subordinate Magistrate has no power under the provisions of the Criminal Procedure Code to take recognizances from a complainant and witnesses to appear on a

RECOGNIZANCE TO APPEAR—*contd*

certain day before a Magistrate of co ordinate juri diction and recognizances thus taken cannot be forfeited ANONYMOUS 4 Mad Ap 17

See VENKATAPPAH *v* PAPAMMAH 5 Mad 132

See also ANONYMOUS 4 Mad Ap 6

3 ——— *Security for good behaviour—Criminal Procedure Code 1872 s 204—Adjourned hearing* Where it becomes necessary to adjourn the hearing of a summons case the attendance of the accused person at the adjourned hearing can be secured under the provisions of s 204 of Act X of 1872 Therefore where a person appeared in answer to a ummons requiring him to find security for good behaviour for one year and

4 ——— *Power of police officers—Criminal Procedure Code 1872 ss 396 397—Bail taken by police officer* The powers contained in ss 396 and 397 of the Code of Criminal Procedure extend not only to recognizances taken by a Magistrate for the appearance of an accused person by a surety under s 125 but also to such recognizances when taken by a police officer *In the matter of the petition* OF KRISTO PROSAD MUNDLE 22 W R Cr 74

5 ——— Security bond to appear before police—*Code of Criminal Procedure (Act X of 1882) s 514* As there is no provi ion in the Criminal Procedure Code authoriz ng a police officer to take a surety bond for the production of any person before the police such a bond is *ab initio* void and a Magistrate has no power to alter it and impo e fresh obligations thereunder *In the matter of* CHANDRA SEKHAR PAI I L R 11 Calc 77

6 ——— Recognizance bond—*Where appearance of accused has been dispensed with—Agent Held* that where the personal attendance of an accused is di pen ed with a recognizance bond if such is deemed necessary should be taken from him and not from his agent binding him (the accused) to appear either in person or by an agent and that a Magistrate has no legal authority to secure the attendance of an agent by such a bond PEG *v* LALLUBHAI JASSUBHAI 5 Bom Cr 64

7 ——— Bail bond to appear when called on —*Right of sureties to notice.* Where the condition of bail bonds given by the defendants

4 Mad. Ap 4

8 ——— Discharge of surety—*Permission of Court to accused to leave.* Where a surety conditioned that he would be responsible for the continued presen e of an accused person at one

Court (Nowadah) it was *held* that the surety was released from liability under his recognizance by the permission which the Court at Nowadah gave the accused without the surety s con ent, of leaving that place of business and also by the subsequent tran fer of the case to another Court. QUEEN *v* MEWA LALL 13 W R Cr 53

9 ——— Prosecutor failure of to

to appear before the Subordinate Magistrate to be forfeited on the failure of the prosecutor to appear ANONYMOUS 4 Mad. Ap 18

10 ——— Forfeiture of recognizances—*Failure to appear* The estreating of recognizances is a proceeding resorted to where persons who have undertaken to give evidence in a criminal inquiry have failed without just excuse to attend and have thus created an obstruction to public justice but where a Magistrate thinks it proper to treat their recognizances he ought to allow them an opportunity of justifying their default QUEEN *v* DASSOO MANJEE 11 W R Cr 39

11 ——— *Criminal Proc*

the case was called —*Held* that the ... ture of the recognizance In such cases s 519 of the Code of Criminal Procedure requires that the Magistrate shall form a reasonable opinion that there has been wilful default before issuing proce s to enforce the penalty ANONYMOU 4 Mad. Ap 44

12 ——— *Criminal Procedure Code (Act X of 1882) s 514—Bond forfeiture of—Mistake of Court—Sunday fixed for the hearing of a case* The Magistrate in a ca e in which under s 107 of the Criminal Procedure Code the ... had entered into recogni

... wer to the ... ake to fix t ... to appear ... ht not them

the day following that ... fore to have been forfeited EMPRESS *v* ... KHAN 2 C W N 519

13 ——— *Forfeiture of recognizances—Notice* Defendants were charged with theft and on their appearance before the Subordinate Magistrate on 1st May were bound over by recognizance to appear from that date until the close of the trial On the 2nd May when the case was called on defendants were not present but they appeared on the 3rd The Subordinate Magistrate

RECOGNIZANCE TO APPEAR—*contd*

heard what they had to say and directed the penalties on the forfeited recognizances to be levied from the defendants *Held* that there was no ground for the interference of the High Court as a Court of Revision that there was nothing illegal in requiring defendants to execute such a bond and that no notice was necessary before proceeding to enforce the penalty ANONYMOUS 6 Mad. Ap 39

14. ——— Failure of surety to produce accused—*Forfeiture of recognizance—Attachment of property of surety for accused person—Notice* A surety who was bail for an accused person having failed to produce him on the day on

first of the accused and secondly of the surety No recognizance had been signed by the accused and no notice had been given to the surety to show cause On a reference by the Magistrate the Deputy Magistrate s order was set aside as being illegal QUEEN v DURGA DAS BHUTTACHARJEE 7 B L R Ap 37

s c KHOODEE KOIBURTNEE v DURGADASS BHUTTACHARJEE 15 W R Cr 82

15 ——— Enforcement of security bond—*Notice to surety to pay amount of bond—Forfeiture of recognizances—Service of notice* A notice must be served on a surety calling upon him to pay the amount of his security bond or to show cause why he should not pay the same before an order can be made to levy the sum from him QUEEN v JEEBUN SHEIKH 9 W R Cr 4

16 ——— *Civil cases—Civil Procedure Code 1882 s 349* A security bond given under the provisions of s 349 of the Code of Civil Procedure 1882 for the production of a judgment debtor when called upon cannot be enforced summarily MOIDIN v CHANDU I. L. R 7 Mad. 273

17 ——— Forfeiture of Bail bond—*Guarantee by surety for appearance of accused before a certain Magistrate—Non appearance of accused before different Magistrate—Bond forfeiture of—Criminal Procedure Code (Act V of 1898) s 514* Where a surety executed a bail bond guaranteeing that the person for whom he stood surety would

had been no breach of the conditions of the bail bond and that the order forfeiting it under s 514 of the Criminal Procedure Code should be set aside SHAMSUDDIN SIRKAR v EMPEROR (1902) I L R 30 Calc 107 s c 6 C W N 885

RECOGNIZANCE TO KEEP PEACE

RECOGNIZANCE TO KEEP PEACE—*contd*

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES I L R 2 Mad 169 3 Bom. Cr 1

See CRIMINAL PROCEEDINGS I L R 9 All 452

See EVIDENCE—CRIMINAL CASES—CHARACTER I L R 25 All 273

See MAGISTRATE—POWERS OF MAGISTRATES I L R 29 Calc 389

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE 7 C W N 142

See ONUS OF PROOF—RECOGNIZANCE TO KEEP PEACE 4 B L R F B 46

See POSSESSION ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE 6 C W N 883 7 C W N 29 I L R. 30 Calc 443

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES I L R 2 Calc 110 I L R 3 All 545

See TRANSFER OF CRIMINAL CASE—GENERAL CASES I L R 24 All 151

——— forfeiture of—

See CONTEMPT OF COURT—PENAL CODE s 174 1 B L R A Cr 1

1 PERSONS OUT OF JURISDICTION

1 ——— Power of Magistrate as to persons not resident in his district—*Power of the Magistrate of a district to call on person residing in another district to furnish security—Criminal Procedure Code s 10* *Held* by the Full

RECOGNIZANCE TO KEEP PEACE—*contd*

1 PERSONS OUT OF JURISDICTION—*contd*

[illegible] the terms of s 107 Criminal Procedure [illegible]

district *In the matter of* [illegible] PRAKASH LAL I L R 6 All 26

2 ———— *Criminal Procedure Code (Act X of 1882) s 107—Power of District Magistrate to call on person residing in another district for security* A Magistrate has no jurisdiction to take proceedings under s 107 of the Criminal Procedure Code against a person not personally within his jurisdiction *In the matter of the petition of Jai Prakash Lal I L R 6 All 26* and *In the matter of the petition of Rajendra Chunder Roy Chowdhry I L R 11 Calc 737* followed Even assuming there was jurisdiction it was not a case where the Magistrate should have called upon the petitioner to appear personally he residing at a distance there being no special circumstance making his personal attendance necessary and the Magistrate having power under s 116 to allow him to appear by a pleader *In the matter of the petition of* DINONATH MULLICK DINONATH MULLICK *v* GIRJA PROSONNO MOOKERJEE I L R 12 Calc 133

3 ———— *Power of a District Magistrate to call on a person residing in another district to furnish security—Criminal Procedure Code (Act X of 1882) s 107—Procedure* The provisions of s 107 of Act X of 1882 do not empower a Magistrate to issue process on persons not residing within the limits of his district The proper course for a Magistrate to pursue where he believes that certain persons who are resident beyond the limits of his district are likely to commit a breach of the peace within his district is to cause information of the fact to be given to the Magistrate within whose district such persons reside and to produce evidence in support of such view in order that proceedings may be taken against them by a Court which has jurisdiction *In the matter of the petition of* RAJENDRO CHUNDER ROY CHOWDHRY I L R 11 Calc 737

4. ———— *Criminal Procedure Code s 107—Power of the Magistrate of a district to call upon a person residing in another district to furnish security—Persons out of the jurisdiction* S 107 of the Criminal Procedure Code does not empower a Magistrate to issue process under it to a person not residing within his jurisdiction *In the matter of the petition of Jai Parkash Lal I L R 6 All 26* followed *In the matter of the petition of Rajendro Chunder Roy Chowdhry I L R 11 Calc 737* and *In the matter of the petition of Dinonath Mullick I L R 12 Calc. 133* approved *In the matter of the petition of* ABDUL AZIZ I L R 14 All. 49

5 ———— *Criminal Procedure Code 1882 s 10—Jurisdiction of Magistrate—Temporary residence of offender* In a case where an accused was bound over to keep the peace by the Deputy Magistrate of the district in which the accused was temporarily residing at the time when the Magistrate received information and instituted proceedings against him —*Held* that although the accused permanently or habitually resided in another jurisdiction he was sufficiently within the jurisdiction of the Magistrate within the meaning of s 107 of the Criminal Procedure Code SHAMA CHARAN CHAKRAVARTI *v* KATI MUNDAL I L R 24 Calc 344

SHAMA CHARAN CHAKRAVARTY *v* TARAK NATH GHOSE 1 C W N 193

6 ———— *Criminal Procedure Code (Act X of 1882) s 10 —Magistrate's power to demand such security from persons residing beyond his local jurisdiction* A Magistrate [illegible] person residing beyond his local [illegible] breach of the [illegible] *re Jai Parkash Lal I L R 6 All* [illegible] *I L R 14 All 49 In re Rajendro Chunder Roy I L R 11 Calc 737* and *Dinonath Mullick v Girija Prosunno Mukerjee I L R 12 Calc. 133* followed *In re* KRISHNAJI P JOGLEKAR I L R 23 Bom. 33

2 MAGISTRATE WITH POWERS OF APPELLATE COURT

1. ———— Magistrate of district powers of—*Criminal Procedure Code 1882 s 439—* [illegible] *for keeping the peace* The Magistrate of a [illegible] of an appellat[e] [illegible] s 439 [illegible] appel[late] [illegible] All 213

2 ———— *Criminal Procedure Code (Act X of 1882) ss 106 423* The Magistrate of a district when acting as an Appellate Court is not competent to make an order under s 106 of the Criminal Procedure Code (Act X of 1882) requiring the appellant to furnish security for keeping the peace *In the matter of the petition of* ASLU ASLU *v* QUEEN EMPRESS I L R 16 Calc 779

3 ———— *Criminal Procedure Code 1882 s 106—Magistrate Jurisdiction of—Procedure to be followed by Magistrate trying a case when he is not empowered to bind the accused down under s 106 of the Criminal Procedure Code* An Honorary Magistrate exercising third class power tried an accused on a charge of criminal trespass and convicted and sentenced him to pay a fine of R10 or in default to suffer seven days rigorous imprisonment. He further submitted the case to the District Magistrate with a recommendation that the accused should be bound down to keep the peace under s 106 of the Criminal Procedure Code

RECOGNIZANCE TO KEEP PEACE—*contd.*

2 MAGISTRATE WITH POWERS OF APPELLATE COURT—*contd*

and the District Magistrate ordered the accused to furnish security *Held* that the order of the District Magistrate was illegal and must be set aside Before an order under 106 can be properly passed the conviction must be by a Magistrate of the class mentioned in the section and not by a third class Magistrate and the order must be passed by the Magistrate who convicts and passes the sentence MAHMUDI SHEIKH v AJI SHEIKH
I L R 21 Calc 622

4. ———— *Criminal Procedure Code 1882 s 106—Magistrate acting as Appellate Court—Power to require security to keep the peace* The Magistrate of a district acting as a Appellate Court in criminal cases cannot make an order under s 106 of the Code of Criminal Procedure *Aslu v Queen Empress I L R 16 Calc 9 Queen Empress v Lachman All Weekly Notes (1890) 201* referred to QUEEN EMPRESS *v* ISHRI
I L R 17 All 67

5 ———— *Order—Omission* [illegible]

[illegible]

under s. 106 of the Criminal Procedure Code binding over the petitioner to keep the peace *Held* that he was not competent to pass such an [illegible]

3 WHEN RECOGNIZANCE MAY BE TAKEN

1. ———— Prevention of wrongful act —*Act XXV of 1861 s 282—Act X of 1872 s 491 —Power of Magistrate—Breach of the peace—Wrongful act* Under s 282 of Act XXV of 1841 a Magistrate could prevent a person from doing a wrongful act but not one which the person might lawfully do It was not intended that a person [illegible]

2 ———— *Criminal Procedure Code (Act X of 1882) ss 107 and 118—Wrongful act likely to occasion a breach of the peace—Practice—Rule issued upon the Magistrate—Right to appear of a party interested in the result*

RECOGNIZANCE TO KEEP PEACE—*contd*

3 WHEN RECOGNIZANCE MAY BE TAKEN —*contd*

The granting of leases to tenants of land not in one's possession does not constitute a wrongful act such as s 107 of the Criminal Procedure Code (Act X of 1882) contemplates Where the notice directs a person to show cause why he should not be bound down to keep the peace it is improper to make an order directing him to execute bonds for his good behaviour When a rule is issued upon the Magistrate to show casue and the order sought to be set aside is one that is only intended to secure the peace of the district by binding down the petitioner the Magistrate is the only party entitled to be heard Any other party interested in the result of the order cannot appear DRIVER v QUEEN EMPRESS
I L R 25 Calc 798

3 ———— Prevention of crime—*Pending charge of specific offence—Criminal Procedure Code 1872 Ch XXXVIII ss 489 503* The object of Ch XXXVIII Code of Criminal Procedure 1872 was the prevention not the punishment of crime When a charge of a specific offence is under trial proceedings under Ch XXXVIII should not be instituted. *In the matter of the petition of Juggut Chunder Chuckerbutty I L R 2 Calc 110* followed *In the matter of* UMBICA PROSHAD
1 C L R 268

4. ———— Offence against public tranquillity—*Order to convicted person to find security —Recognizance to convicted person—Criminal Procedure Code 1861 s 280—Offences affecting the human body* An order directing a person convicted of an offence to find security to keep the peace should be simultaneous with the conviction and should not provide for an engagement to be executed at a future period S 280 of the Code of Criminal Procedure 1861 did not refer to offences affecting the human body but to cases of riot simple assault or other breach of the peace being an offence against public tranquillity QUEEN *v* KUNHIYA
4 N W 154

5 ———— Order for recognizance on expiration of sentence for criminal trespass The order of the Magistrate directing the prisoner on the expiration of his sentence for the offence of criminal trespass to execute personal recognizances to keep the peace was upheld as legal and necessary QUEEN *v* GENDOO KHAN
7 W R Cr 14

6 ———— Order for recognizance on dismissal of charge of criminal trespass—*Criminal Procedure Code (Act XXV of 1861)* [illegible]

not enter into recognizances to keep the peace *Held* that it was not necessary also to issue a summons to them under s 283 of the Criminal Procedure Code QUEEN *v* CHOWDHRY
2 B L R Ap 28

RECOGNIZANCE TO KEEP PEACE—*contd*

1 PERSONS OUT OF JURISDICTION—*contd*

Bench that the terms of s 107 Criminal Procedure Code do not empower a Magistrate to issue process to a person not residing within the limits of his district *In the matter of the petition of* JAI PRAKASH LAL I L R 6 All 26

2 ———— *Criminal Procedure Code (Act X of 1882) s 107—Power of District Magistrate to call on person residing in another district for security* A Magistrate has no jurisdiction to take proceedings under s 107 of the Criminal Procedure Code against a person not personally within his jurisdiction *In the matter of the petition of Jai Prokash Lal I L R 6 All 26* and *In the matter of the petition of Rajendra Chunder Roy Chowdhry I L R 11 Calc 737* followed Even assuming there was jurisdiction it was not a case where the Magistrate should have called upon the petitioner to appear personally he residing at a distance there being no special circumstance making his personal attendance necessary and the Magistrate having power under s 116 to allow him to appear by a pleader *In the matter of the petition of* DINONATH MULLICK DINONATH MULLICK *v* GIRJA PROSONNO MOOKERJEE I L R 12 Calc 133

3 ———— *Power of a District Magistrate to call on a person residing in another district to furnish security—Criminal Procedure Code (Act X of 1882) s 107—Procedure* The provisions of s 107 of Act X of 1882 do not empower a Magistrate to issue process on persons not residing within the limits of his district The proper course for a Magistrate to pursue where he believes that certain persons who are resident beyond the limits of his district are likely to commit a breach of the peace within his district is to cause information of the fact to be given to the Magistrate within whose district such persons re[illegible]

4 ———— *Criminal Procedure Code s 107—Power of the Magistrate of a district to call upon a person residing in another district to furnish security—Persons out of the jurisdiction* S 107 of the Criminal Procedure Code does not empower a Magistrate to issue process under it to a person not residing within his jurisdiction *In the matter of the petition of Jai Parkash Lal I L R 6 All 26* followed *In the matter of the petition of Rajendro Chunder Roy Choudhry I L R 11 Calc 737* and *In the matter of the petition of Dinonath Mullick I L R 12 Calc 133* approved *In the matter of the petition of* ABDUL AZIZ I L R 14 All 49

5 ———— *Criminal Procedure Code 1882 s 107—Jurisdiction of Magistrate—Temporary residence of offender* In a case where an accused was bound over to keep the peace by the Deputy Magistrate of the district in which the accused was temporarily residing at the time when the Magistrate received information and instituted proceedings against him —*Held* that although the accused permanently or habitually resided in another jurisdiction he was sufficiently within the jurisdiction of the Magistrate within the meaning of s 107 of the Criminal Procedure Code SHAMA CHARAN CHAKRAVARTI *v* KATU MUNDAL I L R 24 Calc 344

SHAMA CHARAN CHAKRAVARTY *v* TARAK NATH GHOSE 1 C W N 1[illegible]9

6 ———— *Criminal Procedure Code (Act X of 1882) s 107—Magistrate's power to demand such security from persons residing beyond his local jurisdiction* A Magistrate cannot call upon a person residing beyond his local [illegible]

[illegible]

I L R 11 Calc 737 and *Dinonath Mullick v Girja Prosunno Mukerjee I L R 12 Calc 133* followed *In re* KRISHNAJI P JOGLEKAR I L R 23 Bom 32

2 MAGISTRATE WITH POWERS OF APPELLATE COURT

1. ———— Magistrate of district power of—*Criminal Procedure Code 1872 s 489—Security for keeping the peace* The Magistrate of a district when exercising the powers of an appellate Court is competent to make an order under s 489 of the Criminal Procedure Code requiring the appellant to furnish security for keeping the peace EMPRESS OF INDIA *v* KAMTA PRASAD I L R 4 All 212

2 ———— *Criminal Procedure Code (Act X of 1882) ss 106 423* The Magistrate of a district when acting as an Appellate Court is not competent to make an order under s 106 of the Criminal Procedure Code (Act X of 1882) requiring the appellant to furnish security for keeping the peace *In the matter of the petition of* ASLU ASLU *v* QUEEN EMPRESS I L R 16 Calc 779

3 ———— *Criminal Procedure Code 1882 s 106—Magistrate Jurisdiction of—Procedure to be followed by Magistrate trying [illegible] to bind the accused* [illegible] Code [illegible] class [illegible] minal [illegible] pay a [illegible] rigor[illegible] [illegible]

ous imprisonment He further [illegible] to the District Magistrate with a recommendation that the accused should be bound down to keep the peace under s 106 of the Criminal Procedure Code

RECOGNIZANCE TO KEEP PEACE—*contd.*

2. MAGISTRATE WITH POWERS OF APPELLATE COURT—*contd*

and the District Magistrate ordered the accused to furnish security *Held* that the order of the District Magistrate was illegal and must be set aside Before an order under s 106 can be properly passed the conviction must be by a Magistrate of the class mentioned in the section and not by a third class Magistrate and the order must be passed by the Magistrate who convicts and passes the sentence MAHMUDI SHEIKH v AJI SHEIKH

I L R 21 Calc 622

4. ———— *Criminal Procedure Code 188 s 106—Magistrate acting as*

79 *Queen Empress v Lachman All Weekly Not s (1890) 01* referred to QUEEN EMPRESS v ISHRI I L R 17 All 67

5 ———— *Order—Omission*

a Subordinate Magistrate convicted the prisoner under s 3 9 of the Penal Code of theft and the District Magistrate on appeal merely affirmed the conviction and added to his judgment an order under s 106 of the Criminal Procedure Code binding over the petitioner to keep the peace *Held* that he was not competent to pass such an order except on an express finding that the petitioner had committed an offence within the terms of s 106 KINOO SHEIKH v DARASTULLAH MOLLAH (1902) I L R 29 Calc 393

s c 6 C W N 678

3 WHEN RECOGNIZANCE MAY BE TAKEN

1. ———— Prevention of wrongful act —*Act XXV of 1861 s 282—Act X of 1872 s 491 —Power of Magistrate—Breach of the peace— Wrongful act* Under s 282 of Act XXV of 1841 a Magistrate could prevent a person from doing a

In the matter of the petition of KASHI CHUNDER DOSS KASHI CHUNDER DOSS v HURRISHORE DOSS 10 B L R 441 19 W R Cr 47

2 ———— *Criminal Procedure Code (Act X of 1883) ss 107 and 118— Wrongful act likely to occasion a breach of the peace—Practice—Rule issued upon the Magistrate —Right to appear of a party interested in the result*

RECOGNIZANCE TO KEEP PEACE—*contd*

3 WHEN RECOGNIZANCE MAY BE TAKEN —*contd*

The granting of leases to tenants of land not in one s possession does not constitute a wrongful

of the order cannot appear DRIVER v QUEEN EMPRESS I L R 25 Calc 798

3 ———— Prevention of crime—*Pending charge of specific offence—Criminal Procedure Code 1872 Ch XXXVIII ss 489-503* The object of Ch XXXVIII Code of Criminal Procedure 1872 was the prevention not the punishment of crime When a charge of a specific offence is under trial proceedings under Ch XXXVIII should not be instituted *In the matter of the petition of Juggut Chunder Chuckerbutty I L R 2 Calc 110* followed *In the matter of* UMBICA PROSHAD 1 C L R 268

4. ———— Offence against public tranquility—*Order to convicted person to find security —Recognizance to convicted person—Criminal Procedure Code 1861 s 280—Offences affecting the human body* An order directing a person convicted of an offence to find security to keep the peace should be simultaneous with the conviction and should not provide for an engagement to be executed at a future period S 280 of the Code of Criminal Procedure 1861 did not refer to offences affecting the human body but to cases of not simple assault or other breach of the peace being an offence against public tranquillity QUEEN v KUNHIYA 4 N W 154

5 ———— Order for recognizance on expiration of sentence for criminal trespass The order of the Magistrate directing the prisoner on the expiration of his sentence for the offence of criminal trespass to execute personal recognizances to keep the peace was upheld as legal and necessary QUEEN v GENDOO KHAN

7 W R Cr 14

6 ———— Order for recognizance on dismissal of charge of

show cause on a day fixed why they should not enter into recognizances to keep the peace *Held* that it was not necessary also to issue a summons to them under s 283 of the Criminal Procedure Code QUEEN v CHOWDHRY

2 B L R Ap 28

RECOGNIZANCE TO KEEP PEACE—*contd*

3 WHEN RECOGNIZANCE MAY BE TAKEN —*contd*

7 ———— **Order for recognizance on conviction of criminal trespass**—*Criminal Procedure Code 1872 s 489—Sentence* On a conviction of criminal trespass under s 447 Penal Code the Joint Magistrate added to the sentence of imprisonment an order that the prisoners should *give recognizances to keep the peace* The Sessions Judge recommended that the order as to recognizances should be quashed as criminal trespass was not one of the offences detailed in s 489 for which such recognizances could be taken The High Court declined to act on this recommendation holding that there was nothing illegal in the Joint Magistrate s order the conduct of the accused clearly pointing to an intention to commit a breach of the peace QUEEN v JHAPOO

20 W R Cr 37

8 ———— *Criminal Procedure Code (Act X of 1882) s 106—Security to keep the peace on conviction of house trespass—Breach of the peace—Penal Code (Act XLV of 1860) s 448* An order under s 106 of the Criminal Procedure Code (Act X of 1882) binding down the accused to keep the peace upon conviction for house trespass under s 448 of the Indian Penal Code cannot stand where the intention of the accused for committing the trespass was to have illicit intercourse with the complainant s wife *Queen v Gendoo Khan 7 W R Cr 14* and *Queen v Jhapoo 20 W R Cr 37* distinguished It is necessary before an order under s 106 of the Criminal Procedure Code can be made that the accused should have an opportunity of answering to an accusation for an offence of the kind upon a conviction for which such an order can be made SUBAL CHUNDER DEY v RAM KANAI SANYASI

I L R 25 Calc 628
3 C W N 18

9 ———— **Order for recognizances on renewal of conviction of house trespass**—*Order in absence of accused—Criminal Procedure Code 1861 s 280* A conviction of house trespass by Subordinate Magistrate was reversed on appeal [illegible]

recognizance bond in the sum of Rs50 from the accused that he would not for one year enter the house and would not commit a breach of the peace *Held* by the High Court that the order directing the recognizance bond to be taken should be set aside as having been improperly made by the Magistrate in the absence of the accused and upon the assertion of his adversary *Semble* The order was also illegal as not authorized by s 280 or any other section of the Criminal Procedure Code REG v BHASKAR K KHARKAR 3 Bom. Cr 1

10 ———— **Order for recognizance in case of rioting**—*Criminal Procedure Code 1872 s 489—Personal recognizance* No order requiring personal recognizance to keep the peace can be passed under Act X of 1872 s 489 unless the accused has been convicted of rioting or any other offence SAHEBDI v KURAN 21 W R Cr 37

11 ———— *Criminal Procedure Code (Act V of 1898) s 106—Security for* [illegible]

finding to the effect that his acts involved a breach of the peace or an evident intention of committing the same or the evidence must be so clear as to satisfy the Court (without an express finding) that such was the case JIB LAL GIR v JOGMOHAN GIR

I L R 26 Calc 576

12 ———— *Conviction under s 143 of the Penal Code (Act XLV of 1860)—Code of Criminal Procedure (Act V of 1898) s 106* An [illegible]

person or persons to furnish security to keep the peace There may be findings in the case which justify such an order if such findings can be brought within the terms of s 106 *Jib Lal Gir v Jogmohun Gir I L R 26 Calc 576* referred to Where the accused were convicted under s 143 of the Penal Code and ordered under s 106 of the Code of Criminal Procedure to furnish security to keep the peace and it was alleged that the facts as proved [illegible] the accused came in a *body* some of [illegible]

MOSAWI I L R [illegible]
4 C W N 795

13 ———— **Order for recognizance to witness in case of rioting**—*Admission of being present at or near scene of riot* A witness for the [illegible] admitted being [illegible]

far as the witness was concerned QUEEN v [illegible] KHAN I L R 5 Mad. 380

RECOGNIZANCE TO KEEP PEACE— *contd.*

3 WHEN RECOGNIZANCE MAY BE TAKEN *—contd*

14. ——— Order for recognizance in case of criminal intimidation—*Criminal Procedure Code 18 2 s 489—Penal Code ss 503 506* The words in s 489 of the Criminal Procedure Code "taking other unlawful measures with the evident intention of committing a breach of the peace" do not include the offence of intimidation by threatening to bring false charges. Where therefore a person was convicted under ss 503 and 506 of the Penal Code of such offence —*Held* that the Magistrate by whom such person was convicted could not under s 489 the Criminal Procedure Code require him to give a personal recognizance for keeping the peace. EMPRESS OF INDIA v PAGHUBAR **I L R 2 All 351**

15 ——— Order for recognizance on conviction of offence of voluntarily causing hurt—*Power of Magistrate—Criminal Procedure Code 18 2 s 489* It is in the power of a Magistrate on conviction of a person of voluntarily causing hurt to take security from him under s 489 of Act X of 1872. An order under that section requiring security should not direct that the person convicted should execute the engagement to keep the peace at the end of the term of imprisonment to which he may have been sentenced. The person convicted is at liberty to execute the engagement at once or at any time during the term. QUEEN v BACHU **7 N W 328**

17 ——— Order for recognizance to

to show that a breach of the peace is imminent through his act. *In the matter of* LUCHMEEPUT SINGH **14 W R Cr 3**

18 ——— Order for second recognizance before expiration of first—*Criminal Procedure Code (Act XXV of 1861) s 290—Execution of second recognizance* Under s 290 of the Criminal Procedure Code an order to execute a second recognizance during the time the first recognizance is in force is illegal. QUEEN v KUMODINI KANT BANERJEE CHOWDHRY **9 B L R Ap 30 18 W R Cr 44**

19 ——— *Criminal Procedure Code (Act XXV of 1861) s 298—Illegal order* A was bound over to keep the peace for a year. Before the expiry of the period he was involved in fresh disputes with other persons. The Deputy Magistrate instead of referring the case to the Court of Session under s 298 of the Code of

20 ——— *Criminal Procedure Code (Act V of 1898) ss 120 (?) 1?—Order to give fresh security upon expiry of a previous and existing security bond legality of* A security to keep the peace once given is sufficient for that purpose so long as it is in force in respect of every act of the person bound over breaking any of its conditions. A second order to give further security during the continuance of the first one is not contemplated by law, but if upon expiry of the first order the dispute still exists a further security may be demanded on fresh proceedings properly taken. MAHOMED ABDUL BARI v EMPRESS **4 C W N 121**

21 ——— Disputes concerning land—*Criminal Procedure Code (Act X of 1882) ss 10 145—Procedure* Where a dispute likely to cause a breach of the peace exists concerning possession of land proceedings under s 145 and not under s 107 of the Criminal Procedure Code should be instituted. DOLEGOBIND CHOWDHRY v DHANU KHAN **I L R 25 Calc 559**

22 ——— In a case of a dispute regarding land where the Magistrate had taken proceedings under s 107 and one of the parties moved the High Court and contended that the

institute proceedings. *In the matter of the petition of* EKRAM SINGH **3 C W N 267**

BEJOY SINGHA NEOGI v EMPRESS **3 C W N 463**

23 ——— Assembly of armed men—*Criminal Procedure Code s 106—Binding down to keep the peace order for* S 106 of the Code of Criminal Procedure may apply to a case in which armed men are assembled with the intention of committing a breach of peace but no breach of

RECOGNIZANCE TO KEEP PEACE—*contd*

3 WHEN RECOGNIZANCE MAY BE TAKEN —*contd*

the peace occurs because the assembly does not go so far SRIHARI SHOME v LAL KHAN (1900) **5 C W N 250**

24 ——— Security for keeping the peace on conviction order for—*Offences not within the terms of s 106 of the Code of Criminal Procedure (Act V of 1898)—Duty of Magistrate to record findings of fact which make that section applicable* Where the offences of which a person is convicted do not in themselves and apart from any other incidents come within the terms of s 106 of the Criminal Procedure Code it i incumbent upon

MAJUMDAR v NIBARAN CHUNDER COPE (1902) **I L R 30 Calc 93** **s c 6 C W N 471**

25 ——— House trespass—*Criminal Procedure Code (Act V of 1898) s 106 order under when proper—Breach of peace—Penal Code s 448* An order under s 106 Code of Criminal Procedure can be passed against a person who has been convicted of house trespass if he committed it with the object of causing hurt *Subal Chunder Dey v Ram Kanai Sanyasi I L R 25 Calc 628* distinguished *Queen v Gendoo Khan 7 W R Cr 14* and *Queen v Jhapoo 20 W R Cr 37* referred to TARINI CHARAN MUNDLE v GOURI KANT BISWAS (1902) **7 C W N 25**

26 ——— Order of recognizance when proper—*Criminal Procedure Code (Act V of 1898) s 107 118—Record of order* An order under s 118 Code of Criminal Procedure requiring security for keeping the peace should show that the person so called upon is likely to commit a breach of the peace or disturb the public tranquillity or to do some wrongful act that may probably occasion breach of the peace or disturb the public tranquillity Where an order passed under s 118 Criminal Procedure Code stated that the persons bound over had used their influence for the purpose of stopping the services of the village barber washerman and others from being rendered to complainant and also generally that they had committed diverse other acts of oppression *Held* that the former statement was not enough to justify an order under s 118 Code of Criminal Procedure and the latter was by itself too vague to sustain the order JINNAT CHOWDRY v RHUSEN (1902) **7 C W N 32**

27 ——— Criminal Procedure Code (Act V of 1898) s 106—*Order for security to keep the peace on convictions for offences not necessarily involving a breach of the peace—Validity* Certain accused were convicted of theft of mischief and of being members of an unlawful assembly

RECOGNIZANCE TO KEEP PEACE—*contd*

3 WHEN RECOGNIZANCE MAY BE TAKEN —*concld*

They were sentenced to imprisonment and were

ing the peace must be set aside as none of the offences for which they had been convicted necessarily involved a breach of the peace *Quære* Whether such an order might be made in a case in which a person is not accused of an offence involving a breach of the peace but there is nevertheless an express finding that a breach has been committed KANNOOKARAN KUNHAMAD v EMPEROR (1902) **I L R 26 Mad 469**

4 CREDIBLE INFORMATION

1 ——— Nature of information required—*Criminal Procedure Code 1882 s 107* *Held* by the Divisional Bench that information of the kind mentioned in s 107 of the Criminal Procedure Code 1882 must be clear and definite directly affecting the person against whom process is issued and should disclose tangible facts and details so that it may afford notice to such person of what he is come prepared to meet *In the matter of the petition of* JAI PRAKASH LAL **I L R 6 All 26**

2 ——— Report of police officer The report of a police officer is credible information within s 282 of the Code of Criminal Procedure 1861 *In the matter of* BRINDABUN SHAHA **10 W R Cr 41**

BEHARI PATAK v MAHOMED HYAT KHAN **4 B L R F B 46** **12 W R Cr 60**

3 ——— Criminal Procedure Code 1872 ss 491 530 A police report is under Act X of 1872 s 530 (explanation) sufficient information on which a Magistrate may take action in a case of apprehended breach of the peace under s 491 of that Act QUEEN v RAM CHUNDER ROY **21 W R Cr 28**

4 ——— Statement of complainant on oath—*Criminal Procedure Code 1861 s 282* There is nothing in the Criminal Procedure Code which makes it imperative on a Magistrate to confront the accuser and the accused in a case under s 282 of the Criminal Procedure Code and if a Magistrate considers a statement on oath of a complainant to be credible information under that section there is no reason why he should not call on the accused to give security the sufficiency of such credible information being ordinarily left to the Magistrate to determine *In the matter of petition of* TARINEE KANT LAHOORY CHOWDHRY **8 W R Cr 79**

5 ——— Statement of complainant—*Expectation of attack by defendant—Criminal Pro-*

RECOGNIZANCE TO KEEP PEACE—*contd.*

4 CREDIBLE INFORMATION—*concld*

cedure Code 1861 s 282 A statement by a complainant (believed by the Magistrate) that he expected the defendant at any time to make an attempt on his person or property is credible information within the meaning of s 282 of the Code of Criminal Procedure of an intended breach of the peace QUEEN v KRISTENDPO ROY

7 W R Cr 30

6 ——— Petition not on oath—*Criminal Procedure Code 1861 s 28* A petition un

MARO MALO v KASHI CHUNDER LALLA

8 W R Cr 85

7 ——— Statement by private person not on oath—*Report by Subordinate Magistrate—Criminal Procedure Code 1861 s 282 288* A statement by a private person not upon oath or solemn affirmation is not credible information upon which alone a Magistrate should issue a summons under s 282 of the Code of Criminal Procedure *Semble* A report by a Subordinate Magistrate of facts within his knowledge would be credible information upon which such summons might issue but would not be sufficient ground for a final adjudication under s 288 REG v JIVANJI LIMJI

6 Bom. Cr 1

8 ——— Report of Magistrate—*Criminal Procedure Code 1861 s 282* The report of a Subordinate Magistrate is such credible information within the meaning of s 282 of the Code of Criminal Procedure as to authorize a Magistrate to summon an individual named in the report and require him to enter into a recognizance to keep the peace although the report does not suggest that a recognizance should be required but suggests other means for the prevention of dispute and the preservation of order *Ex parte* NELLIKEL EDATTHIL ITTI I UNGY ACHEN 2 Mad 240

REG v IRAPA BIN BASAPA 8 Bom Cr 162

9 ——— Conversations out of Court—*Evidence—Criminal Procedure Code 188 s 107* Conversations out of Court with persons however respectable are not proper or legal material on which Magistrates should adopt proceedings under s 107 Act X of 1882 EMPRESS v BABUA

I L R 6 All. 132

10 ——— Information unsupported

5 SUMMONS

1. ——— Contents of summons—*Criminal Procedure Code 1872 ss 491 492* In a

RECOGNIZANCE TO KEEP PEACE—*contd*

5 SUMMONS—*contd*

20 W R Cr 50

2 ——— Dispute likely to

3 ——— *Criminal Procedure Code 1861 s 283—Separate summons to several persons* It is essential to the validity of a summons issued under s 283 that it should contain the substance of the information by which the Magistrate is moved to act A separate summons should be issued to each person required to furnish security and a separate bond taken from

4. ——— Criminal Procedure

QUEEN v NIJABUT HOSSEIN

1 N W Ed 1873 304

5 ——— *Criminal Procedure Code 1861 s 283* The summons to a person to show cause why he should not be required to furnish recognizances to keep the peace should under s 283 Code of Criminal Procedure set out the substance of the information against him. When the party summoned shows cause the Magistrate in taking evidence should look not merely to the question of possession but also whether he is satisfied that there was a probability of a breach of the peace KOONJBEHARY CHOWDHRY v EKNATH GURAIN 15 W R Cr 43

6 ——— *Criminal Procedure Code (Act X of 1872) s 492* The words of s 492 of the Code of Criminal Procedure are directory and not imperative and an omission to insert in a summons under that section the amount of the recognizance and security required will not invalidate any subsequent proceedings binding over the parties to keep the peace ABASU BEGUM v UMDA KHANUM I. L. R 8 Calc 724

7 ——— Form of summons—*Summons to appear—Criminal Procedure Code 1872 s 491*

RECOGNIZANCE TO KEEP PEACE—*contd*

5 SUMMONS—*concld*

... the person to whom it ... 491 of ... ing his ... a sum mons as is required by that section *In the matter of* CHAROO CHUNDER MULLICK
10 C L R 430

6 OPPORTUNITY TO SHOW CAUSE

1 ———— **Omission to issue summons to show cause**—*Order directing recognizance to be taken* An order directing certain persons to enter into recognizances of R500 each conditioned to keep the peace for the period of one year without first summoning them to show cause why they should not be required so to do is irregular and will be quashed QUEEN *v* MOONEE DOOBEY
2 N W 189

KALI PERSHAD SIRDAR *v* FUTTEH CHUND DASS
9 W R Cr 16

2 ———— **Order giving insufficient time to show cause**—*Irregular order—Criminal Procedure Code 1872 s 491* Where parties required on the 1st July to show cause on the 9th under s 491 Criminal Procedure Code why they should not furnish security for breach of the peace were served on the 6th and 7th idem it was *held* that they ... them for the ... security was ... CHEYT SINGH

3 ———— **Omission to give opportunity to show cause**—*Criminal Procedure Code 1872 s 492* On a complaint being lodged of criminal trespass and assault the Magistrate recorded that ... interrogating the witnesses he found that a ...

... Procedure Code to show cause why they should not be bound QUEEN *v* SHUKUR MAHOMED
22 W R Cr 68

4 ———— *Notice to accused* ... The notice to the accused ...

SINGH

RUN BAHADUR SINGH *v* TILESSUREE KOOER
22 W R Cr 79

7 SUMMONING WITNESSES

1 ———— **Obligation of Magistrate as to summoning witnesses**—*Criminal Procedure Code 1872 s 491* A Magistrate is bound to assist

RECOGNIZANCE TO KEEP PEACE—*contd*

7 SUMMONING WITNESSES—*concld*

both parties in a case under s 491 Criminal Procedure Code 1872 in bringing in their witnesses by issuing summonses to attend QUEEN *v* CHEYT SINGH
22 W R Cr 70

2. ———— **Right to adjournment to produce witnesses**—*Criminal Procedure Code 1872 ss 491 496 497* Under the sections (491 and 497) of the Criminal Procedure Code relating to ... for breach of the peace the party charged is ... dy been ... his wit... duce his ... ing his ... in such ... Court on ... D KHAN ... R Cr 9

8 LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE

... Evidence of specific act or ... peace ... party ... 491 ... unl... or act ... ediate ... umit a ... inference can be drawn that he is likely to ... breach of the peace HUREE MOHUN MULLICK *v* KALINATH ROY
25 W R Cr 15

2 ———— **Mere possibility of breach of peace**—*Criminal Procedure Code 1872 491* To justify an order under s 491 Act X of 1872 calling on a person to give security to keep the peace there must be a reasonable probability of a breach of the peace being committed and not merely a bare possibility of a breach of the peace QUEEN *v* ABDOOL HUQ
20 W R Cr 57

QUEEN *v* HUR KUMARI DASSIA
24 W R Cr 10

3 ———— **Omission to prevent rioting**—*Criminal Procedure Code 1861 s* ... Parties who are not stated by a Magistrate to be likely to commit a breach of the peace or to do any act that may probably occasion a breach of the peace cannot be called upon to enter into recognizances to keep the peace with a view that they should interfere to prevent riot simply because they did not interfere when they might have done so between the persons actually quarrelling so as to prevent a riot their laches in this respect not bringing them within the purview of s 28 of the Code of Criminal Procedure QUEEN *v* OMERTO LALL
19 W R Cr 33

4. ———— **Acts of agents of zamindar**—*Non resident zamindar liability of* A non resident zamindar cannot be bound over to keep the peace because his local agents are committing

RECOGNIZANCE TO KEEP PEACE—*contd*

8 LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*contd*

acts likely to cause a breach of the peace *In the matter of* CHAROO CHUNDER MULLICK
10 C L R 430

5 ———— Probable resistance by raiyats—*Distraint for arrears of rent—Criminal Procedure Code 1S r 491* The petitioner a tahsildar applied to the police for assistance to protect him while distraining the crops of certain raiyats for arrears of rent On this being reported to the Magistrate he required the petitioner to furnish security to keep the peace on the ground that any riot which might result from the resistance of the raiyats to the attachment of their crops would be attributable to his act This order was set aside by the High Court as illegal because the Magistrate had not found that the petitioner himself was likely to commit a breach of the peace *In the matter of* SHEO SURN LALL
3 C L R 280

6 ———— Want of evidence of likelihood of breach of peace A Magistrate cannot bind over a person to keep the peace where there is no evidence to show that such person was likely to commit a breach of the peace or to do any act that might probably occasion a breach of the peace QUEEN *v* KIDAR NATH
7 N W 233

In the matter of the petition of BROJENDRO KUMAR ROY CHOWDHRY *alias* DIGHOO BABOO
17 W R Cr 35

7 ———— Want of adjudication as to security for preservation of peace—*Recognizance made on admission of accused* A Magistrate has no power to make an order that an accused person should enter into a bond to keep the peace until after an adjudication that it is necessary for [illegible]

[illegible] W R Cr [illegible]

8 ———— Evidence of necessity for taking security—*Necessity of adjudication by Magistrate—Onus probandi* In proceedings against persons to show cause why they should not enter into bonds to keep the peace it is incumbent on the Magistrate to adjudicate judicially on evidence given before him as to the necessity for taking such security and in such cases the onus of proof lies upon the party on whose complaint the summons was issued. QUEEN *v* NIRUNJUN SINGH
2 N W 431

9 ———————— *Inquiry by Magistrate—Criminal Procedure Code 1861 s 282* After calling upon a person under s 282 of the Code of Criminal Procedure to show cause why he should not enter into recognizances to keep the peace a Magistrate should not order the defendant to enter into such recognizances without taking evidence or making inquiry whether defendant had committed any act which might probably occasion a breach of the peace QUEEN *v* DEO NUNDUN SINGH
12 W R Cr 16

QUEEN *v* HARVEY 20 W R Cr 68

10 ———— Evidence of likelihood of breach of peace—*Necessity of adjudication by Magistrate* After summoning a person to show cause why he should not enter into a bond to keep the peace the Magistrate cannot bind over that person until he adjudicates on evidence before him that such person is likely to commit a breach of the peace GOSHAIN LUCHMUN PERSHAD POOREE *v* ROHOOP NARAIN POOREE 24 W R Cr 30

QUEEN *v* NIAZ ALI 5 N W 80

QUEEN *v* ISREEPERSHAD SINGH
20 W R Cr 18

RUN BAHADOOR SINGH *v* TILESSUREE KOOER
22 W R Cr 79

11 ———————— *Evidence not taken in presence of accused—Criminal Procedure Code 1872 ss 491 494—Necessity for adjudication by Magistrate* A Magistrate cannot bind over a person to keep the peace unless he has adjudicated on evidence taken in the presence of that person that a breach of the peace is probable If such person fails to attend on a summons duly served a warrant should issue (s 494) the order for security cannot be passed *ex parte* *In the matter of* OKHIL CHUNDER BISWAS 1 C L R 48

12 ———————— *Criminal Procedure Code 1872 s 491—Necessity for adjudication by Magistrate—Notice* To constitute a proper foundation for an order under s 491 of the Criminal [illegible]

[illegible]

13 ———————— *Necessity of judicial investigation and adjudication* In order to warrant an adjudication under s 288 Civil Procedure Code 1861 there should be a judicial investigation and the order should be passed upon legal evidence duly taken and recorded. REG *v* JIVANJI LIMJI 6 Bom. Cr 1

14. ———————— *Order for recognizance made without evidence duly taken.* Order of District Magistrate requiring certain persons to

RECOGNIZANCE TO KEEP PEACE—*contd*

8 LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*contd*

enter into recognizances and find security to keep the peace reversed as such order appeared to have been made without any legal evidence having been taken and recorded as required by s 307 of the Criminal Procedure Code 1861 REG v DALPAT RAM PEMABHAI 5 Bom Cr 105

15 ———— *Presence of accused—Criminal Procedure Code (Act XXV of 1861) s 282—Procedure* Before making an order absolute directing a person to enter into a bond to keep the peace the Magistrate must take the evid ence on which he bases the order in the pre ence of the accused or his agent (GLOVER J dissen ing) MAGHAN MISRA v CHAMMAN TELI
2 B L R A Cr 7 10 W R Cr 46

QUEEN v NARSINGH NARAYAN
2 B L R A Cr 7 note 10 W R Cr 1

16 ———— *Presence of accused—Necessity of adjudicating on evidence* A Magistrate is not competent to require persons to give security to keep the peace until he has adjudicated on evidence taken in their presence that they have by their conduct rendered this necessary *Run Bahadoor Singh* v *Tilessuree Kooer 22 W R Cr 79* cited and followed *In the matter of* UMDA KHANUM 3 C L R 72

17 ———— *Dispute likely to cause breach of peace—Report of police officer* The existence of a dispute likely to cause a breach of the peace must be first proved by legal evidence before the Magistrate can proceed to call upon the parties to enter into recognizances to keep the peace The report of a police officer is not such legal evidence ABHAYA CHOWDHARY v BRAE
6 B L R Ap 148 15 W R Cr 42

18 ———— *Report of police officer—Procedure Held* (GLOVER J *dissentiente*) that the report of a police officer though it justi fies the issuing of a summons is not sufficient ground on which to bind a man over in a recogni zance to keep the peace The Magistrate must ad judicate on the question whether there is reason able ground for believing that the defendant is likely to commit a breach of the peace after taking evidence in the presence of the person charged and giving him an opportunity to cross examine the witnesses BEHARI PATAK v MAHOMED HYAT KHAN DUNNE v HEM CHANDRA CHOWDHRY GOVERNMENT v BEHARI LALL BRAJABASI
4 B L R F B 46 12 W R Cr 60

In the matter of PORESH NARAIN ROY
16 W R Cr 45

19 ———— *Report of police inspector* A report of an inspector of police and the evidence given by the same inspector are not sufficient to justify an order binding a person to keep the peace *In the matter of* RAJENDRO KISHORE ROY CHOWDHRY 10 W R Cr 55

20 ———— *Criminal Proce*

is a full judicial inquiry evidence being taken in the presence of the parties charged and opportunity given for the cross examination of witnesses NOOR MAHOMED v NIL RUTUN BAGCHEE
18 W R Cr 2

21 ———— *Criminal Procedure Code 1861 s 282—Inquiry before taking re cogni ances—Cross examination of witnesses* A Magistrate is not competent under s 28? of the

giving the parties an opportunity of cross examining the complainant QUEEN v NUSSEER OOD DEEN
2 N W 461

QUEEN v MAHOMED AFZUL 7 W R Cr 59

22 ———— *Report of Subordinate Magistrate—Criminal Procedure Code 1861 ss 280 287 288* The report of a Subordinate Magistrate although it is credible information on which a Magistrate of the district would be justified under s 280 of the Code of Criminal Procedure

case shall be recorded and if none is forthcom security to keep the peace should not be demanded REG v IRAPA BIN BASAPA 8 Bom Cr 162

23 ———— *Criminal Procedure Code 1872 s 490—Want of evidence* In the absence of any evidence rendering a breach of the peace probable a Magistrate is not justified in call ing upon parties to show cause why they should not enter into recognizances and on their failure to make an order under Act X of 1872 s 490 QUEEN v GOSSAIN MUNRAJ POOREE QUEEN v GOSSAIN LUCHMEE NARAIN POOREE 24 W R Cr 23

24 ———— *Evidence taken as to some only of accused—Illegal order* Where a Magistrate bound down twenty six persons to keep the peace under s 491 of the Criminal Proce dure Code 1872 after recording evidence as to eleven of them only the order was set aside as to the persons not affected by the evidence *In the matter of* KASSIM BISWAS 10 C L R 335

25 ———— *Criminal Procedure Code 188? ss 107 11? 115—Security to keep the peace—Substance of information—Joint inquiry* A Magistrate ordered sixty nine persons to show cause why they should not give security to keep the peace it having been reported to him by the police and the tehsildar of the pergunnah in which such

RECOGNIZANCE TO KEEP PEACE—*contd*

8 LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*contd*

persons re ided that they were likely to commit a

sub in pector of poli e ordered that ten of the ac cu ed who were sai l to be the ringleaders should enter into bonds with sureties and the rest hould enter into their own recognizances to keep the peace for one year *Held* that the Magi trate s order purporting to be prepared under s 112 of the Criminal Procedure Code did not adequately or properly di clo e the substance of the report or information upon which he issued his summons the parties were entitled to something more than a mere a ertion by the Magi trate that he had been informed that a breach of the peace was likely to occur in order to enable them if they were in a po ition to do o to bring evidence to rebut the truth of such information that the very loo e state ments of the tehsil lar and the sub inspector as to the large majority of the persons summoned were quite insufficient to justify the wholesale order for security pas ed by the Magistrate that as the religious procession would have been over in a fortnight it was a most excessive exercise of power

likely to commit a breach of the peace or to do a wrongful act likely to occasion a breach of the peace QUEEN EMPRESS *v* NATHU I. L. R 6 All 214

26 ———— *Criminal Procedure Code ss 107 112 117 118—Nature of order to show cause—Onus Probandi—Nature and quantum of evidence necessary before passing order for security* An order passed by a Magistrate under ss 107 and 112 of the Criminal Procedure Code requiring any person to show cause why he should not be ordered to furnish security for keeping the peace is not in the nature of a rule nisi implying that the burden of proving innocence is upon such person The onus of proof lies upon the

Singh 3 N W 431 referred to In proceedings instituted under s 107 of the Criminal Procedure Code against more persons than one it is essential for the prosecution to establish what each individual implicated has done to furnish a basis for the apprehension that he will commit a breach of the peace In holding such an inquiry it is improper to treat what is evidence against one of such persons as evidence against all without di criminating between the cases of the various persons impli cated *Queen Empress* v *Nathu I L R 6 All 14* referred to Although in an inquiry under s 117 the nature or quantum of evidence need not be so conclusive as is necessary in trials for of fences the Magistrate should not proceed purely upon an apprehension of a breach of the peace but is bound to see that substantial grounds for such an apprehension are established by proof of facts against each person implicated which would lead to the conclusion that an order for furnish ing security is necessary What the nature of the facts should be depends upon the circumstances of each case but where the nature of the Magis trate s information requires it overt acts must be proved before an order under s 118 can be made and such an order cannot be passed against any person simply on the ground that another is likely to commit a breach of the peace *Queen* v *Abdool Huq 20 W R Cr 57 Goshain Luchmun Pershad Pooree* v *Pohoop Narain Pooree 24 W R Cr 30 Rajah Run Bahadoor* v *Ranee Tilless iree Koer 27 W R Cr 9* and *in the matter of Kashi Chunder Dos 10 B L R 441 19 W R Cr 47* referred to QUEEN EMPRESS *v* ABDUL KADIR I L R 9 All 452

27 ———— Interference by High Court—*Criminal Procedure Code 1861 ss 282 288* Where there is evidence which would justify the finding of a Magistrate that an act likely to cause a breach of the peace had been committed the High Court will not interfere with the proceed ings of the Magistrate ANONYMOUS 4 Mad Ap 38

28 ———— *Evidence taken irregularly* The High Court declined to interfere with an order passed by a Magistrate in a case in which he ordered security to be taken for the preserv ation of the peace where it appeared that the evid ence was sufficient to warrant the order although such evidence was taken in the vernacular and in disregard of the provisions of s 267 of the Code of Criminal Procedure 1861 QUEEN *v* PURIAG SINGH 13 W R Cr 20

29 ———— Criminal Procedure Code (Act V of 1898) ss 107 145—*Dispute relating to possession—Propriety of instituting proceedings for taking security—Findings justifying order for security—Issue raised as in a case under s 145—Order under s 107—Jurisdiction.* In a proceeding instituted under s. 107 Code of Criminal Procedure the Magistrate found that one *M* was the aggressor and was trying his best to disturb the peaceful possession of *S* and *B* in certain lands in dispute and upon that finding made an order for taking security from *M* *Held* that the finding was not such as would justify the order and it should

RECOGNIZANCE TO KEEP PEACE—*contd*

8 LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*concld*

be set aside *Per* BANERJEE *J* —The mere fact of a dispute likely to lead to a breach of the peace being a dispute relating to the possession of land may not be sufficient to preclude the Magistrate from taking proceedings under s 107 Criminal Procedure Code *Per* BRETT *J*—It cannot be [illegible]

breach of the peace relates to possession of land KING EMPEROR *v* BASIRUDDIN MOLLAH (1903)
7 C W N 746

9 SECOND APPLICATION FOR SECURITY

1 ———— **Order for recognizances not passed at decision of case**—*Necessity of subsequent proceedings for valid order—Criminal Procedure Code 1861 ss 280 281* An order calling for recognizances under s 280 or for security under s 281 Code of Criminal Procedure must be passed at the time of deciding the original case If no such order is then made subsequent proceedings must be taken under s 282 and the parties summoned to show cause *In the matter of the petition of* GOBIND SOOBOODHEE
15 W R Cr 56

2 ———— *Subsequent order—Criminal Procedure Code 1861 s 281—Evidence of likelihood of breach of the peace—Separate summons* Although it is competent to a Magistrate upon conviction and sentence for assault to order the accused to enter into an engagement to keep the peace yet having omitted to do so he can afterwards only institute proceedings under s 281 of the Criminal Procedure Code upon receiving some further credible information (other than that which he derived from the previous trial) that the parties are likely to commit a breach of the peace QUEEN *v* POWELL 3 N W 96

3 ———— **Use of evidence formerly taken in other proceedings**—*Criminal Procedure Code 1872 s 491—Evidence Act s 33* S 33 of the Evidence Act 1872 does not justify a Magistrate in proceedings under s 491 of the Criminal Procedure Code in using evidence taken in a previous criminal trial in supersession of evidence given in the presence of the accused QUEEN *v* PROSONNO CHUNDER GOSSAMI 22 W R Cr 36

See DILLOO SINGH *v* OOTIM SINGH
22 W R Cr 9

RUN BAHADOOR SINGH *v* TILESSUREE KOOER
22 W R Cr 79

4 ———— **Order for further security**—*Criminal Procedure Code 1861 s 290—Procedure* Where a matter in respect of which further security to keep the peace is required is the same as that

RECOGNIZANCE TO KEEP PEACE—*contd*

9 SECOND APPLICATION FOR SECURITY—*concld*

before the Magistrate on the first occasion the case can only be dealt with under s 290 of the Code of Criminal Procedure DE SILVA *v* JEHANGEER
7 W R Cr 23

KALLY CHURN SINGH *v* BUNKEE SINGH
7 W R Cr 98

10 EFFECT OF ORDER POSTPONING PROCEEDINGS FOR CIVIL SUIT

———— **Discharge of accused**—*Criminal Procedure Code 1872 s 491* An order postponing proceedings instituted under s 491 of the Code of Criminal Procedure (Act X of 1872) until [illegible]

amounts to a discharge EMPRESS *v* DHUNBHAR [illegible]
5 C L R 368

11 ORDER LIMITED BY REQUISITION

———— **Order going beyond terms of requisition**—*Criminal Procedure Code 18[illegible] ss 491 492—Order for other and further security than originally required* Where information of a [illegible] first laid in general [illegible] ence [illegible] o are [illegible] mand [illegible] whole

for recognizances may properly rest on the whole evidence taken in the case but when a Magistrate calls upon persons to show cause why they should not be bound down in their own recognizances to [illegible] the requisition [illegible]

12 AMOUNT OF SECURITY

1 ———— **Considerations in fixing amount of security**—*Criminal Procedure Code 1861 s 284* A Magistrate should have due regard to the circumstances of the case and the means of the parties when fixing the amount in which the [illegible] case under s [illegible] of [illegible] *In the* [illegible] *In* [illegible] R. Cr 1

2 ———— **Mode of calculating amount**—*Criminal Procedure Code 18[illegible] s 483—Means of parties called on* The High Court reduced the amount of recognizances required in this case as it was very much in excess of and out of proportion to the means of the party accused s 483 of the Criminal Procedure Code requiring that the Magistrate should look to the means of the party ordered

RECOGNIZANCE TO KEEP PEACE—*contd*

12 AMOUNT OF SECURITY—*concld*

to find sureties FUTTEH BAHADOOR v GIBBON LALL MAHAMAD v GIBBON 22 W R Cr 74

3 ———— Statement of amount in summons—*Power of Magistrate to alter amount and form from what is stated in summons* A party was called upon summons to show cause why he [illegible]

[illegible]

I REE PERSHAD SINGH
9 B L R Ap 44 18 W R Cr 61

See In the matter of the petition of ABDOOL BAPI 25 W R Cr 50

4 ———— Power to increase amount —*Criminal Procedure Code 1861 s 290* Notwithstanding that a person has been bound down by bond to keep the peace for a stated period a Magistrate has power under s 290 of the Code of Criminal Procedure to increase the amount of the security required before the expiry of that period *In the matter of the petition of* GOPAL DAS ROY
18 W R Cr 57

13 EFFECT OF SIGNING WRONG BOND

———— Bond signed by mistake for security for good behaviour—*Invalid bond* Where a person who had been required to give a bond to keep the peace in the form E to Sch. II of the Code of Criminal Procedure [illegible]

[illegible]

14 CANCELLING ORDER

1 ———— Power of Magistrate to cancel order —*Criminal Procedure Code 1861 ss 282 291* A Magistrate may under s 291 of the Code of Criminal Procedure cancel an order passed by him under s 282 of that Code summoning a person to show cause why he should not enter into a bond to keep the peace ANUNDEE KOOER v SOONSET KOOER. GOVERNMENT v ANUNDEE KOOER 10 W R Cr 40

2 ———— Power of Sessions Judge to cancel Magistrate s order for recognizances —*Power of Appellate Court* In a case in which an accused was charged with voluntarily causing grievous hurt the Magistrate convicted him of that offence and also ordered him to furnish recognizances to keep the peace *Held* that as the Magistrate had jurisdiction under Ch XVIII of the Code of Criminal Procedure to pass the latter order

RECOGNIZANCE TO KEEP PEACE—*contd*

14 CANCELLING ORDER—*concld*

regarding recognizances the Sessions Judge could not on appeal while upholding the conviction for grievous hurt cancel the order as to take recognizances the evidence on the record being sufficient for that purpose QUEEN v JHAMOODEEN BHINA 13 W R Cr 73

3 ———————— *Order for keeping the peace on conviction—Appeal—Appellate Court power of to set aside such order—Criminal Procedure Code (Act V of 1898) ss 106 and 423 cl (d)* An order in appeal setting aside an order of the first Court made under s 106 of the Code of Criminal Procedure is an incidental order within the meaning of s 423 cl (d) of the Code and can be made by an Appellate Court ABDUL WAHED v AMIRAN BIBI (1902) I L R 30 Calc 101
s c 6 C W N 422

15 DISCHARGE OF RECOGNIZANCES

———— Order as to disposition of property in dispute—*Illegal order* Where a [illegible]

[illegible] tions as to the disposition of the property in dispute between the parties CHOWDHRY SHEO NUNDUN PROSHAD v CHOWDHRY NIL KANTH PROSHAD
13 W R Cr 44

16 FORFEITURE OF RECOGNIZANCES

1 ———— Proof of forfeiture—*Criminal Procedure Code 1872 s 50 —Evidence on oath* [illegible]

[illegible] without previous *prima facie* proof by which is meant evidence on oath that it has been forfeited *In re* HARIRAM BIPBHAN 11 Bom. 170

2 ———————— *Sufficiency of evidence to prove forfeiture* Before a recognizance can be forfeited it must be proved that the person accused has either personally broken the peace or abetted some other person or persons in breaking it The mere fact that the accused is a servant of one of two rival parties for whose benefit the breach took place is not sufficient QUEEN v KALI BHYRUB SANDYAL 11 W R Cr 52

3 ———————— *Necessity to record evidence of forfeiture* Before a Magistrate can declare that recognizances to keep the peace have been forfeited he must record legal evidence in the presence of the accused proving that he was about to do something which would cause a breach of the peace *In re* KALIKANT ROY CHOWDRY
3 B L R Ap 155 12 W R Cr 54

RECOGNIZANCE TO KEEP PEACE—*contd*

16 FORFEITURE OF RECOGNIZANCES—*contd*

4. ——— *Necessity for evidence of forfeiture—Criminal Procedure Code 1872 s 502* An order estreating a recognizance or a bail bond must be made upon evidence duly recorded in the case and not upon evidence taken in other cases Where a Magistrate makes an order forfeiting a recognizance under s 502 of the Criminal Procedure Code the terms of the section must be strictly followed It is not competent to direct that in default of payment the person whose recognizance is forfeited should be imprisoned without first issuing a warrant for the attachment and sale of his immoveable property *In the matter of* MOHESH CHUNDER ROY 10 C L R 571

5 ——— *Evidence of person bound over—Power of Magistrate to reduce penalty* Per AINSLIE J—In a case in which pro

...nalty corre ...onfined only ...*the petition* ... R Cr 87

6 ——— *Opportunity to accused for cross examination of witness—Proceedings on forfeiture of recognizance—Criminal Procedure Code (Act X of 1872) s 502* A Magistrate is not justified in forfeiting a recognizance under s 502 of Act X of 1872 unless the party charged with a breach of the peace has had an opportunity of cross examining the witnesses upon whose evidence the rule to show cause why the recognizance should not be forfeited has been issued EMPRESS v NOBIN CHUNDER DUTT I L R 4 Calc 865 4 C L R 243

7 ——— *Liability to forfeiture—Evidence necessary—Criminal Procedure Code (Act X of 1882) s 514* The mere fact of the person for whom another stands surety being convicted of a breach of the peace ought not to be sufficient to make the surety bond executed by

not indicate that the final order making a person bound by a bond can be made without taking any evidence in his presence or giving him any opportunity of cross examining the witnesses on whose evidence the forfeiture is held to be established

the Criminal Procedure Code QUEEN EMPRESS v HAR CHANDRA CHOWDHRY I L R 25 Calc 440

8 ——— Delay in taking steps to forfeit recognizance—*Invalid proceedings* When a Magistrate has before him the fact that a person *convicted by him of an offence* attended with violence was under recognizance to keep the peace and does not nevertheless proceed to forfeit such recognizance it must be held that he thought it

LALLA 1 C L R ...

9 ——— Liability to forfeiture—*Commission of offence—Theft* Where a person had been bound down by recognizance not to

amount to a breach of the peace or ... likely to occasion a breach of the peace *In the matter of the petition of* HARAN CHUNDER ROY 18 W R Cr 63

10 ——— *Subsequent offence* A person was bound down under recognizance ... Her Majesty's ... money from two raiyats who were supposed to have committed theft on his lands he being for such offence fined and his recognizances forfeited *Held* that the matter ought to have ended with the fine for the raiyats not having offered any resistance no breach of the peace took place and the amount of the recognizance could not be taken *In the matter of the petition of* ZEARUDDIN HOWLADAR 19 W R Cr 48

11 ——— *Criminal Procedure Code (Act XXV of 1861) s 293—Jurisdiction* A executed in district T a recognizance to keep the peace towards B A was afterwards convicted in district S of having assaulted B in that district *Held* that A had forfeited his recognizance and the Magistrate in district T could proceed against him under s 293 of the Criminal Procedure Code QUEEN v SHAM SUNDER CHOWDHRY 2 B L R Cr 11

12 ——— *Assault* On the ... recognizance was taken from B ... months under ... of the period ... as a forfeiture of the recognizance JAHU LAL v GOVERNMENT 6 B L R Ap 66 15 W R Cr 14

13 ——— *Criminal Procedure Code 1872 s 502* Where certain persons were bound over to keep the peace and were subsequently convicted of voluntarily causing grievous

RECOGNIZANCE TO KEEP PEACE—contd

16. FORFEITURE OF RECOGNIZANCES—contd.

hurt and at the time of conviction the Magistrate made an order estreating their recognizance as part of his judgment in the case without in any way fulfilling the provisions of s 502 of Act X of 1872 and the convictions were quashed by the Court of Session the High Court cancelled the order of forfeiture. QUEEN v GHISA 7 N W 375

14. ———— *Criminal Procedure Code, 1872 s 50 —Forfeiture of recognizances—Fresh recognizances* On the 20th of April 1877 A was bound down to keep the peace for one year On the 14th of January 1878 he was convicted of an offence and sentenced therefor to fine and imprisonment but no order was made for the recovery of the penalty though the Magistrate knew [illegible]

and a warrant for its recovery was issued on the 6th of June 1878 *Held* that the warrant must be quashed on the ground that the Magistrate having inflicted a sentence of fine and imprisonment with the knowledge that the recognizance was forfeited *he was not competent to inflict a further penalty* on a reconsideration of the circumstances *In the matter of* PARBUTTI CHURN BOSE
3 C L R 406

15 ———— Forfeiture of portion of recognizances—*Criminal Procedure Code 1861 s 293* Under the provisions of s 293 a Magistrate cannot direct the forfeiture of a portion of the [illegible]

the matter of the petition of JUDOONATH ROY
19 W R Cr 1

16 ———— Reduction of penalty—*Power of Magistrate to enforce only portion of penalty* A Magistrate has no power to mitigate the penalty entered in a recognizance bond which must be enforced to its full amount unless Government forego a portion of the penalty ANONYMOUS
1 Bom. 138

17 ———— *Power of Court to reduce amount of penalty* The High Court has no power to reduce the amount of recognizances which have been forfeited but in a case of hardship the matter should be referred to Government EMPRESS v NURAL HUQQ
I. L. R 3 Calc 757 2 C L R 408

In the matter of the petition of NILMADHUB
19 W R Cr 1

In the matter of NAKI HAJI 8 C L R. 72

RECOGNIZANCE TO KEEP PEACE—concld

16 FORFEITURE OF RECOGNIZANCES—concld

18 ———— Mode of enforcing penalty—*Surety—Imprisonment on forfeiture of recognizance to keep the peace* S 294 of the Code of Criminal Procedure 1861 did not authorize the imprisonment of sureties ANONYMOUS
4 Mad Ap 69

RECOLLECTION

———— cross examination from by Advocate—

See DEFAMATION—PENAL CODE s 499 EXCEP 9 13 C W N 340

RECORD

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE DIARIES PAPERS AND REPORTS I L R 28 Calc 348

See POSSESSION ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS 6 C W N 923

See PRACTICE—CIVIL CASES—RECORD
5 W R 271
I. L R 5 Calc 317

See PRACTICE—CRIMINAL CASES—RECORD IN SESSIONS CASES 14 W R Cr 46
15 W R Cr 16
7 W R Cr 112
8 W R Cr 30 57

———— disallowance of cost of printing—

See PRIVY COUNCIL PRACTICE OF—COSTS
L R 29 I A 156

———— entry in—

See KHOTI SETTLEMENT ACT

———— *loss of*—

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—LOST OR DESTROYED DOCUMENTS

———— *Appeal case to High Court—Procedure* Where the records of a case in appeal were not forthcoming the High Court ordered the return of whatever papers had been sent up together with such papers as the parties had respectively filed with a direction to the lower Court to summon both parties and to take such further evidence as either of them might think fit to adduce in support of his case and to return such evidence with its own opinion for final disposal by the High Court BUNWARRY LALL v FURLONG
8 W R. 38

———— loss of in Mutiny—

See POSSESSION—EVIDENCE OF TITLE
4 B L R. Ap 21

RECORD—*concld*

——— of proceeding in Small Cause Court—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—SMALL CAUSE COURT PROCEEDINGS IN
6 B L R 729 730 note
7 B L R Ap 61

——— of statement made by dying person—

See EVIDENCE—CRIMINAL CASES—DYING DECLARATION 6 C W N 72

See INFORMATION OF COMMISSION OF OFFENCE 6 C W N 921

——— preparation of for appeal—

See PRIVY COUNCIL PRACTICE OF—RECORD PREPARATION OF
I L R 20 Mad. 395
L R 24 I A 194

——— signature to—

See PRACTICE—CRIMINAL CASES—SIGNATURE BY MAGISTRATE
I L R 6 Mad 396

——— transmission to High Court—

See PRACTICE—CRIMINAL CASES—TRANSMISSION OF RECORD TO HIGH COURT 15 W R Cr 67

——— under s 145, Criminal Procedure Code—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE 6 C W N 923

RECORD OF RIGHTS

See BENGAL TENANCY ACT s 101
I L R 21 Calc 378

See BENGAL TENANCY ACT—

ss 101 TO 108 I L R 30 Calc 339
ss 101 TO 111A I L R 28 Calc 28
s 102 I L R 21 Calc 38
s 103 I L R 16 Calc 641 643
9 C W N 504
11 C W N 153
12 C W N 122
s 108 I L R 21 Calc 521
ss 108 109 I L R 35 Calc 176
s 188 7 C W N 400

See LANDLORD AND TENANT
I L R 34 Calc 57

See PRE EMPTION I L R 24 All 493

See RENT SUIT FOR 6 C W N 914

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS 5 C W N 798

RECORD OF RIGHTS—*contd*

——— amendment of—

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 18 ?), ss. 11 AND 25 I L R 18 Calc 148
I L R 22 Calc 473

——— dispute as to—

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
I L R 16 Calc 526
I L R 21 Calc 776
I L R 22 Calc 477
I L R 24 Calc 46?
I L R 25 Calc 148

——— duties of Settlement Officer when preparing—

See PRE EMPTION I L R 31 All 533

——— entries in—

See BENGAL TENANCY ACT s. 103A
10 C W N 809

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N W P
I L R 1 All 614

——— presumption of accuracy of—

See RECORD OF RIGHTS.
I L R 33 Calc 338
11 C W N 49

——— publication of—

See BENGAL TENANCY ACT s. 105
13 C W N 1149

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 18 ?) ss. 4 ?
I L R 13 Calc 245
I L R 15 Calc 165

1 ——— *Bengal Tenancy Act (VIII of 1885) ss 107 109—Undisputed entry—Presumption of accuracy how rebutted* The presumption under s 109 of the Bengal Tenancy Act (VIII of 1885) in favour of the accuracy of an undisputed entry as to the rate of rent is sufficiently rebutted by the decree in a contested suit *inter partes* showing a different rate S 109 of the Bengal Tenancy Act lays down a rule of evidence it does not override the rules of *res judicata*, which are of general application GHANESHYAM MISSER *v* PARMANAND SINGH (1905)
I L R 33 Calc 338
s c 9 C W N 610

2. ——— *Bengal Tenancy Act (VIII of 1885) ss. 101 to 106—Settlement Officer jurisdiction of* The particulars specified in s 102 of the Bengal Tenancy Act when recorded and compiled under s. 103 amount to a Record of rights as contemplated in Chapter X of the Act and proceedings taken by a Revenue Officer after making a record of the particulars under s. 103 including those under s. 105 of the Act, are not therefore void for want of jurisdiction. Dharani

RECORD OF RIGHTS—*contd*

Kanta Lahiri v Gaffer Ali Khan I L R 30 Calc 609 relied upon *Per* PARGITER J—The difference between s. 103 of the old Act and the present section is, that under the former the Revenue Officer was to record the particulars specified in s. 102 but under the present Act s 103 gives an applicant the right to select what particulars he may wish to have recorded If the applicant asks that all or almost all particulars mentioned in s. 102 be recorded that would constitute a "Record-of-rights" but if only the particulars mentioned in cls. (a) and (c) of s 102 be recorded they not involving any rights the record could hardly be called a "Record of rights." SUDHENDU NARAIN ACHARJYA CHOWDHRY v GOBINDA NATH SIRCAR (1905) I L R 32 Calc 518 s c 9 C W N 504

3 ———— Bengal Tenancy Act (VIII of 1885) ss 103A 111A—Draft record of rights objection to—Entry made on objection—Final publication of record-of rights—Presumption as to correctness of entry—Suit to declare entry erroneous—Limitation—Limitation Act (XV of 1877) Sch. II Art 14—Decree not produced—Recital in later decree produced if evidence A suit by a party whose objection under s 103A Bengal Tenancy

no finality is not an order of a Government officer within the meaning of Art 14 Sch. II of the Limitation Act Further the final publication of the record-of rights merely raises a presumption of the correctness of the entry and it is not necessary to bring a suit to avoid a presumption Nature of remedy under 111A of the Bengal Tenancy Act discussed. *Agin Bindh v Mohan Bickramshah I L R 30 Calc 20* followed *Ashutose Nath v Abdool I L R 28 Calc 676* referred to *Semble* The recital of the purport of a previous decree not produced in a later one which has been produced is evidence PAMOULAM SINGH v BISHNU PARGASH NARAIN SINGH (1906) 11 C W N 48

course to the special remedy provided in that chapter JOGENDRA NATH ROY v KRISHNA PROMODA DASSI I. L. R 35 Calc 1013 s c 12 C W N 1032

5 ———— Bengal Tenancy Act (VIII of 1885) ss 108 109 sub s (3)—Settlement Officer power of—Revision of entries—Objection by tenants—Second appeal Settlement of rent

S

the

to

RECORD OF RIGHTS—*concld*

gives to tenants ample opportunity for correction of mistakes in the record of rights but the tenants to avail themselves of the opportunity must make an objection to the draft record or institute a suit under s 106 of the Act after the final publication of the record No second appeal lies from the decision of a Settlement Officer settling rent under s 109 of the Bengal Tenancy Act SHAMBHU CHANDRA HAZRA v PURNA CHANDRA PAL (1907) I L R 35 Calc 176

RECORD OFFICE

———— report from—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS 6 B L R Ap 15

RECORDER OF MOULMEIN

See PARTIES—ADDING PARTIES TO SUITS—GENERALLY 10 W R 86

See RECORDER S ACT 1863

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15—CIVIL CASES 6 B L R 180

1 ———— Jurisdiction of Recorders—*Execution of decree made by Town Assistant Commissioner* The Court of the Recorder of Moulmein has no jurisdiction to execute a decree made by the late Court of the Town Assistant Commissioner KYANPETTEE v NGA SHA LAW 14 W R 386

2 ———— *Trespass to personalty in foreign State—Judicial cognizance—Question of title* Trespass to personalty in a foreign State (the title to such personalty depending

corder a Court would have

U W R Civ Ref 4

RECORDER OF RANGOON

See ADVOCATE 21 W R 297

See RECORDER S ACT 1863

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15—CIVIL CASES 15 W R 351

———— Court of—

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION I L R 22 Calc 487

RECORDER OF RANGOON—*concld*

——— decree of appeal from—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL I. L. R. 24 Calc 30

1 ——— Cause of action—*Defendant out of the jurisdiction* The Court of the Recorder of Rangoon had no jurisdiction in a suit brought against a defendant dwelling in Surat though the cause of action arose in Rangoon ANONYMOUS CASE 18 W R 397

2 ——— Jurisdiction—*Civil Procedure Code (Act XIV of 1882) s 16 (c) proviso—Suit for damages for trespass on land and for injunction* The plaintiff sued in the Court of the Recorder of Rangoon to recover damages for trespass on land in his own possession situate outside the limits of the original jurisdiction of the Recorder s Court asking at the same time for an injunction restraining the defendant from further acts of trespass Both plaintiff and defendant resided within the limits of the original jurisdiction of the Recorder s Court *Held* (i) that the plaintiff having alleged that the land was in his possession was not entitled to the benefit of the proviso to s 16 of the Code of Civil Procedure and (ii) that a suit for damage to land cannot be said to be a suit for which relief can be entirely obtained through the personal obedience of the defendant even though it may be joined with a claim for an injunction and that for the above reasons the Recorder had no jurisdiction to try the suit CRISP *v* WATSON I L R 20 Calc 689

3 ——— Reference to High Court Calcutta—*Lower Burma Courts Act (XI of 1889) s 42—Conflicting decisions—Decision of Superior Court—Power of Recorder to refer* The Recorder of Rangoon in a suit tried by him referred to certain decision of the High Courts at Calcutta Bombay and Madras which were in conflict and not agreeing with the decision of the Calcutta High Court referred the case to the High Court in its appellate jurisdiction *Held* that as the decisions of the High Court at Calcutta are binding on the Recorder he had no jurisdiction to make the reference and that it must be returned MAHOMED HADY *v* SWEE CHEANG & CO

I L R 25 Calc 488
1 C W N 172

RECORDERS ACT (XXI OF 1863)

1 ——— Jurisdiction of Recorder—*Recorder of Moulmein—District of Amherst* Under Act XXI of 1863 the Recorder of Moulmein had no power to order execution to issue on a judgment of the late Court of the First Class Assistant Commissioner of the district of Amherst *In the matter of* PYAW PETEE 6 B L R Ap 15

2 ——— *Minors Act (IX of 1861)* Recorders appointed under Act XXI of 1863 possess all the jurisdiction relative to minors referred to in s 1 Act IX of 1861 or intended to be given by that Act *In re* HUTTON

3 W R Rec. Ref. 5

RECORDERS ACT (XXI OF 1863)—*contd*

3 ——— *Jurisdiction of Judge in cases of bank in which he is a share holder* A Recorder under Act XXI of 1863 being the holder of Bank of Bengal shares has power to dispose of a suit to which the Bank is a party in a case of necessity as when the Commissioner also has shares in the Bank BANK OF BENGAL *v* GOLAM AZIM 12 W R 185

4 ——— *Suit on judgment of Court of Queen s Bench* In a suit to make a judgment passed in the Court of Queen s Bench in

XXI of 1863 that the Recorder has no jurisdiction to entertain the suit it not being a suit for land, and the defendant not dwelling carrying on business or personally working for gain within the local limits of the Court s jurisdiction and the cause of action not having arisen within those limits. SCHEKING DROOP & CO *v* FOCKE 9 W R 915

——— s 17—Withdrawal of license to practise as a pleader The Recorder of Moulmein under s 17 of Act XXI of 1863 had no power to withdraw a license granted by him to plead in the Court of Moulmein except for any sufficient reason *In the matter of* THOMSON

6 B L R 180 14 W R 257

——— *s* 18—

See ADVOCATE 7 W R 390

——— ss 22 25—*Reference to High Court—Execution of decree* The Recorders could not under Act XXI of 1863 refer for the opinion of the High Court questions arising in execution of a decree The question must be one in the trial of a suit DACOSTA *v* CURRIE 4 B L R A C 50

13 W R 27

S C ASHBURNER *v* CURRIE 9 W R 479

In the matter of SUTHERLAND

——— s 27—

See APPEAL—ACTS—ACT XXI OF 1863.

7 W R 505

1 ——— Appeal to High Court—*Valuation of suit* Where the plaintiff sued to establish his right to a quantity of timber the value of which he stated in his plaint to be R1 590 but on appeal to the High Court valued his appeal [illegible]

[illegible] R. 243

2 ——— and s 39—*Appeal—Valuation of suit* The Recorder of Moulmein in trying an administration suit valued at R13 000 found as to R6 000 in value of the property claimed that it did not exist The value of the amount decreed by him amounted to R7 000 *Held* that under Act XXI of 1863 ss. 27 and 39 the appeal lay in the first

RECORDERS ACT (XXI OF 1863)—*concld*

——— s. 27—*concld*

in tance to the High Court and not to the Privy Council HAWABI v IBRAHIM SALI BHAY DAPTI 5 B L R 305

s.c HOWAH BEE v IBRAHIM SALEE BHOY DUFLEE 13 W R 393

RECOVERY OF RENTS ACT (X OF 1859)

See BENGAL TENANCY ACT s 21 9 C W N 141

——— s 153—

See PRACTICE 11 C W N 112

RECTIFICATION

——— *Specific Relief Act (I of 1877) s 31—Sale—Suit for specific performance—Mutual mistake—Clear proof* To establish a right to rectification of a document it is necessary to show that there has been either fraud or mutual mistake Under the terms of s 31 of the Specific Relief Act (I of 1877) it is necessary that the Court should find it clearly proved that there was such mistake A person who seeks to rectify a deed upon the ground of mistake must be required to establish in the clearest and most satisfactory manner that the alleged intention to which he desires it to be made conformable continued concurrently in the mind of all parties down to the time of its execution and also must be able to show exactly and precisely the form to which the deed ought to be brought. *Fowler v Fowler 4 D & J 250 264* followed and applied MADHAVJI v RAMNATH (1906) I L R 30 Bom 457

RECURRING RIGHT

See LIMITATION ACT 1877 SCH II ART 131

REDEMPTION

See BENAMIDAR I L R 30 All. 30

See CIVIL PROCEDURE CODE 1882 s 13 244 10 C W N 115

See EQUITY OF REDEMPTION

See EXECUTION OF DECREE I L R 28 Mad. 211

See HINDU LAW I L R 34 Calc 372

See LIMITATION ACT 1877 SCH II—

ART 144—ADVERSE POSSESSION I L R 27 Bom 43

ART 148 I L R 26 Bom 500

See MALABAR LAW—MORTGAGE I L R 26 Mad 649

See MORTGAGE 10 C W N 592 778
I L R 33 Calc 590
I L R 31 All 482

See MORTGAGE

CONSTRUCTION I L R 26 Bom. 252

POSSESSION UNDER MORTGAGE I L R 25 All. 287

REDEMPTION—*contd*

See MORTGAGE—REDEMPTION

ACCOUNTS I L R 28 Bom 363

See MORTGAGE SALE 9 C W N 201 225 789

See PARTIES—PARTIES TO SUITS—MORTGAGES SUITS CONCERNING 5 C W N 423

See REDEMPTION DECREE

See REGISTRATION ACT (III OF 1877) s 17 CLS (b) AND (h) I L R 30 Calc 1016

See RES JUDICATA—MATTERS IN ISSUE I L R 25 Bom. 115

See TRANSFER OF PROPERTY ACT 1882 s 82 I L R 32 Bom 521

See TRANSFER OF PROPERTY ACT 1882 s 91 I L R 30 All. 497

See TRANSFER OF PROPERTY ACT 1882 ss 92 93 I L R 29 All 481

See TRANSFER OF PROPERTY ACT 1882 ss 92 94 I L R 30 All. 36

See USUFRUCTUARY MORTGAGE I L R 31 All. 325

——— by minor—

See MORTGAGE 11 C W N 1078

——— suit for—

See DEKKHAN AGRICULTURISTS RELIEF ACT I L R 33 Bom 722

See EVIDENCE ACT s 92 I L R 30 Bom 426

See LIMITATION ACT 1877 SCH II ART 148 (1871 ART 148)

See SALSETTE LAW APPLICABLE IN I L R 19 Bom 680

See VALUATION OF SUIT—APPEALS
I L R 2 All. 778
I L R 13 All. 94
I L R 16 Mad. 326 415

See VALUATION OF SUIT—SUITS

——— *Transfer of Property Act s 91* Before confirmation of sale an auction purchaser has such a title in the property as entitles him to ask for redemption under s 91 of the Transfer of Property Act RADHA KISHUN MARWARI v HEM CHANDRA BOSE (1907) 11 C W N 495

REDEMPTION DECREE

See CIVIL PROCEDURE CODE 1882 ss 13 43 I L R 31 Bom 527

See MORTGAGE EQUITY OF REDEMPTION

See PARTNERSHIP I L R 28 Bom 176

RE ENTRY RIGHT OF

See GRANT I L R 35 Calc. 1069

REFERENCE

See CIVIL PROCEDURE CODE 1882 CH XLVI I L R 30 Bom 226

See LAND ACQUISITION ACT (I OF 1894) 12 C W N 985 987

See LAND ACQUISITION ACT (I OF 1894) s 18 12 C W N 98 241

See LAND ACQUISITION ACT s 50 13 C W N 117

See LAND REGISTRATION ACT (BENGAL ACT VII OF 1876) ss 52 55 62 I L R 35 Calc 120

See REFERENCE TO FULL BENCH

See REFERENCE TO HIGH COURT

REFERENCE BY COLLECTOR

——— *Land Acquisition Act (I of 1894) ss 18 and 18—Notice by the Collector—Construction of statute—Meaning of word immediately* *Held* that the conditions prescribed by s 18 of the Act are the conditions to which the power of the Collector to make the reference is subject and these conditions must be fulfilled before the Court can have jurisdiction to entertain the reference *In re* LAND ACQUISITION ACT (1905) I L R 30 Bom 275

REFERENCE FROM SUDDER COURT AT AGRA

——— Establishment of High Court—*Letters Patent N W P 1866 s 27* The Sudder ... the High ... an ... ourt had power to hear and determine the case UDEY KUNWAR *v* LADU
6 B L R 283 15 W R P C 16 13 Moo I A 585

REFERENCE TO CIVIL COURT

See CIVIL PROCEDURE CODE 1882 s 103 11 C W N 430

REFERENCE TO FULL BENCH

1 ——— Power of one Judge to refer ...

... *tion of* CHUNDER KANT BHUTTACHARJEE B L R Sup Vol Ap 43

S C CHUNDER KANT BHUTTACHARJEE *v* BINDABUN CHUNDER MOOKERJEE 7 W R 277

2 ——— Refusal to answer question when found not to arise in the case The majority of the Judges of a Full Bench refused to answer the question referred on the ground that it did not arise in the case INDRA CHANDRA DUGAR *v* BRINDABUN BIHARA
7 B L R F B 251 15 W R F B 21

REFERENCE TO FULL BENCH—*contd*

3 ——— Power of a single Judge sitting alone to refer a case in which the value of the subject matter in dispute does not exceed R50 —*Division Court—Rules of the High Court Ch V Rule 1 Ch VI Rules 1 and 6—Stat 24 & 25 Vict c 109 s 13* A reference to the Full Bench cannot be made by a Judge of ...

NATU MANDAL *v* BADAL MULLICK 2 C W N 40?

4. ——— Question referred not answered on the ground that it did not arise in the case GRISH CHANDRA LAHURY *v* FAKIR CHAND B L R Sup Vol 503

GOPAL CHUNDER ROY *v* GOOROO DOSS ROY B L R Sup Vol 664 note

See also RAM KANTH CHOWDHRY *v* BEHARY MOHAN BISWAS *per* PEACOCK *C J* B L R Sup Vol 25 W R F B 183

See KIRTEE NARAIN CHOWDHRY *v* PROTAP CHUNDER BUROOAH W R F B 199

5 ——— KEMP and MACPHERSON *JJ* were of opinion that the first question referred did not arise in the case and therefore should not have been answered PRO... COOMAR PAL CHOWDHRY *v* KOYLASH CHUNDER PAL CHOWDHRY B L R Sup Vol 758 2 Ind Jur N S 327 8 W R 428

6 ——— Difference of opinion between individual Judges—*Practice* A question arising from a conflict of opinion between individual Judges is not properly speaking the subject of reference to a Full Bench RAJ KOOMAR SINGH *v* SAHEBZADA ROY I L R 3 Calc 20

7 ——— Practice—*Regular appeal—Special appeal* On a reference to a Full Bench from a special appeal the Full Bench will decide the special appeal but on a reference from a regular appeal the Full Bench will only decide the point referred and send the case back to be dealt with by the Bench which made the reference SYDUR REZA *v* AMJAD ALI
I L R 7 Calc 703 10 C L R 121

8 ——— *Power of Full Bench for final* ... *Ch V rul* ... of the Rules ... relating to ... of the High Court Appellate ... references to the Full Bench in criminal matters is sufficiently wide to enable the Full Bench to send a case back with an expression of opinion upon the point of law raised to the Bench which referred it for final disposal *In the matter of* ABDUR RAHMAN I L R 27 Calc 839

ABDUR RAHMAN *v* EMPRESS 4 C W N 658

and *per* MACLEAN *C J* in NEMAI CHATTERJI *v* EMPRESS 4 C W N 645

REFERENCE TO FULL BENCH—*concld*

9 ———— Matter not decided in order of reference—*Limitation Act (XV of 1877) Sch. II Art 64—Statement of account unsigned—Cause of action.* The plaintiffs claimed on a statement of account in writing dated the 15th October 1877 this statement of account was not signed by the defendant The date of the institution of the suit was the 30th September 1880 A Division Bench of the High Court held on the appeal on the case coming up before them on the 18th October 1877 that the suit was not based upon any express contract made between the parties that the transaction which took place on that date did not constitute an implied contract and that therefore these contentions were not open to the plaintiff but the Court referred the question whether the plaintiffs claim so far as it was based on the statement of account on the 15th October 1877 fell within Art 64 of Sch II of Act XV of 1877 *Held* by MITTER PRINSEP and McDONELL *JJ* —That the question referred was a matter of limitation arising in the case which had not been decided in the order of reference and without such a decision the case could not be disposed of and as to that point that the statement of account not being signed by the defendant did not fall within the terms of Art 64 of Sch II of Act XV of 1877 *Held* by GARTH *C J* and TOTTENHAM *J* —That the Division Bench having held that the transaction afforded no basis for a suit had disposed of the case and the question referred was therefore immaterial DUKHI SAHU *v* MAHOMED BIKHU

I L R 10 Calc 284 13 C L R 445

10 ———— Matter not decided in or made the subject of reference—*Matter for decision by Full Bench* Per TYRRELL *J* that in a reference to the Full Bench the only matters which can legally be attended to are the cases referred and it is not competent for the Full Bench to review or pronounce judicial opinions upon the Court s judgment in cases which have been finally decided and not made the subject of reference *Jajram Das* v *Narain Lal I L R All 857* and *Afzal un nissa Begum* v *Al Ali I L R 8 All 85* followed and explained JADU RAI *v* KANIZAK HUSAIN

I L R 8 All 575

11. ———— Reference in Sessions case—*Power of Judge of High Court presiding at the Criminal Sessions to refer to Full Bench point raised by accused before he is called upon to plead—Letters Patent High Court 1865 cl* Where a point is raised on behalf of the accused before he is called upon to plead the Judge presiding at the Sessions has no power under the Charter to refer the matter to a Full Bench QUEEN EMPRESS *v* DOLEGOBIND DASS (1900)

I L R 28 Calc 211
s c 5 C W N 169

REFERENCE TO HIGH COURT—CIVIL CASES

See CIVIL PROCEDURE CODE 1882 s 244—QUESTIONS IN EXECUTION OF DECREE I L R 11 Bom 57

REFERENCE TO HIGH COURT—CIVIL CASES—*contd*

See DISTRICT JUDGE JURISDICTION OF
I L R 11 Mad. 36

See MAMLATDARS COURTS ACT s 17
I L R 14 Bom. 371

See PRACTICE—CIVIL CASES—REFERENCE TO HIGH COURT
I L R 21 Bom 806

See RECORDER OF RANGOON
I L R 25 Calc 488

See RECORDERS ACT 1863 ss 22 25
4 B L R A C 50
13 W R 27
9 W R 478

See REVIEW—ORDERS SUBJECT TO REVIEW I L R 10 Bom 68

See RIGHT TO BEGIN 13 B L R 142

See SMALL CAUSE COURT MOFUSSIL—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT

See STAMP ACT 1879 s 50
I L R 15 Mad 259

See STAMP ACT (II OF 1899)—

ss 32 AND 57
I L R 25 Mad 751

s 57 I L R 25 Mad 752

1 ———— Question for reference—*Act XXIII of 1861 s 28—Question arising on application for review* S 28 Act XXIII of 1861 merely authorised the reference of such questions as might arise in the trial of the suit and not of questions arising on an application for a review of judgment which cannot in any sense be considered as the trial of a suit BONOMALLY DEO *v* RAM SODOY CHUCKERBUTTY 17 W R 95

2 ———— *Question arising on application for review* A reference cannot be made upon an application for a review of judgment TALIM MUNDAL *v* WATSON & Co 17 W R 94

3 ———— *Order made on application for probate—Court of concurrent jurisdiction—Succession Act (X of 1865) ss 18 264—Code of Civil Procedure (Act X of 1877) s 617*

application as a Court of concurrent jurisdiction under s 264 of the Succession Act *In the matter of* MONOHUR MOOKERJEE

I L R 5 Calc 756 7 C L R 228

4 ———— *Civil Procedure Code 1877 s 617—Case in which there is no appeal* It is only when a matter cannot come before the High Court as a Court of appeal that a reference

REFERENCE TO HIGH COURT—CIVIL CASES—*contd*

can be made under s 617 of the Civil Procedure Code (Act X of 1877) KRISHNA NATH SIRCAR *v* RAM KUMAR DE 7 C L R 144

5 ———— *Civil Procedure Code 1882 s 617—Final decree or order* A Munsif being of opinion that he had no jurisdiction to entertain a particular suit made an order returning the plaint for presentation to the proper Court An ... referred under s 588 of the Civil Proce

had not jurisdiction to entertain the reference RAMPHUL *v* DURGA I L R 7 All 815

6 ———— *Civil Procedure Code 1882 s 617—Reference of question arising in execution of a decree—Final decree* A question arising in execution of a decree cannot be referred for the decision of the High Court under s 617 of the Civil Procedure Code (Act XIV of 1882) except where the decree is final ORIENTAL LOAN ASSOCIATION *v* HATCH I L R 17 Bom 735

7 ———— *Civil Procedure Code 1882 s 617—Stay of execution—Amount of security required on granting stay of execution*

should be regarded in fixing the security referred the case to the High Court under s 617 of the Civil Procedure Code (Act XIV of 1882) *Held* even assuming that section to apply to a proceeding of this kind under s 647 that no reference would lie under s 617 of the Civil Procedure Code The question as to the amount of the security was a question relating to execution as contemplated by s 244 of the Code and therefore an order determining that question would be appealable under s 2 of the Code ISHWARGAR *v* CHUDASAMA MANABHAI I L R 12 Bom 30

8 ———— *Difference of opi*

providing for a difference of opinion between the Judges of a Division Bench was applied and read with s 647 of the Code and the case was referred to a third Judge *In the matter of* PURNA CHUNDER PAL 4 C W N 389

9 ———— *Civil Procedure Code 1882 s 617—Pleader—Professional conduct*

REFERENCE TO HIGH COURT—CIVIL CASES—*contd*

S 617 of the Code of Civil Procedure (Act XIV of 1882) does not authorize a reference except on a point arising in a litigation between parties in a suit or appeal or in a matter wherein the Court is called on to adjudicate that is to pronounce on the opposite pretensions of contending parties A

did not make it litigious In such an ... reference could properly be made under s. 617 of Act XIV of 1882 YESHVANT NARAYAN ADARKAR *v* DESOUZA I L R 12 Bom 78

10 ———— *Civil Procedure Code 1882 s 646A—Reference of case before judgment* A reference to the High Court which applies to a case before judgment is not authorized by s 646A of the Civil Procedure Code DIWALIBAI *v* SADASHIVDAS I L R 24 Bom 310

11 ———— *Civil Procedure Code 1882 s 646B—Reference by District Judge of proceedings in Small Cause Court attacked for want of jurisdiction* Before a District Court can make a reference under s 646B of the Civil Procedure ... that the sub... ...point of ... suit ... one in which the interference of the High Court ... should be sought The word shall in s 646B cl (1) is not mandatory but directory MADAN GOPAL *v* BHAGWAN DAS I L R 11 All 304

12 ———— *Civil Procedure Code 1882 s 646B—Reference where appeal lies to lower Court—Case in which jurisdiction of Small Cause Court is doubted* A suit to recover a sum of money as payable to the plaintiff under an award which was contested was filed in a Subordinate Court on the Small Cause side The Subordinate Judge returned the plaint being of opinion that the suit was not cognizable by a Court of Small Causes The plaint was then presented in the Court of the District Munsif as an ordinary suit but the District Munsif returned it on the ground that the suit was cognizable by a Court of Small Causes The plaintiff then applied to the District Judge to submit the record for the orders of the High Court. *Held* that the District Judge was bound to submit the record to the High Court under s. 646B of the Code of Civil Procedure on the requisition of the plaintiff although the plaintiff might have appealed to the District Court against the order of the District Munsif SIMSON *v* MCMASTER I L R 13 Mad 344

13 ———— *Civil Procedure Code 1882 s 646B—Civil Procedure Code Amd*

REFERENCE TO HIGH COURT—CIVIL CASES—*contd*

ment Act (VII of 1888) s 60—Provincial Small Cause Court Act (IX of 188) s 16—Power of High Court on reference under s 646B Notwithstanding s 16 of the Provincial Small Cause Courts Act the High Court has on a case being submitted to it under s 646B of the Civil Procedure Code full power to consider the matter of jurisdiction or to deal with it on the merits so as to do substantial justice without putting the parties to the expense of a fresh trial SURESH CHUNDER MAITRA v KRISTO PANGINI DASI I L R 21 Calc 249

14. ——————— *Ajmere Court Regulation (I of 18) s 18 et seq —Reference by Commissioner of Ajmere—Powers of High Court —Jurisdiction H ld* that where a point of law or a question as to the construction of a document is referred to the High Court by an order purporting to be made under 18 of the Ajmere Courts Regulation the High Court cannot consider whether the point referred arises in the case in which the reference before it has been made or not but its functions are limited to pronouncing an opinion on any point which may be so referred to it KALIAN MAL v RAM KISHEN I L R 21 All 163

15 Refusal to interfere—*Practice—Procedure —Civil Procedure Code (Act XIV of 188) ss 539 61 64 M* claiming to be a trustee or manager of a mosque applied to the District Judge for permission to grant a lease of lands belonging to the mosque In response to a proclamation issued *A* the opponent appeared before the District Judge claiming to be the ... of the village in which the lands were a ... and referred the point to the High Court under 617 of the Code The High Court referred to answer the reference being of opinion that no reference under s 617 could be made on such an application Ss 617 and 647 of the Civil Procedure Code apply when doubts arise in the proceeding of a suit or appeal or execution or other proceeding S 617 was not intended to provide for suppositious cases which do not naturally arise in a proper proceeding before the Court MAHAMAD HAJI ZAKERIA v AHMADBHAI HABIBBHAI (1900) I L R 25 Bom. 327

16 ——————— *Civil Procedure Code s 646B—Small Cause Court—Jurisdiction—Question of jurisdiction not raised in the Court of Small Causes—Reference by District Judge under s 646B declined* S 646B of the Code of Civil Procedure does not apply to every case in which a Court of Small Causes has failed to exercise a jurisdiction vested in it by law or has exercised a jurisdiction not vested in it by law but applies only to a restricted number of such cases namely those cases in which a Court of Small Causes has erroneously held a suit to be or not to be cognizable by it Where no question as to the Court s jurisdiction was raised by either party and the Court of Small Causes proceeded to judgment as if the case was properly cognizable by it the High Court refused to interfere upon a reference by the District Judge purporting to be made under s 646B of the Code of Civil Procedure PAM LAL v KABUL SINGH (1902) I L R 25 All. 135

REFERENCE TO HIGH COURT—CRIMINAL CASES

See CALCUTTA MUNICIPAL ACT 1899 s 449 — 7 C W N 554

See COUNSEL — 9 B L R 417; I L R 1 Bom 64

See HABEAS CORPUS WRIT OF — I L R 29 Calc 286

See PLEADER—APPOINTMENT AND APPEARANCE — 6 B L R Ap 46; 17 W R C R 37

See POSSESSION ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION — 5 C W N 71

See PRACTICE—CRIMINAL CASES—REFERENCE TO HIGH COURT — I L R 18 Calc 186

See RIGHT TO BEGIN — 9 B L R 417; 20 W R Cr 33; I L R 8 Bom 200

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS — I L R 29 Calc 128; I L R 19 Calc 380

——— by Presidency Magistrate (record of evidence necessary)—

See CRIMINAL PROCEDURE CODE s 123 — 13 C W N 318

——— for confirmation of sentence of death—

See CRIMINAL PROCEDURE CODE s 374 — 5 N W 130

See CRIMINAL PROCEDURE CODES s 376 — I L R 1 Bom. 639; 19 W R Cr 57; 2 C W N 43

——— right of—

See OFFENCE BEFORE PENAL CODE. — I L R 1 All. 599

1. ——— Discretion of Magistrate—*Criminal Procedure Code, 1857 s 296* A Magistrate should under s 296 Criminal Procedure Code exercise a discretion as to whether he will refer a case to the High Court and is not bound to refer every case in which he may detect an error 3 W

REFERENCE TO HIGH COURT—CRIMINAL CASES—*contd*

R Cr Let 5 explained NIBARUN CHUNDER DASS v BHUGGOBUTTY CHURN CHATTERJEE
20 W R Cr 40

2 ——— Power to refer—*Power of Joint Magistrate—Criminal Procedure Code 1861 s 434* A Joint Magistrate of a district had no power to make a reference to the High Court under s 434 of the Code of Criminal Procedure Such references can be made only by the Sessions Judge or by the Magistrate of a District QUEEN v CHOORAMONI SANT 14 W R Cr 25

3 ——— *Power of Magistrate—Case heard by Sessions Judge* One of two prisoners who were tried jointly before a Bench of Magistrates on the complaint of the District Magistrate appealed to the Sessions Judge and was acquitted. The District Magistrate thereupon under ss. 296 and 297 of the Criminal Procedure Code 1872 [illegible] to the High [illegible] quashed on [illegible] of justice [illegible] competent to refer the proceedings of a superior Court to the High Court *In the matter of* DAVID
6 C L R 245

4 ——— *Power of Magistrate—Order of Appellate Court—Criminal Procedure Code (Act X of 1872) ss 295 296 and 297* A District Magistrate being of opinion that the [illegible]

trate had no power to make such a reference *In the matter of the petition of* RAM LAL EMPRESS v RAM LALL I L R 8 Calc 875

5 ——— *Practice—Criminal Procedure Code s 438—Reference by District Magistrate of proceeding of Sessions Judge* A District Magistrate who considers that there has been a miscarriage of justice in the Court of Session should not report the case to the High Court for orders under s 438 of the Criminal Procedure Code but should communicate with the Public Prosecutor as to the case in which he thinks such miscarriage has occurred and invite his assistance to move the Court with regard to it QUEEN EMPRESS v SHERE SINGH I L R 9 All 362

6 ——— *Criminal Procedure Code s 438—Reference by Magistrate of orders passed by Sessions Judge.* A Magistrate is not justified in referring under s 438 of the Criminal Procedure Code orders passed by the Sessions Judge on appeal except in very special cases. *Queen Empress v Shere Singh I L R 9 All 362* referred to QUEEN EMPRESS v ZOR SINGH
I L R 10 All 146

7 ——— *Criminal Procedure Code 1882 s 438—Power of the District Magistrate to question the propriety of finding and sentence by the Sessions Judge—Criminal Procedure Code ss 435 and 439* The power conferred by s 438 read with s 435 of the Criminal Procedure Code upon a District Magistrate to make a reference to the High Court refers clearly to a proceeding before any inferior Criminal Court By the words [illegible]

or which has been reported for orders in s 438 could it have been intended that such report might be made by an inferior criminal authority with respect to a proceeding by a superior authority QUEEN EMPRESS v KARAMDI
I L R 23 Calc 250

8 ——— *Criminal Procedure Code 1882 s 438—Power of the District Magistrate to refer to the High Court a case in which the Sessions Court has under s 123 refused to confirm his order under s 118 of the Code.* S. 438 of the Criminal Procedure Code does not authorize the District Magistrate to refer to the High Court a case in which the Sessions Court has, under s 123 of the Code refused to confirm his order under s. 118 If the District Magistrate as the officer responsible for the peace of his district is dissatisfied with any such order his proper course is to ask the Public Prosecutor to move the High Court for the revision of the same QUEEN EMPRESS v JABANDI
I L R 23 Calc 249

9 ——— *Criminal Procedure Code 1882 s 307—Duty of Sessions Judge as to referring cases tried with a jury* The discre[illegible] sions [illegible] should [illegible] ks that the [illegible] QUEEN [illegible] Mad 343

10 ——— *Criminal Proce[illegible] necessary for ends [illegible]* [illegible] clearly of opinion [illegible] ends of justice SURJA KURMI v QUEEN EMPRESS I L R 25 Calc 555

11 ——— *Criminal Procedure Code 1898 s 269 cl 3 and s 307—Trial by jury of an offence triable with the aid of assessors* The accused was tried by a jury on four charges (i) forgery (ii) using a forged document (iii) criminal misappropriation and (iv) attempting to use a forged document as genuine The jury returned a unanimous verdict of not guilty on all the charges The Sessions Judge agreed with the jury in their verdict on the 1st 2nd and 4th charges but he differed from them on the 3rd charge which was criminal misappropriation. This offence was not triable by a jury and ought therefore under cl. 3 of s. 269 of the Criminal Procedure Code (Act V of 1898) to have been tried by the Sessions Judge with the aid of the jurors as assessors. Nevertheless, the Judge took the verdict

REFERENCE TO HIGH COURT—CRIMINAL CASES—contd

of the jury upon this charge and differing from it referred the case to the High Court under s 307 of the Code *Held* that although the procedure of the Se ion Judge was irregular the trial by jury mu t be accepted as legal and the ca e as one that could be referred to the High Court under s 307 of the Criminal Procedure Code QUEEN EMPRESS v JAYRAM HARIBHAI
I L R 23 Bom 696

12. ———— *Code of Criminal Procedure (Act V of 1898) ss 369 0 —Verdict of a jury Acceptance of by Sessions Judge—Reference to High Court for deci ion on a reconsideration of verdict—Sess on Judge power of* It is not open to a Se ion Judge when he has once accepted the ... the ca e for r and to refer Criminal Pro e on the per lict QUEEN ... W N 683

13 ———— Mode of reference—*Criminal Proc dure Cod 1861 s 434—Reasons for reference by Judg* A Ses ions Judge in referring a ...

BHUGLOO CHOWKEEDAR ...

14 ———— *Criminal Procedure Code (Act V of 1898) s 307—Power of Judge in dealing with evidence* In making a reference under s. 307 of the Code of Criminal Procedure the Se ions Judge is limited to the evidence at the trial which was before the jury QUEEN EMPRESS v JADUB DAS
I L R 27 Calc 295
4 C W N 129

15 ———— Question as to validity of commitment—*Criminal Procedure Code 18 s 9 —Power of Sessions Court to set as de com* ...

7 N W 211

16 ———— Order contrary to law—*Sessions Judge—Criminal Procedure Code 1872* ...

applicable to references under s. 296 of the Code of Criminal Procedure 1872 RAJKISTO PAUL v NITTIANUND PAUL
20 W R Cr 50

17 ———— Question of jurisdiction pending trial—*Reference under s 269 of Act X* ...

under s 296 of Act X of 1872 on a question of jurisdiction which had arisen in the trial of the case *Held* that it was not intended that that section should be so used and the Court of Se sion must dispose of such question itself EMPRESS OF INDIA v BHUP SINGH
I L R 2 All. 771

18 ———— Question of sufficiency of evidence—*Criminal Procedure Code 1861 s 434* S 434 of the Code of Criminal Procedure 1861 contemplated reference to the High Court in ca es where the sentence or order is contrary to law A case where a Magi trate had convicted of an offence on the evidence of one witness whom he considered credible was held not a proper subject of reference to the High Court QUEEN v BINDU
8 W R Cr 60

19 ———— Power of High Court on reference—*Criminal Procedure Code 1882 s 434* ...

20 ———— *Reference made without jurisdiction* Upon a reference made without juri diction the High Court has no power to act in considering the merits of the case on the evidence QUEEN EMPRESS v MOJAHUR RAHMAN
4 C W N 683

21 ———— *Criminal Procedure Code (Act X of 1872) s 466 (Act X of 1882) s 19 —Grounds for non interference—Government orders as to tribunal for trial of officials—Magistrate Jurisdiction of* In 1890 the Collector of ...

As istant Magistrate He accordingly sent it to the Senior Assistant Magistrate of Berhampore the accused was convicted but he appealed to the Sessions Judge who held that the Magistrate had jurisdiction to try it but reversed the conviction on the merits The Government did not appeal ...

I L R 15 Mad. 36

22 ———— *Illegality in proceedings—Criminal Procedure Code 1861 s 434* The Court can only interfere under s 434 Code of Criminal Procedure when there is some illegality in the proceedings of a lower Court QUEEN v JOY KISHEN LALL
12 W R Cr 46

REFERENCE TO HIGH COURT—CRIMINAL CASES—*contd*

23 ——— *Criminal Procedure Code s 307—Trial by jury—Verdict of acquittal—High Court s power of interference with the verdict of a jury* In a case referred under s 307 of the Criminal Procedure Code (Act X of 1882) the High Court will not as a rule interfere with the verdict of a jury except when it is shown to be clearly and manifestly wrong QUEEN EMPRESS v MANIA DAYAL I L R 10 Bom 497

24 ——— *Criminal Procedure Code s 307—Powers of High Court under s 307—Criminal Procedure Code ss 418 423 (d)* No trial can be legally speaking concluded until judgment and sentence are passed and the trial of a case referred by a Sessions Judge to the High Court under s 307 of the Criminal Procedure Code remains ... ry and ... or by ... causing conviction and sentence to be entered against the accused The provisions of s 307 of the Criminal Procedure Code are not in any way cut down by ss 418 and 423 and the High Court has power under s 307 to interfere with the verdict of the jury where the verdict is perverse or obtuse and the ends of justice require that such perverse finding should be set right The power of the High Court is not limited to interference on questions of law i e misdirection by the Judge or misapprehension by the jury of the Judge s directions on points of law QUEEN EMPRESS v McCARTHY I L R 9 All 420

25 ——— *Question as to credibility of witnesses—Criminal Procedure Code 1861 s 434* S 434 gave the High Court no power ... in a case where the difference of opinion ... sufficient evidence it cannot be called illegal OODLA v BARKAT 18 W R Cr 7

In the matter of RAMDHUN MUNDLE 18 W R Cr 39

26 ——— *Criminal Procedure Code 1872 s 296—Acquittal by Magistrate* When a Magistrate having called on the prisoners ... the defence takes the evidence of a witness and ... urt ... to ... it under s ... MODHOO SHEIKH 19 W R Cr 55

27 ——— *Criminal Procedure Code 1872 s 296—Order of Magistrate rejecting application for restitution of forfeited property* The High Court declined on a reference under ... lar suit against the Government *In the matter of the petition of* GHUMUNDEE SINGH 23 W R Cr 30

28 ——— *Taking up on reference case where sentence of imprisonment had expired* Where the imprisonment awarded on a ... tried again for the offence ... been charged KOPIL DOLAI v KANHAI JENA 24 W R Cr 71

29 ——— **Right of counsel to be heard**—*Criminal Procedure Code 18.. s ...* ... heard on a ... 9 B L R 417

See ANGELO v CARGIL

30 ——— **Acquittal**—*Practice—Reference to High Court from verdict of acquittal when not proper—Making up of records defect in—Penal Code (Act XLV of 1860) ss 116 161 466* Where on the Sessions Judge s own showing in his charge to the jury the evidence for the prosecution was so open to hostile criticism as to justify the jury in regarding it with suspicion *Held* that the Sessions Judge was not justified in making a reference under s 307 Code of Criminal Procedure against a verdict of acquittal delivered upon such evidence KING EMPEROR v CHIDGHAN GOSSAIN 7 C W N 135 (1902)

31 ——— *Criminal Procedure Code ss 435 438 439—Practice—Provision Reference by District Magistrate recommending the reconsideration of an order of acquittal passed by a Subordinate Magistrate* In the case of an acquittal by a subordinate Magistrate where the Local Government does not appeal or where the Local District Magistrate does not move the Local Government to appeal the High Court will not as a general rule entertain a reference direct from the District Magistrate under s 435 of the Code of Criminal Procedure *In the matter of* AMIN UD DIN (1902) I L R 24 All 318

32 ——— *Criminal Procedure Code s 438—Revision—Practice—Reference by District Magistrate questioning an order of acquittal* The High Court will not ordinarily entertain a reference under s 438 of the Code of Criminal Procedure the object of which is to have an order of acquittal passed by an inferior Court set aside EMPEROR v MADAR BAKSH (1902) I L R 25 All 193

33 ——— **Duty of Sessions Judge**—*Criminal Procedure Code—Reference under s 307 Criminal Procedure Code—Duty of the Sessions Judge in making a reference* Where a Sessions Judge in his reference to the High

REFERENCE TO HIGH COURT—CRIMINAL CASES—*contd*

Court under s 307 Criminal Procedure Code merely said that the verdict of the jury was against the weight of the evidence and expressed no other opinion it was observed that in a case of this description it is the duty of the Sessions Judge to set out on what portions of the evidence or on what facts disclosed by the evidence the accused should have been convicted KING EMPEROR v BHUT NATH GHOSE (190) **7 C W N 345**

34 ——— **Security of good behaviour** —*Criminal Procedure Code s 118—Security for good behaviour—Discretion of Court—Security demanded not to be excessive* Where a Magistrate acting under s 118 of the Code of Criminal Procedure required securities to an amount which the person to be bound over was totally unable to furnish in consequence of which he remained in jail for some two months and a half the Court *held* that the Magistrate had not exercised a proper discretion in the matter and reduced the amount of the security *Queen Empress* v *Rama I L R 16 Bom 3 ?* followed QUEEN EMPRESS v RAZA ALI (1900) **I L R 23 All 80**

35 ——— **Acquittal by Jury**—*Powers of the High Court—Opinion of Jury in cases of divided verdict—Consideration of entire evidence—Verdict not unreasonable on the face of the charge—Pardon—Omission to state reasons when facts leading to grant of pardon appear on the record—Criminal Procedure Code (Act V of 1898) ss 30 33 (4)* Where the facts which led up to the tender [illegible]

[illegible]

Code merely because it might be argued upon the [illegible]

judgment after giving due weight to the opinions of the Judge and Jury *Emperor* v *Lyall I L R 29 Calc 128* and *Emperor* v *Abdul Rahman 9 C L J 439* followed *King Emperor* v *Chidghan Gossain 7 C W N 135* *Emperor* v *Anarudin Biswas* unreported and *King Emperor* v *Anes* unreported and *King Emperor* v *Prasanna Kumar Ganguli* unreported referred to *Emperor* v *Chirlua 2 All L J 445* dissented from The opinion of the Jury is their conclusion and not the reasons therefor and in the case of divided verdicts the opinion of the minority must also be considered [illegible]

making the reference to invite such reasons not for the purpose of deciding whether it should be made but for consideration by the High Court after having made up his mind to refer the case and after telling the Jury of his intention to do so

REFERENCE TO HIGH COURT—CRIMINAL CASES—*concld*

But the omission to take or record the reasons does not warrant the High Court in declining to go into the evidence *Emperor* v *Chellan I L R 29 Mad 91* referred to EMPEROR v ANNANDA CHARAN THAKUR (1909) **I L R 36 Calc 629**

REFORMATORY SCHOOLS ACT (V OF 1876)

——— **ss 2 7**—

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES **I L R 12 Mad. 94**

——— ——— ——— *Reformatory Schools Act (VIII of 1897) s 1 cls 2 3 and s 8—Criminal Procedure Code (Act X of 1882) s 3 and s 399—Criminal Procedure Code (Act X of 1872) s 318* The accused was convicted of the offence under s 457 of the Penal Code by the Deputy Magistrate of Barisal who found that the accused was a boy of fourteen or fifteen years decidedly under sixteen [illegible]

I direct under s 399 of the Criminal Procedure Code and s 7 of Act V of 1876 that Ahmad Ali be confined in the Calcutta Reformatory for two years for training in some branch of useful industry *Held* that the order could not be sustained under s 7 of Act V of 1876 as that Act had been repealed before the date of the order and the commission of the offence nor under s 8 of Act VIII of 1897 as the order does not comply with the [illegible]

virtue of s 3 of the Code to have been repealed in the provinces including Bengal to which Act V of 1876 was extended The repeal of a statute repealing another statute does not revive the repealed statute The law in India as embodied in s 7 of the General Clauses Act (X of 1897) is the same as the law in England *Queen Empress* v *Mada ami I L R 12 Mad 91* and *Queen Empress* v *Manaji I L R 14 Bom 381* referred to and approved of DEPUTY LEGAL REMEMBRANCER v AHMAD ALI **I L R 25 Calc 333**
2 C W N 11

——— **s 8**—*Magistrate s duty under that section to ascertain the prisoner s age—Nature of proceeding under that section—High Court s power of revising such proceeding—Criminal Procedure Code (Act X of 1882) ss 4 and 435—Judicial proceeding* A Magistrate acting under s 8 of the Reformatory Schools Act (V of 1876) is bound to a certain the age of prisoner and in accordance with that finding to direct the confinement in a reformatory according to the rules made under s 22 of the Act It is not sufficient for the Magistrate merely to find that the prisoner is under a particular age Under s 8 of the Act evidence may be taken

REFORMATORY SCHOOLS ACT (V OF 1876)—*concld*

——— s 8—*concld*

by the Magistrate as to the age of the prisoner and as the proceeding of the Magistrate involves the alteration of a sentence after the exercise of judicial di cretion such proceeding is clearly a judicial proceeding within the meaning of ss 4 and 435 of the Code of Criminal Procedure (Act X of 1882) The High Court is therefore competent to exercise its revisional jurisdiction in such cases QUEEN EMPRESS v MANAJI **I L R 14 Bom 381**

1 ——— s 22—*Government Notification (India) No 1/3 of the 14th March 1889—Sentence* Where a boy over fourteen but otherwise of uncertain age was ordered upon conviction by a Magistrate to be detained in a Reformatory School for two years —*Held* that such entence having regard to the rule made by the Governor General in Council on the 14th March 1889 under s 22 of Act V of 1876 was illegal The proper course for the Magistrate to have adopted with reference to the above mentioned rules was to have ascertained as near as might be the exact age of the offender and entenced him to a specified period of detention which should be that elapsing between hi conviction and the attainment by him of the age of eighteen years QUEEN EMPRESS v NARAIN **I L R 15 All 208**

2 ——— *Reformatory Schools Act (VIII of 1897) s —Period of detention in reformatory—Rules under Act of 18 6* *Held* by SHEPHARD *Offg C J* affirming the judgment of MOORE *J* (DAVIES *J* dis enting) that the rules made by Government under Act V of 1876 must be deemed to have been made under Act VIII of 1897 and that Magistrates acting under Act VIII of 1897 must order the detention of a juvenile offender until he attains the age of eighteen QUEEN EMPRESS v RAMALINGAM **I L R 21 Mad 430**

REFORMATORY SCHOOLS ACT (VIII OF 1897)

——— ss 8 9 11—*Recording of and finding on evidence as to age of offender—Jurisdiction of Sessions Judge as a Court of Appeal to pass order for detention in reformatory school in lieu of imprisonmnt* A Sessions Judge can on appeal from a Magistrate pass an order for detention in a reformatory school in supersession of an order for imprisonment But he can only do so when he has before him evidence as to the age of the accu ed otherwi e he must take evidence under s 11 of the Act and record a finding stating the age and then with reference to such finding pass a sentence within the terms of the Reformatory Schools Act and the rules made by the Local Government thereunder DEPUTY LEGAL REMEMBRANCER v KOPIL KAHAR **4 C W N 225**

——— ss 8 9 11 13 and 16—*Youthful offenders—Periods of detention allowable under the Act—Finding by Magistrate as to ag —Form of order —Exact period of detention* A District Magistrate before whom the ca e of a youthful offender came

REFORMATORY SCHOOLS ACT (VIII OF 1897)—*contd*

——— s 8—*contd*

under the provisions of s 9 of the Reformatory Schools Act 1897 found the accused to be thirteen years of age sentenced him to six months ri orous imprisonment and directed that in lieu of under going that sentence he should be detained in a reformatory school for a period of five years unless he should attain the age of e ghteen years at an earlier date *Held* that the order was wron ina much as it failed to fix the exact period of detention *Semble* That in some ca es it may n t be nece ary to ascertain the exact age of the offender If he be not over fifteen a period of three years may rightly be fixed if not over eleven a period of seven years may be fixed without further inquiry But in cases in which inquiry is nece sary in order to fix the period as when the offender is over eleven and the Magistrate wishes to make the period as long as pos ible he mu t find as well as he can the exact age of the offender and is not at liberty to leave the deci ion of the que tion to the reformatory official The effect of the notification published by Government re lating the periods for which youthful offenders may be sent to reformatory schools in the Madras Presidency is to fix a minimum period of five [illegible] period is legally [illegible] e offender [illegible]

was not intended to prevent the Magistrate from fixing a period short of five years but not short of three years in the case of a boy over thirteen QUEEN EMPRESS v RAMA (1900) **I L R 24 Mad 13**

——— ss 8 9 and 16—*Penal Code (Act XLV of 1860) s 3 9—Theft—Code of Criminal Procedure (Act V of 1898) s 439—High Court power of revision of—Ord r for detention of youthful offender in reformatory school without passing sentence legality of—Jurisdiction of High Court to consider legality or propriety of conviction sentence or order if affected by s 16 Reformatory School Act—L m ation of power* S 16 of the Reformatory Sch [illegible] [illegible] the juri diction of [illegible] con ider t [illegible] or sentence [illegible] e Court o her [illegible]

than that mentioned in that section [illegible] *Courtney I L R 28 Calc 4 3* referred to The law requires that a Magistrate trying a case or one to whom the proceedings of the case are submitted under s 9 of the Reformatory Schools Act should in the first in tance sentence the accused to a term of imprisonment or transportation which may then commute into one of detention in a reformatory school for such period as the law prescribes An order for the detention of a youthful offender in a reformatory school when no sentence of imprisonment or of transportation has been pas ed is bad in law RADHA KRISTO BARIK v GOKULA NUT (1901) **5 C W N 310**

——— ss 8 and 16—*Jurisdiction—Reformatory school—Detention in in lieu of sentence of impr*

REFORMATORY SCHOOLS ACT (VIII OF 1897)—*contd*

——— s. 8—*concld*

sonment—Power of High Court to alter or set aside such sentence S 16 of the Reformatory Schools Act does not in any way take away the jurisdiction of the High Court to alter or set aside the sentence in substitution of which an order for detention is made The power of the High Court remains intact

——— s 9—

See ante—

s 9 11 13 and 16

ss 8 9 and 16

——— ss 11 and 13—

See ante s 8 9 11 13 and 16

——— s 16—

See ante—

ss 8 9 11 etc

ss 8 9 and 16

ss 8 and 16

1 ——— s 16 and ss 8 11 and 31—*Rule framed by the Local Government—Youthful offender—Evidence of age—Order not properly passed—Penal Code (Act XLV of 1860) s 83* If an order for detention in a reformatory school in substitution

and without any preliminary inquiry as to the age of the boy being made was sentenced to three months rigorous imprisonment or in lieu thereof to be detained in a reformatory school for seven years *Held* that the accused did not come within the definition of youthful offenders as given in the rule framed by the Local Government under s 8 of the Reformatory Schools Act and the offence of the

The age of the accused being under twelve years

I. L. R 27 Calc 133

REFORMATORY SCHOOLS ACT (VIII OF 1897)—*contd*

——— s 16—*contd*

2 ——— *Order for detention in a reformatory school under s 8—Powers of High Court in revision* *Held* that the High Court has no power to interfere in appeal or revision with an order for detention in a reformatory school passed in substitution for an order of transportation or imprisonment QUEEN EMPRESS v HIMAI

I L R 20 All 158

QUEEN EMPRESS v GOBINDA

I L R 20 All 159

QUEEN EMPRESS v BILLAR

I L R 20 All 160

3 ——— *Power of High Court in revision* The prohibition contained in s 16 of Act VIII of 1897 does not apply to an order for detention in a reformatory school when the person to whom it relates has not been convicted of any offence and has not been sentenced to any term of imprisonment or transportation for which detention in a reformatory could be substituted In such a case the High Court has power to interfere in revision QUEEN EMPRESS v BILLAR

I L R 20 All 160

4. ——— *Substitution of an order of detention in a reformatory school for a sentence of imprisonment passed on a youthful offender—Power of Appellate Court to order the alteration of such order—Evidence—Age of such offenders finding as to—Revisional powers* S 16 of the Reformatory Schools Act (VIII of 1897) does not entitle any Appellate Court to order the alteration of the substitution of an order for detention in a reformatory school to imprisonment Before an order for detention in a reformatory school can be passed in lieu of a sentence for imprisonment there should be a definite finding as to the age of the boy and as to his being a fit subject for a reformatory school EMPRESS v HARIDAS MUKHERJEE 3 C W N 576

5 ——— *Rules of the Local* ... *Act—Order* ... *formatory* ... *interfer* ... *statutes*

Held that the High Court has power to interfere in appeal or revision with an order for detention in a reformatory school passed in substitution for transportation or imprisonment when such order is made

stitution of detention in a reformatory school for transportation or imprisonment where such substitution is not made without jurisdiction or is not otherwise illegal having regard to the provisions of the Act *Queen Empress v Himai I L R 20 All 158* and *Queen Empress v Gobinda I L R 20 All 159* overruled *Queen Empress v Billar I L R 20 All 160 Queen Empress v Kaidya Husain*

REFORMATORY SCHOOLS ACT (VIII OF 1897)—*concld*

——— s 16—*concld*

*1 Bom L R 1*02 *Deputy Legal Remembrancer v Ahmad Ali I L R 25 Calc* 533 *Queen Empress v Ramalingam I L R 21 Mad 430 Roop Lal Das v Manook 2 C W N 572 Queen Empress v Partap Chunder Ghose I L R 25 Calc 8*52 *Ex parte Bradlaugh L R 3 Q B D 509* and *Colonial Bank of Australasia v Willan L R 5 P C 417* referred to QUEEN EMPRESS v HORI **I L R 21 All 391**

REFORMED LAND

See DILUVION **I L R 36 Calc 856**

REFUND OF OVERCHARGE.

See RAILWAYS ACT ss 77 140
I L R 31 Bom 534

REFUND OF STAMP DUTY

See STAMP DUTY **I L R 36 Calc 645**

REFUSAL

——— to answer questions—

See MISJOINDER OF CHARGES
I L R 35 Calc 161

——— to perform services -

See SERVICE TENURE
I L R 4 Calc 67
I L R 23 Bom 602

——— to register—

See FALSE EVIDENCE—GENERAL CASES
5 C W N 44

See REGISTRATION ACT 1877 s 35

See REGISTRATION ACT 1877 s 73
I L R 1 All 318

See REGISTRATION ACT (III OF 1877)— ss 73 TO 77
I L R 24 All 402

s 77 **I L R 30 Calc 532**

——— to take oath—

See MISJOINDER OF CHARGES
I L R 35 Calc 161

See OATHS ACT ss 11 12
I L R 31 Mad. 1

See REGISTRATION **12 C W N 47**

REGIMENTAL DEBTS ACT

——— 26 and 27 Vict c 57 ss 5, 7 8 10 12 22 and 35—*Committee of adjustment—Royal Warrant cl 1 — Surplus — Person — Bona fide* The appoi[illegible] nt of a committee of adjust- ment [illegible] [illegible] the Ag[illegible] order by w[illegible] n the committee had been appointed stating that he had given over to the widow of a deceased officer the whole of the estate of her hus

REGIMENTAL DEBTS ACT—*contd*

band by direction of the Military Secretary to Government and requesting the Bank to conform to her instructions concerning the amount of deposit receipts then in charge of the Bank in the name of the deceased officer The widow had taken out no letters of administration to the estate of her husband nor had she a preferential claim or any preferential charge against it but she paid all the preferential charges On receipt of the letter from the president of the committee of adjustment the Bank paid over all the moneys of the deceased officer in their hands to his widow In a suit brought against the Bank by the first plaintiff (the grand daughter of the deceased officer) who had taken out letters of administration to his estate on 6th June 1873 and her husband the second plaintiff to recover two thirds of the moneys so paid by the Bank to the widow with interest —*Held* that on the payment by the widow of the preferential charges the whole of the property remaining in the hands of the committee was surplus within the meaning of s 5 of the Regimental Debts Act of 1863 and that assuming the Bank at Bombay to be within the command within the meaning of s 7 the moneys of the deceased officer in the hands of the Bank a be part of such surplus should have been dealt with by the committee in accordance with the provisions of s 10 of the Regimental Debts Act 1863 and cl 17 of the Royal Warrant and should have been remitted to the Military Secretary to Government *Held* also that the Military Secretary to Government had no authority to pay or order the payment of such surplus to any person except in accordance with the provisions of s 10 of the Regimental Debts Act of 1863 *Held also* that s 8 of the Regimental Debts Act of 1863 did not render it incumbent on the widow for the purpose of ousting the jurisdiction of the committee of adjustment to pay the preferential charges before the committee had taken any steps under s [illegible] The true construction of s 8 is that on payment of the preferential charges the committee of adjustment must be regarded as *functi officio* except for the purpose of reporting and should make over whatever property they have which comes under the denomination of surplus in accordance with the terms of s 10 *Held* also that the letter of the [illegible] was a [illegible]

[illegible]

Act of 1863 but even if it con[illegible] the pay[ment by the] Bank were not protected by that section the payment by them not having been made to a representative as defined in the Act *Held* also that the Bank were not protected by s 35 of the Regimental Debts Act the payment not having been made in pursuance of the Act and the carelessness of the Bank in paying the money having been such as to amount to positive negligence and debar them *from pleading* that they acted under

REGIMENTAL DEBTS ACT—*concld*

the *bond f'e* beh that the payment was made in pursuance of the Act *Pemberton v Chapman 7 E & B 210* distinguished SAPSTEDT v AGRA BANK 12 Bom 268

REGISTER

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS

S EVIDENCE ACT s 74
I L R 18 Calc 534

——— entry in—

See EVIDENCE ACT 32
I L R 19 Calc 689
L R 19 I A 157

See EVIDENCE ACT 35
I L R 20 Calc 940
I L R 23 Mad. 492

See LAND REGISTRATION ACT (BENGAL) s 7
I L R 17 Calc 304

REGISTRAR OF DOCUMENTS

See REGISTRATION ACT (III OF 1877) ss 3, 34 AND 87 5 C W N 177

REGISTRAR OF HIGH COURT

See ADMINISTRATION BOND
I L R 33 Calc 713

——— authority of—

See LEAVE TO SUE
I L R 34 Calc 619

——— reference to—

See DIVORCE ACT s 36 6 C W N 414

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS I. L. R 19 Calc 334

See PRACTICE—CIVIL CASES—REFERENCE TO REGISTRAR I L R 26 Calc 585

——— report of -

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTIONS OF LAW—REGISTRAR'S REPORT

See HINDU LAW—USURY
I L R 23 Calc 899 903 note 906 note

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR I L R 24 Calc 437

——— sale by—

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR I L R 21 Calc 566

1. ———Examination of stamps The ...

REGISTRAR OF HIGH COURT—*contd*

2 ———Authority of Registrar—*Power to execute conveyance and enter into covenants on behalf of infants and persons refusing to execute—Effects of title known to purchaser at time of sale—Covenants for title and quiet enjoyment—Pardanashin when not bound by conveyance executed by her containing covenants for title and quiet enjoyment—Civil Procedure Code (Act XIV of 1882) ss 261 262—Rules of Court (Belchambers Rules and Orders) Nos 341 and 436* The Registrar of the High Court has authority when so directed by an order of Court to execute a conveyance on behalf of a party refusing to do so so as to pass his estate if any but has no authority to bind him by entering into any covenants on his behalf The power of the Registrar to execute such a conveyance rests upon statutory authority General covenants for title and quiet enjoyment extend to the case of a defect known to the purchaser at the time of the sale unless the intention of the parties that they should not do so is clearly expressed in the covenants themselves Conveyance as used in rule 436 (Belchambers Rules and Orders) means such an instrument as may be necessary to transfer the estate if he has any belonging to the person on behalf of whom the Registrar executes the transfer to the purchaser Circumstances under which a pardanashin lady will be relieved from liability under covenants contained in a conveyance executed by her *D* an heir of one *X* a deceased Hindu lady sold and conveyed to *M* in March 1878 a moiety in certain premises belonging to the estate of *X* Subsequently a decree was made for partition of the estate left by *X* in a suit to which *D A P G* and *S* were parties and an order was made in that suit directing the premises of which *D* had so sold a moiety to be sold by the Registrar and the parties were directed to join in the conveyance the Registrar being directed to approve and execute the same on behalf of *G* who was an infant At the sale the plaintiff purchased the premises and thereafter *D* refused to execute the conveyance which included the usual covenants for title and quiet enjoyment A summons was thereupon taken ...

... he was entitled to possession as against the plaintiffs of the moiety of the premises covered by his conveyance The plaintiff therefore brought a suit against *D A R G* and *S* to recover damages for breach of the covenants for title and quiet enjoyment It was not found that *R* had any good independent advice in the matter or that she clearly understood the nature of the contract she ...

REGISTRAR OF HIGH COURT—*contd*

having regard to the position of *R* the suit should also be dismissed as against her RAM CHUNDER DUTT *v* DWARKA NATH BYSACK

I L R 16 Calc 330

3 ———— Sale by Registrar—*Title to property purchased at Registrar s sale—Doubtful title enforcement of—Endowment—Rent charge* The Court will not enforce a doubtful title on a purchaser where (*a*) there is a reasonable probability of litigation re ulting or (*b*) where the title depends on the construction and legal operation of some ill expressed and inartificial instrument and the Court holds the conclusion it arrives at to be open to reasonable doubt in some other Court Case in which the title sought to be enforced did not fall within the e rules KALLY DOSS SEAL *v* NOBIN CHUNDER DOSS

I L R 14 Calc 518

4 ———— *Compensation to purchaser for deficiency in area of land—Conditions of sale* At a Registrar s sale held on 13th June 1895 a property described as Lot No 11 formerly Lot No 21 Emambaree Lane containing by estimation 8 cottahs be the same a little more or less was sold to the applicant One of the conditions of sale was that the purchaser would not be entitled to any compensation On the 10th July the purchaser applied for and obtained an order to pay the balance of the purchase money into Court and for confirmation of the sale Subsequently the purchaser cau ed the property to be measured and discovered that it consisted only of 5 cottahs 13 chittaks and 38 sq ft and he accordingly applied for compensation in respect of the deficiency The purchase money was still in the hands of the Court at the time of the application *Held* that the proviso in the conditions of ale applied only to small or unimportant errors and misstatements and not to a deficiency in mea urement of a substantial character and that in respect of the latter the purcha er was entitled to compensation out of the purchase money in Court although he had obtained an order for confirmation of the sale *Whitmore* v *Whitmore L R 8 Eq 603* followed KISSORY MOHAN ROY *v* KALI CHARAN GHOSE

1 C W N 106

5 ———— *Sale notification—Boundaries Rectification of—Compensation—Annulment of sale* In an application by a purcha er for rectification of boundaries or annulment of sale where such rectification would involve the inclusion within his boundaries of a cookroom which according to the sale notification was included within the boundaries of another lot purchased by another person but which according to the evidence was always included in the lot purchased by the applicant and which the applicant was led to beli ve was included in his lot —*Held* that in determining what the property is which is purchased at Registrar s sale one has to look at the *sale notification* the description of the property and the boundaries therein given. It is therefore *impossible* to determine in the present application what were the boundaries of the property purchased by the applicant That in a

REGISTRAR OF HIGH COURT—*contd*

proceeding of this kind an application for rectification of boundaries cannot be entertained, and the best course is to annul the ale ADMINISTRATOR GENERAL OF BENGAL *v* ANNODA PROSAD DAS

4 C W N 504

6 ———— *Dwelling house—Conditions of sale—Title abstract of misstatement in—Acceptance of title by purchaser—Payment into Court of balance—Subsequent discovery of misstatement—Sale, rescission of—Compensation* A purchaser of a dwelling house at a Registrar s sale accepted the conditions of sale whereby he was [illegible]

the originals of documents of which the vendor [illegible] only copies and was to accept the title as shewn in the abstract of title By the abstract it was represented to the purchaser that he was purch[illegible] the entire sixteen annas of the house and prem[illegible] The purchaser accepted *the title as shown in the* abstract and paid the balance of the purchase money into Court without reserving any right to object to the title He now applied to be discharged from such purchase and for leave to withdraw the purchase money from *Court on the ground* that he had subsequently discovered that only an eight twelfth share of the *house had been* sold to him and that he *had been* misled in the purchase by misrepresentation contained in the conditions of sale and the abstract of title [illegible] [illegible] the part of the

[illegible]

Else v *Else L R 13 Eq 196* [illegible] *Banister Broad* v *Munton 12 Ch Div 131* [illegible] to *Held* also that in the case of a purchase of a dwelling hou e it is *impossible to compensate* a person in respect of such a material misstatement and the Court must either enforce the contract or rescind the sale It is different in the *case of* [illegible] [illegible] occupied for agricultural or such like purposes [illegible] *Ordered* that [illegible] [illegible] [illegible]

[illegible] W N 593

REGISTRAR OF MAHOMEDAN MARRIAGE

———— *Registration—Direction* [illegible] *Mahomedan marriage—Evidence* Where one *X* [illegible] personating *P* before the Mahomedan Registrar of [illegible] the registration of *P* [illegible] [illegible]

[illegible] Penal Code inasmuch as the [illegible]

REGISTRAR OF MAHOMEDAN MARRIAGE—*concld*

bound or authorized by law to receive his statement in evidence but whether he was guilty of an offence under s. 1⁹² of the Penal Code would depend chiefly on whether he knew that Y was not P or had no knowledge whether he was P or not *Held* that the Judge had fairly put the evidence on this point to the jury YASIN SHEIKH v EMPEROR (1905) 9 C W N 69

REGISTRAR OF SMALL CAUSE COURT

See SANCTION FOR PROSECUTION—

POWER TO GRANT SANCTION I L R 27 Bom. 130
I L R 33 Calc 193

REVOCATION OF SANCTION I L R 27 Bom 130

REGISTRAR OR SUB REGISTRAR

See REGISTRATION ACT 1877 ss 57 84

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
I L R 10 Mad. 154
I L R 11 Mad. 3 500
I L R 12 Bom. 36
I L R 12 Mad. 201
I L R 15 Mad. 138
I L R 15 All 141

——— offence committed before—

See CRIMINAL PROCEDURE CODES ss 480 481 482 13 B L R Ap 40

REGISTRATION

See DEED—EXECUTION 6 C W N 329

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS I L R 11 All. 13

See GIFT I L R 33 Calc 584

See LEASE I L R 30 All 82
I L R 33 Bom 610

See MORTGAGE I L R 29 Bom 199

See OUDH ESTATES ACT (I OF 1869) s 13 I L R 16 Calc 468 556

See REGISTRATION ACT
I L R 27 All. 307 305 392 564

See REGISTRATION ACT (III OF 1877) s 35 I L R 26 All 57

See SALE CERTIFICATE.
I L R 35 Calc 614

See TRANSFER OF PROPERTY ACT 1882 s. 54 I L R 31 All. 612

See VALUATION OF SUITS
I L R 33 Calc 1133

See WILL 10 C W N 521

——— effect of—

See DEED—PROOF OF GENUINENESS.
15 W R. 15 305
I L R 17 Calc 903

REGISTRATION—*contd*

——— effect of—*concld*

See HINDU LAW—GIFT—REQUISITES FOR GIFT I L R 20 Calc 464

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS

See PARTIES—PARTIES TO SUITS—MORTGAGES SUITS CONCERNING
I L R 13 All 432

See PRINCIPAL AND AGENT—REVOCATION
I L R 30 Calc 265

See REGISTRATION ACT 1877—

ss 49 AND 50

s 50

s 50 AND s 17

See VENDOR AND PURCHASER—NOTICE

——— non validity of unregistered lease—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE
7 C W N 90

——— of divorce—

See REGISTRAR OF MAHOMEDAN MARRIAGE
9 C W N 69

——— of kobala—

See TRANSFER OF PROPERTY ACT s 54
13 C W N 692

——— of land—

See LAND REGISTRATION ACT 1876 (BEN ACT VII OF 1876)

——— suit to enforce—

See REGISTRATION
I L R 29 All 284

See REGISTRATION ACT (III OF 1877) s 77 I L R 30 Calc 532
I L R 29 All 284

——— whether it amounts to notice—

See TRANSFER OF PROPERTY ACT s 3—NOTICE 7 C W N 1

1 ——— Beng Reg XXXVI of 1793 s 17—*Document registered by Kazi* This Regulation did not apply to registration by Kazis SREEMUNT KOWAR v AKBUR MUNDUL
8 W R 438

2 ——— Mad Reg XVII of 1802 s 3—*Instrument of hypothecation* An instrument

[illegible]

3 ——— Notice of prior incumbrance —*Transfer of Property Act (IV of 1882) s 81—Marshalling of security* Registration of a sale or mortgage is in itself notice to subsequent purchasers or mortgagees This doctrine is as applicable since the introduction of the Transfer of

REGISTRATION—concld

Property Act (IV of 1882) as it was before DINA v NATHU (1902) I L R 26 Bom 538

4 —— Deed of compromise—*How far compromises in suits exempted from* A razinamah does not require registration only in regard to such of its stipulation and provisions as are incorporated with and given effect to by the order of the Judge The provisions of the Registration Act will apply to terms in the razinamah which are not so incorporated *Pranal Anni v Lakshmi Anni I L R 22 Mad 508* followed PATHA MUTHAMMAL v ESUP ROWTHER (1906) I L R 29 Mad 365

5 —— Suit to compel registration —*Indian Registration Act (III of 1877) ss 76 and 77—Registration—Grounds of such suit* Where a Registrar refused to register document presented to him upon the grounds that there was not sufficient proof that the document was executed by the authority of the alleged executant and that there was undue and unexplained delay in presenting the document for registration it was *held* that a suit would lie under s 77 of the Indian Registration Act 1877 to compel registration *Held* also that in a suit under s 77 of the Registration Act the Court is only concerned with the genuineness of the document sought to be registered and not with its validity *Kudrathi Begum v Najib un nissa I L R 25 Calc 93* and *Rai Lalhi Ghose v Debendra Chandra Majumdar I L R 24 Calc 668* referred to KANHAYA LAL v SARDAR SINGH (1907) I L R 29 All 284

6 —— Deed of gift—*Gift of immoveable property—Acceptance of the gift—Registration of the deed subsequent to acceptance—Transfer of Property Act (IV of 1882) ss 121 and 122* A gift of immoveable property duly made and accepted is not invalid merely because the registration of the deed of gift took place after the death of the donor *Nand Kishore Lal v Suraj Prasad I L R 20 All 392* followed On registration the deed of gift would operate as from the date of execution KHASHABA v CHANDRABHAGABAI (1908) I L R 32 Bom 441

7 —— Mortgage decree assignment of A mortgage ... for R100 or more is assign...

REGISTRATION ACT (XIX OF 1843)

See REGISTRATION ACT 1877 s 50

1 —— s 2— *Satisfied meaning of* *Held* that the term satisfied as used in s 2 Act XIX of 1843 did not merely signify that the mortgage money might be realized by sale but that all the stipulations of the mortgage deed were to be performed and its terms and conditions fulfilled PURSIDH NARAIN RAI v MAHOMED SHOOKOOL HUQ 1 N W 38 Ed. 1873 35

2 —— Construction—*Mortgages—Deed of sale—Deed tainted by fraud*

REGISTRATION ACT (XIX OF 1843)—concld

—— s 2—concld

The words any knowledge or notice of any such unregistered deed or certificate alleged to be had by any party to such registered deed or certificate notwithstanding in s 2 Act XIX of 1843 referred not only to the mortgages and certificates mentioned in that part of the section which immediately precedes these words but extended also to the deeds of sale or gift which were mentioned in the earlier part of the section The words provided its authenticity be established to the satisfaction of the Court in the same section pointed not merely at the exclusion of a forged deed from the benefit of the Act but also of a deed tainted by fraud although in other respects genuine SREENATH BHATTACHARJEE v RAM COMUL GANGOOLY 3 W R P C 43 10 Moo I.A. 220

3 —— Construction—*Effect of registration* The words in Act XIX of 1843 provided its authenticity be established to the satisfaction of the Code were introduced in order to prevent any supposition that registration would give to a merely fictitious transaction any effect which it would not otherwise possess NARASANNA v GAVAPPA 3 Mad. 2 0

REGISTRATION ACT (XVI OF 1864)

—— s 13—

See REGISTRATION ACT 1877 s 17

—— and ss 17 and 68—*Admissibility in evidence—Priority of registered over unregistered deed* A deed creating an interest in immoveable property exceeding in value R100 executed prior to 1st January 1865 was not affected by Act XVI of 1864 s 13 although it might have been registered under s 17 All former Acts and Regulations having been repealed except in respect of registered instruments an unregistered deed creating an interest in immoveable property exceeding in value R100 executed prior to 1st January 1865 was not by any provision of Act XVI of 1864 postponed to a registered instrument executed subsequently to that date CHUTTERDHAREE MISSER v NURSINGH DUTT SOOKOOL 3 Agra 371

Agra F B Ed. 1874 163

S 13 did not apply to deeds executed before 1st January 1865 and s 17 contained no penalty for non registration RAM SOONDUREE DOSSEE v MADHUB CHUNDER GOOHOO 8 W R 689

—— s 15—

See PLEADER—REMUNERATION 9 W R 101

See REGISTRATION ACT 1877 s. 7

—— s 16—

See PROMISSORY NOTES—FORM OF 6 B. L. R. Ap. 40

REGISTRATION ACT (XVI OF 1864) —*concld.*

——— s 17—*Construction—Inducement to register old deeds* S 17 Act XVI of 1864 did

——— s 29—

See REGISTRATION ACT 18 ss 34 35

——— s 51—*Record of agreement by Registrar—Signature of Registrar* S 51 Act XVI of 1864 did not require a Registrar to record the agreement there spoken of entirely with his own hand The signature of the Registrar was sufficient HOBEEBO SOBAIR v HOSSAIN ALI
5 W R S C C Ref 14

——— ss 51 52—

See BOND
3 Mad. 88
5 B L R 167

——— s 52—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—REGISTRATION ACT
4 W R S C C Ref 11

——— s 68—

See REGISTRATION ACT 1877 s 50

REGISTRATION ACT (XX OF 1866)

See REGISTRATION ACT III OF 1877

——— s 32—

See APPEAL—ACTS—REGISTRATION ACT
6 B L R 578 note

——— ss 52 and 53—

See APPEAL—ACTS—REGISTRATION ACT

See LIMITATION ACT 18 7 ART 178 (1859 s 2?)
18 W R 512
I L R 10 Calc 196
I L R 5 Bom. 673
I L R 1 All 586

See LIMITATION ACT 1877 ART 179 (1871 ART 167)—LAW APPLICABLE TO APPLICATION FOR EXECUTION
I L R 1 All. 586

See MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY DECREES ON MORTGAGES

See REGISTRATION ACT 1871 s 2
6 Mad. 351

See RES JUDICATA—CAUSES OF ACTION
14 B L R 408
8 B L R Ap 92
L R 3 Calc 363

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—REGISTRATION ACT
I L R. 11 Calc 169
18 W R 199

REGISTRATION ACT (XX OF 1866) —*contd*

——— ss 52 and 53—*concld*

See SMALL CAUSE COURT PRESIDENCY TOWNS—JURISDICTION—REGISTRATION ACT
6 B L R 177

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
I L R 1 Mad 401
I L R 11 Calc 169

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622
I L R 1 Mad 401

1 ——— ss 52 53 and 54—*Bond for delivery of paddy—Money bond* Ss 52 to 54 Act XX of 1866 contemplated money bonds only A bond for the delivery of paddy without specification of its money value or of the amount to be paid in case of non delivery could not be summarily enforced under s 53 of that law JADUB MUNDUL v BISHOO SIRDAR
15 W R 369

2 ——— *Bonds hypothecating immoveable property* Bonds containing hypothecation of immoveable property were not excluded from the provisions of ss 52 and 53 of Act XX of 1866 GOBIND SHUNKERJEE v GIRDHAREE SINGH
1 N W 90 Ed 1873, 142

WOOMA CHURN MOOKERJEE v HURRY CHURN BOSE
11 W R 60

3 ——— *Bond—Instalment* A bond payable by instalment stipulated that in case of default in payment of two successive instalments the whole amount secured should be come due *Held* that a petition in a summary way could not be presented under s 53 of Act XX of 1866 *In the matter of the* INDIAN REGISTRATION ACT 1866 *In the matter of* LACHMIPAT SING DUGAR ROY
2 B L R O C 151 11 W R O C 24

VENITHITHAN CHETTY v MOOTHIROOLANDI CHETTY
6 Mad. 4

GRISH CHUNDER CHOWDHRY v KRISTO SOONDUR SANDYAL
14 W R 277

4 ——— *Bond payable by instalments—Agreement that on non payment of interest amount of bond should become due* A bond payable two years after date contained a stipulation that in case of default being made in payment of interest on the principal sum secured the principal sum [illegible]

6 Bom O C 64

5 ——— *Summary application—Representative of obligee* The summary remedy under s 53 of the Registration Act 1866 was made applicable only as between the immediate

REGISTRATION ACT (XX OF 1866) *—contd*

———— ss 52 53 and 54—*contd*

parties to the registered obligation Such remedy therefore could not be enforced by the representative of an obligee *In the matter of the petition of* SUBBUVIYAN 4 Mad 233

RAMNARAIN DOSS BISWAS v SREEMUNTH PODDAR 9 W R 498

No by an assignee of the bond CAUR MOHUN DASS v RAMRUP MAZOOMDAR 1 B L R A C 42 10 W R 84

6 ———— *Proceeding against heirs of obligor* An agreement recorded on a bond or obligation under s 52 Act XX of 1866 binds the obligor only and not his heirs who cannot be summarily called upon to show cause why a decree should not be passed against them RAM NARAIN DOSS BISWAS v SREEMUNTH PODDAR 9 W R 498

7 ———— *Procedure—Summoning defendant* In cases of application to the Court under s 53 of the Registration Act (XX of 1866) the Court ought not to summon the defendant but the applicant was entitled to a decree merely on production of the obligation and the record duly signed KRISTO KISHORE GHOSE v BROJONATH MOOZOOMDAR 6 W R Civ Ref 11

So with his personal representative PUDIYA PORAYIL MAMI v MADAKARATH AMMAN KUTTI 3 Mad 199

POISTUB CHURN DIOPUTTY v GOBIND PERSHAD TEWAREE 13 W R 203

And so with a partner The petitioner was *held* to be only entitled to a decree against the partner who actually signed the note and special agreement *In the matter of the petition of* BAKATRAM BADRINATH 6 Bom O C 131

8 ———— *Application to enforce bond —Copy of obligation and record* In an application to a Small Cause Court under s 53

and of the record signed but not on a copy of the same SREERAM ROY CHOWDHRY v KOLEMOODDEE MOLLAH 9 W R 477

9 ———— *Application to enforce mortgage bond—Money decree* The obligee of a simple mortgage bond was only entitled under s 53 Act XX of 1866 to a money decree AKHE RAM v NAND KISHORE I L R 1 All 236

10 ———— *Decree on mortgage bond—Enforcement of lien* A decree obtained under the summary procedure prescribed by the Registration Act 1866 could be for money only and not the enforcement of a lien JUGGUN NATH v KOMAL SINGH 3 N W 123

ASMA BIBEE v RAM KANT ROY CHOWDHRY 19 W R 251

REGISTRATION ACT (XX OF 1866) *—contd*

———— ss 52 53 and 54—*contd*

GRISH CHUNDER CHOWDHRY v KRISTO SOONDERI SANDYAL 14 W R 277

BOISTUB CHURN DIOPUTTY v GOBIND PERSHAD TEWAREE 13 W R 203

11 ———— *Form of decree on obligation enforceable under Act* The only ...

Nor any declaration against the property pledged nor to make the sureties of the bond liable ... NOO CHUNDER GHOSE v GOBIND CHUNDER M... KERJEE 22 W R ...

12 ———— *Suit for ...*

ment and get a decree for the second ... enforced the summary remedy on the ... DHUNUNJOY GHOSE v BEMAL DHARA BIBEE 17 W R ...

13 ———— *Decree on bond—... interest from the date of ...*

and a sum for costs ... MAHCUM CHUND v MAHTAB 3 Agra ...

BHAIRO SINGH v BECHOO 3 Agra 325

14 ———— *Bond specially registered—Interest* Where a bond was specially registered under the provisions of Act XX of 1866 the creditor was entitled on observing the procedure there prescribed summarily to have a decree for the amount specified including interest up to the date of such decree If the creditor intended to secure interest at the rate stipulated after such decree it was not enough to insert the ... phrase date of realization in the instrument as such phrase must be held controlled by other parts of the agreement as expressed in the bond MONEE DEBIA v KOOLO CHUNDER CHATTERJEE 21 W R 140

15 ———— *Effect of decree on registered bond* A decree under s. 53 of Act XX of 1866 had all the effect of a decree in a regular ...

REGISTRATION ACT (XX OF 1866)—*contd.*

——— ss 52 53 and 54—*concld*

under the Code of Civil Procedure GUNGA NARAIN CHATTERJEE *v* RADHA KRISHNA DUTT
25 W R 322

16 ——— and s 55 -*Specially registered bond—Setting aside of summary decree* A decree obtained by the plaintiff upon a specially registered bond under s 53 of Act XX of 1866 and set aside under s 55 of that Act *held* not to bar a regular suit upon the bond UTSHAB NARAYAN CHOWDHRY *v* CHITTRA PAKA GUPTA
8 B L R Ap 92

S C OOTSHUB NARAIN CHOWDHRY *v* CHITTRA PECKA GOOPTA 17 W R 154

17 ——— *Bond—Appeal* A petition for payment of a bond which had been specially registered under Act XVI of 1864 was presented on the 3rd April 1866 *Held* that it must be considered as having been presented under s 53 of Act XX of 1866 by virtue of the 3rd section of that Act which repealed Act XVI of 1864 conse [illegible]

[illegible] 2

——— s 55—

See APPEAL—ACTS—REGISTRATION ACT
18 W R 512
I L R 12 Calc 511
23 W R 328
24 W R 225
I L R 1 All 377

See MANAGER OF ATTACHED PROPERTY
15 W R 477

1. ——— *Setting aside or staying execution of decree* Under s 55 Act XX of 1866 the Court might after decree on a representation by the judgment debtor set aside the decree and stay or set aside execution KRISTO KISHORE GHOSE *v* BROJONATH MOZOOMDAR
6 W R Civ Ref 1

2 ——— *Suit to set aside* [illegible]

proper one for investigation in a regular suit His successor dismissed the suit when brought because in his opinion it did not lie *Held* on appeal (by the majority of the Court) that no suit lay The effect of ss 5_ to 55 was to make a decree under them of precisely the same validity as any other decree to make it enforceable by the same process but to render it impeachable on the special grounds referred to in s 55 *Held* also that the matters alleged were not such as if proved would have justified the setting aside of the decree The special circumstances must be such as to show a vice in the mode in which the contract to submit to decree and the special registration were obtained and an infirmity in the original obligation will not do SINNA TEVAR *v* RANGASAMI AIYANGER
7 Mad 112

3 ——— *Right to sue to cancel deed and enforce it* The powers conferred on the Court under the Registration Act 1866 for enforcement by process of execution of the payment of a bond are not inconsistent with the right to sue to cancel and annul the deed as fraudulent SREE RAM *v* HOKOOM SINGH 2 N W 467

The summary procedure provided for in ss 52 to 55 of this Act has been omitted in the latter Acts

——— s 66—

See ADMISSION—MISCELLANEOUS CASES
15 W R 280

——— ss 83 and 84—

See APPEAL—ACTS—REGISTRATION ACT
6 B L R 578 note
7 W R 130

——— s 84—

See APPEAL—ACTS—REGISTRATION ACT
3 Bom. A. C 104
8 W R 266
9 W R 122

See PLEADER—REMUNERATION
7 Bom. A C 132

——— s 91—

See JURY—JURY IN SESSIONS CASES
14 W R Cr 32

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACT 1866
5 Bom Cr 7

——— s 93—

See FALSE PERSONATION
7 W R Cr 99
2 B L R A. Cr 25

——— s 94—

See SENTENCE—GENERAL CASES
8 W R Cr 16

——— s 95—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACT 1866
5 Bom. Cr 7

REGISTRATION ACT (VIII OF 1871)

See GENERAL CLAUSES CONSOLIDATION ACT s 6
I L R 4 Calc 536
I L R 3 Calc 727

REGISTRATION ACT (VIII OF 1871) —*contd*

See LIMITATION—STATUTES OF LIMITATION —LIMITATION ACT 1871 ART 168
24 W R 372

See REGISTRATION ACT 1877

———— s 2—*Stamps on petitions under s 53 Registration Act 1866—Court Fees Act 1870 Sch I Art 3* The effect of the first and fourth clauses of s 2 of the Registration Act of 1871 read with the provision in the first schedule as to the extent of the repeal of Act VII of 1870 was to keep in force all the provisions of Act XX of 1866 relating to the procedure for the recovery in a summary way of the amount of an obligation upon agreements recorded under s 52 of that Act before the 1st day of July 1871 PACHAIPERUMAL CHETTI *v* SANAYYAR AUDONI KURUSU RAYYET
6 Mad 351

[The sections of this Act correspond substantially with those of the present Act III of 1877 under which therefore the cases will be found]

———— s 76—

See APPEAL—RIGHT OF APPEAL EFFECT OF REPEAL ON I L R 3 Calc 727

———— s 80—

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY 18 W R Cr 3

REGISTRATION ACT (III OF 1877)

See APPEAL—RIGHT OF APPEAL EFFECT OF REPEAL ON I L R 3 Calc 727

See CHARGE I L R 35 Calc 854

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 375 I L R 35 Calc 867

See COMPROMISE I L R 35 Calc 867

See COURT FEES ACT s 7 (4) ART 17 (6)
I L R 31 Mad. 89

See LEASE I L R 33 Calc 502

See POWER OF ATTORNEY
I L R 35 Calc 854

See SALE CERTIFICATE
I L R 35 Calc 614

———— **Operation of Act** The provisions of Act III of 1877 apply to all documents tendered in evidence on or after 1st April 1877 RAJU BALU *v* KRISHNARAV RAMCHANDRA
I L R 3 Bom 273

But *see* OCHRA SINGH *v* ABLAKH KOOER
I L R 4 Calc 536

———— s 3—

See post s 28 I L R 25 Bom 50

1 ———— s 3 (1871 s 3)—**Lease** The expression an undertaking to cultivate or occupy used in s. 3 of Act VIII of 1871 in defining the word lease means an accepted undertaking giving to the lessee a right or interest in the thing left APU BUDGAVDA *v* NARHARI ANNAJEE
I L R 3 Bom. 21

REGISTRATION ACT (III OF 1877) —*contd*

———— s 3—*contd*

2 ———— (1866 s 2)—**Moveable property—Trees** Trees are to be held moveable property for the special purposes of the Registration Act but they are not ordinarily so regarded in Indian Acts CHOWDHRY POORUM ALI *v* DHANDOO
3 Agra 157

3 ———— **Lease to take juice from date trees** The right to take juice from date trees is not according to s 2 Act XX of 1866 a right to immoveable property but falls under the definition of moveable property JALU NAMDAR *v* BEICHA NAMDAR
3 B L R A C 394

S C JANOO MUNDUR *v* HUCHA MUNDUR
12 W R 388

4 ———— (1866, s 3)—**Timber**—*Standing timber—Mango tree—Custom of a locality* By the term timber is meant properly such trees only as are fit to be used in building and repairing houses. A mango tree which is primarily a fruit tree might not always come within the term standing timber used in the definition of immoveable property in s 3 of the Registration Act (XX of 1866) but it may be classed as a timber tree where according to the custom of a locality its wood is used in building houses KRISHNARAO *v* BABAJI
I L R 24 Bom. 31

5 ———— and s 84—**District Court**—*Jurisdiction of High Court North West Provinces* For the purposes of Act XX of 1866, District Court meant the principal Court of original jurisdiction in a district and included the High Court in its ordinary original civil jurisdiction The High Court of the North West Provinces which has no ordinary original civil jurisdiction was not a District Court to which a petition might be presented under s 84 of the Act and an order passed by that Court on such a petition directing the registration of a deed was made without jurisdiction MUKHUN LALL PANDAY *v* KOONDUN LALL 15 B L R P C 228 24 W R 75
L R 2 I A 210

6 ———— *District Court—Jurisdiction of High Court* Where the property the subject of a deed presented for registration was without the jurisdiction of the High Court but the order of refusal was made by the Registrar General who was within such jurisdiction —*Held* the High Court was the District Court under s. 84 of Act XX of 1866 to which the petition should be made *In the matter of the* INDIAN REGISTRATION ACT (XX OF 1866) *In the matter of* WYNDHAM
6 B L R 578

7 ———— *District Court—Regulation provinces* The Registration Act of 1871 gives power to the Government to appoint districts and sub-districts for the purposes of registration but the District Courts mentioned in the Act (except where the High Court when exercising its local jurisdiction is said to be a District Court within the meaning of the Act) must in the

REGISTRATION ACT (III OF 1877)
—contd

——— s 3—*concld*

case of a regulation province be taken to import the ordinary Zillah Courts *In the matter of the petition of* ABDOOLLAH. REASUT HOSSEIN v ABDOOLLA I L R 2 Calc 131
26 W R 50 L R 3 I A 221

——— ss 3 17—

See REGISTRATION
I L R 33 Calc 502

1. ——— *Transfer of Property Act (IV of 1882) s 105—Immoveable property—Definition—Lease of right to receive market dues* *Held* that the right to collect market dues upon a given piece of land is a benefit to arise out of land within the purview of s 3 of the Registration Act 1877 A lease therefore of such right for a period of more than one year must be made by registered instrument SIKANDAR v BAHADUR (1905)
I L R 27 All 462

2 ——— *Lease—Agreement to lease—Amalnama—Evidence admissibility of—Ejectment—Right to possess* By certain unregistered *amalnamas* tenable for nine years the land lord agreed that upon the defendant fulfilling certain conditions mentioned in the *amalnama* during that period, he would grant a lease to the defendant No lease was however granted in the terms of the *amalnamas* and the defendant was allowed to hold on the lands for eleven years after the expiration of the nine years upon payment of rent In a suit for ejectment —*Held* that there [illegible] as a trespasser *Syed Sujdar Reza v Amjad Ali I L R 7 Calc 703* distinguished DWARKA NATH SAHA v LEDU SIKDAR (1906)
I L R 33 Calc 502

——— ss 6 to 14 69 84—

See PUBLIC SERVANT
I L R 32 Calc 664

——— s 7—*Registration of mortgage—Interest in land—Right to redeem immoveable property mortgaged—Transfer of Property Act (IV of 1882) s 59* Two documents were [illegible] show that the transaction between the parties was a mortgage *Held* that the second document could [illegible] mortgage transaction being reduced in any form to

REGISTRATION ACT (III OF 1877)
—contd

——— s 7—*concld*

writing on different papers whether attached together or detached yet the requirements as to registration cannot be said to have been complied with if some of such papers are registered while others are left unregistered A document which gives a person a right to redeem a mortgage on immoveable property on payment of money creates an interest in immoveable property and its registration is compulsory under s 7 of the Registration Act MUTHIA VENKATACHELAPATI v PYANDA VENKATACHELAPATI (1904) I L R 27 Mad 348

——— s 17 (1864 s 13 1866 s 17 1871 s 17)—

See post s 18

See post s 28 I L R 29 Calc 654

See post ss 49 50 AND 17

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS L R 29 I A 138

See INSOLVENCY ACT (11 AND 12 VICT c 21) s 23 I L R 25 Bom. 659

See LANDLORD AND TENANT—TRANSFER BY TENANT 6 C W N 916

See LIMITATION ACT (XV OF 1877) ss 19 22 I L R 33 Calc 613

1 ——— Operation of section—*Document not registrable under Registration Act (XX of 1866) but requiring registration under Act III of 1877—Immoveable property—Hereditary allowance attached to office of Desai—Deed of gift of such property* S 17 of the Registration Act III of 1877 should not be construed as requiring a document to be registered which would not have required registration when it was executed *Paju Balu v Krishnarao I L R 2 Bom 273* distinguished An instrument which did not require registration under Act XX of 1866 is not inadmissible in evidence by reason of Act III of 1877 Dues incidental to an office such as that of a Desai which is capable of being held by a person other than a Hindu were not immoveable property when Registration Act XX of 1866 was enacted DESAI MOTILAL MANGALJI v DESAI PARSHOTAM NANDLAL I L R 18 Bom. 92

2 ——— *Kabuliyat—Act XVI of 1864 s 13* Neither 17 of Act III of [illegible] without registration RAM KOOMAR SINGH v KISHARI I L R 9 Calc 68 11 C L R 318

3 ——— *Document executed before Act XVI of 1864 came into operation—Hibbanama* A hibbanama executed before Act XVI of 1864 came into operation was admissible as evidence though not registered S 13 did not apply to deeds executed before 1st January 1865 and s. 17 contained no penalty for non registration.

REGISTRATION ACT (III OF 1877)
—*contd*

———— s 17—*contd*

BAMA SOONDUREL DO IA *v* MADHUB CHUNDER COOHOO 8 W R 269

4. ———— *Kabuliat executed when registration was unnecessary* An unregistered kabuliat is not inadmissible as evidence if it was executed at a time when the law did not require registration SHEO RAM SINGH *v* SEWAK RAM 20 W R 83

5 ———— and s 49—*Registration Act 1871 s 17—Decree—Instrument—Admissibility in evidence* A decree by which immoveable property was charged did not need Registration under s 17 of the Registration Act 1871 in order to make it admissible in evidence under s 49 Such decrees are now expressly excluded by s 17 Registration Act 1877 PURMANANDAS JIWANDAS *v* VALLABDAS WALLJI I L R 11 Bom. 506

6 ———— cl (a)—*Deed of gift—Immoveable property* All instruments of gift of immoveable property must be registered whatever be the value of the property PUTONA KOLITA *v* MUTIA KOLITA 2 B L R Ap 46

s c PROTONA KOLITA *v* MOTTEA KOLITA 11 W R 334

7 ———— *Judicial Proceedings—Petitions—Pleadings—Order by Court etc*— S 17 of the Registration Act III of 1877 does not apply to proper judicial proceedings whether consisting of pleadings filed by the parties or orders made by the Court BINDESRI NAIK *v* GANGA SARAN SAHU I L R 20 All 171 L R 25 I A 9 2 C W N 129

8 ———— *Unregistered agreement incorporated into a judicial proceeding* A prior suit between the same parties now contesting the right to part of an ancestral estate claimed another part of the same estate without comprising the lands now in suit which at the time when the first suit was brought were outstanding under a mortgage A decree had been made by consent excluding the lands now sued for The defendant s case was that the lands now claimed together with those decreed by consent had been made the subject of a compromise of which the terms had been stated in two written agreements not registered Also that according to the compromise each of the parties was to take a moiety of the whole estate Each had obtained possession but the decree was limited to the part of the estate for which the prior suit then disposed of was brought and only one of the agreements—that one which related to the lands then in suit—was presented to and accepted by the Court which made the consent decree *Held* that this agreement had a different effect from the other one as it constituted a step in a judicial proceeding and did not require registration The order was pronounced in terms of it But as regarded the lands now in suit excluded as they had been from the decree in the former suit the defendant s title to them had been left to stand or fall by the other unregistered document. The latter by the Registration Act 187 conferred no title and this defence failed. PRANAT ANNI *v* LAKSHMI ANNI I L R 22 Mad 508 L R 26 I A 101 3 C W N 435

9 ———— Hibba bil awaz—*Deed of gift—Nominal consideration* A hibba bil awaz although made on the nominal consideration of a than of cloth and natural love and affection is merely a deed of gift and as such must be registered GOLAM MOSTOFA *v* GOBURDHUN MULLA 8 C L R 441

10 ———— cl (b)—*Determination of necessity for registration* The necessity for registration must be determined by the value of the consideration stated in the deed ROHINEE DEBIA *v* SHIB CHUNDER CHATTERJEE 15 W R 558

11 ———— *Computation of value for purposes of registration—Deed of sale—Consideration* The consideration mentioned in a deed of sale by the parties thereto must be regarded as showing the value of the interest conveyed for the purpose of registration under Act XX of 1866. *Rohinee Debia* v *Shib Chunder Chatterjee 15 W R 558* followed VASUDEV MORESHVAR GUNPULE *v* RAMA BABAJI DANGE 11 Bom. 149

12 ———— Statement in will—*Words not purporting or operating to extinguish an interest in the present or in future—Evidence Act (I of 1872) s 32 cl (6)* S 17 cl (b) of the Registration Act (III of 1877) does not render a passage in a will inadmissible in evidence if the words of it do not purport or operate to extinguish an interest in the present or in future but state only past facts Such a statement would, if proved be admissible also under s 32 cl (6) of the Indian Evidence Act (I of 1872) CHAMANSING JAVJE MAHOMED ALI BHORI *v* MULTANCHAND SHIVRAM I L R 20 Bom. 569

13 ———— Assignment of mortgage—*Consideration—Stamp* A executed to B an assignment of a mortgage It was stamped with a stamp of R168 and recited that B had instituted a suit against C to recover R3 000 interest [illegible] been come [illegible] to execute [illegible] his paym[illegible] and settled [illegible] to A on the [illegible] agreed to [illegible] mortgage and that A had [illegible] assign it to B By the operative part A in consideration of R5 paid to A by B and in consideration of the premises assigned the mortgage to B. *Held* that the consideration for the deed of assignment was not merely R5 paid to A but the assignee s agreement to withdraw the suit if A assigned the mortgage to him upon the instrument that the money value of the latter part of the consideration was the amount covered by the stamp

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

put by the parties them elves and as it exceeded R100 the deed of as ignment was inadmissible in evidence for want of regi tration (17 of Act VIII of 1871) NAGO KANATURIA v BABAJI KATARI

I L R 8 Bom 610

14 ——— Agreement relating to family arrangement—*Valuation for purpose of registration.* Where a document was in the nature of a family arrangem nt and drawn up mainly for the purpo e of ettlin a wi low s main tenance though ome ri ht in immoveable property was created or declared by such instrument and it was proved that the actual value of the whole of the immoveable pr perty mentioned in the do cument exceeded R100 but there was no evidence to show that the value of the widow s right exceeded that sum —*Held* that for the purpo e of re i tra tion under Act XX of 1866 the actual value of the whole immoveable property named in the document mu t not be taken to be the value of the ri ht so created or declared NILAVA KOM RACHAPPA v PUDRAYA BIN PACHAPPA 12 Bom. 141

15 ——— Agreement to prevent ac quisition of easement—*Document not creat ing etc right in immoveable property—Chance of acquiring easement—Immoveable property* The chance of acquiring a right to light and air is not immoveable property within the meaning of the Registration Act nor can a pecuniary value be put upon it A document therefore which limits or extingui hes the chance of acquiring such an ease ment does not require registration SULTAN NAWAZ JUNG v PUSTOMJI NANABHOY

I L R 20 Bom. 704

16 ——— Change of name in Gov ernment records—*Mortgage or conditional sale —Sub quent agreement to re tran fer land in Government records on payment of debt—Document creating a right in land* In 1877 the plaintiff being indebted to the defendant transferred certain land to the defendant s name in the Government re cords In July 1879 the defendant executed the following document to the plaintiff reciting the previous transfer and agreeing to re transfer the land to the plaintiff s name on the 12th July 1880 if the debt which would then be due should be paid off In the village of Berhampur is your (plaintiff s) field, Survey No 146 measuring 5 acres 3 gunthas bearing assessment R16 You (plaintiff) have got it transferred to our name That field therefore stands in our (defendant s) name in the Government records You owe a debt to us On account of that debt you have transferred it to our name. The field shall be re tran ferred to your name when you repay the said debt to me You have cultivated the field for the produce of Samvat 1936 and a lease in respect thereof you have this day pa sed to me And a stamp paper was purchased at the time of the transfer for the ex cution of this agree ment but no agreement was then passed. This agreement is therefore this day passed to you when the lease in executed And you owe me (a) debt bearing interest I will pay out of my pocket the expenses to be incurred at present in

said field I shall not take the rupee after the 4th (chauth) nor shall I give (or transfer the field to you I shall lease the field to any one I like without keeping any claim of you as regards cultivation manure and hedge You have no claim or right whatever This document was not registered The plaintiff brought this uit to redeem the land alleging that it had been mortgaged to the defendant and that the debt had been paid off The defendant con tended that the transaction in 1877 was not a mortgage but a sale of the land to him and that the document of July 1879 was an agreement to re ell it to the plaintiff which was not admissible in evidence as it was not registered *Held* that the document of the 11th July 1879 did not require registration It created no rights in land but only amounted to a per onal covenant to effect a muta tion of names in the Government books when the debt due by the plaintiff was satisfied PATEL RANCHOD MORAR v BHIKABHAI DEVIDAS

I L R 21 Bom 704

17 ——— Document providing for payment of hereditary allowance—*Interest in immoveable property—Registration Act (III of 1877) s 3—Bombay General Clauses Act (Bom Act III of 1886)* Plaintiffs sued in the Court of Small Causes at Poona to recover R400 for arrear alleged to be payable to them under an agreement by the defendant s father to pay R150 per annum of which R50 were for maintenance of plaintiff s mother and the residue was to be applied towards defraying the expenses of a temple The terms of

within the meaning of ss. 3 and 17 of the Registra tion Act and that the document creating it required registration and not being registered was in admissible in evidence On application by the plaintiffs to the High Court under s. 25 of the Provincial Small Cause Courts Act (IX of 1887) — *Held* reversing the decree that the document did not require regi tration as it was not an instru ment purporting or operating to create or declare an interest in immoveable property within the meaning of s. 17 or create an hereditary allowance in the sense in which that expres ion is used in s 3 of the Registration Act. VISHNU GANESH JOSHI v YESHVANTRAO I. L. R 21 Bom 387

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

18 ——— **Bond creating charge on immoveable property**—*Larger sum payable on contingency* The words in s. 17 of the Registration Act (VIII of 1871) present or future vested or contingent point not to the value or its a certainment but to the right or interest in the land which is to be created as a security If the charge or interest created is of a value less than R100 registration is needless NARASAYYA CHETTI *v* GURUVAPPA CHETTI I L R 1 Mad 378

19 ——— *Valuation of right title and interest created by mortgage* The value of the right title or interest created by a mortgage is estimated by the amount of the principal money thereby secured. The words or in future in s 17 of Act XX of 1866 and s 17 of Act VIII of 1871 have reference to estates in remainder or in reversion in immoveable property or to estates otherwise deferred in enjoyment and not to interest payable *in future on principal moneys lent on the security of* immoveable property NANA BIN LAKSHMAN *v* ANANT BABAJI I L R 2 Bom 353

20 ——— *Bond creating interest in land—Mode of testing value* For the purpose of registration the value of the interest created in immoveable property by a mortgage bond is that sum by the payment of which the interest could be determined TIYAGARAJA PADYACHI *v* RAMANUJAM PILLAI I L R 6 Mad. 422

21 ——— and s 49—*Mortgage* The value of the interest created by a mortgage of immoveable property is estimated for the purposes of the Registration Act of 1871, not by the amount of the principal money thereby secured but by the amount of such money and the intere t payable thereon. Consequently a bond dated the 9th August 1873 which charged certain immoveable property with the payment on the 31st May 1874 of R98 and interest thereon at the rate of one per cent per men em should have been regi tered *Darshan Singh* v *Hanwanta I L R 1 All 274* followed *Nana bin Lakshman* v *Anant Babaji I L R 2 Bom 353* differed from RAJPATI SINGH *v* RAM SUKHI KUAR I L R 2 All. 40

22 ——— *Bond hypothecating immoveable property* The registration of a

paid on the date of the last instalment without any provision that the debtor should be at liberty to anticipate the payment of any instalment is compulsory inasmuch as the lowest sum which the debtor could compel the creditor to accept is in excess of R100 The proper test for determining the value of the interest created by a mortgage for the purpose of registration is the amount of the least sum recoverable and not the consideration for the bond. Although an unregistered mortgage bond which creates an interest in land in excess of R100 is of no effect as a mort age it may be received as evid nce of the p rsonal obligation *Seshathri Ayyengar* v *Sankara Ayen 7 Mad. 296* followed KATTAMURI JAGAPPA *v* PADALU LATCHAPPA I L R 5 Mad. 119

23 ——— *Bond creating interest in immoveable property* The registration of a deed which does not necessarily create an interest in immoveable property of the valu of R100 is not compulsory *Darshan Singh* v *Hanwanta I L R 1 All 274* and *Rajpati Singh* v *Ram Sukhi Kuar I L R 2 All 40* dissented from. *Nana bin Lakshman* v *Anant Babaji I L R 2 Bom 353* and *Narasayya Chetti* v *Guruvappa Chetti I L R 1 Mad 380* approved. A bond for R99 8 0 with interest at 12 per cent per ... the date by which ... secure ... registered.

I L R 6 Mad. 214

24 ——— *Bond creating charge on immoveable property—Mortgage* A bond which charged immoveable property with the payment on a day specified therein of R99 the principal amount and R6 interest thereon should have been registered under the provisions of cl. (b) s. 17 Act VIII of 1871 DARSHAN SINGH *v* HANWANTA I L R 1 All 274

DEOJIT *v* PITAMBAR I L R 1 All 275

25 ——— *Bond hypothecating immoveable property—Amount together with interest over R100* A bond which secures by the hypothecation of immoveable property the repayment after four months from the date thereof of a loan of R96 15 0 with interest at the rate of 12 per cent per annum is an instrument requiring to be registered under s 17 of Act XX of 1866 DHURM DEO NARAIN SINGH *v* NUND LALL SINGH 6 N W 257

26 ——— *Bond under R100—Mortgage-bond—Compulsory registration—Priority—* A mortgage bond for R99 repayable in nine months and eleven days with interest at the rate of 2 per cent per mensem does no require registration but a subsequently registered mortgage bond for R195 executed will have priority over it KORBAN ALI MIRDHA *v* SHARODA PROSHAD AICH I L R 10 Calc 82

s c KORBAN ALI MIRDHA *v* PITAMBARI DASI 13 C L R 256

27 ——— *Bond—Principal and interest* A bond for the payment of R93 8 0 on demand together with interest thereon at the rate of 2 per cent. per mensem which charges immoveable property with such payment does not, though the amount due on it may in time exceed R100 purport to create an interest of the value of R100 within the meaning of the Registration Act

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

and its registration is therefore optional. KARAN SINGH *v* RAM LAL I L R 2 All 96

28 ——— and cl (h)—*Instrument creating a charge in the nature of a mortgage—Admissibility in evidence of documents compulsorily registrable but unregistered* A kararnama (agreement) dated 11th day of June 1885 was passed by *A* to *B* to the following effect As my father *S* is dead it has been arranged that I should succeed to his estate Part of this estate at Varoda consisting of a house field cattle and a cart has been given into your possession for use and enjoyment The reason thereof is that you have undertaken to pay R450 found due on an adjustment of khata from my father to *G* I am unable to pay off this debt and so you have been put into possession of this property I shall pass to you a sale deed in respect of this property and shall transfer the fields to your name from the year 1888 89 *Held* that the kararnama required registration It did not fall within the exception provided for by cl. (*h*) of s. 17 of the Registration Act (III of 1877) It was not a document which merely created a right to demand another document It created as between the parties to it a charge in the nature of a mortgage The document of itself declared a right and the mention of an intention to execute a deed of sale made no difference ...

e

BANI I L R 20 Bom. 553

29 ——— *Document compulsorily registrable—Valuation—Least sum payable—Sum repayable before expiry of stated term—Principal sum without interest* A charge on certain property to secure R50 was given by the jenmis in favour of defendant No 1 who held a kanom on the property granted three years previously containing the following terms This amount of R50 together with the customary interest thereon will be added to the kanom amount when after the expiry of the period of demise of the paramba a renewal is effected or the paramba is caused to be surrendered The jenmam right over the said paramba has been mortgaged to you for this R50 and the interest thereon. The document was not registered It was contended that the document was one compulsorily registrable under s 17 of the Registration Act 1877 inasmuch as payment under it was postponed for at least nine years (*i e* the balance of the term granted by the kanom) by the end of which period the accumulations of interest would have amounted to R54 in addition to the principal sum of R50 making R104 in all. ...

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

words by construing them to mean no more than that in the event of the amount remaining unpaid when the kanom became redeemable the R50 with interest thereon should be treated as if it were part of the kanom amount so as to entitle the ...

under s 17 of the Registration Act 1877 *Per* O FARRELL and MICHELL, *JJ*, that under cl (*b*) of s 17 of the Registration Act 1877 only the principal amount secured should be taken into consideration. KUNHI AMMA *v* AHMED HAJI I L R 23 Mad 105

30 ——— *Mortgage—Suit* ...

property as collateral security for such payment On the 15th February 1879 the obligee sued the obligor on the bond to recover R196 8 0 being the principal amount and interest from the hypothecated property *Held* by the majority of the Full Bench (STUART *C J* dissenting) that for the purpose of registration ...

Bom 553 and *Narasayya Chetti* v *Guruvappa Chetti I L R 1 Mad 378* followed *Per* PEARSON *J* OLDFIELD *J* and STRAIGHT *J* That a suit on a bond for money charged thereby on immoveable property must where the bond is not admissible in evidence because it is unregistered fail HIMMAT SINGH *v* SEWA RAM I. L. R 3 All. 157

Overruled by HABIBULLAH *v* NAKCHED RAI I L R 5 All. 447

31. ——— and s. 49—*Occupancy tenancy — Immoveable property — Mortgage — General Clauses Act (I of 1868) s 2 (5)* The obligee of a bond dated the 29th October 1869 sued to recover the amount due thereunder from the property hypothecated therein By the terms of the bond the obligor agreed to pay the sum of R75 with interest at 2 per cent. per mensem on

REGISTRATION ACT (III OF 1877) —contd

——— s 17—*contd*

the 12th May 1873 The amount thus secured exceeded R200 The property mortgaged was the tenant holding of the obligor *Held* that the interest of a tenant in his holding was right or interest to or in immoveable property that consequently such bond which affirmed as a security a *right of which the value estimated by the amount* secured exceeded R100 ought to have been registered that being unregistered it could not affect the immoveable property comprised therein or be received in evidence of any transaction affecting the same and that the suit brought on the basis of such bond for the enforcement of the lien must in the absence of the bond fail *Himmat Singh* v *Sewa Ram I L R 3 All 157* followed. NABIRA PAI v ACHAMPAT RAI

I L R 3 All 422

32 ——— *Bond charging immoveable property—Interest* The obligors of a bond for the payment of money charging land agreed to pay the principal amount R99 within six months after the execution of the bond and to pay interest every month on the principal amount at the rate of 2 per cent and that in the event of default of payment of the interest in any month whole amount mentioned in the bond should be [illegible]

[illegible] bond did not therefore need to be registered AHMED BAKHSH v GOBINDI I L R 2 All 216

33 ——— *Bond—Mortgage* The immoveable property charged by a bond payable by instalments dated the 17th December 1866 was charged for both principal and interest and the first instalment was payable within three years from the date of the bond with the accumulated interest and the amount then becoming due exceeded R100 *Held* in a suit on the bond that it was an instrument creating an interest in immoveable property of the value of R100 and upwards and under s 17 of Act XX of 1866 required registration *Rajpati Kuar* v *Ramsukhi Kuar I L R 2 All 40* followed BANNO v PIR MUHAMMAD

I L R 2 All 688

34. ——— *Mortgage of im*[illegible]

[illegible] ment of mortgage is optional or compulsory under the Registration Act 1877 The ruling of the Full Bench in *Himmat Singh* v *Sewa Ram I L R 3 All 157* overruled *Held* therefore where an instrument of mortgage by way of conditional sale dated the 2nd July 1871 secured the payment of a principal sum of R72 with interest at R2 per cent per mensum on the 12th May 1873 the whole amount thus secured exceeding R190 that the registration of such instrument was optional and not compulsory HABIBULLAH v NAKCHED PAI

I L R 5 All 447

35 ——— [illegible]

[illegible] was inoperative as being unregistered. *Held* that the mortgage was one to secure a sum under R100 and did not require registration PANCHI DASI v AHMEDULLA 12 C L R 444

KORBAN ALI MIRDHA v PITAMBARI DASI 13 C L R 258

s c KORBAN ALI MIRDHA v SHARODA PROSHAD AICH I L R 10 Calc 8[illegible]

36 ——— and s 18 A agreed by an instrument in writing called a "sattah" in consideration of a loan of R99 8 0 that B should have the right of cultivating indigo on certain land from a certain date for a certain period that if she failed to make over to him any portion of such land, or interfered with his cultivation of any portion of it she should be responsible in damages for the loss occasioned to *B* in respect of such default or interference at the rate of R40 per bigha and for the repayment of such loan that if she failed to pay *B* was at liberty to recover from her person and property and that until the conditions of the agreement were fulfilled she hypothecated her 4-anna share in mouzah B *B* sued A upon the sattah to recover R1 059 6 0 being the amount of such loan and damages by the sale of such 4-anna share such suit being founded on a breach of the agreement *Held per* STUART C J that inasmuch as the value relating to the immoveable property hypothecated in the sattah was simply R99 8 0 without any stipulation as to interest or any other payment by which the sum might be augmented the damages stipulated for depending upon a contingency which might or might not happen and respecting which nothing could be anticipated at the time of registration the instrument did not under Act VIII of 1871 s 17 require registration *Darshan Singh* v *Hanwanta I L R 1 All 274* observed on. *Per* OLDFIELD J —That the only certain sum secured by the sattah being R99 8-0 the instrument did not require registration under that Act but it could not be used to enforce a lien to any greater extent than R99 8 0 against the property in suit BASANT LALL v TAPESHRI RAI

I L R 3 All 1

37 ——— *Bond for money to be advanced* Where a bond pledges land for sums to be hereafter advanced not exceeding R100 and the sums actually advanced exceed that amount the bond becomes an instrument of which registration is necessary under s 17 Act XX of 1866 PERRIN v LEDLIE 15 W R 384

REGISTRATION ACT (III OF 1877) —*contd*

—— s 17—*contd*

38 —— *Bond by which land is pledged as collateral security* A bond for money in which land is pledged as a mere collateral security is not one of the instruments defined in cl. 2 s. 17 Act XX of 1866 the registration of which is compulsory but is one of which registration is optional. WOODOY CHAND JANA v NITYE MUNDUL 9 W R 111

39 —— *Mortgage deed—Evidence* A executed an instrument in favour of B thereby covenanting to repay B the amount of a loan together with interest and mortgaging certain immoveable property as security for repayment of the same B sued A for the debt *Held* that the instrument did not directly create declare transfer or extinguish any right or title in immoveable property the land was mentioned as a collateral security and therefore the instrument was not inadmissible in evidence under s 13 of Act XVI of 1864 GOPAL PRASAD v NANDARANI

1 B L R A C 92 10 W R 252

40 —— Deposit of title deeds—*Memorandum of deposit on promissory note—Admissibility in evidence* The defendant deposited certain title deeds with the plaintiff as security for the repayment of R1 200 lent him by the plaintiff at the time when the deposit was made On the evening of the same day the defendant by way of further security gave to the plaintiff a promissory note for the amount of the loan and endorsed thereon the following memorandum

For the repayment of the loan of R1 200 and the interest due thereon of the within note of hand I hereby deposit with the plaintiff as a collateral security by way of equitable mortgage title deeds of my property etc *Held* that the memorandum did not require registration KEDARNATH DUTT v SHAMLOLL KHETTRY

11 B L R 405 20 W R 150

41 —— Document giving future

title *Held* that the agreement did not require registration SREEGOPAL MULLICK v RAM CHURN NUSKUR. I L R 8 Calc 856 12 C L R 152

42 —— Instrument intending to create charge on immoveable property Where the parties had agreed upon a sale of certain property and the terms were settled but the seller took an advance of R100 the instrument which

REGISTRATION ACT (III OF 1877 —*contd*

—— s 17—*contd*

Act VIII of 1871 s 17 JOY RAM GOSAIN BUTTACHARJEE v KALEE NARAIN ROY 20 W R 291

43 —— *Deed covenanting to pay sum for immoveable property—Admissibility in evidence* A deed by which a defendant covenanted to pay monthly a certain sum for the use and hire of a steam engine boiler and machinery sheds and a bungalow is one relating to immoveable property and therefore not admissible in evidence without registration WINTERSCALE v GOPAL CHANDRA SEAL 3 B L R O C 90

44 —— *Agreement as to land—Suit for specific performance* The plaintiff lent defendant R20 000 and received a document in the following terms On demand we promise to pay S V Mutu Ramen Chetty and C T A China Chetty the sum of rupees twenty thousand value received Memo — For the above promissory note the grant of the dockyard and offices to be deposited in three days and a proper agreement drawn out The time of credit to be one year or eighteen months the interest at R1 10 per cent per mensem In a suit to compel specific performance and for damages for breach of the agreement contained in the above memo —*Held* that the document did not contain an agreement creating an interest in land and registration was not therefore necessary to render it receivable in evidence under the Registration Act of 1866 CURRIE v MUTU RAMAN CHETTY

3 B L R A C 126 11 W R 520

45 —— Document concerning right of use of growing trees A document creating and transferring a right of use of growing

46 —— and s 49—Hypothecation of crops— *Moveable property —Act I of 1868 s 2(6)—Transfer of Property Act (IV of 1882) s 54* *Held* that an assignment by endorsement of a registered bond hypothecating certain crops was a transaction relating to moveable property and registration of such endorsement was not required by s 17 of the Registration Act (III of 1877) or s 54 of the Transfer of Property Act (IV of 1882) KALKA PRASAD v CHANDAN SINGH

I L R 10 All 20

47 —— Assignment of decree obtained by mortgagee Where a mortgagee obtained a decree against his mortgagors for the payment of the mortgage money and in default for the sale of the mortgaged property and his heir afterwards executed an assignment of the decree for valuable consideration to the plaintiff who proceeded to execute the decree by sale of the mortgaged property —*Held* that the assignment was a document of which the registration was

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd.*

compulsory GOPAL NARAIN *v* TRIMBAK SADASHIV I L R 1 Bom 267

48 ——— **Assignment of mortgage** —*Extrinsic evidence—Evidence Act (I of 1872) s 91—Title to sue—Amendment of plaint* An equitable mortgage by deposit of title deeds was created on 15th August 1862 In March 1873 the mortgagee *P D* executed an assignment of all his property and of all debts due to him and all the securities therefor to the plaintiff The assignment also contained a power of attorney from the mortgagee to the plaintiff in the name of the said *P D* his executors etc but for the sole use and benefit of the said *A D* (the plaintiff) to ask demand sue for recover and receive of and from all and every the person or persons liable in that behalf all and every (*inter alia*) the sum and sums of money and debts hereby assigned or intended so to be or any of them or any part of them to hold the same unto and to the use and behoof of the said *A D* his executors etc Some days after the execution of the assignment the title deeds which had been deposited in 1862 with the mortgagee were handed to the plaintiff in accordance [illegible]

held that as an assignment the deed required registration and that not being registered it could not be received in evidence that under s 91 of the Evidence Act (I of 1872) no evidence other than that contained in the document itself could be given to prove the fact of the assignment and that therefore the plaintiff had failed to show a title to sue as assignee of the equitable mortgage The Court however permitted an amendment of the plaint by which the plaintiff was described as suing in his own name and as the constituted attorney of *P D* and then allowed the deed of assignment to be put in as evidence of the power thereby conferred on the plaintiff to sue for and re [illegible]

tain the suit for *P D* inasmuch as it purported to enable the plaintiff to recover the debts mentioned in the deed on his own account only and not on account of *P D* and on the other hand if the suit were regarded as that of the plaintiff the Court by treating the power in the deed as enabling him to recover on his own account virtually gave to [illegible]

of opinion that there had not been any deliberate intention on the part of the parties to the deed to evade the law of registration granted the plaintiff

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

[illegible]

v ADARJI DADABHAI I L R 3 Bom [illegible]

49 ——— **Deed of assignment showing payment of rent as interest**—*Admissibility of deed in evidence—Limitation Act (X[illegible] of 18[illegible]) s 20—Payment of interest as such—Mortgage—Payment of rents to mortgagee in lieu of inter[est on] debt* By a bond dated the 1[illegible]th July 18[illegible] *A* assigned to *B* the vahivat of assessment of certain lands belonging to him as security for a loan of R10 000 The bond provided that *B* should receive [illegible]

the Registration Act [illegible] gage and in either case the bond could not be admitted in evidence as it was not registered. [illegible] terms of the bond [illegible] assessment [illegible] This would [illegible] of the bond be to admit indirectly [illegible] bond, there was no [illegible] evidence Apart from the bond, there was no [illegible] paid in [illegible]

defendants and the claim was [illegible] VENKAJI BABAJI NAIK *v* SHIDRAMAPA BALAPA DESAI I L R 19 Bom 663

50 ——— **Deed of assignment of a decree**—*Admissibility in evidence—Registration Act s 49* S 17 (*b*) of the Registration Act (III of 1877) does not apply to a kobala or deed of assignment of a decree and an unregistered kobala of a decree dealing with immoveable property of more than R100 in value is not inadmissible in evidence under s 49 of that Act *Gopal Narain v Trimbak Sadasiv I L R 1 Bom 267* dissented from *Jiwan Ali Beg v Basa Mal I L R 9 All 108* referred to GHOUS MAHOMED *v* KHAWAS ALI KHAN I L R 23 Calc 450

51 ——— **Assignment of a right to recover assessment** *A* passed to *B* a document by which he assigned his inam rights over certain lands held by mirasi tenants including the right to

REGISTRATION ACT (III OF 1877) —*contd.*

——— s 17—*contd*

recover the assessment fixed on them at R40 a year and also the right of succession to the full ownership of the lands should the mirasi tenure on which they were held come to an end *Held* that the document purported to assign a right title and interest in immoveable property of the value of more than R100 and as such required registration under cl (*b*) of s 17 of the Registration Act ANANDRAO *v* JOTI I L R 24 Bom 615

52. ——— Deed of compromise *P S P* a Hindu died in 1811 leaving a will by which he gave his property to his four sons subject to certain charges and among other things directed that the profits of a portion of it should be dedicated to a certain idol After his death his sons partitioned the property In 1857 *B* one of the sons brought a suit in the

this decree a conveyance was settled by the Master but it was never executed the parties having come to an agreement to compromise and executed a deed to that effect on 15th March 1866 The deed recited that the parties now agreed to compromise

settlement of the dedicated portion when for more

party or parties who should for the time being be entitled to the turn of worship and that a house of worship should be built for the idol on the land mentioned in the schedule provision was also made for the forfeiture of interest of any party who should renounce the Hindu religion and it was declared that a certain portion was not to be considered divided as theretofore but that it belonged to the plaintiff and was not liable to be sold *Held* (reversing the decision of MARKBY J) that the document was one which required registration under s 13 of Act XVI of 1864 RAJKUMAR ROY *v* KALIKRISHNA ROY 7 B L R 197

53 ——— *Deed of compromise* It was *held* not necessary that a deed of compromise should be registered in order to make it admissible in evidence GUPTA NARAIN DAS *v* BIJOYA SOONDARI DEBYA 2 C W N 663

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

See PRANAL ANNI *v* LAKSHMI ANNI I L R 22 Mad 508
3 C W N 485
L R 26 I A 101

54 ——— Covenant for title running with the land A covenant for title running with the land would seem to be in itself a transaction affecting the land and the instrument containing it if coming within cls (*a*) to (*d*) of

55 ——— Contract of mortgage—*Letter stating terms of equitable mortgage effect of—Equitable mortgagee his proper remedy* *A* and *B* executed a joint and several promissory note in favour of the plaintiff On the same day *A* deposited with the plaintiff the title deeds of his property as collateral security and received conjointly with *B* a part of the consideration money for the promissory note Shortly afterwards *A* addressed a letter to the plaintiff to this effect As collateral security for the due payment of R2 000 secured by a promissory note of even date I herewith hand you the title deeds of my property money borrowed and received in pledge of house and obtained the balance In a suit on the basis of the documents for foreclosure or for sale of the property or in the alternative for a conveyance of the legal estate —*Held* that the letter itself was not a contract of mortgage and was without registration admissible in evidence of the equitable mortgage which had been completed upon deposit of the title deeds *Held* also that the fact of the existence of the letter would not prevent the plaintiff from giving any other evidence in proof of his claim *Kedar Nath Dutt* v *Sham Lall Khettry 11 B L R 405* followed OO NOUNG *v* MOUNG HTOON OO I L R 13 Calc 322

56 ——— Endorsement on deed of sale of immoveable property *D* sold a house to *P* and executed a deed of conveyance which was duly registered *P* did not pay the purchase money and therefore did not get possession Shortly after the conveyance had been registered *P* returned it to *D* with an endorsement thereon to the effect that it was returned because *P* was unable to pay the purchase money The right title and interest in the house were subsequently attached and sold under a decree obtained against him by the plaintiff The plaintiff became the purchaser *Held* in a suit by him against *D* for possession that the endorsement on the conveyance not having been registered could not affect the property UMED MAL MOTIRAM *v* DAVU BIN DHONDIBA I L R 2 Bom. 547

57 ——— Sanad—*Endorsement on a sanad returning the sanad to the grantor—Evidence—Admissibility* The plaintiff sought to attach a certain *hak* as belonging to his judgment-debtor *K*

REGISTRATION ACT (III OF 1877) —*contd*

———— s 17—*contd*

the evidence of *K's* brother This evidence was rejected by

dorsement

grant, was

ment did nc

rescind the grant to *K* nor constitute a re grant to the defendant It was simply an endorsement returning the sanad to the defendant and therefore passed no interest in any property HERAMBDEV DHARNIDHARDEV *v* KASHINATH BHASKAR.

I L R 14 Bom 472

58 ———— Letter depositing title deeds—*Admissibility in evidence of unregistered document* The defendant deposited certain title deeds with the plaintiff as security for money due on a bond executed by the defendant in favour of the plaintiff The deeds were sent with the following letter from the defendant to the plaintiff's attorney I have the pleasure of handing to you the title deeds of a house 56 Lower Circular Road as a collateral security for R20 000 which falls due this day Please accept them from my manager In a suit for an account of what was due to the plaintiff on the security of the deed —*Held* that the letter needed registration as being a document which created an interest in land and therefore being unregistered was inadmissible in evidence DWARKANATH MITTER *v* SARAT KUMARI DASI

7 B L R. 55

59 ———— Letter containing contract—*Acknowledgment of receipt of consideration—Evidence Act s 91—Oral evidence Admissibility of— Instruments* An advertisement appeared in the *Bombay Gazette* newspaper of the 9th March 1874 advertising for sale certain moveable and immoveable property situate in the village of Angur near Junnar in the district of Poona On reading that advertisement plaintiff entered into negotiation with the solicitors of the widow and administratrix of the owner of the said property for the purchase of a certain portion of it On the 26th May 1874 the plaintiff wrote a letter to the solicitors offering to purchase the said property for R14 000 on certain conditions and proposing to pay a deposit of R1 000 as earnest money if the

with the solicitors on the same day and obtained from them a receipt bearing a one anna receipt

REGISTRATION ACT (III OF 1877) —*contd*

———— s 17—*contd*

stamp The receipt mentioned the money as being in part payment of the sum of R14 000 the amount for which the plaintiff had agreed to purchase the property Instead of completing the contract of

against the widow and the other purchasers to set aside the subsequent sale of the property and to compel the widow to execute a conveyance thereof to the plaintiff the following documents were produced and tendered in evidence the advertisement of the 9th March the plaintiff's letter of the 26th May (exhibit No 3) the solicitors reply (exhibit No 4) and their receipt of the th May 1874 (exhibit No 5) and it was contended that three of the four documents—exhibits Nos 3 4 and 5—required registration under the Registration Act (VIII of 1871) s 17 *Held* that the plaintiff's letter (exhibit 3) offering to purchase the property in question and the letter of acceptance

or equitable in the property

Quære Whether the letters between the parties (exhibits Nos 3 and 4) even if they did constitute a complete contract for sale unincumbered by the necessity for the payment of the deposit by way of earnest could be regarded as instruments within the meaning of s 17 of the Registration Act (VIII of 1871) WAMAN RAMCHANDRA *v* DHONDIBA KRISHNAJI

I L R 4 Bom. 126

60 ———— and s 49—*Letters of one partner to another transferring to the latter the share of the former in the assets of the firm including the mortgages but not mentioning them—Necessity of registering such letters—The words document and instrument in the Registration Act* By two mortgage bonds dated respectively September 1870 certain

divided the assets of the firm Subsequently *S* died and fell to the share of *S* the plaintiff his son inherited his property and took possession of the mortgaged lands These lands were afterwards attached in execution of a money decree against one of the mortgagors (defendant 1). The plaintiff objected to the attachment, but his objection was disallowed and the property was

REGISTRATION ACT (III OF 1877)
—*contd*

——— s 17—*contd*

sold in execution and purchased by defendants 2 and 3 The plaintiff then filed this suit to establish his rights under the two mortgage bonds The defendants contended that the plaintiff had no interest in the mortgages and was not entitled to sue The plaintiff relied (*inter alia*) in support of his title upon the letters (A B and C) whereby *G* had transferred his share in the assets of the firm to his (the plaintiff s) father *S* These letters were objected to as inadmissible in evidence not having been registered *Held* that independently of the letters there was evidence to show that the plaintiff s father *S* was a partner in the firm and that as such partner the mortgages in question fell to his share at the final division of assets The position of *S* as a partner being once established his right to the property followed by operation of law and no other proof of title was required *Per* JARDINE *J* — To lay down that the three letters in question which deal generally with the assets moveable and immoveable without specifying any particular mortgage or other interest in real property require registration would I incline to think in the present state of the authorities go too far It may be argued that such letters are not instruments of gift of immoveable property but rather disposals of a share in a partnership of which the business is money lending and the mortgage securities merely incidental thereto *Per* TELANG *J* — Although a partner's share does not include any specific part of [illegible]

[illegible]

property and therefore every instrument operating to create or transfer a right to such share requires to be registered under the Registration Act (III of 1877) It is true that the authorities referred to apply in terms only to immoveable property owned by a partnership But I am on the whole disposed to hold that the principle of those authorities applies to cases where immoveable property is held by a firm not in full proprietorship but only by right of mortgage Upon the whole I should if necessary have been disposed to hold that the letters [illegible]

Per TELANG *J* —A perusal of various sections of the Registration Act seems to show that the *Legislature has used the words* document and instrument interchangeably JOHARMAL *v* TEJRAM JAGRUP I L R 17 Bom 235

61 ——— Deed of partition S 17 of Act XX of 1866 extended to a deed of partition and this was not prevented by such an instrument being enumerated in s 18 amongst those which were optionally registrable SHANKAR RAM CHANDRA *v* VISHNU ANANT I L R 1 Bom 67

62. ——— *Deed of division of immoveable property* The registration of a deed of division of immoveable property of the value of more than R100 executed by members of an undivided Hindu family was optional under cl 9 s 17 of Act XX of 1866 and a suit will not lie to compel registration ANONYMOUS 6 Mad Ap 9

63 ——— *Deed of partition.* A deed of partition need not be registered NEMROY *v* LALMUN ROY 25 W R. 376

Instruments of partition made by revenue officers require registration under s 17 cl (*b*) of the Registration Act of 1877

64 ——— and cl. (c) and s 49—*Unregistered document—Document to contradict witness—Meaning of word declare in s 17 of Act III of 1877—Acknowledgment necessary for registration of* *S* and *R* sued their brothers *M* and *V* in 1880 for partition of the family property The defendants pleaded that the property had been partitioned in 1870 and that the various members of the family had been ever since in possession and enjoyment of their respective shares At the hearing a document was produced by the defendant *M* dated the 13th January 1877 which was proved to have been signed by his three brothers *S* *R* and *V* on the occasion of *M* s effecting a mortgage of part of the property This document contained the following words Our eldest brother *M* has built houses and is building new houses on property appertaining to his share To the same we three persons and our heirs and representatives have no interest of any kind whatever If we or they should prefer any claim then the same is to be null This release paper we have duly passed in writing jointly and severally and in sound mind This document had not been registered and was therefore inadmissible as evidence of the alleged partition In cross examination of the plaintiff *R* he was interrogated as to the circumstances under which the mortgage was made by *M* on the 13th January 1877 He said I was present when the mortgage was made but I was ill in bed This was on the 13th January 1877 I did not say on that day that I had no claim to the property He was then shown the above document and admitted his signature The document was then tendered in evidence not as a release but to contradict the witness *Held* that the document was admissible for that purpose as [illegible] ed a right [illegible] nded by [illegible] It was [illegible] ime past been a partition between the brothers who signed it and the defendant *M* but it was not itself the instrument of partition That an acknowledgment of a partition is distinct from the instrument of partition is to be gathered from cl (*c*) of s. 17 of the Registration Act (III of 1877) Had the terms of cl (*b*) of that section been satisfied by a mere acknowledgment cl (*c*) would have been superfluous. Its operation is to require an acknowledgment in

REGISTRATION ACT (III OF 1877) —*contd*

———— s 17—*contd*

the form of a receipt to be registered but not an [illegible]

create assign etc used in the same section vi as implying a definite change of legal relation to the property by an expression of will embodied in the document referred to It implies a declaration of will not a mere statement of a fact and thus a deed of partition which causes a change of legal relation to the property divided amongst all the parties to it is a declaration in the intended sense but a letter containing an admission direct or inferential that a partition once took place does not declare a right within the meaning of the section It is not the expression or declaration of will by which the right is constituted *Quære* Whether if the above document were itself a release operating or intended to operate as a declared volition constituting or severing ownership it could be received even for the purpose of contradicting a witness who had denied that he had previously made a statement inconsistent with his evidence SAKHARAM KRISHNAJI *v* MADAN KRISHNAJI I L R 5 Bom 232

65 ———— **Release from mortgage**—In June 1875 *L* executed a bond in favour of *S* in which he mortgaged amongst other property a village called Chand Khera as security for the payment of certain moneys He subsequently sold such village to *A* concealing the fact that it had been mortgaged to *S* On this fact coming to the knowledge of *A* he threatened *L* with a criminal prosecution whereupon *L* proposed to *S* in writing that the security of a share in a village called Kelsa which he alleged was his property should be substituted for the security of Chand Khera *S* accepted this proposal by a letter in which he referred to *L's* proposal in terms It subsequently appeared that the share in Kelsa did not belong to *L* but to another person *S* having sued upon his bond claiming to enforce thereunder a lien upon Chand Khera *A* set up as a defence to the suit that *S* had agreed to substitute Kelsa for Chand Khera in the bond producing *S's* letter as evidence of the agreement *Held* that such letter operated as a release and should therefore have been stamped and registered SAFDAR ALI KHAN *v* LUCHMAN DASS I L R 2 All 554

66 ———— *Release from mortgage—Agreement for fresh consideration between mortgagee and third person for release of property from mortgage—Release not required to be in writing and registered* The mortgagee of immoveable property under a hypothecation bond entered into an agreement with one who was not a party to his mortgage to release part of the property from liability under his mortgage This agreement was not in writing and registered. The mortgagee subsequently ought to enforce the hypothecation against the whole of the mortgaged property *Held*

REGISTRATION ACT (III OF 1877) —*contd*

———— s 17—*contd*

that the agreement being a new contract for a fresh consideration between persons who were not parties to the mortgage was not as between the parties to the mortgage a release which the law required to be in writing and registered GURDIAL MAL *v* JAUHRI MAL I. L. R. 7 All. 870

67 ———— **Widow's right to maintenance release of**—*Release affecting property* A widow's right to maintenance constitutes no interest vested or contingent in the immoveable property of an undivided Hindu family within the meaning of the Registration Act XX of 1866 and a release thereof did not require to be registered under cl 2 s 17 of that Act *Semble* Under *Act XX of 1866 s 17 cls 2 and 3* releases affecting immoveable property above R100 in value had to *be registered and the releases mentioned in cl 7 of s 18 are releases relating to* moveables The ruling in *Anonymous Case 6 Mad Ap 9* dissented from KALPAGATHACHI *v* GANAPATHI PILLAI I L R 3 Mad. 184

68 ———— **Deed of release by adopted son**—*Document registered under the Dekkan Agriculturists Relief Act (XVII of 1879) ss 56 and 60* The plaintiff was adopted in 1881 by *K* the widow of one *G* In June 1885 he executed a document which recited that he and *K* had not been on amicable terms and that his adoption had consequently been cancelled and that she had adopted another son (defendant No 1) to whom she had given all rights of heirship and declared that in consideration of R200 paid by *K* he delivered back to her the right which he had obtained by virtue of his adoption and heirship This document was not registered under the General Registration Act (III of 1877) but was registered under s 56 of the Dekkan Agriculturists Relief Act (XVII of 1879) which section applied to the district in which the transaction took place *K* died in October 1885 and the plaintiff brought this suit as adopted son to recover the property of *G* The first defendant who had been adopted by *K* subsequently to the plaintiff's adoption contended that he had been validly adopted and that he was entitled to the property He relied (inter alia) upon the release executed by plaintiff in June 1885 It was contended that the release in question was not admissible in evidence no having been registered under the General Registration Act (III of 1877) *Held* that the document was admissible It was a conveyance within s 56 of the Dekkan Agriculturists Relief Act (XVII of 1879) and the law in force as to its registration was contained in ss 56 and 60 of that Act MANIKOR GANU *v* BAVAJI SIDU I. L. R. 10 Bom. 339

69 ———— **and s 49—Deed of conditional sale**—*Admissibility of evidence.* A deed of bye bil wafa or conditional sale is a deed which under s 17 of Act XX of 1866 requires registration before it can become admissible as evidence But so far as it is a covenant or agreement for

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

the repayment of the money lent on a particular day it is not an instrument requiring registration and therefore for such purpose notwithstanding s 4[?] it is admissible in evidence NILMADHUB SING DAS v FATTEH CHAND SHAHA

3 B L R A C 310 12 W R 222

70 —— Shebaitnamah—A *shebait namah* which conveyed no right or interest but merely declared that a particular portion of the thakoor s income should be expended through the instrumentality of the *shebait* in the worship of the thakoor was not a deed registered under Act XVI of 1864 GIREEDHUR DASS v NITTO GOPAL DASS

19 W R 291

71 ——— Sulehnamah—*Agreement creating a charge on immoveable property—Suit for money charged on immoveable property* Certain immoveable property having been attached in the execution of a decree held by S B and L objected to the attachment An arrangement was subsequently effected between the objectors and the parties to the decree which resulted in all parties jointly filing a sulehnamah in Court in which B and L who had purchased the rights of the judgment-debtor in the attached property agreed to pay the amount of the decree which exceeded one hundred rupees within one year and hypothe[illegible]

[illegible]

required to be registered and not being registered the suit thereon was not maintainable Cases decided by the High Court in which the sulehnamah having been relied on not as containing the hypothecation itself but as evidence only of a separate parol agreement or in which a decree having been made in accordance with the terms of the document was held not to require registration remarked upon and distinguished by SPANKIE J SURJU PRASHAD v BHAWNI SAHAI

I L R 2 All 481

72 ——— Deed of surrender— *Acknowledgments* An *istifanamah* or deed of surrender surrendering pledged property of which the party executing it was in possession on receiving back the amount of a bond-debt comes under cls 2 and 3 s 17 of Act XX of 1866 and must be registered to be admissible in evidence Acknowledgments in cl 7 of s 18 refer to transactions of quite a different description. BHYRUB CHUNDER DASS v KALEECHUNDER CHUCKERBUTTY

16 W R 56

73 ——— Surrender of interest by tenant to landlord—*Act XVI of 1864 ss 13 14* A document which was substantially a surrender by a tenant of his interest in land to his landlord and as such was exempted from stamp duty by Act X of 1862 under the general exemption clause did not require registration under Act XVI

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

of 1864 ss 13 and 14 JADAV PUGHNATH v RATJI HIMMAT

9 Bom 246

74. ——— Deed of relinquishment by tenant to landholder in consideration of waiver of right to arrears of rent An instrument by which a tenant in a zamindari in consideration of the zamindar waiving his right to arrears of rent accrued due relinquishes the land to him is not admissible in evidence unless it is registered in accordance with law although it may have been drawn up and delivered to the servants of the zamindar before he had signified his consent to waive his right to the arrears PANGAYYA APPA RAU v KAMESWARA RAU

I L R 20 Mad 367

75 ——— cl. (c)—Acknowledgment of consideration money—*Document acknowledging receipt of consideration money for conveyance* A document which acknowledges the receipt of consideration money for the conveyance of immoveable property cannot be received as evidence unless it is registered SREENATH CHURN SOOR v NILKANTO DEY

22 W R 309

76 ——— *Acknowledgment of receipt of consideration* J T passed a writing to V under date 28th April 1874 stipulating that the deed of sale of J T's bungalow to V for R4 300 which was to have been made that day owing to certain circumstances therein mentioned should be made and delivered by J T to V twenty days thereafter The writing further acknowledged the receipt by J T from V of R100 as earnest money for the purchase of the bungalow and concluded with certain penalties in the event of a default by either party In a suit in the nature of a suit for specific performance brought by V to compel J T to execute the deed of sale to V and to register the same as promised in the writing of 28th April 1874 —*Held* that the writing required registration under Act VIII of 1871 s 17 cls 2 and 3 as it distinctly acknowledged the receipt of R100 as part of the [illegible]

[illegible]

Balkrishna 7 Bom O C 6 and *Kedarnath Dutt v Shamlal Khettry 11 B L R 405* distinguished VALAJI ISAJI v THOMAS

I L R 1 Bom 190

77 ——— *Receipt for earnest money—Consideration* Where the plaintiff proposed to purchase property moveable and immoveable for R14 000 and to pay a sum of R1 000 as earnest money and his offer was accepted and the earnest money deposited a receipt was given for it stamped with a one anna receipt stamp The receipt mentioned the money as being in part payment of the sum of R14 000 the amount for which

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

the plaintiff had agreed to purchase the property Instead of completing the contract of sale with the plaintiff and putting him in possession the defendant sold it to other persons In a suit to set aside the sale to them and to compel the defendant to execute a conveyance to the plaintiff —*Held* that the receipt for R1 000 earnest money (exhibit No 5) fell with in cl (*3*) of s 17 of the Pegistration Act (VIII of 1871) as being an acknowledgment of the receipt or payment of consideration on account of the creation of a right title or interest in immoveable property of the value of upwards of R100 and was therefore inadmissible in evidence not having been registered but that under s 91 of the Evidence Act (I of 1872) oral evidence was admissible to prove the payment notwithstanding the existence of the written receipt The third clause of s 17 of the Pegistration Act (VIII of 1871) includes within its scope a payment of a part of the consideration as well as a payment of the whole of it WAMAN RAM CHANDPA v DHANDIKA KRISHNAJI

I L R 4 Bom 126

78 ——— and s 20—Declaration of title—*Receipt* The defendant passed to the plaintiff a document worded in substance as follows Your fields are entered in my name Ever since they came into your possession I have received from you the assessment due upon them I have now no claim upon you for any balance of assessment I will cause the aforesaid two fields to be entered in your name Nothing remains due by or to either of us in respect of the produce of these fields The document was stamped as a receipt with a stamp of one anna *Held* that for the purpose of establishing satisfaction of all claims which the plaintiff and the defendant had upon one another the document was admissible in evidence but that if used as evidence of title it came within the provisions of s. 17 of the [illegible]

[illegible] I L R 4 Bom [illegible]

79 ——— Receipt by mortgagee—*Release of claim secured by mortgage* *Held* that a document called a receipt but intended to be used to prove the release of a claim secured by mortgage required registration under s 49 of Act VIII of 1871 inasmuch as it affected immoveable property BASAWA v KALKAPA I L R 2 Bom 489

Contra GUGUNFUR ALI v MAHOMED YASEEN 20 W R 334

80 ——— *Receipt by mortgagee—Admissibility of evidence* The defendant tendered in evidence a receipt for R250 to show that the interest of his co mortgagee (the plaintiff) in the mortgage had been extinguished The receipt was objected to on the ground that it had not been registered *Held* that the receipt being tendered to show that the interest of the plaintiff in the mortgage had been extinguished required registration and was inadmissible without registration *Shidlingapa* v *Chenbasapa* *I L R 4 Bom* 235 distinguished RAMAPA v UMANNA

I L R 7 Bom 123

81 ——— *Document acknowledging receipt of consideration—Parol evidence* In a suit for possession where plaintiff s case was that a kut mirash (usufructuary mortgage-deed) had been granted to defendant who had promised upon repayment of the money consideration to surrender the pottah and give back the land, and where plaintiff produced a receipt in proof that such repayment had been effected —*Held* that the receipt being an instrument acknowledging receipt of the consideration on account of extinction of interest in land came within the terms of Act VIII of 1871 s 17 cl. 3 and was not admissible as evidence without registration. But oral evidence was receivable in proof of the receipt of the money SOORJO COOMAR BHUTTACHARJEE v BHOWANI CHUNDER ROY 24 W R 3[illegible]

82 ——— *Memorandum—Receipt—Extinction of mortgagee s lien Evidence of* A document purporting to have been passed by a mortgagee to his mortgagor and reciting the demand of the former for repayment of his mortgage money before the due date of the mortgage and the compliance with that demand by the latter by means of a fresh loan upon a second mortgage of the same property and reciting also the fact of the delivery of possession of the property by the original to the second mortgagee and purporting in conclusion to contain a declaration by the original mortgagee that nothing remained due to him in respect of his mortgage is a document which under cls. 2 and 3 of 17 of Act XX of 1866 as well as under cls 2 and 3 of s 17 of Act VIII of 1871 requires registration, and if unregistered is, by [illegible] inadmissible as evidence [illegible]

documentary or [illegible] I L R [illegible]

v VYANKAJI GOVIND

83 ——— *Receipt for sums paid on bond hypothecating immoveable property* A receipt for sums paid in part liquidation of a bond hypothecating immoveable property must be registered under the provisions of s. 17 of Act VIII of 1871 to render it admissible as evidence under s 49 of the said Act. DALIP SINGH v DURGA PRASAD I L R 1 All 443

84. ——— *Receipt for money paid under an hypothecation bond.* A receipt acknowledging as a fact part payment of a sum due under an hypothecation bond does not require registration under s. 17 cl (*c*) of the Pegistration Act unless the fact is referred to as a consideration for a contractual engagement whereby the interest created by the prior registered instrument is limited or extinguished. A mere receipt does not acknow

REGISTRATION ACT (III OF 1877)
—*contd*

———— s 17—*contd*

ledge the receipt or payment of a consideration *Dalip Singh* v *Durga Prasad I L R 1 All 44* dissented from *Venkatarama Naik* v *Chinnathambi I L R 1 Mad 1* approved VENKAYYAR v VENKATA SUBBAYYAR I L R 3 Mad 53

85 ———— and cl (b)—*Receipt by mortgagee* Receipts passed by a mortgagee for sums paid on account of the mortgage debt and exceeding R100 each are not inadmissible in evidence for want of registration under Act III of 18[illegible] s. 17 The technical term consideration implies that the person to whom the money is paid himself limits or extinguishes his interest in the land in consideration of such payment Such limitation or extinction (if there can be said to be any) as results from the payment on account of the mortgage debt is the legal consequence of such payment and not the act of the mortgagee The payment reduces the sum due at the time on the mortgage and thus modifies the account between the mortgagor and mortgagee But it does not operate to limit or confine within narrower limits the right or interest of the mortgagee in the land which is simply to have the payment of the principal and interest secured on the mortgaged premises by some one or other of the remedies available for that purpose Money paid on account of a mortgage-debt is not the consideration for the limitation or extinction of so much of the interest in the land created by the mortgage and a receipt for such a payment need not therefore be registered under s 17 cl (*b*) of the Registration Act III of 18[illegible]7 *Dalip Singh* v *Durga Prasad I L R 1 All 44* dissented from SHIDLINGAPA v CHENBASAPA I L R 4 Bom 235

86 ———— *Receipts given by mortgagee for payments on account of the mortgage debt* Unregistered receipts given by a mortgagee to a mortgagor for sums paid on account of

[illegible]

Bom [illegible] followed ANNAPA v GANPATHI I L R 5 Bom 181

87 ———— *receipt for payment of mortgage money* The payment of money by a mortgagor to a mortgagee in satisfaction of the mortgage-debt is a payment of consideration on account of the extinction of the mortgagee's right within the meaning of cl (c) s 17 of Act VIII 1871 (Registration Act) A receipt for such payment is therefore a document of which the registration is compulsory and which if unregistered is inadmissible in evidence under s 49 *Dalip Singh* v *Durga Prasad I L R 4 All 412* *Basava* v *Kalkapa I L R 2 Bom 489* *Mahadaji* v *Vyankaji Govind I L R 1 Bom 197* and *Ramaya* v *Umanna I L R 7 Bom 1*[illegible]*3* followed *Shidlingapa* v *Chenbasapa I L R 4 Bom 235* dissented from *Mattongeny Dassee* v *Ramnarain*

Shaikhan I L R 4 Calc 83 referred to IMDAD HUSAIN v TASADDUK HUSAIN I L R 6 All 335

88 ———— *Receipt by mortgagee* [illegible]

[illegible] bond provided that the mortgagee was to enjoy the rents and profits in lieu of interest on R4[illegible] and that the remaining R[illegible]00 were to carry interest at [illegible] per cent per annum In 1880 a recei[illegible]

gago[illegible]

due[illegible]

paid on the day of the receipt that a further sum of R100 was to be paid in a month and a half and that the rents and profits of the property were in future to be taken for the interest on the balance of R[illegible] only In 1896 the mortgagor sued for redemption and relied on the receipt in support of his case *Held* that the receipt did not require registration It purported to be a mere settlement of accounts and was not intended to modify or supersede the original mortgago contract Cl 4 s [illegible] of the Evidence Act (I of 1872) had therefore no application to the case LAKSHMAN v DAMODAR I L R 24 Bom 609

89 ———— and s 49—*Mortgage bond—Indorsement of part payment—Receipt* The strict construction should be placed on the prohibitory and penal sections of the Registration Act which impose serious disqualifications for non observance of registration An instrument to come within s 17 (*b*) of the Registration Act (III of 1877) must in itself purport or operate to create declare assign limit or extinguish some right title or interest of the value of R100 or upwards in immoveable property To come within s 17 (*c*) it must be on the face of it an acknowledgment of the receipt of payment of some consideration on account of the creation declaration assignment limitation or extinguishment of such a right title or interest In a suit by a mortgagee for the sale of immoveable property mortgaged in certain simple mortgage bonds for amounts severally exceeding R100 the defendant pleaded that he had made certain payments in respect of the bonds and in support of his plea relied on indorsements of payment upon them one of which was as follows

Paid on the 21st December R300 The other indorsements were in similar terms *Held* by the Full Bench (STRAIGHT J doubting) that the indorsements even if assumed to be receipts did not fall within s 17 (*b*) of the Registration Act inasmuch as a receipt unless so framed and worded as to purport expressly to limit or extinguish an interest in immoveable property (which the indorsements did not) could not come within the section and what ordinarily operated to limit or extinguish a mortgagee's interest in the mortgaged property was not the paper receipt but the actual part payment of the mortgage debt *Held* also

REGISTRATION ACT (III OF 1877) —contd

——— s 17—*contd*

that the indorsements did not fall within s 17 (c) of the Act ina much as taken by themselves they were merely memoranda made by the mortgagee and could not be treated as acknowledgments nor even if assumed to be such did they show upon their face that they were acknowledgment of the receipt or payment of any consideration for the limitation or extinguishment of any interest of the mortgagee in the mortgaged property *Held* therefore that the indor ements did not require to be registered in order to make them admissible in evidence of the payments to which they related *Mahadaji v Vyankaji Govind I L R 1 Bom 19 Ba aua v Kalkapa I L R 2 Bom 489 Faki v Khotu I L R 4 Bom 590 Waman Ram Chandra v Dhondiba Kisnaji I L R 4 Bom 126 Futteh Chand Pahoo v Leelumber Singh Doss 14 Moo I A 1 9* and *Imdad Husain v Tasaddak Husain I L R 6 All 335* distinguished *Dalip Singh v Durga Prasad I L R 1 All 442* referred to JIWAN ALI BEG v BASA MAL

I L R 9 All 108

90 ——— **Agreement to renew kanom**—*Agreement to renew a kanom and to credit as renewal fees a sum of money then due by plaintiff to defendant—Portion of agreement severable from rest—Admissibility in evidence of portion though unregistered* A written agreement to renew a kanom and to credit as renewal fees two sums of money then due is not an acknowledgment of money paid for the creation of interest in land within the meaning of s 17 (e) of the Registration Act and therefore in

evidence of the agreement to renew even if it were inadmissible for other purpo e KRISHNAN NAMBUDRI v PAMAN MEMON I L R 20 Mad. 484

91 ——— **Receipt showing payment of money**—*Document proving extinction of mortgage right* Plaintiff purchased a portion of certain land from two persons who owed him money or mortgage bond and took a mortgage over another portion taking posse sion of the whole estate as security for the balance of his debt He then permitted defendants to purchase a portion

guish the mortgage right and even if it did so it was receivable as evidence of the payment oral

REGISTRATION ACT (III OF 1877) —contd

——— s 17—*contd*

evidence as to which was also admissible APPIAMMA NAYURALU v RAMANNA I L R 23 Mad. 9?

92 ——— **and cl (h)—Receipt for purchase money**—*Document creating or extinguishing a right to immoveable property* The plaintiffs sued to recover the property sold to them

no longer any interest in the property and that they would execute a new sale deed The plaintiffs contended that the receipt required registration *Held* that as the receipt created or declared or extinguished a right to the property with a superadded covenant to execute a stamped document to the same effect on a future occasion it required registration PARASHRAM v GANPAT

I L R 21 Bom. 533

93 ——— **cl (d)—Unregistered lease** By Act XVI of 1864 no unregistered lea e for a term exceeding a year could be received in evidence in any civil proceeding however small the value of the property leased OMAR v ABDOOL GUFFOOR 9 W R 425

94 ——— **Kabuliat**—*Lease* A kabuliat wa not a lease within the meaning of s 13 Act XVI of 1864 AMJED ALI v ALA BUKSH

9 W R 537

HUR CHUNDER GHOSE v WOOMA SOONDREE DOSSEE 23 W R 1?0

95 ——— **Lease for more than a year**—*Liability under unregistered lease* Where a house is let for a term exceeding a year the registration of the kabuliat is compulsory and no action will lie for the recovery of the rent stipulated to be paid under the kabuliat if that document is ... A party who retains and holds a ... kabuliat is ... compensa... PIROKA... ...ER DAS ... W R 2?9

96 ——— **Pottah**—*Agreement between landlord and tenant—Pottah—Mad Act VIII of 1865* An agreement between a landlord and tenant in the Presidency of Madras for more than one year is a pottah within the meaning of Act VIII of 186? and consequently exempted from registration under Act XX of 1866 VAKATI PAMIAR... v DUVVURU ALAPPAREDDI 7 Mad. ?31

97 ——— **and s 49—Agreement for lease**—*Evidence* Under cl (d) s 17 of the Registration Act III of 1877 an agreement for a lease needs registration if the parties to such agreement intend to create a present demise Although the agreement may contemplate a formal document being subsequently executed the paramount intention as gathered from the whole of

REGISTRATION ACT (III OF 1877)
—*contd.*

———— s. 17—*contd*

the instrument must prevail. PREMANANDDAS JIWANDAS *v.* DHARSEY VIRJI
I L R 10 Bom. 101

98 ———————— *Lease—Agreement for lease—Doul darkhast—Proposal—Acceptance—Contract* Every lease or agreement for a lease in writing must be registered before being given in evidence But a proposal in writing to take a lease of certain land in certain terms made by one person to another need not be registered unless the proposal in writing has been so accepted that the proposal and acceptance constitute a contract in writing. SUBDAR REZA *v.* AMZAD ALI
I L R 7 Calc 703 10 C L R 121

LUCHMI PER SINGH *v.* DAKHO LUCHMI PER SINGH *v.* PUNGLAL
I L R 7 Calc 708 10 C L R 127

99 ———————— *Proposal to pay rent—Doul darkhast—Lease—Agreement to lease* Whether a doul darkhast amounts to nothing more than a proposal by a tenant to pay a certain rent for certain land it does not amount to a lease or to an agreement for a lease and does not therefore require registration But if the proposal has been so accepted that the proposal and acceptance constitute a contract in writing then such contract must be registered. *Choonee Mundur* v *Chundee Lall Doss* 14 W R 1 S and *Meheroonissa* v *Abdool Gunee* 17 W R 509 distinguished LAL JHA *v.* NEGRO I L R 7 Calc 717

100 ———————— *Agreement to execute lease* Where defendants had contracted to execute a maurasi pottah of certain land at a given rent for a consideration of which a portion was paid as earnest money and the balance was to be paid within fifteen days and had agreed that if they failed to execute the pottah the baeena pottro was to be considered a pottah and plaintiff on allegation of failure sued the defendant for possession on the footing that the baeena namah was a mirasi pottah —*Held* that the deed under which the plaintiff sued was a pottah and under cl 2 s 17 of Act XX of 1866 an instrument the registration of which was compulsory As an unregistered document it could not hold its ground against a registered pottah put in by intervenors NUND RAM GHOSE *v.* MAUNOO BIBEE
10 W R 177

101 ———————— *Lease or agreement to lease* In a suit for possession of certain property and for the execution of a pottah it appeared that two of the defendants had executed an agreement which was duly registered by which they acknowledged the receipt of a portion of the salami and covenanted to execute a pottah on a certain day This agreement was afterwards confirmed by two of the defendants who were minors when it was entered into the confirmation was by deed which was duly registered Subsequently all the defendants executed a document which provided for the payment of a portion of the salami on the day when possession should be given as provided in the first agreement and for the payment of the remainder by instalments which were to carry interest This document was not registered *Held* that it was not a lease or agreement to lease within the meaning of s. 17 of the Registration Act and was admissible in evidence KEDARNATH MITTER *v.* SURENDRO DEB ROY
I L R 9 Calc 865 13 C L R 58

102 ———————— Lease—*Usufructuary mortgage—Act XVI of 1864 ss 13 14* B sued for possession of certain lands on a contract embodied in a document which purported to grant B possession of these lands for a period of six years on payment of R99 *Held* that the document in question was not a lease but a usufructuary mortgage and that the consideration money being less than R100 its registration under Act XVI of 1864 was merely optional ISHAN CHANDRA *v.* SUJAN BIBI
7 B L R 14 15 W R 331

103 ———————— *Lease—Agreement to lease—Contract of special nature* *Held* that certain letters forming a correspondence which had passed between the parties did not require registration for they did not amount to a lease or an agreement for a lease but were evidence of a contract of a special character not coming within any of the definitions in the Registration Act PORT CANNING LAND COMPANY *v* SMITH
21 W R 315 L R 1 I A 124

104 ———————— *Lease at an annual rent* A lease for no definite time but fixing an annual rent (one bosone) falls within cl 4 of s 17 of Act XX of 1866 and must be registered in order to be admissible in evidence RAMKUMAR MANDAL *v.* BRAJAHARI MRIDHA
2 B L R A C 75 10 W R 410

105 ———————— *Lease for more than a year—Condition which may shorten term* A lease for more than a year is not the less a lease because a condition is attached to the consideration and because its term may be lessened on the payment of a sum of money by the lessor Such a lease cannot be used in evidence unless it is registered BUKSH ALI BOOHEAN *v.* NUBOTARA 13 W R 468

106 ———————— *Lease with provision extending term* Where a kabuliat for one year contains a provision extending it term to more than that period it cannot be admitted in evidence without registration KISTO KALEE MOONSHEE *v.* AGEMONA BEWA 15 W R 170

107 ———————— *Lease with agreement for renewal on expiration* A kabuliat in which a raiyat agreed to hold under a pottah for a specified year the agreement between the parties being that at the close of that period a fresh settlement would be made was *held* to be a lease for one year and not to need registration under Act XX of 1866 as being a lease for more than a year although

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

a clause intervened between the above clauses to the effect that year by year the raiyat would pay rent at the above rate JUGDESH CHUNDER BISWAS v ABEDOLLAH MUNDUL 14 W R 68

108 ——— *Lease for more than a year—Lease with option of renewal* Where a lease is only for one year with option to the lessor to allow the lessee to continue his tenure on the old conditions after expiration of the year —*Held* that the absolute right of the lessee is restricted to one year and that the lease is therefore one year's lease the registration of which is not necessary SOUTHO PURSAD DASS v PARASU PADHAN SOUTHO PURSAD DASS v PUGHOO PADHAN 26 W R 98

109 ——— *Lease for so long as tenant continues to pay* A lease for so long as the lessee or tenant continues to pay the stipulated rent is a lease not limited to a year and must be registered under s 17 of the Registration Act of 1866 and not being registered cannot be received in evidence under s 49 of that Act SHEOGHOLAM v BUDDREE NATH 4 N W 36

110 ——— *Zur i peshgi lease— Leases not exceeding one year Meaning of* Leases which were exempted from the operation of s 17 cl 2 Act XX of 1866 were leases the term of which was one year certain Where a zur i peshgi lease was granted for one year but with a stipulation that unless the loan were repaid within that time it should continue in force —*Held* that such a lease came within the words of s 17 cl 4 Act XX of 1866 leases of immoveable property for any term exceeding one year of which registration was compulsory BHOBANI MAHTO v SHIB NATH PARA I L R 13 Calc 113

111 ——— *Lease for one year —Lease exceeding one year—Option of renewal* A lease for one year containing an option of renewal for a further period of one year is not a lease for a term exceeding one year within the meaning of cl (*d*) s 17 of the Registration Act so as to render registration thereof compulsory Certain correspondence passed between the plaintiff and the defendant relating to a lease of a flat in premises in occupation of the plaintiff which admittedly contained an agreement for a lease for one year with an option of renewal for another year The terms in which the option was given were as follows The defendant in one letter wrote So I expect you will give me the option of renewal for another year respectively five months on same terms To which the plaintiff replied You may have the option of retaining it (the flat) for another year on the same term but not for a shorter period In pursuance of an arrangement the defendant had a draft lease prepared embodying the terms agreed on which he sent to the plaintiff for approval and which was in due course returned by him approved The defendant then had the lease engrossed and properly stamped but the plaintiff eventually refused to execute it and it was never signed by the defendant The option of renewal was given in the unexecuted lease in the following terms Also with option to renew for another twelve months certain The defendant having entered into possession and disputes having arisen the plaintiff gave him notice to quit and sued to eject him alleging that at the most he was a mere monthly tenant The defendant pleaded that under the *lease he was* entitled to hold for a year The year expired before the suit came on to be heard and the defendant not having exercised the option *to renew* vacated the premises At the hearing the defendant in support of his case tendered the correspondence and the stamped unexecuted lease *It was objected* that the correspondence was inadmissible in evidence because the option to renew made the period for which the lease was to run exceed one year and therefore rendered registration compulsory On behalf of the defendant it was urged that registration was unnecessary as the option did not make the lease one for a longer period than one year and that the stamped unexecuted lease must be treated as part of the correspondence *Held* following *Hand v Hall L R 2 Ex D 355* that the existence of the option did not create a lease for a term exceeding one year within the meaning of *cl (d)* ... of the Registration Act and that consequently the correspondence did not require registration *Bhobani Mahto v Shibnath Para I L R 13 Cal 113* dissented from BOYD v KRIEG I L R 17 Calc 548

112 ——— *Lease reserving annual rent—Tenancy at will* The defendant executed to the plaintiff a rent note under which he rented two houses from the plaintiff at a rent of ... provided that the ... as ... be ... when ... have ... quire

created a tenancy at will and ... reserved registration although an annual rent was reserved thereby JIVRAJ GOPAL v ATMARAM DAYARAM I L R 14 Bom 319

113 ——— **Settlement papers given by raiyats** Settlement papers prepared at the beginning of each year and signed by the raiyats ... setting forth the quantity of ... lands to be held and the amount of rent to be paid by each tenant during the year are admissible in evidence and do not require registration provided the amount of rent therein agreed to be paid ... R100 and the term is for only one year ... 17 W R ... v RAM DEBUL SINGH

114 ——— **Lease**—*Lease for one year at a rental of more than R100—Evidence—Transfer of Property Act (IV of 1882) s 4 and ...* The owner of certain land exchanged it for ... other land but took a lease for one year of the former land and paid the rent thereof and received and retained the rents of the land he had acquired by the exchange *Held* in a suit for recovery of

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

po ses ion on the expiry of the l a e that the fact that such a l a e recite the fact of the exchan e f the land loe not evidence the exchan e an l as such create a titl in lan l Nor does the fact that the rent reserv l un l r the lea e i m re than R 00 create an interest in land of R100 and more in value so a t necessitate registration f th l a e under s 17 of the Registration Act Such a lea e fall under 107 of the Transfer of Property Act the provision f which constitutes 4 f th Act supplemental t the Registration Act SEETHARAMA RAJU v BAYANNA LANTH
I L R 17 Mad 275

115 ——— *Lease for life of the l* A lease of immoveable property f r th life of the lessee is a lease for a term exceeding one year It therefore requires registration PARSHOTAM VITHAL v NANA PRASAD
I L R 18 Bom 109

116 — ——— *Transfer of Property Act (IV of 1882) ss 4 and 10 —Lease of a lop for three years* Leases falling under s 107 of the Transfer of Property Act are compulsorily registrable notwithstanding the Government notification issued under the proviso to s 17 (*d*) of the Registration Act NATRASANDA NADAR v MIYAK POWTER
I L R 21 Mad 109

117 ——— *Kabuliat or l a e —Lease for so long as landlord might leave land with tenant* A kabuliat of lease under which the tenant might claim po e ion of the land for one year but was to pay rent to the landlord so long as the landlord might leave the land with the tenant did not require registration JAGJIVANDAS JAWHERDAS v NARAYAN LAKSHMAN PATIL
I L R 8 Bom 493

118 ——— *Lease—Compulsory registration* Where a lease deed contained a clause whereby the tenancy thereunder was absolutely determinable at any moment at the option of the lessor it was *held* that such deed was not compulsorily registrable under s 17 of the Registration Act notwithstanding that it also contained provisions for an annual rental and for payment of rent in advance each year provisions which had they stood alone would have raised a presumption that a tenancy exceeding a year was contemplated *Jagjivandas Jawherdas* v *Narayan I L R 8 Bom 493* *Morton* v *Woods L R 3 Q B 658* and *Hand* v *Hall L R 2 Ex D 355* referred to and approved RATNASABHAPATHI v VENKATACHALAM
I L R 14 Mad 271

119 ——— *Bhadekhat—Lease. Held* that a *bhadekhat* is an agreement between a lessee and a lessor in the nature of a counterpart of a lease and that an instrument of this character must for the purposes of the Registration Act be treated as a lease *Held* also that a provision in the *bhadekhat* that the lessee might after six months remain in occupation at a monthly rent till the lessor called upon him to vacate did not extend the term for which the lease was granted as to the conclusion of that term the lessee would be only monthly tenant of the lessor and therefore it did not require registration under s 1 of Act XX of 1866 MORO VITHAL v TUKARAM VALAD MALHARJI
5 Bom A C 92

120 ——— and s 49—*Lease—Lease from year to year* In a suit for possession of a piece of land and for rent of the same the plaintiff produced in support of his claim two sarkhats or kabuliats purporting to be executed in his favour by the defendants and dated respectively in January 1875 and June 1871 These documents were not registered The first after reciting that the executant had taken the land from the plaintiff on a specified yearly rent and promised to pay the same yearly proceeded as follows If the owner of the land wishes to have it vacated he shall give me fifteen days notice and I will vacate without making objection if I delay in vacating the land the owner can realize by recourse to law rent from me at the rate of R8 per annum The second sarkhat after reciting that the executants had taken the land from the plaintiff on a yearly rent specified for six years and promised to pay the same year by year proceeded thus And if the said Shaikh wishes to have the land vacated within the said term he shall first give us fifteen days notice and we will vacate it without objection The lower Courts held that the sarkhats were not admissible in evidence as they required registration under s 17 (4) of the Registration Act VIII of 1871 being leases of immoveable property from year to year or reserving a yearly rent *Held* that the two sarkhats created no rights except those of tenants at will inasmuch as the clause common to both to the effect that at any time at the will of the lessor the lessees were

evidence under s 49 of Act III of 1877 which governed the question of admissibility while Act VIII of 1871 governed the question whether registration was or was not compulsory KHODA BAKHSH v SHEO DIN
I L R 8 All 405

121 ——— *Lease—Exemption from registration by Government* Leases for a term not exceeding five years with a rent reserved not exceeding R50 being exempted by the local Government from registration —*Held* that a potta for one Fasli to remain in force until another pottah is granted with a rent reserved of R110 did not fall within the exemption *Held* also that such a pottah was a lease for a term exceeding one year and not a lease for a year and therefore subject to the general provision of cl. (*d*) s 17 of

REGISTRATION ACT (III OF 1877) —contd

———— s 17—contd

the Registration Act 1877 VENKATACHELLAM CHETTI v AUDIAN I L R 3 Mad 358

122 ———— *Exemption from registration—Lease for one year and till another lease is executed* A muchalka executed for one Fasli to remain in force until the execution of a fresh muchalka for a rent less than R50 is exempted from registration by virtue of the notification of the Local Government under 17 of the Registration Act which exempts from registration leases the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed R50 VIRAMMAL v KASTURI RUNGAYYANGAR I L R 4 Mad 381

123 ———— *Interest in immoveable property—Registration Act s 3—Document giving right to cut and enjoy trees —Lease —Specific Relief Act (I of 1877) s 36—Injunction* The plaintiff (who held on lease a share in a village and in the trees standing in the village tank) in consideration of R200 and a promissory note for R3 200 executed in favour of the defendant a document by which he assigned to the latter the right to cut and enjoy the trees etc for a period of four years from its date The instrument was not registered The defendants felled the trees which were mature at the date of the instrument and subsequently felled others since matured. ... of his titl ... injunction ... meddling ... the defend ... trees as were then matured. *Held* that the unregistered instrument purported to convey an interest in immoveable property and was not a lease and was inadmissible in evidence and that the plaintiff was not entitled to relief by way of injunction or otherwise SEENI CHETTIAR v SANTHANATHAN CHETTIAR I L R 20 Mad 58

124 —— cl (h)—Agreement for lease An agreement for a lease does not require registration BHAIRABNATH KHETTRI v KISHORI MOHUN SHAW 3 B L R Ap 1

ABDUL VIDONA JONAS v HAPONE ESMILE 7 B L R Ap 21

125 ———— *Dowl-durkast—Document preliminary to lease* A dowl durkast being only a preliminary to a lease does not require registration MEHEROONISSA v ABDOOL GUNEE 17 W R 509

126 ———— *Dowl or amulnama* The registration of a dowl or an amuldaree which are mere preliminaries to a lease was not compulsory under s 13 Act XVI of 1864 COTUCK KISHORE ACHARJEE CHOWDHRY v NUND MOHUN DEY SIRCAR 12 W R 394

127 ———— *Dowl-durkast—Proposal by tenant to pay rent* Where a dowl durkast amounts to nothing more than a proposal by a tenant to pay a certain rent for certain land, it does not amount to a lease or an agreement for a lease and does not therefore require registration But if the proposal has been so accepted that the proposal and acceptance constitute a contract in writing then such contract must be registered. *Choonee Mundur v Chundee Lall Doss 14 W R 178* and *Meheroonnissa v Abdool Gunee 17 W R 509* distinguished LALL JHA v NEGOO I L R 7 Calc 71

SUFDAR REZA v AMZAD ALI I L R 7 Calc 703 10 C L R 121

LUCHMISSUR SINGH v DAKHO ... SINGH v PUNGLAL I L R 7 Calc 708 10 C L R 177

128 ———— *Intention to create present demise—Intention to execute more formal document* An agreement for a lease ... as gathered from the whole of the instrument ... prevail PURMANAND DAS JIWANDAS v DHARSEY VIRJI I L R 10 Bom 101

129 ———— *Petition asking* ... 14 W R 334

s c on review

130 ———— Agreement to mortgage —*Equitable mortgage* Documents amounting to an equitable mortgage when creating an interest in land of the value of R100 or upwards require registration under s 17 of the Registration Act but documents when amounting merely to an agreement to mortgage do not require registration under that section Such documents are therefore available in evidence as agreements to the mortgagee without registration but for the purpose of proving an equitable mortgage they must be registered before they are available in evidence BENGAL BANKING CORPORATION v MACKERTICH I L R 10 Calc 315

... which are merely preliminary ... contract or engagement or that deeds which are steps in or mere parts of a transaction should be registered before they can be used as evidence BYWATER LAL v SUNGUM LAL 7 W R 290

See RAMTONOO SURMAH SIRCAR v COUR CHUNDER SURMAH SIRCAR 3 W R 64

and SHIBKISHEN DOSS v ABDOOL SOBHAN CHOWDHRY 3 W R 103

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

132 ——— Deed of agreement to sell at future time—*Act XIX of 1843* A deed of agreement to sell at some future period may be registered under Act XIX of 1843 SHIBKISHEN DOSS v ABDOOL SOBHAN CHOWDHRY 3 W R 103

See PAMTONOO SUBMAH SIRCAR v COUR CHUNDER SURMAH SIRCAR 3 W R 64

NUDDEAR CHAND SEIN v KISHOREE LALL CHUCKERBUTTY 7 W R 463

133 ——— Bargain paper —*Agreement for sale of land contemplating future deed* A bargain paper for the purchase of immoveable property above the value of R100 which contemplates the execution of a future conveyance does not require registration JUSAB HAJI JAFAR v GUL MUHAMMAD 12 Bom 175

134 ——— *Document not itself creating an interest in immoveable property—Bargain paper* An agreement or

good title a deed of sale thereof prepared according to law within two months the cost incidental to the preparation of the deed to be borne jointly by vendor and vendee that on the execution of such deed and delivery of possession of the house to the plaintiff the balance of the purchase money was to be paid that in case a good title to the house could not be made out the bargain paper was to be null and the earnest money was then to be returned to the plaintiff with interest and any solicitors charges incurred were to be paid by the defendants. *Held* that the document was admissible in evidence though unregistered as coming within the provisions of cl (*h*) of s. 17 of the Registration Act III of 1877 CHUNILAL PANALAL v BOMANJI MANCHERJI I L R 7 Bom 310

135 ——— Document giving right to

ceived as earnest money and provided that within two months the vendor would execute a proper conveyance and thereupon receive the balance of the purchase money and give up possession. *Held* that the document did not pass any right title or interest in the property to the purchaser but merely gave him a right against the vendor personally to call for a conveyance and possession on paying the balance of the purchase money

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

HORMASJI MANIKJI DADACHANJI v KESHAV PURSHOTAM I L R 18 Bom 13

See KARALIA NANUBHAI MAHOMEDBHAI v MANSUKHRAM VAKHATCHAND I L R 24 Bom 400

136 ——— Agreement to sell equity of redemption—*Document creating a right to obtain another document*—By an unregistered writing dated the 14th April 1889 *A* agreed to sell to *B* certain landed property on his (*B*'s) paying off

brought by *A* upon the agreement the lower Court held that the agreement was an assignment of the equity of redemption and required registration and that being unregistered the plaintiff's claim based on it could not be maintained On second appeal *Held* following *Chunilal Panalal* v *Bomanji* I L R 7 Bom 310 that the agreement did not require registration SHRIDHAR BALLAL KELKAR v CHINTAMAN SADASHIV MEHENDALE I L R 18 Bom 396

137 ——— *Suit for specific performance of contract to sell land—Person claiming by subsequent title—Notice of prior contract—Transfer of Property Act (IV of 1882) s 54—Contract for sale—Bainanamah—Specific Relief Act (I of 1877) s 27—Legal and equitable rights—Registration Act (III of 1877) ss 48, 50—Document creating a right to obtain another document—Unregistered document—Admissibility of evidence* On the 27th December 1895 S executed an unregistered document bearing a one anna receipt stamp in favour of *J* agreeing to execute a deed of conveyance of certain immoveable property in favour of *J* within a certain time and acknowledging receipt of earnest money Subsequently on the 3rd January 1896 *S* executed a registered *bainanamah* in respect of the same property in favour of *P* and *H* which was followed by a registered deed of conveyance in their favour dated the 9th January 1896 and delivery of possession although *R* and *H* had notice of the previous contract with *J* before the registration of the *bainanamah* and execution of the deed of conveyance in their favour *Held* that having regard to s 54 of the Transfer of Property Act and s. 27 (*b*) of the Specific Relief Act in a suit for the specific performance of contract brought by *J* neither the *bainanamah* nor the deed of conveyance in favour of *P* and *H* could prevail against the prior unregistered contract of *J* *Held* further that the unregistered document of the 27th December 1895 came under s 17 cl (*h*) of Act III of 1877 and was not inadmissible in evidence for want of registration and that the registered *bainanamah* of the 3rd January 1896 did not take effect against it under s 50 of that Act HURNANDUN SINGH v JAWAD ALI I L R 27 Calc 468

138 ——— and cl (b)—*Document creating a right to obtain another document—Pleading*

REGISTRATION ACT (III OF 1877) —*contd*

——— s 17—*contd*

admission—Effect of admission in pleading of execution of contract—Evidence to prove an admitted document not necessary—Evidence By an agreement dated 2nd August 1880 the defendant agreed to sell to the plaintiff a certain piece of land with a dwelling house for R1 900 At the time of the execution of this agreement the plaintiff paid the defendant R100 earnest money and the agreement provided that the remaining R1 800 should be paid within a month from the date of the agreement when the deed of conveyance of the property should be executed The material part of the agreement was as follows I have received from you R100 namely rupees one hundred as earnest (*i e*) at time of the execution of this bargain paper And as to the remaining R1 800 namely one thousand and eight hundred the same are duly to be paid to me within one month from this day when you will get the deed (or) document made in your favour And all the expenditure in respect of the deed (or) documents and transferring (the property) to your name you are duly to make on your account on these terms this informal bargain paper having been written is agreed to and delivered The plaintiff sued for specific performance and tendered the agreement in evidence although unregistered *Held* that the document although unregistered was admissible in evidence under cl (*h*) of s 17 of the Registration Act III of 1877 Being unregistered it could not create or assign the interest intended by the parties to be transferred and being thus incapable of carrying out the primary intention of the parties the agreement became one merely creating a right to obtain another document which would when executed effect the desired purpose if the execution were accompanied with registration. The right given by the agreement was merely a right *in personam* and the agreement was admissible in evidence to show the contract entered into for another conveyance though not as a conveyance itself BURJORJI CURSETJI PRATHAKA *v* MUNCHERJI KUVERJI

I L R 5 Bom 143

139 ——— *Ikrar agreeing to execute deed—Optional registration—Admissibility of evidence* Where a party borrowing money gave the lender an ikrar agreeing to execute a conveyance of certain landed property —*Held* that the instrument was in substance an agreement the registration of which was optional and which might be given in evidence in a suit for specific performance of the agreement to execute the conveyance for which it stipulated ASGUR ALI SHIKDAR *v* MOTHOORA NATH GHOSE 15 W R 354

140 ——— and cl. (b)—*Document giving right to obtain another document* Where by an ikrarnama tenants conjointly promised that they would sign and have registered kabuliats for rents at rates mentioned —*Held* that the document did not come under cl. (*b*) of s 17 of the Registration Act III of 1877 as operating to create or declare an interest but came under cl (*h*) as a document merely creating a right to obtain another document which would when executed create or declare an interest PERTAP CHUNDER GHOSE *v* MOHENDRANATH PURKAIT I L R 17 Calc 291

L R 16 I A 233

[illegible]

showed that the execution of another deed [illegible] reference to those rights was in contemplation [illegible] the deed was one the registration of which was compulsory under s 17 of the Registration Act and being unregistered was not admissible in evidence of the mother s title to either the moveable or immoveable property LAKSHMAMMAL *v* KAMESWARA I L R 13 Mad 281

142 ——— *Letter acknowledging payment of consideration on account of [illegible] of interest in land* A wrote a letter to B stating that an agreement had been made between them that A should sell certain land to B for R4 500 that A had received R500 of this sum and was only entitled to receive the balance *after* executing the sale deed within a certain date and had no connection whatever with the land *Held* that the letter not being registered was not admissible in proof of the agreement to convey RAMASAMI *v* [illegible]

I L R. 6 Mad. 115

143 ——— **Document containing covenants for title**—*Suit for breach of covenant* A document containing covenants for title though no doubt embodying a transaction affecting immoveable property is admissible in a suit for damages for breach of such covenants provided the document conform to the requirements of the exceptive clause of s 17 of Act III of 1877 but where as in the present case the evidence of the covenant is contained in a document itself purporting to assign an interest in immoveable property —the covenant being ambiguous and uncertain without reference to such assignment—the document is not excepted from the necessity of registration RAJU BALU *v* KRISHNARAV RAMCHANDRA I L R. 2 Bom 2[illegible]

144 ——— **cl. (n) and s 18—Receipt not affecting mortgage debt** Although under cl. (n) of s 17 of the Registration Act (III of 1877) a receipt given by a mortgagee purporting to extinguish the mortgage debt does require registration —*Held* that the language of the receipt in the present case did not indicate any intention to extinguish or limit the mortgagor s interest and that therefore registration was unnecessary [illegible] KANDI KUNHI KUTTI ALI HAJI *v* KUNNAN [illegible] KOTTAPRATH ABDUL RAHIMAN I. L. R. 19 Mad. 2[illegible]3

REGISTRATION ACT (III OF 1877)
—*contd*

———— s 17—*contd*

145 ———— Receipt purporting to extinguish mortgage—*Receipt only covering interest of one co mortgagee* The provisions of s 17 cl. (*n*) of Act III of 1877 do not apply to a receipt which purports to extinguish not the entire mortgage but only the right under the mortgage of one of the co mortgagees SRI RAM *v* KESRI MAL
I L R 18 All 338

and *see* CASES UNDER CL (*c*) OF THIS SECTION

146 ———— cl (*o*)—Certificate of sale—*Sale of immoveable property* A certificate of sale of immoveable property of the value of more than one hundred rupees must be registered and the fact of sale cannot be proved except by the production of such certificate MULJI BECHAR *v* ANUPRAM BECHAR　7 Bom A C 136

PADU MALHARI *v* RAKHMAI　10 Bom 435

ANONYMOUS CASE　6 Mad Ap 40

147 ———— *Certificate of sale—Priority of registered over unregistered deeds—Bom Reg IX of 1827 3 cl 2* Held that a certificate of sale was not a document of such a character as to be entitled by law to priority by virtue of its being registered over an unregistered lease but that it came within the class of documents described in Regulation IX of 1827 s 3 cl 2 as judicial process which may at the option of the holder be registered but the force and effect of which is in no wise to depend on their being registered FAKIR CHAND GOVINDRAM *v* KAHANDAS BHAGVANDAS
3 Bom A C 167

148 ———— *Certificate of sale* A certificate of sale requires registration under s 17 of the Registration Act in order to make it admissible in evidence under s 49 HARKISANDAS NARANDAS *v* BAI ICHHA
I L R 4 Bom 155

149 ———— Certificate of [illegible]

[illegible] which is compulsory under the Registration Act 1877 s 17 (*b*) MASARAT UN NISSA *v* ADIT RAM
I L R 5 All 568

HUSAINI BEGUM *v* MULO　I L R 5 All 84

150 ———— *Certificate of sale—Construction of Act—Maxim Optimus legis interpres consuetudo* Sale certificates granted under the provisions of s 259 of Act VIII of 1859 are not documents the registration of which is compulsory under the provisions of s 17 of the Registration Act of 1871 PROKASH CHUNDER DASS *v* TARACHAND DASS　I L R 9 Calc 82　12 C L R 1

151 ———— *Certificate of sale—Admissibility in evidence—Evidence to prove sale* A certificate of sale issued under s 259 of the Code of Civil Procedure 1859 is an instrument requiring registration within the meaning of Act XX of 1866 s 17 Where such a certificate is not registered other evidence is not admissible to prove the sale Per NANABHAI HARIDAS J —An unregistered certificate of sale is not only inadmissible in evidence but invalid PADU MALHARI *v* RAKHMAI
10 Bom 435

LALBHAI LAKHMIDAS *v* KAMALUDIN HUSEN KHAN　12 Bom 247

See HARKISHANDAS NARANDAS *v* BAI ICHHA
I L R 4 Bom 155

152 ———— *Certificate of sale—Certificate of payment—Receipt—Beng Reg VIII of 1819 s 15 cl 1—Civil Procedure Code VIII of 1859 s 259 (X of 1877 s 316)* A certificate of payment granted under the provisions of cl 1 s 15 of Regulation VIII of 1819 is admissible in evidence without being registered *Quære* Whether a sale certificate granted under Act X of 1877 s 316 (corresponding to s 259 of Act VIII of 1859) is admissible in evidence without being registered ABDOOL AZIZ BISWAS *v* RADHA KANTO KOPIRAJ　I L R 5 Calc 226

153 ———— *Certificate of sale Quære* Does a certificate of sale need registration? BENODI LAL GHOSE *v* TAMIZUDDIN
7 C L R 115

See RAJKISHEN MOOKERJEE *v* RADHA MADHUB HALDAR　21 W R 349

154 ———— *Certificate of sale—Memorandum declaring person to be purchaser at sale* What operates to create the property recognized as a right of occupancy is the revenue sale and consequent entry of the occupant's name in the Collector's books A memorandum therefore declaring a person to be the successful bidder at the sale is not an instrument creating or declaring an interest in immoveable property and requiring registration under s 17 of Act XX of 1866 GHELABHAI BHIKAPIDAS *v* PRANJIVAN ICHHARAM
11 Bom 218

155 ———— *Certificate of sale—Civil Procedure Code 1859 s 259* Under Act VIII of 1859 s 259 and Act XX of 1866 s 17 and s 2 it was necessary to register the certificate of sale itself and not merely the memorandum of the certificate of sale SRINIVASA SASTRI *v* SESHAYYANGAR　I L R 3 Mad 37

156 ———— *Certificate of sale—Mortgage* Where the Subordinate Judge of Dehra Dun made and signed the following endorsement on a deed of mortgage of immoveable property This deed was purchased on the 1st December 1875 at a public sale in the Court of Dehra Dun by N and K plaintiffs for R2 400 under special orders passed by the Court on the 23rd November 1875 in the case of N and K plaintiffs against P for self and as guardian of the heir in possession of the estate left by M —*Held Per* SPANKIE J that this instrument operated as a

REGISTRATION ACT (III OF 1877) —*contd*

———— s 17—*contd*

sale certificate and consequently as it related to immoveable property of the value of R100 and upwards it required to be registered *Held per* OLDFIELD J —That as the instrument operated to assign the deed of mortgage to the auction purchasers it for the same reason required to be registered KANAHIA LAL v KALI DIN

I L R 2 All 392

157 ———— *Certificate of sale—Property sold in lots—Single sale certificate for lots each under R100* In compliance with an application for the sale of land to satisfy a decree the Civil Court put up certain land to auction in four lots One lot was purchased by the plaintiff for R88 and each of the other three were bought by him for less than R100 the price for the whole amounting to R111 8 0 for which amount the Court granted a single certificate of sale dated 10th February 1874 This certificate was never registered The plaintiff applied to be put in possession but the defendant resisting him his application was rejected On the 16th of November 1879 the plaintiff brought this suit to have his right declared to the piece bought for R88 and to recover its possession Along with the plaint the plaintiff produced the unregistered certificate of sale of the 10th February 1874 On the application of the plaintiff another certificate for the same property was issued by the Court to the plaintiff on the 31st of October 1877 that is three years after the confirmation of sale This was registered on the 20th of December 1877 and was produced by the plaintiff in the proceedings which gave rise to the present suit It was obtained by the plaintiff on the 23rd of February 1880 and tendered in evidence but was rejected under s 63 of the Code of Civil Procedure (XIV of 1882) *Held* that although the four lots purchased by the plaintiff at the auction sale were included in one certificate of sale such certificate although one instrument in form should for the purpose of registration be regarded as four separate certificates of the four several lots each of which did not require registration DEVIDAS JAGJIVAN v PIRJADA BEGAM

I L R 8 Bom 377

158 ———— **Withdrawal petition setting out terms of compromise filed in Court**—*Subsequent suit for land referred to in the compromise—Necessity for registration* In 1893 plaintiff sued defendants for possession of certain immoveable property The parties then entered into a compromise by the terms of which defendants were to give plaintiff a portion of the property sued for They then filed a petition in Court setting out the agreement at which they had arrived and asking that the suit might be withdrawn The Court thereupon ordered the suit to be struck off the file and made an order as to costs The agreement was never registered Plaintiff relying on the agreement now sued to have it established and to recover possession of the property to which he was entitled under it *Held*, that the agreement should have been registered, and that the suit brought on it must fail MUTHAYYA v VENKATARATNAM (1901)

I L R 25 Mad 553

159 ———— **Deed of gift of immoveable property**—*Registration by legal representative after death of donor—Validity of gift* The voluntary registration of a deed of gift by the legal representative of the donor has the same effect as its voluntary registration by the donor himself in his lifetime MEIYYALU NADAN v ANJALAY (19)

I L R 25 Mad 673

160 ———— **Petition settling disputes regarding immoveable property**—*Unregistered instrument—Non testamentary document—Admissibility of evidence* In proceedings for obtaining Letters of Administration the parties having set [illegible]

[illegible]

cably take 10 anna share and I[illegible] Sarkar shall take 6 anna share of th[illegible] and immovable properties after dividing the [illegible] by demarcation No order was made on th[illegible] petition The properties were of the value of over one hundred rupee *Held* that the peti[illegible] unless registered would be inadmissible in evid[illegible] *Pranal Anni v Lakshmi Anni I L R* [illegible] *508* referred to KALY CHARAN GHOSE v P[illegible] CHANDRA MANDAL (1903) I L R 30 Calc 783

161 ———— cls (b) and (h)—*Deed of* **partnership**—*Partnership—Clause giving one* [illegible]

[illegible]

mortgaged and giving one only [illegible] a future period right of redemption for and during a future period of limited duration was *held* to declare a right [illegible] immoveable property and therefore to need registration under clause (*b*) of s 17 of the Registration Act (III of 1877) to make it admissible in evidence MAUNG PO HTI v MAHOMED C[illegible] (19) I L R 30 Cal 10[illegible]

s c 7 C W N 6[illegible]

L R 30 I A 230

162 ———— cl (d)—**Lease for agricultural purposes**—*Transfer of Property Act (IV of 1882) ss 107 11 —Lease reserving a yearly rent—Term exceeding five years* Defendants executed an instrument by which they leased a bhiti land [illegible] plaintiff for an indefinite period at an annual rent of R35 The instrument was not registered The rent having fallen into arrears, plaintiff sued [illegible] the same when it was pleaded in defence that the [illegible]

REGISTRATION ACT (III OF 1877)
—contd

——— s. 17—contd

instrument of lea e was inadmi ible in evidence for

perty Act and (2) that as uming it to be an agri cultural lease its regi tration was compu ory under s. 17 cl. (d) of the Indian Regi tration Act ina much as it was not a lea e for a term not exceeding five years On a petition bein filed to revi e the Munsif s decree *Held* (i) that a lea e of land for the cultivation of *betel* is an agricultural lea e *Kunhayen Haji* v *Mayan I L R 17 Mad 98* not followed (ii) that athough the lea e might continue beyond five years in the event of neither party determining it in the meanwhile it was not a lea e for a term exceeding five years a either party might determine it before the expiration of that period *Lirammal* v *Rungajyangar I L R 4 Mad 381* followed Ina much a the annual rent was under R50 registration was optional and ting n MBI 121

163 ——— Agreement to lease—*Darkhast application—Endorsement sanctioning application—Communication to applicant—Document not expressed to be for over five years nor for rent exceeding R50 per annum—Necessity for registration* Application was mad to a devasthanam for some waste land on darkhast The manager of the deva thanam anctioned the grant by en dorsement on the darkhast application and this was communicated to the applicant The docu ment did not in terms purport to be for a period exceeding five years nor did the rent re erved by it exceed R50 per annum *Held* that it must be taken to be an agreement to lease and in con equence subject to the provisions of the Registration Act as if it were a lease But treating it as a lease it did not require registration under s 17 of the Regis tration Act It did not in terms purport to be for a period exceeding five years nor did the rent reserved by it exceed R50 per annum It was therefore exempted from regi tration by the notifi cation of Government published under that section The criterion for purpo es of registration is what is expre ed on the face of the document not what incidents may be annexed by custom to a grant of the kind Even though one such incident may be that the grantee is entitled to hold permanently another would be that the tenant may relinqui h the holding at the end of any fa li and therefore before the expiration of five years RAMASWAMY AYYAR v THIRUPATHI NAIK (1904)
I L R 27 Mad 43

164. ——— cl. (e)—Composition deed—*Conveyance—Trustees under the deed* The expres sion Composition deed as u ed in s. 17 (e) of the Regi tration Act III of 18 denotes a transaction entered into by a debtor insolvent or

REGISTRATION ACT (III OF 1877)
—contd

——— s 17—contd

in embarrassed circumstances with his creditors with the object of paying the latter a composition upon their claims The deed must in substance be of the nature of a compo ition not a conveyance Hence where a debtor transfers his property to a creditor or creditors in consideration of his debts e when he parts with his rights absolutely the transaction may partake of the nature of a compo sition but it is in reality a conveyance It is other wise where with the consent of his creditors he parts with his property in favour of a trustee for the pur po e of paying the composition upon the claims and the trustee is authorized to deal with the pro perty for that purpo e A composition deed for the benefit of all the creditors not compri ing the whole not voi in the sure of the circumstance that it is igned by some only of the creditors and that among them are some whose debts are barred by limitation MALUKCHAND AMAPCHAND v MANILAL NANSHA (1904)
I L R 28 Bom 364

165 ——— Release from mortgage—*Release of part of mortgaged property on part payment of mortgage debt effected by endorsement on bond—Registration* A portion of certain property th

gaged property was endorsed *Held* that such an endorsement did not require re istration *Gurlal Mal* v *Jauhri Mal I L R 4ll 820* followed GANGA BAKHSH v JAGANNATH 190)
I L R 27 All 305

166 ——— Assignment of arrears of profits—*Transfer of Property Act (IV of 1882) s 5—Registration—Lambardar and co sharer* A deed of as ignment of profits already due by a lambardar to a co sharer does not require to be registered either by virtue of s 17 of the Regis tration Act 1877 or by virtue of s 54 of the Tran fer of Property Act 1882 DAMODAR DAS v GIRDHARI LAL (1905)
I L R 27 All 564

167 ——— Sale of standing timber—*Registration—Immoveable property* *Held* that a document which purported to be a theka of a certain portion of a forest for all kind of trees for two years was not a document convey ing an interest in immoveable property and did not require to be registered *Seeni Chettiar* v *Santhanathan Chettiar I L R 20 Mad 58* dis tinguished MATHURA DAS v JADUBIR THAPA (1905)
I L R 28 All 277

168 ——— Conveyance by registered deed to transferee who has notice of previous agreement—*Agreement to convey and possession given to transferee—Estoppel* It was agreed amongst certain successful plaintiffs who by a

REGISTRATION ACT (III OF 1877) —contd

———— s 17—*contd*

decree of Court had become entitled to a large estate that a certain relative who had helped them in their suit should have a share in the property and this agreement was carried out to the extent that this person s name was entered in the village papers as a co sharer and he was put int possession by consent of the other co sharers but no conveyance of the share was executed and registered Subsequently one of the original donors purported to sell the share so assigned to a person who had notice of the terms upon which it was held by the original donee *Held* that this sale even though carried out by means of a registered instrument was ineffectual as against the rights of the original donee inasmuch as both the vendor knew that in equity he could not have a title to convey and the vendee also was aware that the vendor could not convey without committing a fraud on the original donee *Benham v Keane 1 Johnson & Hemming 685 70? Greaves v Tofield I R 14 Ch D 563* and *Le Neve v Le Neve 3 Atk 646* referred to ANNU MAL v COLLECTOR OF BAREILLY (1906)
I L R 28 All 315

169 ———— Compromise of suit embodied in a decree—*Registration* In a suit for possession of certain plots of land reference was made as part of the evidence in the case to a compromise in a previous suit relating to other lands but which dealt also with the lands in suit and had been incorporated into the decree of the Court in the previous suit *Held* that such compromise did not require registration and was admissible in evidence *Bindesri Naik v Ganga Saran Sahu I L R 20 All 171* and *Pranal Anni v Lakshmi Anni I L R 22 Mad 508* referred to *Birbhadra Rath v Kalpatara Panda 1 C L J 388* considered RAGHUBANS MANI SINGH v MAHABIR SINGH (1906)
I L R 28 All 78

170 ———— Division of a mortgage

RAMJI MAL v CHHOTE LAL (1906)
I L R 29 All 50

171 ———— Petition of compromise containing a recital of a previous oral agreement for lease—*Stamp—Registration—Evidence* Where a petition of compromise merely contained a recital of a previous oral agreement for lease —*Held* that it did not require registration or stamp It was evidence of an oral agreement but not an agreement in itself PITAMBAR GAIN v UDDHAB MONDAL (1908) **12 C W N 59**

172 ———— Suit for registration—*Suits Valuation Act s 8—Suit for registration of document under s 77 of Registration Act does not fall for purposes of Court fees within s 7 cl (4) (c) of the Court Fees Act but under Art 17 (6) of Sch II of the Act—Such suit to be valued for purposes of jurisdiction on the value of the property* A suit for registration of a document under s 77 of the Registration Act is not for the purposes of payment of Court fees a suit for a declaratory decree with consequential relief within s 7 cl (4) (c) of the Court Fees Act but is a suit in which it is not possible to estimate at a money value the subject-matter in dispute within Art 17 (6) of Sch II of the Act The Court fee payable in such cases is a fixed fee of 10 rupees *Jantoo v Radha Canto Das I L R 8 Calc 515* followed *Savarimuthu Pillai v Arogiam Pillai 12 Mad L J 89* followed The question of valuation for purposes of jurisdiction is in such cases to be decided under s 8 of the Suits Valuation Act The value in such cases will be the value of the interest created by such document *Ramakrishnamma v Bhagamma I L R 13 Mad 56* followed RAMU AIYAR v SANKARA AIYAR (1908)
I L R 31 Mad 89

173 ———— Dastak A *dastak* which merely allows a tenant to take possession of the land and to cultivate it does not require registration as it is not a lease for any term exceeding one year or a lease from year to year or a lease reserving an annual rent AHMUD BEPARI v TOHI MAHMUD (1894)
13 C W N 68

174 ———— s 17 (1)—Hypothecation clause in consent decree—*Matters outside the scope of suit if may be embodied—Terms in consent decree as a consideration for relief given—Registration—Registration Act (III of 1877) s 17 (1)—Transfer of Property Act (IV of* [illegible]

[illegible]

[illegible] shall be [illegible] tion of the money and that the defendant [illegible] on the same [illegible] 17 of the [illegible]

Bindesri Naik v Ganga Saran [illegible] *129 s c L R* [illegible] *Pranal Annee v Lakshmi Annee 3 C W N* [illegible] *s c L R 26 I A 101 I L R* [illegible] followed *Raghubans Mani Singh v Mahabir Singh I L R 28 All 78 Patha Muthammal v* [illegible] *Pouther I L R 29 Mad 355 Gupta* [illegible] referred *v Bijoya Sundari Debya* [illegible] to That the hypothecation of immoveable property was the consideration for the time allowed for payment of the sum decreed by instalments and thus formed an integral and necessary part of the adjustment of the claim in the suit and the Court did not act contrary to the provisions of s [illegible] the Civil Procedure Code in inserting this clause in the consent decree *Birbhadra v Kalpatara Panda 1 C L J 388 Gurdeo Singh v Chandrika Singh 5 C L J 611* distinguished.

REGISTRATION ACT (III OF 1877) —contd

—— s 17—contd

Mani Singh v *Malabir Singh I L R 28 All 78 Gupta Narain Dass* v *Bejoya Sundari Debya 2 C W N 663 Purna Chandra Sarkar* v *Nilmadhub Nandi C W N 455* relied on *Held* further on the construction of the hypothecation clause that it merely created a charge within the meaning of s 100 of the Transfer of Property Act and not a mortgage within s 58 *Tancred* v *Delagoa Bay and East Africa Railway Co 23 Q B D 239 Burlinson* v *Hall 1 Q B D 34* relied on The question whether any particular term of petition of compromise incorporated in a compromise decree relates to the suit or is covered by its subject-matter must be decided from the frame of the suit the relief claimed and the relief allowed by the decree on adjustment by lawful agreement The mutual connection of the different parts of the relief granted by a consent decree is an important element for consideration in each case in deciding whether any portion of the relief is within the scope of the suit No hard and fast rule can be laid down and each case must be governed by its own fact GOBINDA CHANDRA PAUL v DWARKA NATH PAUL (1908) I L R 35 Calc 867 12 C W N 849

175 —— ss 17 18 cls (d) and (f) 21 24 and 77—Document relinquishing right of inheritance—*Transfer of Property Act (IV of 1882) ss 6 19 and 21—Succession Act (X of 1865) s 10 —Document whereby a Mahomedan daughter relinquished her right of inheritance to her father s property—Refusal to register on the ground that the document did not contain sufficient description of property—Discretion of Registrar—Vested or contingent interest— Spes Successionis —Alteration not affecting the legal effect of the contract* A Mahomedan daughter executed in favour of her father a document under which in consideration of her receiving R9 000 she relinquished her right of inheritance to the father s property and also to certain ornaments directed to be given to her by her mother The document was presented for registration to the Sub Registrar who accepted the registration fee which was endorsed on the document and subsequently refused to register the document on the ground that its execution was denied and that

[illegible]

document was proved but refused registration on the ground that the provisions of s 21 had not been complied with Thereupon a suit having been filed under s 77 of the Registration Act (III of 1877) for

[illegible]

because it related to mere heirship much less could it relate to immoveable property capable of being described and identified Supposing that s 21 was applicable and that the document related to immoveable property then the conditions of the section were satisfied because under the document the executant gave up her right of inheritance to such of her father s immoveable property as he

[illegible]

the documents mentioned in s 17 of the Registration Act (III of 1877) It fell within cls (d) and (f) of s 18 of the Act It fell within cl (d) of s 18 because there was a release by the executant of her right to certain ornaments to which he had a present right It fell within cl (f) because it was a document under which the executant agreed to release her right as heir to her father and that belonged to a class of documents not mentioned in s 17 and not falling within the preceding clauses of s 18 Where a Sub Registrar or Registrar receives a document and the registration fee and endorses the payment on the document and issues a commission for taking evidence he must be regarded as having exercised his discretion under s 21 of the Registration Act (III of 1877) and accepted the document for registration But even if there was at first no acceptance under that section that being a matter in his discretion the Court cannot under s 77 of the Act question the subsequent exercise of such discretion The discretion under s [illegible]

ment

it does [illegible]

the disc[illegible]

Court to enquire into such question in a suit under s 77 of the Act The right of a son or daughter or other heir of a person to inherit his property is not an estate in remainder or in reversion in immoveable property or an estate otherwise deferred in enjoyment It is neither a vested nor a contingent right It does not come within the definitions of a vested interest in s 19 of the Transfer of Property Act (IV of 1882) or of a contingent interest in s 21 of the Act and s 10 of the Indian Succession Act (X of 1865) So far from being a vested or a contingent right or a right in present or in future it is in the language of cl (a) of s 6 of the Transfer of Property Act (IV of 1882) the chance of an heir apparent succeeding to an estate or a mere possibility of succession which cannot be transferred A mere *spes successionis* is unknown to and not recognised by Mahomedan law An alteration to be material for the purpose of registration must affect the legal effect of the contract so as to make it cease to be the same instrument ABDOOL HOOSEIN v GOOLAM HOOSEIN (1906) I L R 30 Bom 304

176 —— ss 17 (b) and 47—Mortgage deed—*Date of execution of deed—Date of registration—Priority—Construction—Execution of the deed on plain paper—Subsequent registration—Complete transaction—Unpaid consideration money* On the 24th May 1900 the defendant No 1 mortgaged

REGISTRATION ACT (III OF 1877) —*contd*

———— s 17—*contd*

certain lands to plaintiff for R1 300 of which R775 were in respect of past debts and R525 were to be advanced in cash This latter sum the defendant No 1 did not attempt to receive The deed was written on a plain paper bearing one anna receipt stamp and it was attested by two witnesses The deed itself contained a recital that the mortgagor (defendant No 1) was within 15 days from it date to execute a mortgage on a stamped paper and get it registered This he failed to do The plaintiff thereupon presented the original deed for registration on the 30th July 1900 and it was duly registered at a subsequent date on the payment of stamp duty and penalty In the mean time on the 4th June 1900 the defendant No 1 sold five survey numbers from out of the above lands to the defendant No 2 this sale deed was registered on the 4th July 1900 On this latter date the defendant No 1 mortgaged 4 more survey numbers out of the same property to defendant No 3 and the deed was registered on the same day The plaintiff then brought this suit to recover his money by sale of the property mort gaged to him *Held* that it was clear from the terms of the plaintiff s deed that legally the mort gage therein contained began to operate from the date of the document that is in other words it was not a document which merely created a right to demand another document but created as between the parties a charge in the nature of a mortgage *Purmanandas Jiwandas* v *Dharsey Virji I L R 10 Bom 101* followed *Held* further that the non payment of R525 by the plaintiff could not affect the nature of the document itself or vary its terms the defendant No 1 could sue to recover the unpaid remainder or for damages *Held* also that the plaintiff s document though registered later than the deeds of defendants Nos 2 and 3 was by virtue of its prior execution entitled to priority over them under s 47 of the Registration Act (III of 1877) MOTICHAND *v* SAGUN (1905)

I L R 29 Bom. 46

———— ss 17, 48—

See EQUITABLE MORTGAGE

I L R 33 Calc 410

———— ss 17 (*d*) 49—

See TRANSFER OF PROPERTY ACT ss 4 107 I L R 32 Mad 532

———— ss 17 49—**Authority to adopt in writing and not contained in a will**—*Document not a testamentary disposition of property and not registered—Invalidity—Evidence Act (I of 1872) s 91— Grant — Admissibility of evidence of authority to adopt* In a suit for a declaration that first defendant was not the adoptd son of plaintiff s de ceased brother the first defendant and his mother [illegible]

REGISTRATION ACT (III OF 1877) —*contd*

———— s 17—*concld*

alleged adoption authorised the wife to adopt and [illegible]

a testamentary disposition of property within the meaning of s 3 of Act V of 1881 It was an a[utho]rity to adopt and nothing else and the direction therein to put the adopted son into possession of the property could not be construed as a devise of the property It was simply a statement of the consequences that should legally follow on the adoption *Bhoobun Moyee Debia* v *Ram Kishore Acharj Choudhry 10 Moo I A 279 311* referred to The authority to adopt being in writing and not being contained in a will its registration was compulsory *Quære* Whether other evidence of such authority having been given could have been adduced under s 91 of the Evidence Act SUNDARA MUDALI *v* DURAISAMI MUDALIAR (1904)

I L R 27 Mad 30

———— s 18 (1871, s 18 1866 s 19)—

See ante s 17 CLS (*b*) AND (*d*)

See post s 28 I L R 29 Calc 654

See VENDOR AND PURCHASER—CONDITION OF TRANSFER

I L R 16 Calc 6[illegible]

I L R 22 Calc 17[illegible]

1. ———— **Deed of assignment of mortgage**—*Consideration less than R100—Mortgage for R100 or more* A deed of assignment for a consideration of less than R100 of a mortgage for a consideration of R100 or upwards does not need registration. SATRA KUMAJI *v* [illegible] HASGAVDA

I L R 2 Bom 97

2 ———— **Lease**—*Lease expressing tenant's willingness to continue tenant after a year—Lease.* A lease for one year certain containing an expression on the tenants part of readiness to hold the land longer at the same rent if the landlord should desire it is a lease for a term not exceeding one year the registration of which is optional under s 18 of the Registration Act (VIII of 1871) BUDGAVDA *v* NARHARI ANNAJEE

I L R 3 Bom 21

3 ———— *Lease for one year—Lease exceeding one year* A kabulat written on the 6th May 1880 and executed by the lessee of a house in favour of the lessors set forth that the house was let to the former at an annual rent of R3 for a term of one year It also contained this stipulation I (the lessee) do declare that I shall continue to pay the annual rent every year and that if I should fail to pay the rent in any year the owners of the house shall be at liberty to recover the rent through the Court. The lease was not registered. In a suit by the lessors against the lessee for possession of the house and for arrears of rent, the defendant pleaded that according to the right construction of the lease he was

REGISTRATION ACT (III OF 1877) —contd

——— s 18—contd

entitled to occupy the house and the lessors were not entitled to eject him therefrom so long as he paid the annual rent of R3 that he had duly paid rent at the agreed rate from the 6th May 1880 to the 6th May 1884 and that under these circumstances the plaintiffs were not entitled to either of the reliefs claimed *Held* that the lease was for one year only and thus falling under s 18 of the Registration Act (III of 1877) it was admissible in evidence without registration that the defendant had been a mere tenant at will since the expiry of the year 1880 81 and that the plaintiffs were therefore entitled to possession of the house *Hand v Hall L P 2 Ex D 355* referred to KHAYALI v HUSAIN BAKHSH I L R 8 All 198

4 ——— *Admissibility in evidence of unstamped and unregistered document—Entry in book showing extent of holding and rate of rent—Admission* A lessor having let certain lands to a lessee under a verbal agreement the lessee entered upon possession Afterwards and during the lessee s occupation an entry showing the extent of the holding and the amount of rent payable in respect of it was made in a book of the lessor and signed by the lessee In a suit subsequently brought by the lessor against the lessee for arrears of rent the lessee did not deny that he was a tenant of the lessor but disputed the extent of his holding and the rate of rent *Held* that the entry in the book of the lessor did not although signed by the lessee amount to a lease or to an agreement for a lease but to an admission only and could therefore be used as evidence against the lessee although neither stamped nor registered NARAIN COOMARY v RAMKRISHNA DASS

I L R 5 Calc 864 6 C L R 286

5 ——— Dowl fehrist—*Memorandum of rate of rent* A *dowl fehrist* being merely a memorandum by a zamindar s agent of the rates of rent agreed upon and to which the tenants affix their signatures in token of such agreement is not a contract and does not require to be stamped or registered GUNGAPERSAD v GOGUN SINGH

I L R 3 Calc 322

s c KARTICK NATH PANDAY v KHAKUN SINGH 1 C L R 328

6 ——— Principal sum under R100 —*Interest—Interest in immoveable property* A deed purporting to secure the sum of R99 advanced on certain properties giving the lender possession for a fixed period at a yearly rent of R8 12 R6 12 out of such rent being retainable by the lessee as interest on the sum advanced does not require registration RAM DOOLARY KOOER v THACOOR ROY

I L R 4 Calc 61 2 C L R 547

7 ——— Assignment of debt—*Transfer of Property Act (IV of 1882) ss 8 and 54—Assignment of debts secured on land—Unregistered instrument of assignment* In 1879 the defendants executed a hypothecation-deed which was registered to secure

REGISTRATION ACT (III OF 1877) —contd

——— s 18—concld

the repayment with interest of a loan of R87 In 1884 the obligee transferred his rights to the plaintiff in consideration of R70 under an instrument which was not registered At the date of the transfer of debt amounted with interest to R137 The plaintiff now sued to recover R129 being the principal and interest due on the hypothecation bond at the date of suit *Held* that registration of the deed of transfer was not compulsory and the plaintiff was not precluded from proving the instrument of transfer and establishing his rights thereunder to a personal decree and to a charge on the land by reason of its not having been registered. *Satra Kumaji v Visram Hasgavda I L R 2 Bom 97* referred to SUBRAMANIAM v PERUMAL REDDI

I L R 18 Mad 454

8 ——— Variation of lease—*Subsequent written agreement to abate rent—Transfer of Property Act (IV of 1882) s 107—Form of decree.* In the year 1879 the plaintiff granted a lease of certain land to the father of the defendants In May 1889 he agreed in writing to allow the defendants an abatement of rent to the extent of R100 per annum This agreement was not

Held that the agreement did not operate as a lease but was merely a variation of the lease and that therefore registration was not necessary *Held* therefore varying the order of the District Judge that the decree for the entire amount of the original rent must be set aside and a decree made for the amount of rent due at the reduced rate SATYESH CHUNDER SIRCAR v DHUNPUL SINGH

I L R 24 Calc 20

9 ——— *Document varying amount of rent* A document given by the owner of land to his tenant varying the term of tenancy with reference to the amount of rent to be paid is not an instrument relating to an interest in immoveable property and does not require registration OBAI GOUNDAN v RAMALINGA AYYAR

I L R 22 Mad 217

——— s 20—*Refusal of executing party to initial alteration—Registrable document* Refusal by

1. ——— s 21 (1871, s 21 1866 s 21) —*Requisites for registration—Description of property*

and secondly that if the instrument contains a

REGISTRATION ACT (III OF 1877) —contd

———— s 21—contd

map a copy or copies of the map shall accompany the instrument when presented for registration The other provisions of s 21 are directory only The circumstance therefore that the description of the parcels in the instrument does not specify the registration district or sub district or division or village in which the property is situate or the former occupancy is not alone sufficient to disentitle a party getting an instrument registered if the description in the instrument is sufficient to identify the property *In the matter of the petition of* NARAYNASAMI PILLAI 4 Mad 91

2 ———— *Presentation of two instruments—Description of property only in one* Where two instruments are contained in the same paper and relate to the same property and are both presented for and in all other respects are entitled to registration it is not a sufficient ground for refusing registration that in one of the documents the property is described only by reference to the other Though in the later of two instruments there are no words directly referring to the first yet the frame to the document showing that the second document should be taken to refer to the first the second document must be taken to contain a sufficient reference to the first *In the matter of the petition of* VENKATASAMI NAIK 4 Mad 101

3 ———— and ss 7 and 28—*Description of property in deed—Deed referring to land not in the sub district of registering officer a Sub Registrar* Certain pr[illegible]
bearing [illegible]
R719
Kotwa[illegible]
Bhagulpur This description was so far erroneous in that the property was in reality situated in thana Amarpur sub district Banka and bore a sudder jama of R919 15 Banka was however within the area of the district of Bhagulpur The mortgage bond was registered by the Sub Registrar of Bhagulpur who was under s 7 of the Registration Act authorized in addition to his own duties to exercise and perform the duties and powers of the Registrar of Bhagulpur *Held* by PIGOT O KINEALY MACPHERSON and GHOSE JJ (PETHERAM C J dissenting) that the provisions of s 21 of the Act had not been complied with that the description of the proper[illegible]
p[illegible]
tration [illegible]
the pr[illegible]
PETHERAM C J that the description was sufficient to identify the property and that the Sub Registrar having been authorized to exercise the powers and duties of the Registrar of Bhagulpur and the property being situate in sub-district Banka the Sub Registrar of which sub-district was subordinate t[illegible]
the provi[illegible]
only regi[illegible]
NATH TEWA[illegible]
I L R 18 Calc 556

REGISTRATION ACT (III OF 1877) —contd

———— s 21—concld

4 ———— and s 60—*Description of property not contained in the body of the deed of conveyance but inserted as a foot note* A conveyance of immoveable property did not contain in the body of the deed a description of it sufficient to identify it. In a foot note however such a description was given [illegible]

of the Registration Act (III of 18[illegible] being tendered in evidence was objected to on the ground that it ought to be treated as unregistered since it had been improperly accepted registration *Held* that the error in accepting if error there was did not invalidate the registration see *Sah Mukhun Lal Panday v Sah Koondun Lal 15 B L R 228 L R 2 I A 210* [illegible] ISUFBHAI v JAMNADAS PANCHORDAS I L R 17 Bom 84

5 ———— *Defective description of property—Deed affecting land registered in wrong book—Suit by purchaser for value* In a suit for land forming part of the self acquired property of a deceased Hindu it appeared that in [illegible] widow and his cousin had (on the death without issue of his son) entered into an agreement whereby the latter relinquished in the widow's favour for consideration all his rights in the self acquired property left by her husband. The agreement was registered in book No 4 under the Registration Act 18[illegible]7 and it contained no such description of the property as to satisfy the requirements of s [illegible] The plaintiff afterwards purchased the land now in question from the cousin the defendants Nos 1 and 2 having purchased it and obtained possession from the widow *Held* that the plaintiff was entitled to recover NARASAMMA v SUBBARAYUDU I L R 18 Mad 364

———— ss 21, 22 76—*Refusal to register—Suit to enforce registration—Sufficient to identify the same —Jaidad—Scope of s [illegible] relating to immoveable property* Where a [illegible] purported to transfer immoveable property and was presented as a non testamentary document for registration which has refused on the ground that [illegible] contained no description of the property [illegible] cient to identify the same *Held* that the [illegible] was under the circumstances proper The provisions of s. 21 Registration Act are [illegible] imperative and not merely directory [illegible] MUD v MOHAMMAD ZUBAIR (1909) I L R 31 All 323

———— s 22—*Sufficiency of description as to nature or effect of document—[illegible] of parties* When any question arises under the Registration Act as to the nature or effect of any instrument or the sufficiency of any description contained in it the Court must endeavour to gather from the words used the intention of the parties and give effect to it and not require as a condition of registration that the instrument be drawn up

REGISTRATION ACT (III OF 1877)—contd.

——— s 22—concld

technical language *In the matter of the petition of* VENKATASAMI NAIK 4 Mad. 101

1. ——— s 23 (1871 s 23 1866 ss 22 24 1864 s 18)—*Time for presentation for registration—Power of Registrar to register deed after* [illegible]

[illegible] wh.e except in ca es which came under the provi sions of 15 MONMOHINEE DOSSEE v BISHEN MOYEE DOSSEE BISHEN MOYEE DOSSEE v DEL SHAD BIBEE 7 W R 112

2 ——— *Time for presentation for registration—Procedure* Ss 22 and 24 of Act XX of 1866 made it imperative that the instruments therein referred to should be pre ented for registration within four or at most eight months from the date of their execution but the Act fixed no time within which the registration must be completed Where the registration of an instrument has been declared by a competent Court to be [illegible]

[illegible] PANDAY v KOONDUN LALL
15 B L R 228 24 W R 75
L R 2 I A 210

s c in lower Court KOONDUN LALL v MAKHUN LALL 1 N W 168 Ed 1873 247

3 ——— and ss 34 35 and 73—*Time for presentation for registration—Refusal to register—Effect of non appearance within prescribed time* When a document has been presented for registration in due time by one of the executants [illegible]

[illegible] reasons for his refusal The party desiring regis [illegible]

[illegible] so soon as it appears that the prescribed [illegible]

4 ——— *Period within which document may be registered—Agreement of parties* By an agreement entered into between the parties the vendor bound him elf to execute within thirty days a deed of conveyance and in default that the agreement should be con idered as itself the deed of conveyance of certain lands mentioned in the agreement The vendor having failed to execute such deed the vendee more than four

REGISTRATION ACT (III OF 1877)—contd.

——— s 23—concld

months after the date of the agreement presented it for registration *Held* that the conduct of the parties concerned could in no way affect the period of limitation within which such agreement could have been registered under the Act and that the agreement could not be registered NOBAN NUSYA v DHON MAHOMED

I L R 5 Calc 820 6 C L R 136

5 ——— *Certificate of sale—Period within which it should be registered* Although s 316 of the Civil Procedure Code 1877 says that a certificate granted thereunder shall bear the date of the confirmation of the sale that provision cannot alter the fact of execution or the time execution [illegible] from which [illegible] of the Re[illegible] therefore [illegible] tion in respect of a sale which was confirmed on the 7th April 1880 which was registered within four months from the 10th May 1882 when it was executed was registered within the time allowed by law The certificate showing that a document has been registered is conclusive proof that it has been registered according to law HUSAINI BEGAM v MULO I L R 5 All 84

6 ——— *Presentation for registration—Limitation for completion of registration* There is no provi ion either in the Registration Act or in the Stamp Act which lays down that [illegible]

[illegible] limitation of time is provided *Mukhun Lall Panday v Koondun Lall 15 B L R 228* followed SHAMA CHARAN DAS v JOYENOOLAH

I L R 11 Calc 750

1. ——— s 28 (1871 s 28) and s 85—*Whole or some portion of the property* The terms of s 28 of Act VIII of 1871 must not be construed in their literal sen e inasmuch as to do so would defeat the intention of the Legislature that registration should be made with reference to the locality of the property to which the document relates and hence the words of the section [illegible] portion of the property must be read as me[illegible] [illegible] at P [illegible] which required registration under Act VIII of 1871 and was registered at P *Held* that the bond was [illegible] properly registered in accordance with the provisions of s. 28 of Act VIII of 1871. *Per* MAHMOOD J—The imperative direction of s. 28 of Act VIII of 1871 is addressed not to the [illegible] officer but to the person presenting a document to that officer for registration and [illegible]

REGISTRATION ACT (III OF 1877) —contd

———— s 28—contd

2 ———— *Transfer of decree —Civil Procedure Code ss 232 244—Appeal—Act III of 1877 s 28* The words of s 28 of the Registration Act (III of 1877) some portion of the property should not be read as meaning some substantial portion *Sheo Dayal Mal v Hari Ram I L R 7 All 590* dissented from The holders of a decree for the sale of mortgaged property transferred the same to *M* by instruments which were registered at a place where a small portion only of the property was situate Subsequently *M* transferred the decree to other person and the co transferees applied under s. 232 of the Civil Procedure Code to have their names substituted for those of the original decree holders The judgment det
M
of
to him and that the transfer by *M* were inoperative as the instruments of transfer had not been registered at the place where the substantial por

below *Held* that the objection in reference to s 28 of the Registration Act could only properly be raised between the transferor and the transferee and not by the judgment debtor and moreover had no force CULZARI LAL v DAYA RAM

I L R 9 All 46

3 ———— and ss 64 65 and 66—*Place of registration of documents* The requirements of s. 28 of Act VIII of 1871 are fulfilled by the registration of a document relating to immoveable property in the office of the sub registrar with in whose sub district any portion of the property is situate The words some portion of the property are not to be read as meaning some substantial portion of the property All matters of

v SHEO DAYAL MAL I L R 11 All 100 L R 16 I A 12

Reversing the decision of the High Court in SHEO DAYAL MAL v HARI RAM I L R 7 All. 590

4 ———— *Registration Act (III of 1877) ss 3 28 64 and 65—Registration—Registration of a document relating to property situate partly outside British India* A document relating to immoveable property which is partly situate within British India and partly outside British India can be registered under Act III of 1877 in the district in which a portion of the property is situate GOPAL AMRIT v ANNABHAT (1900)

I. L. R. 25 Bom. 50

REGISTRATION ACT (III OF 1877) —contd

———— s 28—concld

5 ———— *Registration—Mortgage—Registration Act (III of 18) ss 3, 18, 28 49—Registration of documents—Jurisdiction to register document —Effect of registration by an officer not having jurisdiction—Mortgage security ineffectuality of by reason of defective registration—Money decree—Limitation—Transfer of Property Act s 59* Where registration of a deed has been effected by a Registrar having no jurisdiction in that behalf under s. 28 of the Registration Act (III of 1877) the document is not effective for the purpose for which it is created. The Sub-Registrar of Sealdah registered a mortgage deed dated October 10 1890 purporting to hypothecate immoveable property within the area of the Sealdah Registration Office In the suit brought on August 31 1901 for the enforcement of the mortgage bond the defendant contended *inter alia* that no such property as described in the deed ever existed and no satisfactory evidence having been given as to its existence —*Held* that the document could not take effect as a mortgage bond but, it being registered the plaintiff s claim was not barred though the suit was brought more than three years after the date of execution of the deed and the plaintiff was entitled to a money-decree for the whole amount secured by the deed with interest at the contract rate *Baij Nath Tewari v Sheo Saky Bhagut I L R 18 Calc. 556* and *Beni Madhab Mitter v Khatir Mondul I L R 14 Calc. 449* relied upon *Ram Coomar Sen v Khoda Newaz 7 C L R 223* commented upon. JOGINEE MOHUN CHATTERJEE v BHOOT NATH GHOSAL (190)

I L R 29 Calc. 654
s c 6 C W N 8.6

———— s 31 (1871 s 31) and s. 85—*Presentation—Residence of executant—Intending to register—Special cause—Registration Act, VIII of 1871 ss 31 and 85* The words any person intending to register any document in s. 31 of the Registration Act VIII of 18 1 include not only the person or persons in whose favour a document is executed but also any person or persons executing the same Under the provisions of that section therefore the presentation of a document for registration on special cause shown at the residence of a party executing it is valid. The registering officer is the judge of the sufficiency of the special cause and if he is satisfied the Civil Court has no power to question his decision on that point. Assuming the presentation at the residence of one of the executants of a document for registration to be an irregularity it is one which if committed in good faith is covered by the provision of s 85 of Act VIII of 1871 ISAK MAHAMAD v BAI KHATIJA

I. L. R 6 Bom. 68

———— ss 32, 33 and 87—*Validity of registration—Power-of-attorney—Authority of registering officer* One Daulat Ram after selling certain immoveable property to Musammat Ram Bai the mother of the plaintiff on the 1st August 1 sold the same property again on the 1st A

REGISTRATION ACT (III OF 1877) —*contd*

———— s 32—*concld*

1900 to the defendant The latter sale deed was duly registered on the 13th August 1900 and on the same day the sale deed of the 6th August 1900 was presented for registration by a pleader acting under a power of attorney from Musammat Ram Bai The power of attorney admittedly was not executed or authenticated in accordance with the provisions of s 33 of the Registration Act The registering officer however took no notice of the defect and after summoning Daulat Ram who admitted execution registered the sale deed of the 6th August on the 17th November 1900 *Held* that the document of the 6th August had not been legally registered. The terms of ss 32 and 33 of the Registration Act are imperative and proper presentation ... [illegible]

... Registration Act or by the fact that the executant when summoned by the registering officer con... [illegible]

(1900) I L R 23 All 101 [illegible]

———— ss 32 34 and 87—*Registration after death of executant—Registrar jurisdiction of—Procedure, defect in* A Registrar has no power or jurisdiction to register a deed unless he is moved by some person entitled to present it for registration under s. 32 of Act III of 1877 *i e.* by some person having a direct relationship to the deed. The absence of any party legally entitled to a present... [illegible]

(1900) I L R 23 All 233
s c 5 C W N 177
L R 28 I A 15

———— s 33 (1871 s 33)—

See STAMP ACT 1869 SCH. II ART 13
9 Bom 43

———— s 34—

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
I L R 11 Mad. 3
I L R 12 Mad 201

1 ———— (1871 s 34 1866 s 36 1864 s 29)—*Appearance of parties executing—* [illegible]

The other party is not required to appear An agreement to let premises may be made by an agent there is no law that it shall be signed by the principal. BISSENDOYAL *v* SCHLAEPFER
22 W R 68

REGISTRATION ACT (III OF 1877) —*contd*

———— s 34—*contd*

2 ———— and s 77—*Attendance before Registrar to admit execution time for* Although s 34 of the Registration Act 1877 lays down that no document shall be registered unless the person executing the same their representative assigns or authorized agents appear before the Sub Registrar within the periods allowed for presentation yet this section is directly subject to s 77 and that section nowhere provides any time within which the parties their representatives assigns or authorized agents shall appear to admit execution SHAMA CHARAN DASS *v* JOYENOOLAH
I L R 11 Calc 750

3 ———— *Representative assign or agent* The representative assign or agent mentioned in s. 36 Act XX of 1866 meant the representative assign or agent of one of the executors of the deed. *In the matter of* PANCHUNDER BISWAS
16 W R 180

4 ———— *Fact of execution —Title.* It was not necessary under Act XVI of 1864 s. 29 that the Registrar of Assurances should be satisfied of the validity of the title of the person applying to have an instrument registered he should merely enquire whether the person who purports to have executed the instrument did in fact do so if he was satisfied of that he should not refuse to register RAJ CHUNDER BUNDOO *v* RAJESSORY DOSSEE
1 Ind. Jur N S 240

MUTUKDHAREE LALL *v* FUZUL HOSSEIN
6 W R Mis 130

5 ———— *Suit to compel registration—Ground for refusal to register Held* [illegible]

SAJANJI VALAD GODAJI *v* NAJI VALAD LAKSMAN
4 Bom A C 142 note

6 ———— *Registration without parties appearing before Registrar—Invalid registration* A registering officer who registers a deed of sale without the vendor who executed the deed having appeared before him acts in contravention of s. 36 Act XX of 1866 but there are no words in that section which declare that the registration of a deed under such circumstances shall be null and void. *Quære* Whether the words of that section are not merely directory to the registering officer for the benefit of the parties to the [illegible]

[illegible]
L R 2 I A. 210

s c in lower Court KOONDUN LALL *v* MAKHUN LALL
1 N W 169 3 247

REGISTRATION ACT (III OF 1877)—*contd.*

——— s. 34—*contd.*

7. ——— and ss. 23, 24, 72, 77—*Limitation for registration or order of refusal of a document admitted for registration by Registrar—Denial of execution—Refusal to attend—Limitation under s. 77 of the Registration Act.* No period is prescribed by Act III of 1877 within which a document which has been admitted for registration may be registered or within which the order of refusal by the Registrar to register the document must be made. There is nothing in ... 74 and 77 to compel the Registrar in cases where there has been no express denial of execution, but where the executant refuses to attend at his office to make his order of refusal within the time limited for admission of execution by ss. 23 and 24. Limitation in respect of a suit under s. 77 begins to run from the date of such order. *Muktar Lall Pandey v. Kundun Lall, L. R. ... I. A. ... 24 W. R. ...*, and *Shama Charan Das v. Joyenco ..., I. L. R. 11 Calc. 750* relied on. *In the matter of Butto Krishto Banerjee, 11 B. L. R. 21* dissented from. LUCKHI NARAIN KHETTRY v. SATTOWRIE PERSE . . . . I. L. R. 16 Calc. 189

Affirming on appeal the decision in SATTOWRIE PERSE v. LUCKHI NARAIN KHETTRY

I. L. R. 15 Calc. 538

——— s. 35.—

See GIFT　　I. L. R. 23 Calc. 584

1. ——— s. 35 (1871, s. 35; 1866, s. 38) —*Admission of execution—Duty of Registrar when executant does not consent.* The plaintiff, having purchased at an execution-sale the right, title and interest of a tenant in an intermediate tenure, obtained from the zamindar a pottah which he sought to register according to law. The zamindar appeared at the registration office and admitted the execution of the pottah, but did not assent to its being registered, whereupon the registering officer withheld registration. *Held,* that it was the duty of the registering officer to register the pottah, notwithstanding the executant's refusal of assent. MADON ... DOSS v. GAZEE KOOLAN . . . 19 W. R. 198

2. ——— *Deed ... Refusal of vendor to endorse deed—Power of registrar for ...* A deed of sale ... the registration district of C... and presented by the purch... vendor appeared person... but refused to ... that she did not ... a certain deed ... to register ... ju... ...

REGISTRATION ACT (III OF 1877) —*contd.*

——— s. 35—*contd.*

power to refuse to register a deed on the ground that the full consideration therein mentioned had not been paid. His duty is, when the parties are ... person before him, simply to ascertain whether the deed has been executed by the persons by whom it purports to have been executed. *In the matter of Act XX of 1866 and of the petition of* ... DARBY CHANDRA SHAW and ... SHAW . . . . 1 B. L. R. O. C. ...

4. ——— *Admission of execution of document—Setting up collateral agreement.* Where the defendant admitted the execution of the documents, but set up a collateral agreement which would render the documents of no legal ... the lower Courts found that the agreement relied on by the defendant was one to which the plaintiff ... (reversing the decrees of the lower Courts) that, execution having been admitted, the documents ought to be registered. RAMANATHAN CHETTY v. VETTIASAMY . . . . 4 Mad. ...

5. ——— *Improper admission to registration—Suit to enforce document improperly admitted to registration.* H and S admitted in the registering office the execution of a deed of sale purporting to be executed by H, S and M. The last person did not appear before the registering officer, and did not admit or deny the execution of the deed on her part, but the other two persons stated that it had been executed without her knowledge or authority. It was *held* that, under the provisions of ss. 34 and 35 of Act VIII of 1871, the registering officer was not warranted in registering the deed. The deed of sale which the suit was brought to enforce not having been registered according to law, could not be received in evidence, and the suit to enforce the sale was unmaintainable. BAIJANATH v. MAHOMED IBADAT

7 N. W. 135

6. ——— *Refusal to register ... of executants from minority ... —D... I...* words of s. 35 of the Registration Act ... 1871 which provide that "If all the ... the document [... the registration] purports to ... if any such person ... or a lunatic ... ument purports to be ... representative ... registering officer shall ... ent ... registering officer to refuse ... purports to be executed ... from ... executant ... an idiot, or a lunatic ... would cause great ... ld be incon... of the rest of the ... the be read distributively ... the registering officer ... not grant the person ... of the deed and grant such

REGISTRATION ACT (III OF 1877) —contd

———— s 35—contd

Koondun Lall 15 B L R ? 8 referred to and approved MUHAMMAD EWAZ v BIRJ LAL
I L R 1 All 465
L R 4 I A 166

7 ———— *Registration of will after death of testator—Inquiry by registering officer into disability of testator—Registration Act (III of 1877) s 40 and 41* The procedure prescribed by s 35 of the Indian Registration Act is not applicable to the registration of wills which under s 40 of that Act are presented for registration after the death of the testator by persons claiming under them ARUMUGAM PILLAI v ARUNACHALLAM PILLAI I L R 20 Mad 254

8 ———— *Registration of bond executed by minor—Concealment from Registrar of fact of executant being a minor—Fraud—Contract Act (IX of 1872) s 1* A sum of money was advanced by the plaintiff to a minor who executed a bond in respect of the loan and registered it P [illegible] way the p[illegible] and the m[illegible] id which was then registered *Held* in a suit on the bond that there being nothing to show that the minor [illegible]

minority both by himself and by the plaintiff from [illegible]

[illegible]

9 ———— *Representative of deceased settlor—Admission of execution of document by one out of three representatives—Defect of procedure in course of registration—Validity of registration* The mother of three sons executed a deed [illegible]

joined in admitting the execution of the document

REGISTRATION ACT (III OF 1877) —contd

———— s. 35—contd

and that the registering officer was in error in considering one of them the due representative of the deceased [illegible]

10 ———— and ss 74 and 77—*Denial of execution what is—Non appearance—Specific Relief Act (I of 1877) s 45* A by an indenture of mortgage dated 15th March 1887 mortgaged certain property to S to secure the repayment of R18,000 within two months The deed was duly lodged for registration but A (the mortgagor) neglected to appear at the registration office to admit execution A summons was accordingly issued against him under s 36 of the Registration Act III of 1877 to enforce his attendance and was duly served upon him as required by s 39 He however did not obey the summons and neglected to attend the Sub Registrar s office on the day appointed He subsequently went away to Arabia without admitting execution and was not expected to return to Bombay S (the mortgagee) then applied to the Sub Registrar to treat A s neglect to attend and admit execution as equivalent to a denial of execution and to "refuse to register" the deed under the provisions of s 35 (last clause) [illegible]

that he could not treat A s non appearance as a denial of execution On application to the High Court under s 45 of the Specific Relief Act I of 1877 —*Held* following *Radhakishan Rowrea Dalna v Choonilal I L R 5 Calc 445* that the non appearance of A in pursuance of the summons was equivalent to a denial of execution within the meaning of s 35 of the Registration Act and that [illegible]

therein directed *In re* ABDUL AZIZ
I L R 11 Bom 691

11. ———— *Refusal to register —Disability of minority* The object of s. 35 of the Registration Act 1877 which directs the registering officer to refuse to register a document if the person by whom it purports to be executed appears to be a minor is that if the registration authorities refuse to register on that ground the question of minority may at once be brought into a Civil Court and there determined CHUKEE MUL JOHURY v BROJO NATH ROY CHOWDRY
I L R 8 Calc 967 11 C L R 315

12 ———— *Execution of bond by father on minor son s behalf—Registration of bond without the minor being represented effect of* At the registration of a bond executed by H and B and by H on behalf of J a minor the minor was not represented for the purpose of registration by any one

[illegible] ACT ([illegible]) — [illegible]

——— s. [illegible] — [illegible]

Held that the [illegible] [illegible]

[illegible]

[illegible] Where a Hindu executed [illegible]

[illegible]

REGISTRATION ACT (III OF 1877)—contd

——— s 47—concld

defendant No 2 in respect of the same property on the 17th November 1898 and got it registered on the 18th November 1898 On the 5th December 1898 the defendant No 1 mortgaged the same property to the defendant No 3 this deed of mortgage was registered on the 9th December 1898 Defendant No 2 obtained possession of the property The plaintiff then sued to establish his mulgeni lease and to recover possession of the lands *Held* that the plaintiff was entitled to recover possession of the lands for though his deed was registered after the defendant No 2 s deeds yet the moment it was registered it had operation from the date of its execution by virtue of s 47 of the Registration Act (III of 1877) *Held* further that it was immaterial whether the defendant No 2 s deeds were or were not accompanied by possession *Kali Das Mullick* v *Kanhya Lal Pandit L R 11 I A 218* and *Bai Suraj* v *Dalpatram Dayashankar I L R 6 Bom 380* followed and applied NARAYAN v LAXUMAN (1905) I L R 29 Bom. 42

1 ——— s 48 (1871 s 48 1866 s 48) —*Verbal contract between Hindus—Subsequent registered deed* Where a lien by verbal contract and deposit of title-deeds of immoveable property in the Island of Bombay by a Hindu in favour of a Hindu was created before the 1st of January ...

which enacted that all instruments duly registered under that Act and relating to moveable or immoveable property should take effect against any oral agreement relating to the same property did not apply to oral agreements completed before Act XVI of 1864 came into force JIVANDAS KESHAVJI v FRAMJI NANABHAI 7 Bom. O C 45

2 ——— *Registration of illegal or fraudulent document—Priority—Oral agreement accompanied by possession—English principles of equity* Persons claiming under a registered document which has been given ... a third party ... e not entitled ... istration Act ... egistration of ... procured in ...

——— s 48—contd

which is *ultra vires* or illegal or fraudulent The reason for the exception made by s 48 of the Registration Act VIII of 1871 in favour of an oral agreement accompanied by possession is that by *such* possession the parties who rely on a subsequent registered deed had or might if they had been reasonably vigilant have had previously to their entering into their contract with the vendor and to their taking a conveyance notice by the fact of such possession that there was some prior claim to the property Therefore where there is actual notice of a prior oral agreement although unaccompanied by possession the object of the Legislature is fully attained *Hicks* v *Powell 4 Ch 741 Futtechand Sahoo* v *Leelumber Singh Dass 14 Moo I A 129 9 B L R 433* and *Valaji Raji* v *Thomas I L R 1 Bom 191* distinguished. Instances in which the rules of English Courts of Equity have been applied in the mofussil referred to WAMAN RAMCHANDRA v DHONDIBA KRISHNAJI I L R 4 Bom 126

3 ——— *Case where there is no transfer or giving possession* The Registration Act 1871 s 48 which says that documents relating to any property duly registered shall take effect *against any oral agreement or declaration relating* to such property unless where the agreement or declaration has been accompanied or followed by delivery of possession does not aply to a case where there is no transfer or making over of possession KIRTY CHUNDER HALDAR v RAJ CHUNDER HALDAR 22 W R 273

4 ——— *Priority—Verbal contract—Registered deed of sale* A subsequent ...

5 ——— *Priority—Verbal sale with possession—Registered deed* *Held* that a deed of sale of immoveable property duly registered under Act XX of 1866 was to be preferred to a prior verbal sale of the same property accom...

been no such intention BHANDU VALAD RAJRAM v DAMAJI VALAD JIVAJI 6 Bom. A C 59

6 ——— *Priority—Possession under unregistered lease* Where possession of immoveable property has been given under an unregistered lease a subsequent grantee of a registered lease cannot maintain a suit to evict the lessee in possession on the ground of the priority of his deed under s 48 Act XX of 1866 NARSING PORKEAT v BEWAH 5 B L R Ap 86 14 W R 250

7 ——— *Mortgage without possession—Subsequent purchase with possession—Law in Kanara* *Quære* Where in Kanara a

REGISTRATION ACT (III OF 1877)
—*contd*

———— s 48—*contd*

mortgage without possession can be sustained against a subsequent purchase from the mortgagor with possession PURMAYA v SONDE SHRINIVASAPA
I L R, 4 Bom 459

8 ———— *Deposit of title deeds—Priority—Oral agreement* A deposit of title deeds of certain property under a verbal arrangement to secure payment of a debt is not an oral agreement or declaration relating to such property ' within the meaning of s 48 of the Registration Act 1877 COGOAN v POGOSE
I L R 11 Calc 158

9 ———— *Oral alienation—Evidence of possession* Per PONTIFEX J —The words relating to possession found in s 48 are merely intended as a declaration of the law limiting the operation of oral alienations and of declaring the law with respect to them by laying down that the only oral alienations of which the law can take notice in competition with registered instruments are tho e which are properly established by evidence of possession FUZLUDEEN KHAN v FAKIR MAHOMED KHAN
I L R 5 Calc 336 4 C L R 257

10 ———— *Oral agreement—Registration Act* (XX *of* 1866) *s* 48 *Held* that an oral agreement of hypothecation of immoveable property entered into in August 1869 and which was not accompanied nor followed by po session of the property charged could not avail against a registered sale certificate obtained in respect of the same property [illegible]
s 48 of Act X[illegible]
were looked t[illegible]
[illegible]

11 ———— *Oral agreement of sale—Subsequent sale to third party—Notice of prior agreement—Rights of purchaser* Notwithstanding the provisions of s. 48 of the Registration Act a party who purchases even under a registered deed of sale with notice of a prior agreement for sale of the same property will not be allowed to retain the property as against the person claiming under the prior agreement *Solano* v *Lala Ram Lal* 7 *C L R* 481 followed *Fuzludeen Khan* v *Fakir Mahomed Khan* *I L R 5 Calc* 336 distinguished CHUNDER NATH ROY v BHOYRUB CHUNDER SURMA ROY
I L R 10 Calc 250

12. ———— *Transfer of Property Act* (IV *of* 1882) *s* 54—*Oral agreement for sale of land—Subsequent conveyance with notice—Delivery of possession—Priority—Specific performance* Plaintiff being in possession of certain land as an incumbrancer under a registered instrument agreed orally with the mortgagor in 1885 to purchase it The mortgagor subsequently sold the land to others who took the conveyance which was registered with notice of the plaintiff s mortgage and of the oral agreement with him Plaintiff now sued for a declaration that the conveyance was not binding on him and for specific performance of the oral agreement. *Held* that the plaintiff s possession under [illegible]

specifically enforced notwithstanding the subsequent registered sale KANNAN v KRISHNAN
I L R 13 Mad. 324

13 ———— *Suit for specific performance of contract to sell land—Person claiming by subsequent title—Notice of prior contract—Transfer of Property Act* (IV *of* 1882) *s* 54—*Contract for sale—Bainanamah—Specific Relief Act* (I *of* 1877) *s* 27—*Legal and equitable rights—Registration Act* (III *of* 1877) *ss* 17 (*h*) 48 50—*Document creating a right to obtain another document—Unregistered document—Admissibility of evidence* On the 27th December 1895 S executed an unregistered document bearing a one anna receipt stamp in favour of J agreeing to execute a deed of conveyance of certain immoveable property in favour of J within a certain time and acknowledging receipt of earnest money Subsequently on the 3rd January 1896 S executed a registered bainanamah in re pect of the same property in favour of P and H [illegible]
conveya[illegible]
1896 an[illegible]
H had not ce of the previous contract with J before the regi tration of the bainanamah and execution of the dee l of conveyance in their favour *Held* that having regard to s 54 of the Transfer of Property Act and s 27 (*b*) of the Specific Relief Act in a suit for the specific performance of contract brought by J neither the bainanamah nor the deed of conveyance in favour of P and H could prevail again t the prior unregistered contract of J *Held* further that the unregistered document of the 27th December 1895 came under *s* 17 *cl* (*h*) *of Act* III *of* 1887 and was not in admissible in evidence for want of registration and that the registered bainanamah of the 3rd January 1896 did not take effect against it under s 50 of that Act HURNANDUN SINGH v JAWAD ALI
I L R 27 Calc 468

14 ———— *Effect of oral agreement as against subsequent registered conveyance* A by an oral agreement agreed to grant two mokurrari leases of certain properties upon certain terms to B and thereupon executed two mokurrari leases in favour of B which were not, however registered Afterwards A granted two mokurrari leases of the same mouzahs upon terms more favourable to himself to C and D who at the time of such grant had notice of A s previous agreement with B *Held* in a suit for specific performance brought by B against A and to which C and D were added as defendants that notwithstanding the fact that B had never got possession under the oral agreement as provided in s 48 of Act III of 1877 B could obtain a decree for specific relief and

REGISTRATION ACT (III OF 1877) —contd

——— s. 48—contd

a declaration that the lea es to *C* and *D* were void as against him NEMAI CHARAN DHABAL *v* KOKIL BAG
I L R 6 Calc 534 7 C L R 487

See CHUNDER KANT ROY *v* KRISHNA SUNDER ROY I L R 10 Calc 710

a ca e to which the Specific Relief Act applied.

15 ——— *Constructive pos se sion in pursuance of oral agreement to sell land*

re i t the claim of a sub equent registered purchaser PALANI *v* SELAMBARA I L R 9 Mad. 287

——— s 49 (1871 s 49 1866 s 49)—

See ante s 17

See ante s 28 I L R 29 Calc 654

See EXCHANGE 11 C W N 342

See LANDLORD AND TENANT—NATURE OF TENANCY I L R. 27 Bom 515

See LIMITATION ACT 1877 s 19 (1871 s 20)—ACKNOWLEDGMENT OF DEBTS I L R 5 Calc 215 4 C L R 361

1 ——— *Construction of section* In con idering the effect to be given to s 49 Act XX of 1866 that section must be read in conjunction with s 88 and with the words of the

36 or other provisions of a similar nature MUKHUN LALL PANDAY *v* KOONDUN LALL
15 B L R 228 24 W R 75
L R 2 I A 210

s c in lower Court KOONDUN LALL *v* MAKHUN LALL 1 N W 168 Ed. 1873 247

2 ——— *Properly regis tered document requisites of—Act XX of 1866 ss 66 67 68 and 69* The registration of a document under Act XX of 1866 is complete when all the requirements stated in ss 66 67 68 and 69 have been fulfilled and the certificate mentioned in s 68 is *primâ facie* evidence of such completeness

REGISTRATION ACT (III OF 1877) —contd

——— s 49—contd

to reject the document was *held* not to affect its claim to being a well registered document within the meaning of s 49 ROHIMOONISSA *v* ABDOOLLAH KHAN 22 W R 319

3 ——— *Document not duly registered—Admissibility of evidence* Although a document has been actually registered by the proper officer appointed for the purpose of registering documents it cannot be received in evidence under s 49 if it has been regi tered contrary to the provisions of the Registration Act MAHOMED ALTAF ALI KHAN *v* PERTAB SINGH 5 N W 91

4 ——— *Decree sale of—Decree on mortgage bond—Right to execute decree* A decree holder purported to sell to *A* by private sale all his right title and interest in a mortgage decree obtained by him in a suit on a mortgage bond against the mortgagor The deed of sale was not registered Afterwards by a registered deed of sale *A* conveyed all his right title and interest in the same decree to *B* *Held* that the right to execu

pass t
able
CHOW

5 ——— *Deed made before Regi tration Act—Admissibility of unregistered deed* *Held* that there is no provision in the law exclud ing a deed made before the Registration Act came into force and not registered within the time ap pointed for the registration of such deeds from being ad luced in evidence RAM SURUN DASS *v* RAM CHUND 1 Agra 283

6 ——— *Admissibility in evidence of unregistered deed for purpo e for which registration is unnecessary—Bond* An unregis tered document requiring registration as affecting an interest in land is admis ible in evidence for any purpose for which registration is unnecessary LACHMIPAT SINGH DUGAR *v* KHAIRAT ALI
5 B L R F B 18 12 W R F B 11

SHAM NARAYAN LALL *v* KHEMAJIT MATOE 4 B L R F B

MONOMOTHONATH DAY *v* SREENATH GHO E 20 W R. 107

7 ——— *Collateral pur pose—Mortgage unregistered—Limitation Act (XV of 1877)* An unregistered document the registra tion of which is compul ory may be admissible in evidence for a collateral purpose *i e* to prove admission of liability on part of the executant sufficient to prevent a claim from being barred by the Limitation Act MUGNIRAM *v* GURMUKH ROY I L R 26 Calc 334

8 ——— *Admissibility of unregistered deed—Collateral security of land* A bond for money in which land is pledged as a mere collateral security is not one of the instruments

REGISTRATION ACT (III OF 1877)
—*contd*

——— s 49—*contd*

defined in cl 2 s 17 Act XX of 1866 the registration of which is compulsory but is one of which the registration is optional under cl 7 s 18 of that law therefore in a suit for money due on the bond the reception of the bond as evidence though not registered is not barred by s 49 WOODOY CHAND JANA v NITYE MUNDUL 9 W R 111

9 ——— *Admissibility in evidence of unregistered deed to prove debt—Suit for money due on mortgage* In a suit to recover a sum of money due on a mortgage the mortgage deed though not registered was admitted in evidence to prove the debt BUTTOKRISTO DOSS v KHETTRA CHANDRA BHUTTACHARJEE 6 B L R Ap 69

10 ——— *Admissibility in evidence of unregistered deed as receipt or acknowledgment of debt—Deed of sale—Acknowledgment of debt* An unregistered deed of sale so far as it is a receipt or acknowledgment of money paid or an acknowledgment for old debts is admissible in evidence notwithstanding s 49 Act XX of 1866 A portion of an unregistered document requiring registration is admissible in evidence when such portion does not relate to immoveable property SHIB PRASAD DOSS v ANNA PURNA DASI 3 B L R A C 451 12 W R 435

11 ——— and s 17—*Admissibility of unregistered sale deed—Suit for specific performance of contract to sell land* The defendant executed a sale deed of certain land to the plaintiff The instrument bore R1 stamp only The plaintiff

any case secondary evidence of its contents was admissible the document having remained unregistered through no fault of the plaintiff NAGAPPA v DEVU I L R 14 Mad 55

12 ——— *Transfer of Property Act (IV of 1882) s 58—Unregistered mortgage—Suit on personal covenant to pay* An un

personal decree against the mortgagors GOMAJI v SUBBARAYAPPA I L R 15 Mad 253

13 ——— *Evidence admissibility of—Mortgage bond* An unregistered bond containing a personal undertaking to repay money borrowed and also a hypothecation of land above R100 in value as security may be used in evidence to enforce the personal obligation ULFATUNNISSA *alias* FLAHIJAN BIBI v HOSAIN KHAN I L R 9 Calc 520 12 C L R 20

14 ——— *Document creating interest in land* A document which gives or purports to give a right to have immoveable property brought to sale with a view to the recovery out of its proceeds of money lent (principal and interest) is an instrument which creates an interest in moveable property and as such cannot under s 49 of the Registration Act be received in evidence without being registered KALA CHAND MUNDUL v GOPAL CHUNDER BHUTTACHARJEE 12 W R 163

15 ——— *Suit for money decree on mortgage deed of immoveable property—Admissibility of document in evidence* A sued in the Small Cause Court on the covenant of a mortgage deed for a money decree The deed being unregistered was held inadmissible in evidence *Held* on reference to the High Court that the unregistered mortgage deed being in *its terms* indivisible and disclosing one transaction only which it would be imperative on the plaintiff to prove for the purpose of making out his case was under s 49 of Act VIII of 1871 inadmissible in evidence to prove a fact for which registration was unnecessary MATTONGENEY DOSSEE v RAM NARAIN SADKHAN I L R 4 Calc 83 2 C L R 428

16 ——— *Admissibility of document requiring registration—Divisible transaction* When a transaction is indivisible and the registration of the document evidencing it is by law

also (ii) that certain designated property should be hypothecated as collateral security for the repayment of the loan —the same rule does not apply and an unregistered bond for the amount advanced with interest containing a further provision that as collateral security for the amount advanced certain property should remain hypothecated may be used as evidence of the loan although inadmissible to prove the hypothecation KRISHTO LALL GHOSE v BONOMALEE ROY I L R 5 Calc 611 5 C L R 43

17 ——— *Admissibility of unregistered bond in evidence to prove money-debt—Collateral security* In order to secure a loan of R120 the defendant executed a bond to repay the loan with interest which provided that by way of collateral security certain immoveable property should be hypothecated The bond was not registered In a suit upon the bond praying for a money-decree against the defendant and for a declaration of a lien upon the property hypothecated it was objected that the bond was inadmissible in evidence by reason of its not being registered *Held* that the bond might be taken as divisible in its nature as being a money bond with a provision that certain property should be hypothecated as collateral security and that it was therefore admis-

REGISTRATION ACT (III OF 1877) —*contd*

———— s 49—*contd*

sible in evidence GOUR CHURN SURMA *v* JINUT ALI 11 C L R 166

18 —— —— —— *Unregistered mortgage bond pledging land—Consent of parties—Power of Court* Where land of the value of R100 or upwards was mortgaged on a bond which was not registered as it ought to have been under the Registration Act in force at the time —*Held* that the bond could only be sued upon as a money bond and though the suit might be brought in a Court within whose jurisdiction the land was not situated the

19 ———— *Admissibility in evidence of unregistered deed in suit to recover debt* Where an instrument purports to create an interest in immoveable property only as a collateral security for the payment of money and is also a simple contract or bond for the payment of a debt and where effect is sought to be given to the instrument only as a simple contract it is admissible in evidence in a suit to recover the debt though it has not been registered So far as it is a contract for the payment of money it is an instrument the registration of which is made optional by s. 18 of Act XX of 1866 VELLAYA PADYACHY *v* MOORTHY PADYACHY 4 Mad. 174

20 ———— *Instrument creat*

the mortgage The mortgage was executed before the Registration Act (XVI of 1864) came into operation The assignment to the plaintiff was executed after the Registration Act (XX of 1866) became law *Held per* BITTLESTON INNES and COLLETT JJ that the assignment being an instrument operating to create an interest in immoveable property and as such requiring to be

tion of a simple contract or bond to pay a debt and a collateral mortgage security for the debt is admissible in evidence for the purpose of proving the simple contract debt ACHOO BAYAHAM *v* DHANY RAM 4 Mad. 378

21 ———— *Admissibility of unregistered document in which land is pledged as a collateral security in a suit to enforce the personal security*

of 1871 a

property

security

enforce the personal liability of the person executing the bond. It is only excluded where it is offered as evidence of a transaction affecting immoveable property SESHATHRI AYYENGAR *v* SANKARA AYEN 7 Mad 296

22 ———— *Admissibility in evidence of document inadmissible under Act XX of 1866 as not being registered—Suit for money debt on document* A suit was brought to recover money secured by a mortgage in writing of immoveable property made in 1870 whilst the Registration Act (XX of 1866) was in force By Act XX of 1866 the document was not admissible in evidence even to enforce the demand for money the document not having been registered By Act VIII of 1871 (the Registration Act) the document was rendered admissible when the suit was brought *Held* that the document was admissible in evidence GUDURI JAGANNADHAM *v* PAPAKA RAMANNA 7 Mad 348

23 ———— and s 17—*Registration Act 1871 s 17—Decree—Instrument—Admissibility in evidence* Where a decree contained a charge on immoveable property —*Held* that it was admissible in evidence under s 49 of Act VIII of 1871 without registration under s 17 S 17 of the Registration Act 1871 expressly excludes such decrees PURMANANDAS JIWANDAS *v* VALLABDAS WALIJI I L R 11 Bom. 506

24 ———— and s 17—*Unregistered conveyance—Covenant to pay money contingent on ejectment—Suit for money dismissed* By an unregistered document *A* stipulated that *B* should enjoy certain land for a term of years in order that a debt and interest might be liquidated by receipt of profits estimated at a fixed sum and it was provided that if *B*'s possession was disturbed in the meantime *A* should pay the balance of the principal then due and interest from the date of the loan. *B* having been ejected sued *A* upon the covenant to pay *Held* that as the covenant to pay depended on the principal contract which could not be proved for want of registration *B* could not recover VENKATRAYUDU *v* PAPI I L R. 8 Mad. 182

25 ———— *Admissibility in evidence of unregistered bond—Suit for money due on bond* *Held* by COUCH C J following the decisions of the Calcutta and Madras High Courts but doubting that an unregistered bond whereby immoveable property was pledged by way of collateral security is admissible in evidence where effect is sought to be given to it for the purpose of obtaining a decree for the money due under it TUKARAM VITHOJI *v* KHANDOJI MALHARJI 6 Bom. O C 134

26 ———— *Admissibility in evidence of unregistered bond—Suit for money due on bond* Where a bond or other instrument creating an interest in land also contains a distinct promise to pay the money due under it such bond or instrument is evidence in a suit brought to recover the money only SANGAPPA BIN NINGAPPA *v* BASAPPA BIN PARAPPA 7 Bom. A C 1

REGISTRATION ACT (III OF 1877) —*contd*

——— s 49—*contd*

27 ——— *Admissibility in evidence of unregistered bond—Suit for money due on bond* An unregistered bond containing the con

lender sues not to enforce any charge or lien against the land but seeks for personal relief in the shape of a decree against the defendant for the payment of the bond debt ESHREE RAI *v* BINDOOT RAI
3 Agra 60 Agra F B Ed. 1874 142

28 ——— *Admissibility in evidence of unregistered bond—Suit for money due on bond* Although a bond which creates an interest in land as security for the debt is inadmissible in evidence if unregistered it may be adduced as evidence of the debt and a money decree may be given on the basis of it for the sum secured by it SEETA KULWAR *v* JUGGURNATH PERSHAD
3 Agra 170

29 ——— *Suit for money on unregistered mortgage bond—Promise to pay* Where the debtor by an unregistered bond acknowledged the debt and promised to pay and subsequently on his failure to pay on a certain date stipulated for its recovery by sale of the hypothecated property —*Held* that a suit could be maintained on the personal promise to pay NEMDHARI POY *v* BISSESSARI KUMARI 2 C W N 591

30 ——— *Conveyance containing acknowledgment of debt* G owed B R3 500 and executed a conveyance of certain land to B for which such debt was partly the consideration. In such conveyance G acknowledged his liability for the debt but he died before it was registered and it did not operate In a suit against G s widow for the debt —*Held* that notwithstanding the conveyance was not registered it was admissible as evidence of the acknowledgment by G of his liability for the debt KHUSHALO *v* BEHARI LAL
I L R 3 All. 523

31 ——— *Unregistered bond* ... *collateral* ... *nce of the* ... A bond ... ay money ... pothecate immoveable property as collateral security for such payment although the money obligation is of the value of one hundred rupees and the bond is not registered ... a claim to ... *matter of t.* ... MISR

32 ——— *Unregistered bond for the payment of money hypothecating immoveable property—Admissibility in evidence of the bond in support of a claim for money—Mortgage* On the 3rd February 1871 the defendants having borrowed R1 000 from the plaintiffs executed in favour of the latter an instrument in which they mortgaged by way of conditional sale certain immoveable property as security for the loan and in which it was provided that they should pay certain interest on such sum annually and should pay such sum on the expiration of five years from the date of such instrument and in the event of failure in the e respects that the plaintiffs might apply for foreclosure On the 18th January 1879 the plaintiffs sued the defendants for the balance of such sum and interest waiving their claim on such property and suing for such balance as a simple debt as such instrument was not registered *Held* following *Sheo Dial v Prag Dat Misr I L R 3 All. 229* that inasmuch as such instrument involved a personal obligation of the defendants distinct and severable from the obligation in respect of such property such instrument notwithstanding it was not registered was admissible as evidence in support of the claim to enforce that money obligation and it was also admissible in proof of the fact that the debt was not exigible from the defendants until on and after the expiration of five year from the date of the loan LACHMAN SINGH *v* KESRI
I L R. 4 All. 3

33 ——— *Admissibility of unregistered deed—Specific performance suit for* A brought a suit in the Munsif s Court against B and C alleging that they had sold outright to him by saf kobala certain landed property for R300 which was duly paid and the kobala was executed that possession was given to him that B and C set up before the Deputy Registrar fraudulent objections to the effect that a stipulation to return the property to the vendors on the repayment by them ... had not been embodied ... n ... is ... re was no such stipulation as set up by B and C and ... was paid ... could not be admitted in evidence nor parol evidence of the contract be given under which A alleged that he acquired his title A ought to have proceeded under s 83 of Act XX of 1866 PAHMATULLA *v* SARIUTULLA KAGCHI
1 B L R F B 58 10 W R F B 51

MAHOMED OHID *v* KALEE PERSHAD SINGH
24 W R 320

FATI CHAND SAHU *v* LILAMBER SING DAS
9 B L R 433 14 Moo I A 129
18 W R P C 26

34. ——— *Suit for breach of covenant—Admissibility in evidence of unregistered document* In a suit for breach of a covenant to register contained in an unregistered mortgage deed the defendant cannot plead the non registra

REGISTRATION ACT (III OF 1877)
—*contd*

———— s 49—*contd*

tion of the in trument for the purpose of protecting himself Such a deed is admi ible in evidence for a collateral purpo e without being registered SHAM NARAYAN LAL v KHEMAJIT MATOE
4 B L R F B 1

s c SHAM NARAIN LALL v KHEMAJEPT MATOE
12 W R F B 11

35 ———————— *Suit for posses sion ba ed on unregi tered deed—Suit to enforce regi tration* *Held* that a suit for possession based merely on an unregi tered sale deed must fail such unregi tered sale deed being inadmissible as evi dence in any civil proceeding under s 13 Act XVI of 1864 KEI HEN KISHORE CHUND v MAHOMED ZUKAHOOLLAH Agra F B 148 Ed. 1874 111

36 ———————— *Unregistered indigo at ah —Admi sibili y in evidence of claim for damage* S gave M a lease of certain land which was required by law to be registered but which was not regi tered in which it was stipulated that if he failed to deliver any portion of such land he should pay damages at a certain rate per bigha in re pect of the portion not delivered and in which

the lea e was not registered but seeking only a

v SHEO RAM LAL I L R 4 All 232

37 ———————— *Admissibility in*

property By a subsequent unregistered deed of gift of 15th July 1865 *S L* purported in consi deration of natural love and affection to grant and convey the same property the value of which ex ceeded R100 to *B R* the husband of *S* his heirs executors administrators and assigns The last mentioned deed contained covenants on the part of *S L* his heirs executors and administrators with *B R* his heirs executors administrators and assigns for title to the hereditaments and premises herein before expre sed to be hereby granted and assured

in the possession of the surviving members of the

REGISTRATION ACT (III OF 1877)
—*contd*

———— s 49—*contd*

family of *B R* and *S* The plaintiff having failed in a suit for ejectment against the parties in posses sion who relied on the prior gift to *S* sued the representatives of *S L* for damages for breach of the covenants for title contained in the unregistered deed of the 15th July 1865 *Held* that though as in *Tukaram* v *Khandoji* 6 *Bom O C* 134 and *Sangappa* v *Basappa* 7 *Bom A C* 1 an unregis tered document requiring registration may be admitted in evidence for certain purposes yet it cannot be looked at so far as it affects the immove able property comprised therein nor so far as it is evidence of any transaction affecting such property and that excluding the part of the document of 15th July 1865 which purported to be the convey

were not estopped from contending that nothing having passed under it to *B R* nothing had passed to the plaintiff under the subsequent deeds and that consequently the plaintiff was not entitled to maintain this suit PAJU BALU v KRISHNARAV RAMCHANDRA I. L R 2 Bom. 273

38 ———— and s 17—*Covenant in un registered lease—Suit for specific performance* The plaintiff leased a house to the defendant for three years by an unregistered instrument which con tained a covenant by the lessee that he would pur chase the house at a certain price on an event which took place The plaintiff now sued for specific per formance of the covenant *Held* that the unregis tered instrument was not admissible in evidence

GANGAYYA I L R 13 Mad 306

39 ———————— *Admissibility in evidence independently of document sued on when un registered* In a case where it is made to appear that the cause of suit ari es upon a document which by law requires registration but has not in fact been registered the plaintiff cannot be permitted to establish a claim independently of the document the existence of which is shown PAMPERSHAD v MEWA KOOER 2 N W 12

MOONA v JEY MUNGUL SINGH 4 N W 164

KABOOLUN v SHUMSHEER ALI 11 W R 16

Unless it is apparent that such document is not the foundation of his suit SAWANTEE v SEWA RAM 2 N W 35

40 ———————— *Unregistered kabuliat—Suit for rent* Where the contract between

REGISTRATION ACT (III OF 1877) —contd

——— s 49—contd

the parties to a rent suit is in no way disputed or denied and the fact of certain lands having been taken at a certain rent is admitted the only issue being whether the rent has been paid or not the

41 ——— *Inadmissibility for want of registration—Evidence in suit on document* In a suit upon a razinama the execution of which was admitted by the defendants which purported to create an interest in immoveable property the Civil Judge dismissed the suit because the document had not been registered in accordance with Act XVI of 1864 s 13 *Held* (reversing the decree of the Civil Judge) that the existence of the agreement not having been disputed its production was not necessary and that the plaintiff was entitled to whatever relief the effect of the plaint and answer taken together would entitle him on the admission of the defendant CHEDAMBARAM CHETTY v KARUNALYAVALANGAPULY TAVER 3 Mad. 342

See REZA ALI v BHIKUN KHAN 7 W R 334 where the only disputed point being the fact of payment for which the production of the kabuliat was unnecessary the dismissal of the suit for its non registration was *held* unjustifiable

42 ——— *Inadmissibility of evidence where registrable document is not registered* The plaintiff sued the defendant to recover rent due upon a muchilka executed by the defendant The defendant admitted that he occupied the land under the express contract contained in the muchilka. The muchilka was a document the registration of which was compulsory under the Registration Acts but was not registered *Held* that the plaintiff could not establish his case without putting the muchilka in evidence and it was inadmissible not having been registered MORRIS v SAPAMTHEETHA PILLAY 6 Mad. 45

43 ——— *Evidence where contract is unregistered and therefore inadmissible* Where defendant after executing a bill of sale in respect of certain lands and receiving the full amount of purchase money agreed upon had repudiated the contract and refused to make over possession it was *held* that though the fact of the deed of sale not being registered precluded it under s 13 Act XVI of 1864 from being admitted as evidence yet plaintiff was not excluded from showing by other evidence that he performed his part of the contract. There is nothing in that section which says that no contract purporting to create or transfer any right title or interest in land shall be recognised by the Civil Court unless reduced to writing *Held* also that there was no reason why plaintiff should not be permitted to show that non registration was owing not to any fault of his own but to the fraudulent conduct of his adversaries HELALOODDEEN v CHOWDHRY ABDOOL SUTTAR 9 W R 351

44 ——— *Unregistered document with possession—Evidence of possession.* An unregistered document when followed by delivery of possession may be used as evidence of that possession LALLA GOPEE CHAND v LIAKUT HOSSEIN 25 W R 211

45 ——— *Admissibility in evidence—Intention of parties* A sued B for recovery of possession of land which he alleged had been sold to him by B under a bill of sale The bill of sale had been duly registered and was not disputed

...it had

46 ——— *Agreement to have deed of partition drawn up* An agreement to have a deed of partition drawn up in a particular form even if not admissible in evidence without registration can be put in unregistered as evidence of the intention of the parties. NEM ROY v LALMUN ROY 25 W R 376

47 ——— *Receipt for sums paid on bond hypothecating immoveable property —Admissibility in evidence—Parol evidence—Evidence Act (I of 1872) s 91 illus (e)* A receipt for sums paid in part liquidation of a bond hypothecating immoveable property must be registered under the provisions of s. 17 of Act VIII of 1871 to render it admissible as evidence under s 49 of the said Act Under illus (e) s. 91 of Act I of 1872 such payments may nevertheless be proved by parol evidence which is not excluded owing to the inadmissibility of the documentary evidence DALIP SINGH v DURGA PRASAD I L R 1 All. 442

48 ——— *Proof of unregistered mortgage by subsequent admission rejected —Evidence Act s 65 (b)* The defendant in an ... 1865 but ... for R50 ... was ... the Regis... *Held* that by virtue ... tration Act 1864 the first mortgage-deed could not be put in evidence and that the defendant could not give secondary evidence thereof under s. 65 (b) of the Evidence Act DIVETHI VARADA AYYANGAR v KRISHNASAMI AYYANGAR I L R 6 Mad. 117

49 ——— *Landlord and tenant—Entry under unregistered lease—Holding*

REGISTRATION ACT (III OF 1877) —*contd*

——— s. 49—*contd*

over—Proof of terms of lease The plaintiff sued in 1881 to recover certain land and arrears of rent from the defendant alleging that the defendant s ancestor entered on the land as a tenant in 1865 under a lease for five years which was not registered The defendant denied the lease of 1865 admitted that he was the tenant of the land but denied that she could be ejected and claimed to deduct from the rent certain emoluments *Held* that the plaintiff could not prove the tenancy alleged in the plaint ins much as the lease of 1865 was not registered and therefore could not eject the defendant NAVGALI v PAMAN I L R 7 Mad 226

50 ——— ——— *Unregistered lease —Proof of tenancy ejectment—Occupancy right* If a contract of lease is for want of registration

upon VENKATAGIRI v PAGHAVA. ZAMINDAR OF VENKATAGIRI v PAGHAVA I. L R 9 Mad 142

51. ——— *Effect of a registered instrument confirming a prior one of the same purport not registered* An instrument pur

that the fact of the prior deed not having affected the property being unregistered was no reason why the deed afterwards registered should not be admitted as evidence of title In this there had been nothing contravening the object of the Registration Act. MITCHELL v MATHURA DAS I L R 8 All 6 L R 12 I A. 150

52 ——— *Inadmissibility in evidence of unregistered deed—Secondary evidence —Evidence Act s 91* Plaintiff alleged that A and B had sold and conveyed by an unregistered deed

CHUNDER HALDAR v GOBIND CHUNDER SEN 1 C L R 542

53 ——— *Unregistered document—Admissibility of other evidence where document is not admissible—Admission* The plaintiff sued to recover certain immoveable property sold to him by the first defendant by a registered deed of sale executed on the 23rd of July 1868 The second third and fourth defendants pleaded a sale to them by the same party the first defendant on

REGISTRATION ACT (III OF 1877 —*contd*

——— s 49—*contd*

the 23rd March 1867 and that the first defendant

unregistered instrument of conveyance but the lower Courts held that certain admissions made by first defendant in an inquiry held before the registration officer were admissible in evidence to prove the sale to third and fourth defendants The suit was therefore dismissed with costs. Upon special appeal —*Held* by INNES and KINDERSLEY JJ that the admissions made by first defendant were evidence against plaintiff as made by one from whom plaintiff derived his title but that the provisions of the Registration Act precluded any effect being given to the sale evidenced by such admissions there being a writing the sale could not be proved by mere oral evidence By INNES J —The term instrument in s 49 of Act XX of 1866 is used on the under tanding that the writing is not merely evidence of the transaction but is the transaction itself SOMU GURUKHAL v PANGAMMAL 7 Mad. 13

54 ——— *Suit to compel*

three years from the 1st of November 1883 at a monthly rent of R200 Subsequently to the making of the agreement i.e. on the 17th January 1884 the plaintiff caused a writing to be prepared which as he alleged contained the terms of the lease agreed on and having signed it handed it over to the defendants The defendants did not sign it and the document remained with them The plaintiff alleged that he did not ask the defendants to sign it as the defendants told him they would get a copy of it prepared which they would sign and send to him. The defendants alleged that at the time the document was given to them by the plaintiff they objected to it on the ground that it was incomplete inasmuch as it did not contain two of the terms agreed on which prohibited the plaintiff from sub letting or altering the premises and required him to maintain them in their then existing condition. The plaintiff denied these allegations of the defendants. In May 1884 the plaintiff through his attorneys called upon the defendants to lodge the document for registration. The defendants refused and the plaintiff filed the present suit praying—(i) that the defendants might be ordered to lodge the said document for registration and do all such acts as might be necessary to obtain registration thereof (ii) that if necessary another similar document might be prepared and registered (iii) that in the alternative the defendants should pay R4000 damages. At the trial the plaintiff raised ... as to the truth of the defendants allegation that the agreement of lease comprised terms ...

REGISTRATION ACT (III OF 1877) —*contd*

——— s 49—*contd*

plaintiff to sub let or alter etc The defendants objected to the proposed issue In the course of the hearing the plaintiff tendered the document of the 17th January 1884 in evidence The defendants objected on the ground that it was unregistered. The Court held that it was admissible as a mere writing with reference to which irrespective of its contents the other evidence in the case was given At the close of the plaintiff s case the defendants declined to call evidence and judgment was given on all the issues in favour of the plaintiff. The defendants appealed and contended that they were not bound to produce the document for registration and that the Court was wrong in permitting the above issue to be raised and determined in this suit and that the document being inadmissible as evidence of the contract no oral evidence of the contract was receivable The plaintiff contended that there was an implied obligation upon the defendants to register the document arising from the fact that the document contained the true contract between the parties and that the object of the suit being to compel registration the document although not registered could be given in evidence to prove the contract between the parties *Held*

object of giving the document in evidence being to establish the contract of lease for the purpose of drawing an inference from it the document was for that purpose inadmissible being unregistered and that the Court below although admitting it originally as merely a piece of paper was wrong in using it as evidence of the contract between the parties HURJIVAN VIRJI *v* JAMSETJI NOWROJI

I L R 9 Bom 63

55 ——— *Suit for damages for breach of contract to execute a lease—Admissibility in evidence of an unregistered kabuliat to prove contract* Defendant entered into an agreement with the plaintiff to lease a certain property to him The plaintiff delivered the kabuliat to the defendant and was put into possession of the property The defendant did not execute the cowle and did not register the kabuliat and subsequently improperly deprived the plaintiff of his possession Plaintiff brought a suit for damages for breach of contract *Held* on a question as to whether the kabuliat was admissible in evidence having regard to s 49 of Act III of 1877 since it had not been

kabuliat was admissible in evidence to prove the contract *Hurjivan Virji v Jamsetji Nowroji I L R 9 Bom 63* distinguished RAJAH OF VENKATAGIRI *v* NARAYANA REDDI

I L R 17 Mad. 456

56 ——— *Instrument of hypothecation—Endorsement of payment unsigned—Admissibility of evidence of endorsement to show payment* The plaintiff hypothecated certain land to the defendant by a duly registered instrument and subsequently paid off the debt and received back the instrument At the time of payment the defendant made an endorsement on the bond to the following effect 25th Kartik of Sukla Rupees two hundred and sixty three principal including interest was received on account of this bond and there is therefore no lien whatever Some time afterwards plaintiff discovered that what he had paid in redemption of the mortgage-claim was in excess of what was due and he brought a small cause suit to recover the amount overpaid tendering in evidence the endorsement on the bond The objection was taken that the endorsement not being registered was not receivable in evidence under s 49 of the Registration Act of 1866 The District Munsif dismissed the suit upon the ground that the endorsement was not signed by the defendant and was therefore not admissible in evidence but referred to the High Court the question whether the evidence was rightly excluded *Held* by SCOTLAND *C J* and INNES *J* that the fact of there being no signature to the endorsement was no objection to its reception as confirmatory evidence of the sum received by the defendant By SCOTLAND *C J* —That the endorsement was admissible evidence for the purpose for which it was offered although not registered the endorsement not being used as evidence of the creation or discharge of an obligation but merely as confirmatory proof of a fact provable by oral evidence although stated in writing By INNES *J* —That the endorsement was admissible evidence its reception not being precluded by the provisions of the Registration Act VENKATARAMA NAIK *v* CHINNATHAMBU REDDI 7 Mad. 1

57 ——— *Sale certificate—Inadmissibility of as unregistered—Other evidence of* ... where ... y pro- ... ficient ... ose *v* TAMIZUDDIN 7 C L R 115

See RAJKISHEN MOOKERJEE *v* RADHAMADHUB HALDAR 21 W R 349

58 ——— *Certificate of sale—Right of action* The plaintiff sued to recover possession of a house purchased by him at a Court sale for R350 The plaint was filed on the 31st March 1873 No certificate of sale was filed with it but plaintiff subsequently produced one dated the 8th July 1873 and the Court admitted it in evidence Defendant submitted that the suit should be dismissed as no certificate was produced by the plaintiff with the plaint The first Court ... the plaintiff s favour The Court ... ismissed the ... not to have ... Court The

REGISTRATION ACT (III OF 1877) —*contd*

——— s 49—*contd*

High Court on second appeal confirmed the deci sion of the lower Appellate Court on the ground

59 ——— *Admissibility in evidence of instrument registrable but unregistered destroyed by fire* Where an instrument the regis tration of which was rendered compulsory by s 17 of the Registration Act (XX of 1866) was destroyed accidentally by fire soon after its execution and before registration —*Held* in a suit to compel the defendant to execute another instrument to the same effect as that which had been destroyed that secondary evidence of the contents of the instrument

5 Mad 123

60 ——— and s 17—*Instrument affect*

immoveable as to which they had disputed The document was not registered The widow set up a will made by the deceased in her favour the brother sued the widow for a declaration that the will was a forgery but the Court held that it was genuine He now sued the widow and daughter on the above instrument to recover his agreed share of the moveable property of the deceased The widow set up the will which the plaintiff averred

61 ——— *Unregistered con tract for sale of land subsequently attached in exe cution—Evidence of transfer of ownership in*

(s 49) Not being registered it did not operate to transfer the ownership and could not be received

the attachment and sale in execution it passed to

REGISTRATION ACT (III OF 1877) —*contd*

——— s 49—*contd*

the plaintiff HORMASJI MANEKJI DADACHANJI *v* KESHAV PURSHOTAM I L R 18 Bom 13

See KARALIA NANUBHAI MAHOMEDBHAI *v* MANSUKRAM VAKHATCHAND

I L R 24 Bom 400

62 ——— *Lease—Agree ment to indemnify contained in lease—Suit for indemnity* A lease of land for nine years contained a clause by which the lessor agreed to indemnify the lessee in case he should incur any loss in conse quence of disputes which might arise as to the land between the lessor and his kinsmen The lease was not registered After the lessee had held the land under the lease for two years a suit for possession was brought against him and the lessor and he were dispossessed and obliged to pay mesne profits He then brought this suit against the lessor under the above clause in the lease *Held* that the lease being unregistered was not admissible in evidence and could not be looked at The clause on which the plaintiff sued could not be separated from the lease itself and the plaintiff s claim must therefore be rejected GURUNATH SHRINIVAS DESAI *v* CHENBASAPPA I L R 18 Bom. 745

63 ——— *Notice of attorn ment on redemption of mortgage—Evidence of attorn ment but not of satisfaction of mortgage debt* Where on the redemption of a mortgage the mortgagee executed a document which purported to be a notice of attornment to the tenants in occupation of the mortgaged property containing a recital that the property had been redeemed —*Held* that the document though unregistered was admissibl in evidence for its own proper purpose of proving the attornment though not for the purpose of proving that the mortgage charge was satisfied ANTAJI *v* DATTAJI I L R 19 Bom 36

64 ——— *Mortgage taken from Hindu widow—Unpaid interest claim d on her deceased husband s mortgages* A pardanashin

the mortgages had been signed by the husband which it was held could not affect the right to redeem being unregistered. TIKA RAM *v* DEPUTY COMMISSIONER OF BARA BANKI

I L R 26 Calc 707
L. R. 26 I A 97
3 C W N 573

65 ——— and ss 73 and 47—*Assign ment of decree for sale of hypothecated property—Non registration of deed of assignment—Civil Pro cedure*

The as

proper

Code

REGISTRATION ACT (III OF 1877) *—contd*

———— s 49—*contd*

being raised that the deed of assignment had not been registered he subsequently applied for the return of the deed that it might be registered and it was returned accordingly The deed was afterwards duly registered *Held* (i) that the deed of assignment was not a document which comprised immoveable property within the meaning of s 49 of the Registration Act (III of 1877) a decree for sale not being immoveable property as defined in s 3 (ii) that consequently although the assignee might not under the latter portion of s 49 use the deed for the purpose of proving his title there was no provision in the Act saying that he should not take title under the deed (iii) that the position of the assignee when he made his application on the 13th November 1886 was that he was unable to prove that there was a title by assignment in himself (iv) that the subsequent registration cured the absence of registration on the 13th November 1886 and under s 47 of the Registration Act the document thereupon had full effect and related back to its execution ABDUL MAJID *v* MUHAMMAD FAIZULLAH I L R 13 All 89

66 ———— and s 17 (c)—*Unregistered agreement by mortgagor to sell to mortgagee—Subsequent assignment of equity of redemption to third person for value but with notice of agreement* In a suit for redemption filed by an assignee for value of the equity of redemption against a mortgagee in possession it was found that the mortgagor had agreed with the defendant to sell the mortgaged premises to him that part of the purchase money had been acknowledged as paid and that the balance had been tendered in pursuance of the agreement It was further found that the plaintiff had taken his assignment with notice of the above agreement and tender The agreement was in writing but not registered *Held* that though the agreement was not admissible in evidence as creating an interest in land still it might be used for the purpose of obtaining specific performance and the plaintiff having purchased the equity of redemption with notice as above was not entitled to redeem ADAKKALAM *v* THEETHAN I L R 12 Mad 505

67 ———— and s 60—*Certificate of registration—Distinction between act of registering officer and conduct of parties—Certificate not invalidated and document not made inadmissible by erroneous procedure in presenting or admitting execution* The word registered as used in s 49 of the Registration Act (III of 1877) refers to the act of registration by the registering officer and not to matters of procedure or conduct of the parties seeking registration which are governed by special provisions of the Act S 49 read with s 60 only means that a document to be admissible in evidence for the purposes of the former section must be registered *i e* the officer must under s 60 have put upon it the certificate required by that provision If he has done so the document bearing such certificate becomes admissible in evidence if he has not or there has been no registration of the document then such document is inadmissible Where the document bears such a certificate it is registered within the meaning of s 60 and becomes under the second paragraph thereof admissible in evidence and the operation of the second paragraph is not interfered with by s 49 Where therefore the lower Appellate Court rejected as inadmissible in evidence under s 49 a deed of gift of immoveable property upon which was endorsed a certificate under s 60 on the ground that the person presenting it for registration and admitting execution was not qualified to do so under ss 32 and 35 and the registration was consequently void and the document not registered under s 17 (a) —*Held* that the Court was wrong in so doing and ought to have looked at and dealt with the document *Har Sahai v Chunni Kuar I L R 4 All 14 Ikbal Begam v Sham Sundar I L R 4 All 384 Bishu nath Naik v Kelliani Bai All Weekly Notes (1887) 175 Husaini Begam v Mulo All Weekly Notes (1889) 183 Sheo Shunkar Sahoy v Hirdey Narain Sahu I L R 6 Calc 25 Muhammed Ewa v Birj Lal L R 4 I A 166 Jah Mukhan Lall Panday v Jah Koondan Lall L R 2 I A 10 Majid Hosain v Fazl un nissa L R 16 I A 19* referred to HARDEI *v* RAM LAL I L R 11 All 319

68 ———— and ss 28 and 60—*Deed on which certificate under s 60 has been endorsed—Document which should not have been registered under s 28 Semble Per* PIGOT J—A document on which a certificate under s 60 has been duly endorsed cannot be held to have been *duly* registered under s 49 of Act III of 1877 if it appears that the officer who made the certificate should not under s 28 have registered the document BAIJ NATH TEWARI *v* SHEO SAHOY BHAGUT I L R 18 Calc 556

———— ss 49 and 50—*Registration—Priority—Unregistered deed accompanied with possession—Subsequent sale by registered deed—Effect of possession—Possession for purposes of notice equivalent to registration—Duty of purchaser to inquire as to nature of possession* On the 16th June 1876 Revapuri mortgaged the lands in suit to the first defendant with possession and the latter on the 26th June 1876 leased them to the second defendant for one year The second defendant ... tenant after the year had ... hile d fend ... as tenant ... r equity of redemption for R95 The deed of sale was not compulsorily registrable under the Act then in force and owing to the death of Revapuri it was not registered On the 8th December 1895 the heir of Revapuri sold the equity of redemption in the mortgage of 1876 by a registered deed to the plaintiff At the date of this sale to the plaintiff the

REGISTRATION ACT (III OF 1877) —*contd*

———— s 49—*concld*

ses ion as a tenant of the first defendant and lower Courts pa sed a decree for the plaintiff holding that his regi tered deed gave him priority over the second defendant whose deed was unregis tered On appeal —*Held* (reversing the decree of the lower Courts) that the plaintiff s suit should be dismi ed Pos ession in certain cases for the purpo es of notice has the ame effect as regi tra tion The plaintiff at the date of his purcha e had notice of the posses ion of the second defendant and that being so it was the plaintiff s duty to inquire of the econd defendant under what title he held and if the plaintiff had done so instead of assuming that the econd defendant was still holding m rely as tenant he would have discovered that the secon l defendant had purchased the land KONDIBA BIN BABAJI *v* NANA SHIDRAO (1903) I L R 27 Bom. 408

———— ss 49 87—*Death of executant—Registration at the instance of one of several heirs—Validity—Document if binds immovable property* A document which was presented for registration

to cure the shortcomings of persons who apply to have documents registered *Pakran* v *Kunhamma I L R 23 Mad 580* followed *Mujib unni sa* v *Abdur Rahim I L R 23 All 233* referred to SUJAN BIBI *v* ASAFA KHATUN (1909) 13 C W N 722

———— s 50—

See ante ss 49 AND 50

1. ———— s 50 (1871 s 50 1866 s 505 1864 s 68 1843 s 2)—Priority—*Operation of section—Meaning of the words duly registered in the section—Registration Act (VIII*

registered instrument is subsequent to the Act *A* sold certain land to *B* by a sale-deed dated 15th July 1871 The deed was optionally registrable

REGISTRATION ACT (III OF 1877) —*contd*

———— s 50—*contd*

and was not registered *A* continued in possession after the date of the sale *A* sold the same land to the plaintiff by a deed of sale dated 1st February 1872 The deed was registered its registration being compulsory It was unaccompanied with posses sion In 1882 *L* obtained possession of the land from *A* s sons and sold it to the def ndant by a sale deed dated 14th October 1882 This deed was registered and accompanied with possession In 1883 the plaintiff sued for possession of the land in dispute relying on his registered deed of sale of 1st February 1872 The defendant relied on his vendor s sale deed on the 15th July 1871 *Held* that under Act VIII of 1871 which governed the present case there could be no competition between the sale-deeds of 1871 and 1872 the registration of the one being optional whilst that of the other was compul ory The registration of the plaint iff s deed therefore did not give it priority over the earlier deed under which the defendant claimed *Held* al o that the defendant s vendor by merely omitting to take possession of the land on his purcha e was not guilty of any po itive fraud or of any concealment or negligence so gross as to amount to fraud that would entitle the plaintiff to relief against him SHIVRAM *v* SAYA I L R 13 Bom 229

2 ———— **Priority of registered over unregistered deed**—*Mortgage deed* The pur chaser under a decree for sale in sati faction of a registered mortgage is entitled in priority to the purchaser under another decree for sale in satisfac tion of another unregistered mortgage although the latter mortgage be of an earlier date PRAHLAD MISSER *v* UDIT NARAIN SINGH 1 B L R A C 197 10 W R 291

3 ———— *Priority of regis tered over unregistered deed* Under Act XIX of 1843 a registered deed was entitled to priority over any unregistered deed of an earlier date MALE SHAPPA BIN KARVIRAPPA *v* BASSAPPA BIN NIN GAPPA SHETAVNEKAR 1 Bom 10

SUNKUR SAHOY *v* SHEO PERSHAD SOOKOOL 16 W R 270

GOPAL DASS *v* DOOMEE CHOWDHRY W R 1864 226

NUZUR ALI *v* EMDAD ALI 1 W R 206

A deed of ale held to have no priority over a mortgage unregi tered. MAHESHWAR BUKSH SING *v* BHIKHA CHOWDHRY B L R Sup Vol. 403 1 Ind. Jur N S 122 5 W R. 61

Nor over another deed of sale where the case is not one of two rival purcha ers from the same person UMBIKA CHURN KOONDOO *v* DHURMO DO S KOON DOO 11 W R 129

See GOLLA CHINNA GURURVEPPA NAIDU *v* KALI APPEAH NAIDU 4 Mad. 434

REGISTRATION ACT (III OF 1877) —*contd*

——— s 50—*contd*

BISSONATH SINGH *v* RAJCHUNDER ROY W R 1864 141

4 ——— *Priority of registered over unregistered deed—Notice* A registered deed of sale though subsequent in date invalidates

CHELLA AIYAN 3 Mad 89

(*Contra*) KISHORBHAI GALLABHAI *v* JORABHAI DAJI 7 Bom A C 56

5 ——— *Bom Reg IX of 1827 s 6—Priority of registered to unregistered deed* Before the repeal of the first part of cl. 1 s 6 Regulation IX of 1827 by Act XVI of 1864 a purchaser claiming under a deed of purchase duly registered was entitled to be preferred to a mortgagee claiming under a deed of mortgage executed before his purchase but not registered until after the deed of purchase had been registered. PARSHOTAM PANCHOD *v* JAGJIVAN MAYARAM 1 Bom. 60

6 ——— *Priority of deeds—Contract to sell at future time—Deed of sale* The want of registration of a contract by *A* to sell land to *B* at some future time on receipt of balance of the sum agreed on not then paid was no bar *per se* to *B s* preferential claim over *C* a subsequent purchaser whose sale had been registered under Act XIX of 1843 RAMTONOO SURMAH SIRCAR *v* COUR CHUNDER SURMAH SIRCAR 3 W R 64

NUDDEAR CHAND SEIN *v* KISHOREE LALL CHUCKERBUTTY 7 W R 463

7 ——— *Priority—Deed of sale of immoveable property Held* that the preference given under Act XIX of 1843 to the latter of two deeds of sale of immoveable property when registered over the earlier unregistered deed, was not confined to cases in which the first deed had not been carried into effect as every duly registered deed of sale if authentic invalidate any other deed of sale which may not have been registered. PARABHUDAS HIRACHAND *v* DHONDU 2 Bom 233 2nd Ed 222

8 ——— *Pottahs—Priority* Act XIX of 1843 did not apply to pottahs consequently a subsequently registered pottah could not prevail over a prior unregistered pottah ANUND CHUNDER CHOWDHRY *v* CHUNDERNATH ROY 5 W R 205

9 ——— *Priority of deeds—Unregistered mortgage with possession* Act XIX of 1843 did not give a registered kobala priority over a prior unregistered mortgage under which enjoyment had actually taken place FURZUND ALI *v* ABDOOL RAHIM 4 W R 30

DINOBUNDHOO SADHOO *v* KHETTERNATH TEWARI 2 Hay 20

REGISTRATION ACT (III OF 1877) —*contd*

——— s 50—*contd*

(*Contra*) HARVANGIR GURU DHANPATGIR *v* SPIERS 2 Bom 213 2nd Ed 204

10 ——— *Priority of deeds—Mortgagee with possession—Suit under Civil Procedure Code 1859 s 230 Held* that a mortgagee whose bond was registered was entitled under s 230 of Act VIII of 1859 to recover possession of the mortgaged land of which he had been dispossessed under a decree obtained against his

on his satisfying the plaintiff s mortgage claim BHIKAJI *v* VALIABHDAS 2 Bom 209

11 ——— *Bom Reg IX of 18? —Prior unregistered sale with possession—Subsequent registered mortgage* On the 15th December 1863 *H* purchased from *D* for valuable consideration two fields in the Satara district (to which the provisions of Regulation IX of 18?7 and of Act XIX of 1843 as to registration were then applicable) and was duly put into possession of the fields The deed of sale was not registered On the 14th February 1864 *D* mortgaged by a registered mortgage the same two fields to *B* who then knew that *H* was in possession of the fields as purchaser *Held* that according to the true construction of Regulation IX of 1827 s 6 cl. 1 the title of *H* having been completed by possession there was no property in the fields left in *D* to

under the provisions of Act XVI of 1864 or of Act XX of 1866 History of registration given and the provisions of the different enactments relating to registration compared and discussed. BALARAM NEMCHAND *v* APPA VALAD DULU 9 Bom 121

12 ——— *Priority of deeds—Priority of title—Proof of authenticity* Priority of registration gave priority of title under Act XIX of 1843 only when the authenticity of the document was proved GANDHAREE DEBEA *v* SONATUN PANDAY 10 W R 215

13 ——— *Registered and unregistered deed —Priority—Possession—Fraud* Act XIX of 1843 gave the preference generally speaking to a subsequent kobala which was registered over a prior one unregistered. To avoid its operation a plaintiff had to show that the vendor not only sold and parted with his rights in the property but actually made over possession to him. If however the second sale was illusory proving fraud on the part of the vendor it would not stand in the way of plaintiff s right BUTOOLUN *v* QZEERUN 8 W R 300

14 ——— *Registered and unregistered documents—Priority* Plaintiff sued for possession of land under an unregistered deed of sale and one of the defendants claimed the same

REGISTRATION ACT (III OF 1877)—*contd*

——— s 50—*contd*

land under a deed of subsequent date registered after the commencement of the suit The latter deed was found to be fraudulently got up between the defendants. *Held* that the registration of such a document did not give it the effect of invalidating a former unregistered deed of sale NARASANNA *v* GAVAPPA 3 Mad. 270

15 ——— *Priority of registered over unregistered deed* A Civil Court was *held* to have done right in giving priority to a lease registered under Act XVI of 1864 as against an unregistered conveyance of an earlier date GOBIND CHUNDER ROY *v* POORNO CHUNDER SEIN 10 W R. 36

16 ——— *Priority of registered over unregistered deeds* Under s 68 Act XVI of 1864 registered deeds were entitled to preference over unregistered deeds even of that class the registration of which is optional the practical distinction between the two classes being that deeds [illegible] of registration though they must give way to registered documents of subsequent dates relating to the same property MUNSOOR ALI *v* AZMUT ALI 9 W R 282

GOOROO DASS DAN *v* KOOSHOOM KOOMAREE DOSSEE 9 W R 547

17 ——— *Priority of registered over unregistered deed—Possession* Where [illegible]

18 ——— *Impeaching deed of sale registered so as to prevent operation of section* For the purpose of impeaching a deed of sale registered under Act XVI of 1864 so as to prevent the operation of s 68 it is [illegible] executed without consideration RAM CHAND KOOMAR *v* MODHOOSOODUN MOZOOMDAR 7 W R 119

19 ——— *Priority of registered instrument—Deed registered under existing law* —Where an instrument was executed under the Registration Act XIX of 1843 and was a valid instrument conferring a right or interest on the party in whose favour it was made it does not become invalid by reason of the party not getting it registered within twelve months nor is priority over it obtained by a subsequent conveyance which is registered under the Registration Law of 1864 or 1866 DOOLAL BIBEE *v* NADA SHAHA 13 W R 446

20 ——— *Priority of registered over unregistered deeds* A genuine deed of sale given by the owner of an estate at a time when [illegible] invalid [illegible] owner's [illegible] which was [illegible] on the ground that the last deed was registered and the first was not IMRIT SINGH *v* KOYLASHOO KOER 11 W R 559

21 ——— *Optional registration—Priority of deeds* A deed the registration of which was not absolutely requisite under s 49 Act XX of 1866 was not entitled to priority to a duly registered kobala under s 50 of that Act MOFUZEL HOSSEIN *v* GOLAM AMBIAH 10 B L R 381 note 10 W R 196

22 ——— *Priority of registered over unregistered deed* In a suit by a purchaser of a [illegible] in a vendor —*Held* that plaintiff's registered purchase though of a subsequent date must take effect as against defendant's unregistered mortgage which might have been registered. ALI AZIM KHAN *v* ISLAM KHAN 14 W R 483

23 ——— *Priority of registered over unregistered deed—Lien Held* that property sold in satisfaction of a superior lien cannot be held to have been sold subject to an inferior lien and that a registered deed of a subsequent date has preference over an unregistered deed of prior date SEETUL PERSHAD *v* HUR CHUND SAHOO 1 Agra 263

24. ——— *Priority of deeds —Mortgage deed—Deed of sale* *A* lent *B* R75 on 6th Asar 1273 (June 19th 1866) and *B* executed a mortgage of two bighas of land for the amount in *A* favour On 23rd Asar (July 6th) *B* sold to *C* [illegible] property mortgaged to him sold in execution of his decree and to set aside *C's* purchase *Held* that under ss 18 and 50 Act XX of 1866 *C's* registered deed of sale must have preference over *A's* unregistered mortgage GAYARAM MAZUMDAR *v* MADHUSUDAN MAZUMDAR 4 B L R Ap 73

REGISTRATION ACT (III OF 1877) —*contd*

——— s 50—*contd*

25 ——— *Conditional deed of sale—Priority of deeds* A entered into an agreement with B to convey to him a certain portion of land for a consideration of R98 of which R60 had been paid as earnest money The agreement contained a proviso that on A s refusal to convey the property within the time mentioned in the agreement this document should operate as a conveyance and A should forfeit his claim to the balance of the consideration Before the expiry of the time mentioned in the agreement A sold by a registered deed a portion of the property mentioned in the agreement In a suit by B for possession of the property and for a declaration that the agreement operated as a conveyance —*Held* that under cl 1 s 18 and s 50 of Act XX of 1866 the subsequent registered conveyance had priority over the unregistered agreement SHAMA CHURN NEOGI v NABIN CHANDRA DHOBA 6 B L R Ap 1 15 W R 239

26 ——— *Priority of registered over unregistered instrument—San mortgage without possession in Guzerat* Under s 50 of the Registration Act XX of 1866 a registered instru

his mortgagor and also as against any subsequent unregistered assignee of the latter an unregistered san mortgagee in Guzerat has a perfectly valid charge upon the property mortgaged but his right against such property is liable to be defeated by the mortgagor or his heir or such assignee conveying it to another by a registered instrument while his own title remains unregistered *Lakhmichand Walchand* v *Kastur Bechar 9 Bom 60* dissented from MAKANDAS KALIDAS v SHANKARDAS HARIBHAI 12 Bom 241

27 ——— *Deeds of different descriptions—Priority* The rule giving a registered document preference over an unregistered one was *held* not to apply to deeds of different descriptions KHETTUR BALSEE v GOUR HURREE W R 1864 387

28 ——— *Priority—Documents optionally and compulsorily registrable* The 50th section of the Registration Act 1866 applied to instruments of which the registration was optional giving priority between such instruments to the one which was registered HAMED BUX v BINDRABUN 2 N W 37

PANHA KHUMAJI v TATTA UPAJI 12 Bom. 179

But not to a case in which the registration of one instrument was optional but of the other compulsory HAMED BUX v BINDRABUN 2 N W 37

29 ——— *Priority of registered over unregistered document—Compulsory and optional registration.* A registered deed of sale of which registration was compulsory did not under Act XX of 1866 take effect against a prior unregistered mortgage bond in respect of the same land the registration of which it being for a sum under R100 was optional RIASUTULLA v DOORGA CHURN PAL 15 B L R 294 24 W R 121

See OOHRA SINGH v ABLAKH KOER I L R 4 Calc 536 3 C L R 434

LAKHMICHAND WALCHAND v KASTUR BECHAR 9 Bom 60

MAHOMED ASHRUF v KUREEMODDEEN 24 W R. 468

30 ——— *Lease to take juice from date trees—Priority* A registered lease to take juice from date trees cannot under s 50 Act XX of 1866 have priority over an unregistered one of a prior date JALU NAMDAR v BEICHA NAMDAR 3 B L R A. C 394

s c JANOO MUNDUR v HUCHA MUNDUR 12 R W 366

31 ——— *Registration Act XIX of 1843—Priority—Instruments of which registration is optional* A mortgage deed registered under Act XX of 1866 is not thereby entitled to priority over a mortgage deed which might have been but was not registered under Act XIX of 1843 in cases where the consideration for the rival deeds exceeds R100 *Maleshappa* v *Bassappa 1 Bom 10 Harnamgir* v *Spiers 2 Bom 04* and *Parabhudas* v *Dhondu 2 Bom 2??* distinguished *Quære* Whether in the case of instruments executed for a consideration less than R100 *s 50* of Act XX of 1866 would operate to give priority to the deed registered under that Act over the deed which might have been but was not registered under Act XIX of 1843 KHANDU DULABDAS v TARACHAND AMARCHAND I. L. R 1 Bom. 574

32 ——— *Priority—Registered and unregistered deeds—Optional and compulsory registration* Deeds of sale dated respectively the 22nd October 1868 and 7th February 1874 and registered the former under Act XX of 1866 and the latter under Act VIII of 1871 are not thereby entitled to priority over an unregistered mortgage deed dated the 13th June 1864 the registration of which was optional under Act XIX of 1843 where the consideration for the rival deeds exceeds R100 *Quære* Whether in Kanara a mortgage without possession can be sustained against a subsequent purchase from the mortgagor with possession PARMAYA v SONDE SHRINIVASAPA I. L R 4 Bom. 459

33 ——— *Priority—Lien created by sales under registered and unregistered deeds* Where it appeared that a sale of the share for which plaintiffs held a conditional sale-deed had substantially taken place in satisfaction of two decrees obtained on two bonds one unregistered

REGISTRATION ACT (III OF 1877) —*contd.*

——— s. 50—*contd*

and the other registered and of a prior date to that of the plaintiff's mortgage deed —*Held* that the share was not liable to a lien created subsequently to the registered deed and though the plaintiffs might have by reason of registration a preferable right to that possessed by the decree holder of the unregistered bond yet they had no claim preferable to that of the decree holder of the registered prior bond MOTEE RAM *v* KAISREE

2 Agra 52

34 ——— *Unregistered mortgage defeated by subsequent registered sale* I having purchased land from N in March 1871 by a registered deed for R10 entered into and retained possession till ousted by *K* in 1880 in execution of a decree obtained by K against N upon a registered mortgage deed dated 1869 conditioned to become an absolute sale within a certain date which had elapsed before suit was brought *Held* that ... of the Registration Act of 1866 ... title ...TETI

... Mad. 153

35 ——— *Priority—Possession* A registered deed could not under s 50 Act XX of 1866 prevail against an unregistered deed under which possession had been delivered to the alienee SELAM SHEIKH *v* BAIDONATH GHATAK

3 B L R A C 312 12 W R. 217

SHEODYAL AHEER *v* GOOL MAHOMED KHAN **2 N W 296**

MANMAL VALAD SURAT MAL *v* DASHRATH VALAD NARAYAN **9 Bom 147**

NAGESH BHAT *v* BALVANTRAV **9 Bom 151**

36 ——— and s 100—*Priority* *A* purchased certain lands in 1866 and duly registered his bill of sale *B* had purchased the same lands in 18.. from the persons through whom *A*'s vendors made their title and had been in possession ever since but had not registered his bill of sale as he ... 1866 ... not ... *A*

1 B L R A C 14 10 W R 65

FYEZOONNISSA *v* SADUTOOLLAH **22 W R 3**

37 ——— *Priority—Possession* *A* mortgaged a tank in 18.. to the plaintiff The mortgage was never registered *A* in 1867 sold the tank to *C* and executed a deed of sale thereof The deed of sale was duly registered and *C* had been ever since in possession under it The plaintiff sued *A* on his mortgage and in that suit *C* intervened and was made a defendant *A* did not appear in the suit *Held* that *C* having registered his deed of sale and being in possession his title was good against the plaintiff *Girija Singh v Giridhari Singh 1 B L. R A C 14* distinguished SOODHARAM BHUTTACHARJEE *v* ODHOY CHUNDER BUNDOPADHYA

10 B L. R 360 19 W R 279

REGISTRATION ACT (III OF 1877) —*contd*

——— s 50—*contd*

38 ——— *Priority of registered over unregistered deed with possession* In July 1864 two undivided brothers executed a mortgage of their joint property to the plaintiff for R500 and in January 1868 they executed another mortgage for R1 000 to the defendant who registered it under Act XX of 1866 In a suit brought on the mortgage of 1864 a decree was made in October 1871 that if the sum due were not paid within two months the property should be sold and in March 1872 the property was sold in execution of that decree and bought by the plaintiff who was duly put into possession The defendant subsequently obtained a decree on the mortgage of 1868 the property was sold in execution of that decree and was ... essing the ... In a suit ... that the ... registered in order to maintain its priority over that of 1868 VENKATA NARSAMMAH *v* RAMIAH

I L R 2 Mad. 108

39 ——— *Registered and unregistered deed—Priority—Mortgage—Possession.* A mortgage in the Konkan without possession is invalid as against a subsequent mortgagee with possession but the registration of such a mortgage cures any defect or imperfection arising from the non completion of the transaction by delivery of possession and a deed so registered is good against a non registered mortgage though accompanied by possession Previous cases reviewed HARI RAMCHANDRA *v* MAHADAJI VISHNU

8 Bom A C 50

See KRISHNAPPA VALAD MAHADAPPA *v* BAHIRU YADAVRAV **8 Bom. A C 55**

40 ——— *Possession—Priority of registered deed—Purchaser of mortgaged property* A purchaser with possession at a Court's sale whose certificate of sale is registered buys the right title and interest of the debtor burdened with the lien of a prior mortgagee without possession whose deed of mortgage is registered CHINTAMAN BHASKAR *v* SHIVRAM HARI **9 Bom 304**

41. ——— *Priority of registered documents—Possession* The principle that a registered document of posterior date is not to prevail over an earlier unregistered deed where the transfer under such deed has been perfected by possession was *held* not to extend to a case in which, after such possession the claimant under the unregistered deed had been dispossessed by the opposite party ISSUREE DOSSEE *v* LALL BEHAREE HOLDAR **21 W R 421**

42 ——— *Unregistered and registered deeds—Possession—Priority* An unregistered mortgage without possession upon which a decree has been obtained but not executed, has not by virtue of such decree priority over a subsequent deed of sale which is registered. KANU KHANDU *v* KRISHNA BHULAJI SHET

5 Bom. A C 147

REGISTRATION ACT (III OF 1877) —contd

——— s 50—contd

43 ——— *Registered and unregistered deeds—Possession—Priority* Held that an unregistered mortgage without possession is not valid against a purchaser with possession GANPAT BAJASHET v KHANDU CHAUGSHET 4 Bom A. C 69

But *see* GOLLA CHINNA GURUVUPPA NAIDU v KALI APPIAH NAIDU 4 Mad. 434

and SADAGOPA CHARIYAR v RUTHNA MUDALI 5 Mad. 457

44 ——— *Mortgage—Priority over purchaser—Possession* Held that a registered mortgagee although without possession is entitled to priority over a subsequent purchaser SUNDAR JAGJIVAN v GOPAL ESHVANT 4 Bom A C 68

BALAJI NARAYAN KOLATKAR v RAM CHANDRA GANESH KELKAR 11 Bom. 37

45 ——— *Mortgage—Deed of sale—Priority—Purchaser at Court's sale* Held that the rule laid down in *Ganpat Bajashet* v *Khandu Chaugshet 4 Bom A C 69* that an unregistered mortgage without possession is not valid against a purchaser with possession does not apply to a purchaser at a Court's sale whose instrument of purchase is not registered MATHURADAS RANCHODDAS v KALIA KHUSHAL 7 Bom. A. C 24

46 ——— *Registered and unregistered mortgages—Possession—Priority* H and U were mortgagees of one V U's mortgage was prior in point of time and registered. H and U obtained each a decree against V U's decree was prior but H having applied for execution sooner was put into possession U subsequently applied for execution and dispossessed H Held in a suit by H against U to recover possession of the mortgaged premises that registration made U's mortgage complete though he did not obtain possession of the mortgaged property at the time when the deed to him was executed and that any subsequent disposition of the equity of redemption by the mortgagor would be subject to his mortgage UMAJI VALAD MANAJI PALIL DUMALE v HARI RAMCHANDRA KULKARNI 4 Bom. A. C 143

47 ——— *Priority of deeds —Notice to purchaser of existence of ...* [illegible]

48 ——— *Notice to purchaser of prior deed of sale* In a suit to recover possession of land alleged to have been purchased from two parties (K and D) one of whom (D) had appeared before the Registrar admitted the sale and allowed the deed to be registered so far as her interest was concerned but the other (K) when he appeared before the Registrar had denied the deed and subsequently sold his share to the defendant by a registered kobala —Held that as there was no evidence of fraud on the part of the defendant purchaser or that he had purchased with notice plaintiff was not entitled to a decree for K's share SREENATH CHURN DASS v DWARKANATH GHOSE 14 W R. 318

49 ——— *Bona fide instruments—Priority* Per PEACOCK C J All instruments under this section must be *bonâ fide* in order to have priority PAHMATULLA v SARIUTULLA KAGCHI 1 B L R F B 58

DOOKHAI MEER v NASSIR 20 W R 110

BHIKDHAREE SINGH v KANHYA LALL 14 W R 24

RAMPHUL LALL v CHUNDEE PURSHAD 1 N W 204 Ed. 1873 257

50 ——— *Priority—Find* [illegible]

deed priority over it and unless he does so the case will be remanded to him for re trial. GOURI KANT ROY v GIRIDHAR ROY 4 B L R A C 8 12 W R 456

51. ——— *Priority of deeds —Optional registration—Act XIX of 1843* As Act XIX of 1843 has been repealed and the Registration Act (VIII of 1871) contains no provision for the priority of registered deeds over any other save in the cases of optional registration the ordinary rule applies that the prior conveyance must prevail RACHURI VENKUBAIYAMMA v GUDURU RAMANNA PANTULU 6 Mad. 391

52 ——— *Registered and unregistered documents—Act XIX of 1843* A document executed while Act XIX of 1843 was in force and not registered thereunder cannot be postponed to a document executed in 1873 and registered under Act VIII of 1871 CHATTAR SINGH v RAM LAL I. L. R 3 All. 488

53 ——— *Registered and unregistered documents—Act XVI of 1864* An unregistered document executed before Act XVI of 1864 came into force is not invalidated or postponed to a document registered under Act VIII of 1871 under the explanation given in s. 50 of Act III of 1877 RAM BARAN RAI v MURLI PANDEY I. L. R. 3 All. 505

54 ——— *Registered and unregistered documents—Act XVI of 1864* S 50 of the Registration Act III of 1877 does not operate so as to exclude on the ground of their non registration instruments executed before Act XVI of 1864 came into operation TIRUMALA v LAKSHMI I L R. 2 Mad. 147

DESAI LALLUBHAI JETHABHAI v MUNDAS KUBERDAS I. L. R 20 Bom 390

REGISTRATION ACT (III OF 1877) —*contd*

——— s 50—*contd*

55 ——— *Priority—Deed of sale registered under Act VIII of 1871* S 50 of Act III of 1877 is not retrospective in its application and therefore a deed of sale registered under Act VIII of 1871 and not having under that Act priority over unregistered documents relating to the same property acquires no new rights of priority by the passing of Act III of 1877 though coming within the larger class of registered documents which by s 50 of the later Act have priority over unregistered documents KANITKAR v JOSHI

I L R 5 Bom 442

56 ——— *Priority between registered and unregistered documents—Optional and compulsory registration—Acts XVI of 1864 XX of 1866 and VIII of 1871—Interpretation of statutes* The registration of documents under Act XVI of 1864 XX of 1866 or VIII of 1871 does not give them effect as against documents which might have been but were not registered under one of those Acts S 50 of Act III of 1877 has no retrospective operation upon such documents the preference which it gives to registered over unregistered documents is confined to documents registered under Act III of 1877 According to the registration law as it stood before Act III of 1877 came into force there was no competition grounded upon registration between documents optionally and documents compulsorily registrable The Legislature while possessing the power to divest existing rights is not (in construing statutes) to be understood as intending to exercise that power retrospectively to any greater extent than the express terms of or necessary implication from its language requires A and B (two brothers) purchased a house on the 19th July 1871 and mortgaged it to the plaintiff for R580 by san mortgage dated the 21st July 1871 and duly registered In 1874 the plaintiff sued upon his mortgage and obtained a decree directing satisfaction of his claim by the sale of the house The house was accordingly sold by the Court and purchased by the plaintiff for R325 He obtained a certificate of sale dated the 15th October 1875 The certificate was duly registered. On applying to the Court for possession of the house the plaintiff was resisted by the defendant on the ground that he was in possession under two mortgages dated the 20th July 1871 and executed the one by A and the other by B These mortgages were not regi

holding that his mortgage and certificate of sale being registered were entitled to priority over the unregistered mortgages of the defendant under s. 50 of Act III of 1877 On appeal to the High Court —*Held* that the case was governed by the law of registration as it stood before Act III of 1877 came into force and that the registration of the plaintiff's mortgage and certificate of sale both of which were compulsorily registrable did not confer upon them any priority over the defendants unregistered mortgage which were optionally registrable ICHHA RAM KALIDAS v GOVIND RAM BHOWANI SHANKAR I L R 5 Bom 653

57 ——— *Sale under registered and unregistered deeds—Innocent purchasers* Per GARTH C J —The only reasonable construction of s 50 of Act VIII of 1871 is that where property under the value of R100 is purchased by two innocent purchasers the one by a registered and the other by an unregistered deed and there is no fraud shown or other circumstances which in equity would protect the unregistered purchaser against the registered the title of the latter shall prevail. The section contains no such qualification as that a purchaser under an unregistered deed who has obtained possession would have priority as against a subsequent purchaser under a registered deed and the Courts are not at liberty to import such a qualification into the section *Per* PONTIFEX *J*—S 50 is intended to apply to the case of two innocent purchasers giving the preference to the one who has taken the greater precaution to secure his title but is not intended to apply to the case of a subsequent purchaser who registers but who at the date of his purchase had actual notice of a prior unregistered purchase FUZULUDDEEN KHAN v FAKIR MAHOMED KHAN I L R 5 Calc 336

s c FAKIR MAHOMED KHAN v FAZELUDDEEN KHAN 4 C L R 257

58 ——— *Priority of registered over unregistered documents* A registered deed

SINGH v ABLAKH KOER
I L R 4 Calc 536 3 C L R 434

59 ——— *Optional and compulsory registration—Priority of registered over unregistered documents* Documents the registration of which is optional, executed previous to the Registration Act (III of 1877) will not if unregistered take effect against later registered documents S the owner of a 7 annas share in certain property on the 19th November 1866 sold a one anna share thereof to A for R30 the bill of sale not being registered as under the provisions of Act XX of 1866 s. 18 the registration thereof was optional. Subsequently S sold the remaining 6 annas to other persons and then on the 27th September 1876

possession of the 1 anna share he had purchased against S B and the purchasers of the other 6 annas shares —*Held* that he was not entitled to succeed as his bill of sale being unregistered, was not entitled to priority over B's which had been duly registered. *Lachman Das* v *Dipchand I L R.*

REGISTRATION ACT (III OF 1877) —contd

——— s 50—contd

2 All 851 and Oghra Singh v Ablakh Koer I L R 4 Calc 536 followed SHIB CHANDRA CHAKRAVARTI v JOHOBUX

I L R 7 Calc 570 9 C L R 224

60 ——— Registration Act (XVI of 1864)—Registration optional and compulsory—Unregistered document of which registration was optional under Act XVI of 1864—Priority of unregistered document Held in the case of a document executed while Act XVI of 1864 was in force the registration of which under that Act was optional and which was not registered thereunder and of a document executed after Act III of 1877 had come into force the registration of which was compulsory and which was duly registered both documents relating to the same property that under the provisions of s 50 of Act III of 1877 the registered document took effect as regards such property against the unregistered document Held also that all that a person seeking the benefit of s 50 of Act III of 1877 is required to prove is that his document is a document of the kind mentioned in the first clause of that section that it has been duly registered under that Act and that it covers the same property as that covered by any unregistered document against which it is contended that his document shall take effect and it is not necessary for him to show that he is claiming from a vendor common to both himself and the person claiming under the unregistered document Lachman Das v Dip Chand I L R 2 All 851 and Shib Chandra Chakravarti v Joho Bux I L R 7 Calc 570 9 C L R 224 referred to and followed GUNGARAM GHOSE SIRDAR v KALIPODO GHOSE

I L R 11 Calc 661

61 ——— Act VIII of 1871 ss 18 50—Registered and unregistered documents A document creating an interest in immoveable property the registration of which under Act VIII of 1871 was compulsory and which was registered under that Act does not under 50 of

III of 1877 did not apply to documents executed after the first day of July 1871 and before Act III of 1877 came into operation BHOLA NATH v BALDEO I L R 2 All 198

62 ——— Registered and unregistered documents—Compulsory and optional registration Held that under s 50 of Act III of 1877 a document of which the registration was compulsory under that Act and which was registered thereunder took effect as regards the property comprised in the document as against another document of a prior date relating to the same property executed while Act VIII of 1871 was in force and which did not require under that Act to be registered and was not registered under it GANGA RAM v BANSI GIR PRASAD v BANSI

I L R 2 All 431

REGISTRATION ACT (III OF 1877) —contd

——— s 50—contd

63 ——— Optional and compulsory registration—Act VIII of 1871—Act I of 1868 s 6—Registered and unregistered documents Held in the case of a document executed while Act VIII of 1871 was in force the registration of which under that Act was optional and which was registered thereunder and of a document executed after Act III of 1877 had come into force the

document took effect as regards such property against the unregistered document the provisions of s 6 of Act I of 1868 notwithstanding LACHMAN DAS v DIP CHAND I L R 2 All 851

64 ——— Registered and unregistered documents Held (STUART C J doubting) that under the provisions of s 50 of the Registration Act 1877 documents registered under former Registration Acts do not take precedence over all unregistered documents of which at the time of their execution registration was either optional or not required. Lachman Das v Dip Chand I L R 2 All 851 observed on. SRI RAM v BHAGIRATH LAL I L R 4 All 227

65 ——— Registered and unregistered documents—Priority Held that a document which was registered under the Registra

RAHIM v ZIBAN BIBI I L R 5 All [illegible]

66 ——— Priority—Compulsory and optional registration Held by the Divisional Bench (STUART C J and BRODHURST J) that under s 50 of the Registration Act 1877 [illegible] the [illegible]ich [illegible]ds [illegible]an [illegible]he

instrument relating to the same property the registration of which under the Registration Act 1871 was optional and which was not registered under that Act HABIBULLAH v NAKCHED RAI

I L R 5 All 447

67 ——— Registered and unregistered documents—Priority of documents—Registration Act 1877 s 50 Held by STUART C J that under the explanation to s 50 of the Registration Act 1877 a sale deed the registration of which under the Registration Act 1871 was compulsory and which was duly registered thereunder took effect as regards the property comprised therein against a deed of simple mortgage of a prior date relating to the same property the registration of which under the Registration Act 1871 was optional and which was not registered

REGISTRATION ACT (III OF 1877) —contd

—— s 50—contd

thereunder *Ganga Ram* v *Bansi* I L R 2 All 431 and *Lachman Das* v *Dip Chand* I L R 2 All 851 observed on *Sri Ram* v *Bhagirath Lal* I L R 4 All 227 dissented from *Held* by STRAIGHT J that the former document had no preference over the latter under s 50 of the Registration Act 1877 *Sri Ram* v *Bhagirath Lal* I L R 4 All 227 followed DORI LAL v UMED SINGH I L R 6 All 164

68 —— *Priority—Certificate of sale in execution of decree* A certificate of the sale of land in execution of a decree under the provisions of the Code of Civil Procedure does not by registration entitle the holder thereof to priority over a purchaser of the land under an optionally registrable deed of sale NARASAYYA v JUNGAM I L R 7 Mad 418

69 —— *Registered and unregistered documents—Priority* A vendor sold the same property twice over to different people — once by an unregistered conveyance (the purchase money being under R100) giving to his vendee possession and a second time to another person by a registered conveyance at a time when the first vendee was out of possession *Held* by the Court (PRINSEP J dissenting) in a suit by the first vendee to recover possession that the fact of a vendor having given possession to the first and unregistered purchaser even if such possession continued to the date of the second conveyance did not necessarily prevent the operation of that part of s 50 of the Registration Act 1877 which enacts that a registered document shall take effect as regards the property therein comprised against every unregistered document relating to the same property The only case in which the title of the prior unregistered purchaser can prevail against the subsequent registered purchaser for value is when the latter takes with notice of the title of the former *Per* PRINSEP J —A purchaser under a registered conveyance subsequently executed cannot succeed in a suit to eject one who holds possession under a prior but unregistered conveyance registration of which is optional NARAIN CHUNDER CHUCKERBUTTY v DATARAM ROY

I L R 8 Calc 597 10 C L R 241

70 —— *Decrees—Registration Act 1871 s 50—Registered and unregistered documents—Priority* Decrees being excluded from the operation of s 50 Act VIII of 1871 and s 50 Act III of 1877 the omission to register does not make them ineffectual as against subsequent registered assignments or decrees KOLLURI NAGABHASHANAM v AMMANNA I L R 3 Mad 71

71 —— *Unregistered and registered documents—Priority* S sued K in 1879 upon an unregistered hypothecation deed dated 3rd January 1870 securing repayment of a loan of R85 with interest I intervened and being made second defendant claimed to be mortgagee of the land hypothecated to S under registered deeds dated 11th September and 30th November 1875 executed by K *Held* that under s 50 of Act III of 1877 I had a priority over S KALLACOLATHU RAN v SUBBAROYA REDDI I L R 3 Mad 73

72 —— *Priority—Registered and unregistered documents* S 50 of the Registration Act 1877 affects alike documents which it is optional as well as those which it is compulsory to register and its effect is not modified

[illegible]

FOX J dissented from NALLAPPA GOUNDAN v IBRAM SAHIB I L R 5 Mad 73

73 —— *Priority—Optional and compulsory registration—Possession* G having obtained possession of land under an un

[illegible]

virtue of s 50 of the Registration Act 1877 KONDAYYA v GURUVAPPA I L R 5 Mad 139

74 —— *Priority—Registered and unregistered documents* Certain land was hypothecated to T in 1861 to secure repayment of R2 000 and interest The deed was never registered In 1873 the land was mortgaged to A and the mortgage was registered In 1879 in execution of a decree—to which T was no party—upon this mortgage the land was sold and bought by D and the sale certificate registered T then sued to recover the amount due upon the deed of 1861 by sale of the land *Held* that the claim of T was not defeated by the sale to D TIMMU v DEVA PAI I L R 5 Mad 265

75 —— *Mortgage—Pri*

[illegible]

R70 by an unregistered deed In 1879 C sued I upon his mortgage deed obtained a decree and attached the land in B s possession B objected but his claim was rejected *Held* in a suit by B to set aside the attachment by C that C s claim being

[illegible]

I L R 6 Mad 174

76 —— *Land subject to unregistered mortgage—Certificate of sale registered—Civil Procedure Code 1882 s 316—Rights of purchaser* Where land subject to an unregistered mortgage the registration of which was optional was attached and sold in execution of a money

REGISTRATION ACT (III OF 1877) —contd

———— s 50—contd

decree obtained against the mortgagor and the purchaser registered his certificate of sale and obtained possession of the land —*Held* that no question of priority under s 50 of the Registration Act 1877 could arise inasmuch as the purchaser acquired only the right title and interest of the mortgagor subject to the mortgage *Sobhagchand Gulabchand* v *Bhaichand I L R 6 Bom 893* approved and followed *Semble* A certificate of sale issued by a Court under s 316 of the Code of Civil Procedure if duly registered takes effect under s 50 of the Registration Act 1877 against all unregistered encumbrances RAMARAJA v ARUNACHALA I L R 7 Mad 248

77 ———— *Priority of mortgages—First and second mortgagees* S and L held mortgage bonds executed in their favour by the same person S s bond was dated the 16th June 1882 and was registered the registration being compulsory L s bond was of prior date the 30th December 1880 and was not registered the regis

[illegible]

gave priority to the incumbrance created by the former bond over the incumbrance created by the latter and this priority was not affected by the subsequent decrees obtained on the bonds which only gave effect to the respective rights under the bonds The meaning of s 295 of the Civil Procedure Code 1882 is that when immoveable property is sold in execution of decrees ordering its sale for the discharge of incumbrances the sale proceeds are to be applied in satisfaction of incumbrances according to their priority SHAHI RAM v SHIB LAL I L R 7 All 378

78 ———— *First and second mortgage —Payment by purchaser of mortgaged property of first mortgage—Right of purchaser to benefit of first mortgage—Right of second mortgagee to bring to sale mortgaged property—Registered and unregistered instruments—Optional and compulsory registration* At a sale in execution of a decree J purchased certain property which was at that time subject to two mortgages the first under an unregistered deed in favour of M and dated in 1872 and the second under a registered deed in favour of L and dated in 1880 The registration of both deeds was optional the former under Act VIII of 1871 and the latter under Act III of 1877 J subsequently satisfied the mortgage under the registered deed of 1880 which was delivered to him. M then brought a suit to recover the money due to him under the mortgage-deed of 1872 by sale of the mortgaged property *Held* by OLDFIELD J that applying the rule laid down by the Privy Council in *Gokaldas Gopaldas* v *Puranmal Premsukhdas I L R 10 Calc 1035* J having paid off the mortgage under the registered deed of 1880 should have the benefits of that mortgage and was entitled to set up the deed which he held against the unregistered deed of 1872 against which under s 50 of the Registration Act (III of 1877) it would take effect as regards the property comprised in it *Lachman Das* v *Dip Chand I L R 2 All 851* referred to *Per* MAHMOOD J that the word unregistered in s. 50 of the Registration Act 1877 must in reference to the circumstances of the present case be read as not registered under Act VIII of 1871 and that so reading the section the registered mortgage deed of 1880 was entitled to priority over the unregistered mortgage deed of 1872 *Lachman Das* v *Dip Chand I L R 2 All 851* and *Sri Ram* v *Bhagirath Lal I L R 4 All 227* distinguished JANKI PRASAD v MAUTANGUI DEBIA

I L R 7 All 577

79 ———— *Registered and unregistered documents—Mortgagee under registered deed not entitled to priority over holder of subsequent decree on prior unregistered deed* The mortgagee under an unregistered hypothecation bond of which the registration was optional obtained a decree thereon and in execution of such decree attached the hypothecated property *Held* with reference to the terms of s 50 of the Registration Act (III of 1877) that the bond having merged in the decree was entitled to take effect against a registered bond relating to the same property and which was executed subsequently to the unregistered bond but prior to the decree *Kanhaiya Lal* v *Bansidhar All Weekly Notes (1882) 15* and *Shahi Ram* v *Shib Lal I L R 7 All 378* distinguished BAIJNATH v LACHMAN DAS I L R. 7 All. 888

80 ———— *Registered and unregistered documents—Mortgagee under registered deed competing with holder of decree on prior unregistered mortgage deed* The words in s. 50 of the Registration Act (III of 1877) not being a decree

[illegible]

property to sale under a hypothecation bond or under a money bond and under that decree the property has been attached that decree cannot be ousted by a subsequent registered instrument The

[illegible]

the registration of such deed upon a prior unregistered deed of mortgage *Kanhaiya Lal* v *Bansidhar All Weekly Notes (1882) 15* *Shahi Ram* v *Shib Lal I L R 7 All 378* and *Madar* v *Subbarayalu I L R 6 Mad 88* referred to HIMALAYA BANK v SIMLA BANK I L R 8 All. 23

REGISTRATION ACT (III OF 1877) —*contd*

———— s 50—*contd*

81 ———————— *Registered and unregistered documents—Priority—Mortgagee under regi tered deed competing with auction purcha er at a ale under a decree on a prior unregi tered mort gage deed* Under s 50 of the Registration Act the decree or order which is not to be affected by a re gi tered document must be a decree or order made prior to the execution and registration of the regis tered document Therefore where the plaintiffs who were mortgagees under a registered instrument sued to set aside a sale to the defendants under a decree on an unregi tered mortgage the plaintiffs regi tered mortgage being subsequent to the un registered mortgage on which the defendants relied but prior to the decree thereon —*Held* that the defendant auction purchasers must take subject to the right of the plaintiffs as mortgages *Hima laya Bank v Simla Bank I L R 8 All 23 Madar Saheb v Subbarayalu Nayudu I L R 6 Mad 88 Kanhaiya Lal v Bansidhar All Weekly Notes (1884) 1_ and Shahi Ram v Shib Lal All Weekly Notes (1885) 63* referred to JAGRUP PAI v PADHEY SINGH I L R. 13 All 288

82 ———————— *Unregistered mortgage with pos e sion—Subsequent regi tered mortgage—Notice—Priority* The defendants 1 and 2 in 1877 placed the plaintiff s father (since deceased) in possession of certain land as usufruc tuary mortgagee under an unregistered mortgage deed for R99 and in 1883 mortgaged the same land to defendant 3 by a mortgage deed which was registered Defendant 3 obtained a decree on his mortgage in 1886 and applied that the mortgaged premi es should be sold The plaintiffs having opposed his application for an order for sale without success now sued for a declaration of their title as mortgagees It was found that defendant 3 took

[illegible]

brancer under a registered conveyance had notice of a valid prior unregistered encumbrance and of posse sion by such encumbrancer or of such conveyance without possession the Courts are not bound to interpret the Registration Act of 1877 50 so as to defeat the title of the prior encum brancer KRI HNAMMA v SURANNA I L R 16 Mad 148

83 ———————— *Registered and unregistered documents—Priority* The provision of the Regi tration Act that a registered document shall take effect as regards the property comprised therein against every unregistered document relating to the same property only applies where the two documents are antagonistic not where

[illegible]

in the first case the equity of redemption and in the second nothing at all Registration therefore can not help him for on the very face of his certificate of sale the property comprised therein is not the property previously conveyed to *B* but only the re idue of *A* s estate after such conveyance So BHAGCHAND v BHAICHAND I L R 6 Bom. 193

84. ———————— *Priority—Effec of registration—Gift of land* Registration gives a donee neither actual constructive nor symbolical posses ion and therefore cannot be regarded as equivalent to delivery and acceptance BASUDEB BHAT v NARAYAN DAJI DAMLE I L R 7 Bom. 131

85 ———————— *Priority of regis tered over unregistered documents* A sale deed of which the registration is optional being registered takes effect under s 50 of the Registration Act of 1871 as against a similar but unregistered sale deed prior in date though followed by possession BIMARAZ v PAPAYA I. L. R 3 Mad. 46

86 ———————— *Priority—Regis tered conveyance—Unregistered conveyance accom panied by possession* One who holds under an unregistered deed of sale the registration of which is not compulsory and is in posse sion of the pro perty conveyed has a superior title to one who sets up a registered conveyance of a later date unac companied by possession. The second purcha er

[illegible]

87 ———————— *Optional regis tration—Priority—Posse sion under unregistered deed —Notice* Although the mere fact of possession having been taken by a purchaser under an unregis tered conveyance is insufficient of itself to establish a good title to a property as against a subsequent registered purcha er and is not conclusive evidence of notice as against him yet in the majority of cases such possession is very cogent evidence of notice NANI BIBEE v HAFIZULLAH I L R 10 Calc 1073

88 ———————— *Registered pur chaser—Notice of prior contract to sell* The words former part of this section used in the second paragraph of s 50 of the Registration Act 1877 refer to the whole preceding portion of the section *Held* therefore that a registered purchaser of land who bought with notice of a prior unregistered con tract by his vendor to convey to the plaintiff could not resist a suit for specific performance on the plea of registration. KADAR v ISMAIL I L R 9 Mad. 119

89 ———————— *Notice of prior unregistered deed—Priority—Sale—Mortgage.* A subsequent registered purchaser or mortgagee is not to be preferred as against the holder of a prior un registered instrument of purchase or mortgage of

REGISTRATION ACT (III OF 1877) —*contd*

——— s 50—*contd*

which he had notice HATHISING SOBHAI v KUVERJI JAVHER I L R 10 Bom 105

90 ——— *Registered and unregistered documents—Priority—Notice of prior sale Quære* Whether the case of a second registered purchaser with notice of a prior sale is an exception to the rule laid down in the Full Bench case of *Naraın Chunder Chuckerbutty* v *Dataram Roy I L R 8 Calc 597* The Court *held* that it was not necessary to decide the question in the present case inasmuch as the facts of the case did not justify them in finding that the purchaser had such notice BAMASUNDARI DASSI v KRISHNA CHUNDER DHUR I L R 10 Calc 424

91 ——— *Notice—Mortgagor and mortgagee—Unregistered mortgage—Purchaser with notice of prior unregistered mortgage—Priority* Where property has been mortgaged by a deed the registration of which is not compulsory a subsequent purchaser of the property who has duly registered his purchase deed but who has bought with notice of the unregistered mortgage takes the property subject to that mortgage ABOOL HOSSEIN v PAGHU NATH SAHU I L R 13 Calc 70

92 ——— *Priority—Registered purchaser competing with holder of decree on prior unregistered deed—Fraud—Notice* A registered purchaser of land who has bought in 1878 with full notice of an unregistered encumbrance of 1872 of which the registration was optional is entitled to hold the land free of such encumbrance and the fact that prior to the purchase and to the knowledge of the purchaser a decree has been obtained by the encumbrancer declaring the land liable to be sold in default of payment of the amount of the decree does not affect the title of the purchaser MADAR SAHEB v SABBARAYALU NAYUDU I L R 6 Mad. 88

93 ——— *Priority of deeds —Purchaser under an unregistered deed—Lease of the land by purchaser to the vendor—Decree for rent obtained by the purchaser against the vendor—Effect of such decree on purchaser s title in competition with the title of subsequent purchaser under a registered deed* On the 7th August 1876 the defendant purchased the property in dispute under an unregistered sale deed. On the same day he leased it to his vendor In 1878 he obtained a decree for rent against his vendor On the 23rd May 1881 the plaintiff purchased the same property from the same vendor under a registered deed of sale In 1888 the plaintiff sued the defendant to establish his right to the property and to recover possession *Held* that the plaintiff was entitled to a decree his registered deed taking priority to the prior unregistered deed of the defendant. S 50 of the Registration Act (III of 1877) did not give the defendant priority in virtue of the decree which he obtained in the rent suit for in that suit the defendant s ownership was not in dispute and the decree merely adjudicated as to the relationship between the defendant and his vendors created subsequently to the sale The defendant s title as owner was not merged in the decree but still rested exclusively on his deed of sale *Kolluri Nagabhushanam* v *Ammanna I L R 3 Mad 71* and *Madar Sahib* v *Subbarayalu I L R 6 Mad 88* distinguished. KESHAV PANDURANG v VINAYAK HARI I L R 18 Bom 355

94 ——— *Notice—Fraud—Optionally registrable sale deed unregistered competing with similar deed registered* R sold land to S in 1878 for R54 and put S in possession In 1879 R sold the same land to N for R24 8 0 N registered his sale deed The sale deed of S was not registered In 1879 S sued N to have N s sale deed cancelled on the ground of fraud. The lower Courts held that N s sale deed was executed collusively and fraudulently and decreed the claim *Held* on second appeal that as there were grounds [illegible]

[illegible] SUBANNA I L R [illegible]

95 ——— [illegible] *an unregis*[illegible] *registered* [illegible] *cation bon*[illegible] an unregi[illegible] afterwards sold to the defendant by a registered conveyance dated 29th June 1879 which recited the previous hypothecation. In a suit brought by the plaintiff to enforce his charge —*Held* that there was no conflict between the instruments and the hypothecation bond was enforceable though unregistered RAMACHANDRA v KRISHNA I L R 9 Mad. 495

96 ——— *Registered and unregistered mortgages—Possession—Priority—Notice* On the 10th December 1866 M mortgaged certain immoveable property to the defendant for R95. The mortgage was neither registered nor accompanied with possession On the 12th September [illegible] property [illegible] but [illegible] ued [illegible] not [illegible] he [illegible] mortgage of the property to the defendant for R200 including the amount then due to him (defendant) on his mortgage of 1866 That mortgage was registered and accompanied with possession On the 3rd March 1876 K obtained a decree against M directing satisfaction of the mortgage debt out of the mortgaged property The property was sold under that decree and purchased by K himself for R[illegible] He obtained a certificate of sale dated the 8th March 1877 which was not registered On the 25th July 1877 K sold the property to the plaintiff for R75-4 0. The deed

REGISTRATION ACT (III OF 1877) —contd

——— s 50—contd

of sale was not registered. In 1878 the plaintiff sued for possession of the property The defendant relied upon his mortgages of 1866 and 1876 *Held* that the defendant s unregistered mortgage of 1866 which was optionally registrable was not over ridden by *K s* mortgage of 1869 which was compulsorily registrable and that therefore the plaintiff whose title was derived from K was not entitled to recover the property from the defendant without redeeming the mortgage of 1866 on which he (defendant) was entitled to rely The registration of *K s* mortgage in 1869 could not have operated as notice to the defendant when he was taking his mortgage in 1866 and therefore was not such a registration in relation to the defendant s earlier mortgage as to fall within the scope of the rule that registration is equivalent to possession LAKSHMANDAS SURUPCHAND v DASRAT

I L R 6 Bom 168

97 ——— *Acts XX of 1866 and VIII of 1871—Priority—Registered and unregistered documents* On the 14th February 1869 *S* and *M* mortgaged a house and site to the plaintiff for R50 The mortgage was not registered. On the 15th June 1870 *S* (*M* being then dead) mortgaged the same property to the father of the defendant for R200 That mortgage was registered On the 24th June 1871 *S* further mortgaged the property to the plaintiff for R96 including the amount due on the previous mortgage This second mortgage was not registered Possession was not given under any of the mortgages. In 1873 the defendant obtained a decree on his mortgage against S and in execution of it purchased the property for R20 at a Court sale The certificate of sale dated the 9th July 1874 was registered and

the defendant on his two mortgages seeking to enforce them and his decree on the second mortgage against the property The defendant contended that s 50 of the Registration Act III of 1877 operated retrospectively and conferred priority on his mortgage of 1870 in virtue of its registration even over the plaintiff s earlier mortgage of 1869 *Held* that the plaintiff s unregistered mortgage being each for a sum under R100 were under the Registration Acts of 1866 and 1871 optionally and not compulsorily registrable and that the Registration Act of 1866 under which the defendant s

plaintiff s decree did not operate against the defend

REGISTRATION ACT (III OF 1877) —contd

——— s 50—contd

DAVLATRAM VITHALRAV I L R 6 Bom 495

98 ——— *Act XX of 1866 s 50—Priority—Notice of prior unregistered mortgage—Possession—Right to redeem—Parties* On the 24th September 1869 *G* mortgaged certain land to *H* Subsequently on the 14th June 1870 he

decree on his mortgage and at the execution sale he himself became the purchaser and was put into possession of the land under his certificate of sale On the 21st September 1874 *P* assigned his mortgage to t[illegible]
not regis[illegible]
plaintiff
18 0 T
possessio[illegible]
dismissed the plaintiff s claim On special appeal to the High Court —*Held* that if *P* at the time of taking his registered mortgage in 1870 had [illegible]

avail either *P* or the plaintiff who claimed under him by an assignment executed subsequently to the decree in *H s* mortgage suit A subsequent registered purchaser or mortgagee cannot avail himself of the registration of his deed against a prior unregistered purchase or mortgage of which he had notice The High Court reversed the decrees of the Courts below and remanded the case to the District Judge to ascertain whether *P* at or before the time of the execution of his registered mortgage had notice of the prior unregistered mortgage to *H* SHIVRAM v GENU I L R 6 Bom 515

99 ——— *Acts XX of 1866 and VIII of 1871—Priority—Effect of possession under earlier unregistered document—Notice* The plaintiff and the defendant claimed certain land

diately after his purchase he was put into possession of the field and had been in possession ever since Both the lower Courts held that the plaintiff was entitled to the land On appeal to the High Court —*Held* that assuming that the defendant had been in possession when the mortgage deed was executed to the plaintiff or that the plaintiff had otherwise notice of the defendant s prior purchase the plaintiff could derive no advantage from the registration of his mortgage —possession by or registration of the

REGISTRATION ACT (III OF 1877)
—*contd*

———— s 50—*contd.*

title of a purchaser or mortgagee prior in point of time being notice of that title to subsequent pur chasers and mortgagees DUNDAYA v CHENBA SAPA I L R 9 Bom 427

100 ———— *Priority of un registered mortgage over subsequent registered sale—Notice of prior conveyance* It is only where notice of a prior conveyance of which registration is not compulsory is so clearly proved as to make it fraud ulent on the part of a subsequent purchaser to take and register a conveyance in prejudice to the known title of another that the Courts will suffer the registered deed to be affected. Where [illegible]

and the plaintiff holding an absolute deed of sale of the same property duly registered and dated the 22nd June 1880 and having had notice of the mortgage claimed absolute possession of the pro perty irrespective of the mortgage —*Held* that the plaintiff s purchase was subject to the mortgage of which he had had notice and that the plaintiff s suit to declare his absolute title to the property must be dismis ed BHALU ROY v JAKHU ROY I L R 11 Calc 667

101 ———— *Priority—Pos session of mortgagor as tenant to mortgage effect of—Notice* By an unregistered deed of sale dated the 1st June 1881 the first defendants sold to the plaintiff for R90 certain land which had been previously mortgaged with possession by him to the plaintiff The first defendant had remained in posses ion subsequently to the mortgage as the tenant of the plaintiff under a lease which was not registered On the 16th April 1883 the first defend ant sold the property to defendant No 2 who registered his deed took actual posses ion of the land and got it transferred to his name in the revenue books The plaintiff now sued to recover po ession from defendant No 2 who contended (*inter alia*) that his deed being registered was preferable to the plaintiff s prior but unregistered deed of ale The Court of first instance awarded the plaintiff s claim The defendants appealed to the District Judge who reversed the lower Court s decree On appeal by the plaintiff to the High Court —*Held* confirming the decree of the lower Appellate Court that defendant No 2 having registered his deed of the 16th April 1883 was entitled under s 50 of Act III of 1877 in priority to the plaintiff whose deeds were not registered although earlier in date It was contended for the plaintiff that the possession of the defendant No 1 as tenant to the plaintiff subsequently to the mort gage and sale of the land to the plaintiff was the possession of the plaintiff and that such possession operated as constructive notice of the plaintiff s title to defendant No 2 *Held* that the possession by defendant No 1 as mortgagor was not notice to

REGISTRATION ACT (III OF 1877)
—*contd*

———— s 50—*contd*

defendant No 2 of the plaintiff s title Defendant No 1 being the vendor of the land to defendant No 2 the latter could have no reason to suppose that he was in possession otherwise than as owner MOHESHVAR BALKRISHNA v DATTU I L R 12 Bom 569

102 ———— *Bombay Regu lation IX of 1827 s 6—Registration Act (XIX of 1843) s 2—Priority of deeds—Unregistered mortgage with possession and without notice—Mortgage earlier in date but subsequently registered—Possession—Hindu law* The plaintiff sued to enforce a mort gage dated the 8th June 1863 which was registered on the 15th September 1864 but was unaccom panied with possession The defendant relied on a mortgage of the same property dated the 9th May 1864 This mortgage was unregistered but was accompanied with possession *Held* that apart from any special peculiarities of Hindu law the plaintiff s mortgage of the 8th June 1863 which was registered on the 15th September 1864 was en titled to priority over the unregistered mortgage of the 9th May 1864 although the latter was without notice of the earlier mortgage and was accompanied with possession. *Held* also that plaintiff s mort [illegible] owing to its [illegible] TRIKAM [illegible] Bom. 332

103 ———— *Mortgage—Priority—Registration—Notice—Possession of title deeds—Mortgagor allowed by first mortgage to retain title deeds—Subsequent mortgage to second mortgage and transfer of title deeds* *A* mortgaged land to *B* by a mortgage duly registered *A* subsequently [illegible] them to *C* to [illegible] priority The registration of his mortgage was noticed to *C* and there was no misrepresentation by *B* which would relieve *C* as subsequent mortgagee of the duty of inquiry or destroy the effect of such constructive notice BALMAKUNDAS ATMARAM v MOTI NARAYAN I. L R 18 Bom. 444

104. ———— *Transfer of Property Act (IV of 1882) ss 3 and 95—Notice—Effect of registration of subsequent incumbrance* [illegible] mortgage to search the registry for record of any [illegible] and if he has not [illegible] wilfully [illegible] ught to [illegible] above [illegible] which

REGISTRATION ACT (III OF 1877) —*contd*

——— s 50—*contd*

a reasonably prudent mortgagee about to bring a suit on his mortgage under Ch IV of Act IV of 1882 ought to have done and would have done which act inquiry or search would have resulted in the disclosure of the existence of the subsequent incumbrance JANKI PRASAD v KISHEN DAT

I L R 16 All 478

MEHRBANO v NADIR ALI

I L R 22 All 212

105 ——— *Priority of mortgage—Whether registration is notice—Neglect to take steps to find prior incumbrance Semble* The question whether registration is notice or not is a question of fact and as each case arises it should be determined whether the omission to search the register together with the other facts amounts to such gross negligence as to attract the consequence which results from notice *Torab* v *Paud 2 Bro C C 6*, *Evans* v *Bicknell 6 Ves 1 4 Martiney* v *Cooper 2 Russ 198 Farrow* v *Rees 4 Beav 18 Hunt* v *Elmes 2 De G F & J 578* and *Agra Bank* v *Barry L R 7 H L 148* referred to MONINDRA CHUNDRA NANDY v TROYLUCKHO NATH BURAT

2 C W N 750

106 ——— *Priority of registered over unregistered mortgage—San mortgage optionally registrable but not registered—Subsequent mortgage registered—Delivery of possession—Purchaser at sale in execution of decree—Notice.* In 1875 the land in dispute was mortgaged to defendant No 2 under two san mortgage bonds which were optionally registrable but were not registered. In 1885 the land was mortgaged to plaintiff by a registered mortgage accompanied with possession In 1886 the defendant No 2 obtained a decree upon his san mortgage bond in execution of which the mortgaged property was brought to sale and purchased by defendant No 3 Defendant No 3 was afterwards put in possession by the Court Thereupon the plaintiff sued to enforce his mortgage lien against the property in the hands of defendant [illegible]

mortgage bonds under s 50 of the Act A san mortgage is not within the exceptions mentioned in s. 50 of the Act *Held* also that under s. 47 of the Registration Act (III of 1877) the plaintiff s registered mortgage began to operate from the date of its registration and was not affected by the decree subsequently obtained upon the earlier mortgages By the custom of Gujarat transfer of possession which is necessary under general Hindu law is not essential to validate san mortgages and such mortgages have always been held valid charges as between mortgagor and mortgagee but they are

REGISTRATION ACT (III OF 1877) —*contd*

——— s 50—*contd*

liable to be defeated in case of the transfer of interest to third parties under registered instruments Apart from the doctrine of equitable notice registration under Act XVI of 1864 and Act VIII of 1871 conferred no priority on a registered document as against a document the registration of which was optional Since Act III of 1877 however the competition obtains in a more general form and confers priority on all documents required to be registered and registered since Act III of 1877 was passed over all prior unregistered deeds of an antagonistic character JETHABHAI DAYALJI v GIRDHAR

I L R 20 Bom 158

107 ——— *Registered and unregistered documents—Priority—Notice Held* that s 50 of the Registration Act 1877 will not avail to give the holder of a subsequent registered deed priority in respect of his deed over the holder of an earlier registered deed not being a compulsorily registrable deed if in fact the holder of the registered deed has at the time of its execution notice of the earlier unregistered deed *Abool Hossein* v *Raghu Nath Sahu I L R 13 Calc 70 Hathising Sobhai* v *Kuvarji Jaiher I L R 10 Bom 105* and *Krishnamma* v *Suranna I L R 16 Mad 148* followed *Agra Bank* v *Barry L R 7 E & I App 135* and *Ram Autar* v *Dhanauri I L R 8 All 540* referred to DIWAN SINGH v JADHO SINGH

I L R 19 All 145

Affirmed in appeal I L R 20 All 252

108 ——— *Loss of sale deed—Suit for execution and registration of fresh deed—Subsequent transfer with notice of former sale—Priority—Right to possession* When a deed of sale of immoveable property for more than R100 is lost within the time allowed for the registration of the same the purchaser may bring a suit against the vendor to compel the execution and registration of a fresh deed and if after the execution of the lost sale deed the vendor has resold the property by a registered deed and delivered possession thereof to another who has notice of the sale to the plaintiff the latter s entitled as against the subsequent purchaser to a decree for the possession of the property NALLAPPA REDDI v RAMALINGACHI REDDI

I L R 20 Mad. 250

109 ——— *Unregistered san mortgage—Sale—Subsequent unregistered mortgage of same property—Decree on latter mortgage and sale in execution—Sale certificate registered—Pri*[illegible]

[illegible]

[illegible]

was unregistered In 1886 the same property was mortgaged by Chhagan alone by a deed which was also unregistered. In 1889 Chhagan s mortgagee obtained a decree on his mortgage for sale of the mortgaged property and in execution put up the property to auction in 1892 when defendant purchased it Defendant got his sale certificate registered In 1894 the plaintiff brought this suit

REGISTRATION ACT (III OF 1877)
—contd

———— s 50—contd.

to enforce his mortgage lien by sale of the mortgaged property The defendant contended that as to Chhagan s share his certificate of sale having been registered his claim had priority to the plaintiff s unregistered mortgage *Held* that the plaintiff was entitled to a decree His claim superior to the defendant s The defendant had purchased the interest which Chhagan had mortgaged in 1889 But that mortgage was unregistered and was there fore subject to the plaintiff s mortgage which although also unregistered was earlier in date The defendant by registering his certificate of sale could not enlarge the estate which the certificate conveyed to him. MAGANLAL *v* SHAKRA GIRDHAR I L. R. 22 Bom. 945

110 ———— *Notice—Unregistered document under which holder of registered document derives title—Priority* The plaintiff sued to recover possession from the defendants of certain land which they had purchased from one *R* by a registered deed of sale dated the 22nd August 1882 *R* had been given the land by one *H* by a

date which was duly registered The third defendant contended that the plaintiff s title depended on the unregistered deed of the 23rd March 1876 executed by *V* (father of his vendors) and that his (defendant s) purchase by registered deed dated 2nd April 1894 had priority *Held* that the plaintiff s

registration is notice of registered documents it is not notice of unregistered documents under which holders of registered documents derive title CHUNILAL *v* PREMJI. MARWADI *v* RAMCHANDRA I. L R 22 Bom 213

111 ———— *Unregistered sale of land valued under R100—Subsequent registered hypothecation—Possession of first purchaser for over twelve years—Registered hypothecation defeated by such possession.* The owner of land having in 1876 sold and given possession of it for R95 to the

of execution. On plaintiff suing for a declaration of his right to the land —*Held* that the hypothecation

REGISTRATION ACT (III OF 1877)
—contd

———— s 50—contd

had been defeated by plaintiff s possession for a period exceeding twelve years prior to the institution of the suit. A hypothecation right so created is liable to be affected not only by lapse of time as between creditor and debtor but also by possession of the hypothecated p operty for the requisite period by a third person on a claim inconsistent with the rights of both the creditor and the debtor Nor does s 50 of the Registration Act interfere with the operation and effect of limitation and prescription governing such a cas as this. NALLTAMUTHU PILLAI *v* BETHA NAICKAN I L R 23 Mad 37

112 ———— *Registered and unregistered documents—Transfer of Property Act s 52* *B* held a decree for sale of the property which had been mortgaged to him by an instrument which was not compulsorily registrable and was not registered. *N* purchased the same property *pendente lite* by a registered deed of sale *Held* that there was no competition here between a registered and unregistered document to which s. 50 of the Registration Act would apply and that *N s* purchase was by s 52 of the Transfer of Property Act subject to the decree passed in *B s* favour BHAGWAN DAS *v* NATHU SINGH I L. R. 6 All. 444

113 ———— *Mortgage—First and second mortgages—Registered and unregistered documents—Fraudulent transfer—Transfer of Property Act (IV of 1882) s 53* Apart from any question of equitable estoppel such as described by LORD CAIRNS in the *Agra Bank* v *Barry* where one person takes a possessory mortgage of property with full knowledge and notice that another is already in possession of such property under an earlier instrument of a similar kind, he cannot be said to be acting in good faith and the principle of s 53 of the Transfer of Property Act (IV of 1882) is applicable to such a transaction In such a condition of circumstances *quoad* the prior title though created by an unregistered instrument the status of the second mortgagee under his registered document is affected by his own *mala fides* and as on the one hand the first mortgagee might avoid it on the ground that it was executed in fraud of him so on the other the second mortgagee cannot on the strength of his own fraud pray in aid the provisions of the registration law to give preference to an instrument which records a transaction that in its inception being fraudulent was a *nudum pactum* Such document would not be a document in the

deed the plaintiff was aware that the

REGISTRATION ACT (III OF 1877) —*contd.*

——— s 50—*contd*

was in pos ession under his mortgage *Held* that under these circumstances the fact that the plaintiff s deed was registered did not entitle him to dispossess the defendant by virtue of the provisions of s 50 of the Registration Act (III of 1877) RAM AUTAR v DHANAURI I L R 8 All 540

114 ——— *Priority—Registered and unregistered documents—Purchaser under a registered deed whether entitled to priority over purchaser in execution of a subsequent decree obtained by a prior mortgagee under an unregistered deed* A purchaser of immoveable property under a registered deed of sale is entitled to priority over a purchaser of the same property in execution of a subsequent decree obtained by a mortgagee under a prior unregistered deed. *Baijnath* v *Lachman Das I L R 7 All 888* dissented from ISHAN CHANDRA DEY v GONESH CHANDRA PARSI (1900)
I L R 28 Calc 139
s c 5 C W N 419

115 ——— *Document of which registration is optional—Priority of subsequent registered document over prior unregistered document—Notice of prior document—Onus of alleging and proving notice* To check fraud priority is not given by the Courts in cases to which s 50 of the Registration Act applies to the holder of a later registered mortgage if he at the time when he obtained his mortgage had notice of an earlier one But the *onus* lies on the party alleging such knowledge or notice to aver it in his pleadings and to prove it CHINNAPPA REDDI v MANICKAVASAGAM CHETTI (1901) I L R 25 Mad 1

116 ——— *Conflict between registered and unregistered documents—Long possession by usufructuary mortgagee under an unregistered instrument—Title.* Defendant and his father had taken possession of certain land as usufructuary mortgagees in 1877 and had held possession of it ever since The document witnessing the mort

[illegible]

of the Registration Act does not aff ct the operation of the law of limitation in favour of a person who claims under an unregistered document *Nalla muttu Pillai* v *Betla Naickan I L R 23 Mad 37* referred to BUDANKAYALA BALAKRISHNAMMA SUBUDHI v VINAYAKA RAVA SINGI BISOYI (1902)
I. L. R 26 Mad. 72

117 ——— *Prior and subsequent incumbrancers—Notice—Prior incumbrance not compulsorily registrable but incumbrancer in possession. Held* that if a person about to take a mortgage which must be made by registered deed

REGISTRATION ACT (III OF 1877) —*contd.*

——— s 50—*contd*

[illegible]

title is that of a prior mortgagee under a document

[illegible]

Krishnamma v *Suranna I L R 16 Mad. 148* and *Diwan Singh* v *Jadho Singh I L R 20 All 252* referred to BHIKHI RAI v UDIT NARAIN SINGH (1903) I. L. R 25 All. 366

118 ——— *Registration—*

[illegible]

v *Johobux I L R 7 Calc. 570* relied upon SRISH CHANDRA ROY v MUNGRI BEWA (1905)
9 C W N 14

119 ——— *Act XIX of 1843 s 2—Act XVI of 1864 s 68—Registration—Registered and unregistered documents—Priority—Held* that s 50 of the Registration Act 1877 did not give to a registered mortgage executed in 1900 priority over an unregistered mortgage executed in 1861 *Tirumala* v *Lakshmi I L R 2 Mad 147* and *Desai Lallubai Jethabai* v *Mundas Kuberdas I L R 20 Bom 390* followed *Hickson* v *Darlow L R 23 Ch D 690* referred to HARGOVIND v KISHAN KUNWAR (1906) I L R 28 All 607

120 ——— *Mortgage—Sale of property comprised in an unregistered mortgage—Liability of purchaser—Notice* Property was purchased which was the subject of an unregistered mortgage the registration of which was not compulsory The purchaser had no notice of the mortgage at the time of execution of the sale deed in his favour but received notice before the sale deed was registered *Held* that the mortgage was binding on the purchaser The principle of *Diwan Singh* v *Jadho Singh I L R 19 All 145* and *Bhikhi Rai* v *Udit Narain Singh I L R 25 All 366* applied KHIALI RAM v HIMMATA (1908)
I L R. 30 All. 238

——— s. 50 and s 17—*Registration—Constructive notice—Possession.* A registered document contained a recital of unregistered incumbrances and a question having arisen as to whether the recital of the unregistered incumbrances amounted to notice *Held* that registration is at most constructive notice and the doctrine of constructive

[illegible]

REGISTRATION ACT (III OF 1877) —contd

——— s 50—concld

Possession amounts to notice of such title as the person in possession may have and any other person who takes a mortgage or other charge upon or purcha es immoveable property without ascer taining the nature of the claim of the person in possession does so at his own risk The general consensus of opinion of all the High Courts in India is that possession is at least very cogent evidence of notice which a purchaser cannot with safety dis regard and that s 50 of the Registration Act (III of 1877) does not do away with the effect of notice in favour of the registration to which *cæteris paribus* it gives preference SHARFUDIN VALAD TAJUDIN v GOVIND BHIKAJI BADE (1902)
I L R 27 Bom 452

——— s 57 (1866 s 65) and ss 42 46 (1866 ss 44 46)—*Deposit of will—Proof of will when deposited with Registrar* A testator de posited his will in a sealed cover with the Registrar of Assurances at Bombay under s 44 of Act XX of 1866 and upon his death his executors applied to the Registrar to deliver over to them the will in order to enable them to apply to the High Court for probate thereof The Registrar gave a copy of the will under s 46 of the Act but refused to part with the original On application by the executors for a citation to the Registrar General to bring the will into Court and deposit it with the Ecclesiastical Registrar —*Held* that the original should be brought into Court where alone the factum of the will could be tried and determined and that a copy authenticated under s 65 of the Act was not suffi cient The Registrar General should not after the death of the depositor of a will part with it other wise than by order of Court *In the goods of* NAGINDAS 3 Bom O C 135

1 ——— s 58 (1871 s 58) and s 85—*Omission to endorse signature of person admitting execution—Validity of registration—Hindu law—Gift—Posse sion—Construction of instrument of gift* S on the 23rd September 1874 executed an instrument of gift in favour of his two daughters and his adopted son whereby he gave them his houses and shops and other moveable and immoveable pro perty and his loan transactions in equal one third shares At this time he was po sessed of a one third share in a certain partnership busine s As *S* was unable to appear at the registration office by reason of sickne s *N* his adopted son on the same day pre sented such instrument for registration and applied for the issue of a commission for his examination which the regi tering officer issued The commis sioner went to *S* s house on the next day but before he arrived *S* had died He examined the atte ting witnes es to such instrument who stated that it had been executed by *S* and he was informed by *N* that [illegible]

[illegible] that S had executed such instrument

REGISTRATION ACT (III OF 1877)— —contd

——— s 58—concld

the registering officer admitted registration recording that the execution was admitted by *N* *N* s signa ture was not endorsed on such instrument *M* one of *S* s daughters subsequently sued *N* for one third of her father s property including his share in such partnership business basing her suit on such instru ment *Held* that inasmuch as *N* had admitted at the time of registration of such instrument that it had been executed by *S* its registration was not invalidated by the mere fact that *N* s signature had not been endorsed thereon. MAN BHARI v NAUNIDH I L R. 4 All. 40

2. ——— and ss 59 and 60 and 87—*Registration—Unregistered conveyance—Bond con firming conveyance—Registration of conveyance instead of bond— Defect of procedure —Claim to attached property suit to establish* A deed of sale which required to be registered, not having been registered and the time for presenting it for regis tration having expired the vendor in order to avoid the effect of the deed of sale being unregistered gave the purchaser a bond confirming such deed The bond with the deed of sale annexed thereto was pre ented for registration By mistake or for some other reason the particulars to be endor ed on a document admitted to registration and the certi ficate showing that a document has been registered were endorsed on the deed of sale and not on the bond *Held* that assuming that the bond had been registered it was doubtful whether such an obvious attempt to defeat the provisions of the registration law should be permitted to succeed that whether there had been a mistake and the certificate of registration really applied to the bond or not the provisions of ss 58 59 and 60 of the Registration Act had not been complied with and the bond was to all intents and purposes un registered and that the defect was not a defect of procedure within the meaning of s. 87 which could be pa sed over MATHURA DAS v MITCHELL
I. L R. 4 All 206

[illegible] the Privy Council it [illegible]

was no reason why the deed afterwards registered should not be admitted as evidence of title In this there had been nothing contravening the objects of the Registration Act MITCHELL v MATHURA DAS
I L R 8 All. 6
L R 12 I A 150

——— s 59—

See ONUS OF PROOF—DOCUMENTS RELAT ING TO LOANS, EXECUTION OF AND CON SIDERATION FOR I L. R 17 All. 428

1 ——— s 60 (1871 s 60)—*Certificate of Registrar—Proof of registration.* Where a Regis trar of Assurances has intentionally and deliberately issued a certificate of due registration of a document with knowledge of certain facts relied on as affecting

REGISTRATION ACT (III OF 1877) —*contd.*

———— s. 60—*contd*

his power to grant the certificate the Courts are bound to accept such certificate as due proof of registration and cannot go behind it for the purpose of satisfying themselves that the registering officer has strictly conformed with all the provisions of the Act SHEO SHUNKUR SAHOY *v* HIRDEY NARAIN SAHU I L R 6 Calc 25 5 C L R 194

2 ———— *Certificate of re gistration—Evidence of registration—Registration in wrong registration office* A Civil Court cannot dispute the correctness of the certificate of due registration on a document produced in evidence before it merely on the ground that the property referred to by the deed is situate out of the jurisdiction of the Registrar by whom the certificate is granted See *Sheo Shunkur Sahoy* v *Hirdey Narain Sahu I L R 6 Calc 25 5 C L R 194* RAM COOMAR SEN *v* KHODA NEWAZ 7 C L R 223

3 ———— *Certificate of re gistration—Document registered by officer having no jurisdiction—Admissibility of evidence* The Court [illegible]

[illegible]

7 C L R 223 distinguished. BENI MADHUB MITTER *v* KHATIR MONDUL I. L. R 14 Calc 449

4. ———— *Registration of mortgage deed in district in which the mortgaged property is not situate—Admissibility of document in evidence* An instrument of mortgage on land which required to be registered was presented for registration to a Registrar within whose district no portion of the land was situate and was registered by such Registrar In a suit to enforce such mortgage it was objected that such instrument not having been properly registered could not be received in evidence *Held* following the opinion of BROUGHTON J in *Sheo Shunkur Sahoy* v *Hirdey Narain Sahu I L R 6 Calc 25 5 C L R 194* that when a document which purports to have been registered is tendered in evidence the Court cannot reject it for non compliance with the registration law moreover that the mortgagor could not be allowed to take advantage of an objection which would not have been available but for his own wrongful act HAR SAHAI *v* CHUNNI KUAR I L R 4 All. 14

5 ———— *Presentation of document by agent—Power of attorney not executed and authenticated as required by law—Validity of registration* A document bearing the certificate required by law showing that it has been registered [illegible]

REGISTRATION ACT (III OF 1877) —*contd*

———— s 60—*concld*

[illegible]

[illegible] referred to A document was presented for registration by the agent of the person executing it authorized by a power of attorney not recognizable under the registration law and was admitted to registration. *Held* that the person executing such document could not be allowed to object to the validity of its [illegible]

IKBAL BEGAM *v* SHAM SUNDAR I L R 4 All. 384

———— ss 60 87—*Registration of a deed—Omission to seal* The sealing of a deed is not an essential part of the act of registration The omission of the Registering Officer to seal a deed is a mere defect of procedure and the defect is cured by the provisions of s 87 of the Registration Act. SITA NATH BANDOPADHAYA *v* BISSESSUR ROY CHAUDHURI (1901) 6 C W N 528

———— ss 64 65—

See ante s 28 I L R 25 Bom 50

———— s 69 (1871 s 69 1866 s 80)—*Rules by Registrar General—Act XX of 1866* [illegible]

officer has nothing to do with the recitals of the deed or with its possible operation as regards third parties *e.g* a minor whose rights are reserved in the deed. *In the matter of* RAM CHUNDER BISWAS 16 W R 180

———— s 72—

See FALSE EVIDENCE—GENERAL CASES I L R 10 Calc 604

See PARTIES—PARTIES TO SUITS—REGISTRATION SUITS FOR. I. L. R. 8 Bom. 269

———— ss 72—75—

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE I L. R. 15 Mad. 138 I L. R. 15 All. 141

REGISTRATION ACT (III OF 1877) —*contd*

———— s 73 (1871 s 73 1866 s 84)—

See APPEAL—ACTS—REGISTRATION ACT
3 Bom A C 104
9 W R 122
8 W R 266

See FALSE EVIDENCE—GENERAL CASES
I L R 10 Calc 604

See REVIEW—ORDERS SUBJECT TO REVIEW
10 B L R 294
I L R 2 Calc 131
L R 3 I A 221

———— *Refusal to register—Petition by vendor to have document registered—Person claiming under document* A deed of sale executed by the vendor alone which recited that the vendor had received the purcha e money

d
n
t
e

vendor applied by petition to the High Court to establi h his right to have the document registered The alleged purcha er repudiated th esale *Held* (by the majority of the Full Bench) that as it appeared on the face of the document itself that the petitioner was not a person claiming under it the petition could not be entertained under the provisions of s. 73 of the Registration Act *Per* STUART C J —That the mere fact that it did not appear on the face of the deed that the petitioner could claim under it did not preclude the Court from entertaining the petition but under the circumstances of the case the registration of the deed should not be ordered *Per* OLDFIELD J —That it was the duty

I L R 1 All 318

———— ss 73 74 75 76 and 77—*Refusal by Sub Registrar to register on the ground of denial of execution—Application to Registrar to order registration not made within the prescribed time—Suit in Civil Court to compel registration barred* When registration of a document has been refused by a Sub Registrar under s 71 of the Indian Registration Act 1877 on the ground of denial of execution by one of the alleged executants no suit will lie in a Civil Court to compel registration unless an application has been made to the Registrar under s 73 of the Act to establish the right of the applicant to have the document registered and has been made within thirty days after the making of the order of refusal In computing the period of thirty days within which such last mentioned application must be made the applicant is not entitled to the execution of the time necessary for obtaining a copy of the

3 All 397 Edun v *Mahomed Siddik* ... *Calc 150 Lakhimani Chowdhrain* v *Akroomoni Chowdhrain I L R 9 Calc 851 Shama Charan Das* v *Joyenoolah I L R 11 Calc 750 Kunhimmu* v *Viyyathamma I L R 7 Mad 535* and *Veeramma* v *Abbiah I L R 18 Mad 99* referred to UDIT UPADHIA *v* IMAM BANDI BIBI (1902)
I L R 24 All 402

———— s 74—*Sub Registrar holding inquiry under order of the Registrar—Liability of witness giving evidence in such inquiry to prosecution—Registration Act s 82* An inquiry under s 74 of the Registration Act should be made by the Registrar himself He cannot delegate his power to any one else A Sub Registrar holding such an inquiry under an order of the Registrar cannot be said to be acting in execution of the Registration Act in any proceeding or enquiry under that Act. An order for the prosecution of a witness under s 82 of the Registration Act who gives evidence before the Sub Registrar in such an inquiry is wrong in law MATA DAYAL *v* QUEEN EMPRESS
I L R 24 Calc 755

———— ss 76 77—

See REGISTRATION SUIT FOR
I L R 29 All 284

———— s 77—

See ante ss 73 74 75 76 AND 77
See APPEAL—ACTS—REGISTRATION ACT
I L R 8 Bom. 269

See PARTIES—PARTIES TO SUITS—REGISTRATION SUITS FOR
I L R 4 Calc 445
I L R 8 Bom. 269

1 ———— Suit to enforce registration—*Limitation Act (XV of 1877) s 7—Suit by infant to enforce registration—Special rule of limitation.* The Registration Act 1877 being a special Act complete in itself the provisions of the Limitation Act s 7 do not apply to suits instituted under s 77 for a decree directing a document to be registered *Held* accordingly that a suit by an infant to enforce the registration of a conveyance having been instituted more than thirty days after refusal on the part of a Registrar to register it is barred by limitation VEERAMMA *v* ABBIAH
I L R 18 Mad. 99

2 ———— *Suit to establish right to registration—Act XX of 1866 s 84* In an application for registration made on the 27th March 1866 before the new Registration Law (XX of 1866) came into operation it was *held* that it was lawful

REGISTRATION ACT (III OF 1[illegible]

—*contd*

———— s 77—*contd*

for any person interested to institute a regula[illegible] to establish his right to registration under s. 1[illegible] XVI of 1864 notwithstanding the provisions of s 84 Act XX of 1866 BHEEMUL MARTO[illegible] OLIMUSSA *alias* BEGUM JAN 8 W R [illegible]

3 ———— *Suit to enforce re-gistration—Refusal to register* S 15 Act X[illegible] *of* 1864 was held to apply only to cases in wh[illegible] the Registrar had improperly refused to register an instrument. GOOROO DOSS DUTT v D[illegible] NATH MANNA 6 W R M[illegible]

4. ———— *Suit to enforce re-gistration—Refused to register Held* under s. 1[illegible] Act XVI of 1864 that a suit to enforce registra[illegible] lay where one of the parties to the deed refused [to] register it KRISHEN KISHORE CHAND v MOH[illegible] ZUKAHOOLLAH Agra F B 148 Ed. 1874, [illegible]

5 ———— *Suit to enf[orce re-]gistration—Refused to register* According to s. 1[illegible] Act XVI of 1864 a regular suit and not a mis[cella]neous application must be brought to compel a Registrar to register MUTUKDHAREE LALL v FUZUL HOSSEIN 6 W R Mis. 121

INAYAT ALI v FURZUND ALI 2 Agra [illegible]1

6 ———— *Refusal to r[egister]* —*Suit for inforcing registration—Act XVI of 18[illegible] s 17* Where the Registrar for any cause refused to register a deed of sale presented for registration under the provisions of s. 17 of Act XVI of 1864 the law did not provide that the applicant [illegible]

[illegible]

SUPER[illegible] [illegible] W R 212

AHSUNA BEGUM v KHEERUN SINGH 10 W R. 290

7 ———— *Refusal to regist[er]* [illegible]

[illegible]

tion was accordingly made under s 15 to the Principal Sudder Ameen who after hearing the vendor s plea that the whole consideration had [illegible]

[illegible]

8 ———— *Suit to compel registration —Deed presented after time* Under Act [illegible]

[illegible] W R 150

[illegible]ON ACT (III OF 1877)

—*contd*

[illegible]ation Acts of 1866 and 1871 a [illegible]ration after refusal of registra[tion] [illegible]ught the procedure provided [illegible] petition and if necessary [illegible]INGH v CHUNDUN [illegible] Agra F B Ed 1874 213

[illegible]NDAN LAL 7 N W 103

[illegible]DEO DAS 2 B L R A C 105

[illegible] MOHADEO DOSS 10 W R 483

[illegible]UTULLA KAGCHI 1 B L R F B 58 10 W R F B 51

[illegible]LDH PERSHAD SINGH 24 W R. 320

[illegible]*tition of* SANKAR DOBEY 4 B L R A C 65

[illegible]OHAPATTUR v SHUNKUR 12 W R 500

[illegible]LEY v OBHEY CHURN 12 W R 385

[illegible]MBER SINGH DAS 9 B L R. 433 14 Moo I A 129 16 W R P C 26

[illegible]ven by these Registra[illegible] registry officer refused the remedy by suit to [illegible] that is legally requisite [illegible]ling the registration of [illegible] v CHUNDEE PERSHAD 204 Ed 1873 287

———— *Suit to compel* [illegible] *up deed to be registered* [illegible]xpiration of a zur i peshgi [illegible] by defendant the latter [illegible] property forming the sub[ject] [illegible] consideration The kobala [illegible] by defendant and delivered [illegible] to be registered with his con[illegible] [illegible]ant subsequently got it away [illegible]r went to the registry office [illegible] not be registered The defend[ant] [illegible]cts and pleaded that he had [illegible] lease to a third party six days [t]he alleged execution of the kobala [Ap]pellate Court found the plaintiff's [illegible] and ordered defendant to restore [illegible]ale for the purposes of registration [illegible] declared the sale good and valid [illegible]ng already obtained *Held* [illegible] had a right to [illegible] sought [illegible] suit was not barred [illegible]UMSHARE ALI v [illegible] SAHOY v [illegible] R.

REGISTRATION ACT (III OF 1877) —*contd.*

———— s 77—*contd*

allowed for presentation yet this section is directly subject to s 77 and that section nowhere provides

to
to
a
refusal to register by the Sub Registrar an appeal within time to the Registrar a refusal by the Registrar and a suit filed in the Civil Court within one month from the order of the Registrar refusing registration SHAMA CHARAN DAS v JOYENOOLAH
I L R 11 Calc 750

14. ———————*Suit for registration of docum*

under s 73

passed the

not appeare

seems to m

was quite correct *Held* that the mere fact of the applicant not having adduced any evidence before the Registrar did not make his order one not refusing registration within the meaning of s 76 nor was the applicant precluded on that ground alone from pursuing his remedy under s 77 by a civil suit SAJIBULLAH SIRKAR v HAZI KHOSH MOHAMED SIRKAR **I L R 13 Calc 264**

15 ———— and ss 72 and 73—*Suit to compel registration* Under the Registration Act of 1877 a suit to compel registration is maintainable only when the provisions of s 77 of the Act have been complied with *A person omitting to* make an application to the Registrar as provided by s 73 within the time provided by s 72 cannot be said to have complied with the conditions precedent to a suit under s 77 In independently of s 77 of the Act no suit will lie *Bhagwan Singh* v *Khuda Baksh I L R 3 All 397* followed. *Ram Ghulam* v *Choley Lal I L R 2 All 45* dissented from EDUN v MAHOMED SIDDIK
I L R 9 Calc 150 11 C L R 440

16 ———— and s 74—*Refusal to execute deed—Suit to compel registration* If the non registration of a deed has resulted from the refusal of one of the parties to it to execute it that matter must be inquired into by the Registrar as directed by s 74 of the Registration Act before any right *to sue under s 77 can arise and unless the* requirements of the Act have been complied with no cause of action arises under s 77 *Edun* v *Mahomed Siddik I L R 9 Calc 150* followed LAKHIMONI CHOWDHRAIN v AKROOMONI CHOWDHRAIN **I L R 9 Calc 851 12 C L R 527**

17 ———————— *Compulsory registration—Execution of document admitted—Cancellation of document* On the 26th January 1892 the defendant executed a conveyance of certain land to the plaintiff. On the 26th May 1892 the plaintiff presented the conveyance for registration but registration was refused. The plaintiff now sued for a decree directing that the conveyance be registered under the Registration Act 1877 s 77 The

REGISTRATION ACT (III OF 1877) —*contd*

———— s 77—*contd*

defendant pleaded that the conveyance had been cancelled *Held* (without determining the question of cancellation) that the plaintiff was entitled to the decree prayed for The only question for *decision in a suit under this section is the factum* of execution BALAMBAL AMMAL v ARUNACHALA CHETTI **I L R 18 Mad. 255**

18 ———— and ss 36 and 72 to 76—*Compulsory registration—Suit to compel registration* The plaintiff and defendant agreed that in consideration of a sum of money already paid and of a further sum to be paid on the completion of the transaction the defendant should transfer a certain mortgage to the plaintiff and an instrument of transfer was prepared and executed to give effect to that agreement but it was not registered The plaintiff now sued for a decree compelling the defendant to execute and register that or a similar instrument *Held* that the plaintiff was not entitled to a decree for compulsory registration and should have proceeded under Registration Act ss 36 72 to 77 VENKATASAMI v KRISTAYYA **I L R 16 Mad 341**

19 ———————— *Suit for Registration of a conveyance—Power of Court to inquire into the genuineness as well as the validity of a document—Effect of execution of conveyance by a certificated guardian in contravention of the terms of permission granted by the District Judge—Guardians and Wards Act (VIII of 1890) s 30* In a suit under s 77 of the Registration Act a Court cannot go into any matter affecting the validity of a document apart from its genuineness The question of its validity must be determined in a suit properly framed for that purpose *Balambal Ammal* v *Arunachala Chetti I L R 18 Mad 255* approved Where therefore a document was executed by the certificated guardian of a minor in contravention of the terms of permission accorded by the District Judge —*Held* that the Court under s 77 directed its registration if only the document was proved to be genuine although the document was voidable at the instance of the minor under s 30 of Act VIII of 1890 RAJ LAKHI GHOSE v DEBENDRA CHUNDRA MOJUMDAR **I L R 24 Calc 668 1 C W N 444**

20 ———— and s 73 A Sub Registrar refused to register certain documents
the
cted
arty
Act
it to
by
have the documents registered
virtue of the provisions of s 77 of the Registration Act the Court was not competent to order registration KUNHIMMU v VIYYATHAMMA
I L R 7 Mad 535

21 ———————— *Refusal to register on ground of denial of execution—Suit for registration* A Sub Registrar refused to register a bond

REGISTRATION ACT (III OF 1877) —*contd*

——— s 77—*contd*

as the obligor denied the execution of it The obligee instead of applying to the Registrar under s. 73 of Registration Act in order to establish his

observed upon BHAGWAN SINGH v KHUDA BAKHSH I L R 3 All. 397

22 ——— *Contract of sale—Suit to enforce registration of conveyance Held* where a person had agreed to sell to another certain immoveable property and had conveyed the same to him by a deed of sale which under the Registration Act of 1877 required registration and the vendor refused to register such deed that it was not incumbent on the vendee to take steps under that Act to compel the vendor to register before he sought relief in the Civil Court but that he was at liberty without doing so to sue the vendor in the Civil Court for the registration of such deed RAM GHULAM v CHOTEY LAL I L R 2 All 46

23 ——— *Lease suit to compel registration of—Right of suit* Certain leases

that the lessor might be ordered to cause the lease

R 2 All 46 approved *Bhagwan Singh* v *Khuda Bakhsh I L R 3 All 397* and *Edun* v *Mahomed Siddik I L R 9 Calc 151* distinguished ABDULLAH KHAN v JANKI I L R. 16 All. 303

24 ——— and ss 24 73 74 75 76—*Order for registration—Finality of order—Refusal to register—Application to establish right to registration—Suit for registration* Where an application for registration of a sale deed had been presented after the expiry of the period prescribed by law for registration and had been dealt with

complied with and that it was not competent for

given in pursuance of a discretionary power allowed to a Registrar to accept documents for registration after the time prescribed DURGA SINGH v MATHURA DAS I L R. 6 All. 460

REGISTRATION ACT (III OF 1877) —*contd*

——— s 77—*contd*

Under the Registration Acts of 1866 and 1871 a suit to enforce registration after refusal of registration could not be brought the procedure provided in those Acts was by petition and if necessary appeal SEPAHEE SINGH v CHUNDUN 2 N W 160 Agra F B Ed 1874, 213

BEHARI LALL v KUNDAN LAL 7 N W 103

TULSI SHAU v MAHADEO DAS 2 B L R A C 105

s c TOOLSEE SAHOO v MOHADEO DOSS 10 W R 483

RAHMATULLA v SARIUTULLA KAGCHI 1 B L R F B 58 10 W R F B 51

MAHOMED OHID v KALEE PERSHAD SINGH 24 W R 320

In the matter of the petition of SANKAR DOBEY 4 B L R A C 65

s c OBHOY CHURN MOHAPATTUR v SHUNKUR DOBEY 12 W R 500

Upholding SUNKUR DOBEY v OBHEY CHURN MOHAPUTTUR 12 W R 385

FATI CHAND SAHU v LILAMBER SINGH DAS 9 B L R 433 14 Moo I A 129 16 W R P C 26

The remedy however given by these Registration Acts by appeal where a registry officer refused to register did not affect the remedy by suit to

25 ——— *Suit to compel defendant to register or give up deed to be registered —Right of suit* On the expiration of a zur i peshgi ticca granted to plaintiff by defendant the latter executed a kobala of the property forming the subject of this suit for a consideration The kobala was drawn up signed by defendant and delivered to plaintiff s servants to be registered with his consent but the defendant subsequently got it away from them and never went to the registry office and the deed could not be registered The defendant denied these facts and pleaded that he had given a mokurrari lease to a third party six days after the date of the alleged execution of the kobala The lower Appellate Court found the plaintiff s case established and ordered defendant to restore the deed [of sale for the purposes of registration and use and declared the sale good and valid

LALLA THAKOOR SAHOY v MAHOMED LOOTFOOLLAH 18 W R. 504

REGISTRATION ACT (III OF 1877) —*contd*

——— s 77—*contd*

26 ——— *Suit to enforce registration on refusal of party who ought to register—Implied contract to register* Whether an action will lie against the maker of an instrument requiring registration to render it valid for a refusal to get such instrument registered depends upon the question whether there is a contract express or implied on the part of the maker to register it Such a contract is not to be implied in every case GIRDHAR DALPAT *v* HARIBHAI NARAYAN 7 Bom. A C 3

27 ——— *Refusal to register—Suit to enforce contract* A sold certain property to *B* and received part of the purchase money in advance the rest to be paid after registration of the deed of sale When the deed was executed and

deed to him and he sold the property to other parties *Held* that it was a suit to enforce a contract from which the vendor had receded and notwithstanding the subsequent sale to a third party and registration of such subsequent deed there was nothing in the registration law to prevent plaintiff from enforcing this contract BHEEMUL MATHOON *v* OLIMUSSA *alias* BEGUM JAN 8 W R 423

28 ——— *Suit for possession for damages for refusal to register and for enforcing registration—Effect of execution of deed required by law to be registered* The owner of a share in a talukh granted a se patni thereof to the plaintiff but before registration granted a se patni to the Bengal Coal Company In a suit against the owner and the Company for possession of the se patni talukh for damages caused by the refusal to register and also for compelling registration of the se patni pottah —*Held* that the suit was not maintainable in a Civil Court as the plaintiff s title rested upon an unregistered deed that there was no cause of action as against the company to enforce registration of the pottah and that a distinct stipulation is not necessary to bind a person to cause registration of a deed required by law to be registered but he virtually agrees to do so when he executes a contract which by the law in force requires registration. PRABHURAM HAZRA *v* ROBINSON 3 B L R Ap 29 11 W R 398

But *see* TRIPURA SUNDARI *v* RASIK CHUNDRA KANUNGOI 6 B L R Ap 134 15 W R 189

29 ——— *Suit on bond—Failure to register according to agreement—Cause of action* *A* executed a bond in favour of *B* but failed to cause the registration of the same Before the amount secured by the bond became due *B* sued *A* for recovery thereof on the ground that as *A* had agreed to get the bond registered but failed to do so *B* was entitled to recover the amount advanced by him *Held* that *B* had no cause of action GURU PRASAD ROY *v* DHANPUT SINGH 5 B L R Ap 46 14 W R 20

REGISTRATION ACT (III OF 1877) —*contd*

——— s 77—*contd*

See COURT OF WARDS *v* NITTA KALI DEBI 2 B L R A C 353 12 W R 287

30 ——— *Refusal to register—Suit to enforce registration* A suit lies against a vendor and another for recovery and registration of a document wrongfully taken back from a Registrar upon such Registrar s refusal to register the same on account of certain false statements made by the parties objecting to the registration MITTER SEIN *v* NARAIN SINGH 1 N W 206 Ed 1873, 289

31 ——— *Suit to enforce deed* Where a deed had been registered though possibly improperly registered under s 36 Act XX of 1866 a suit for enforcement of the deed was maintainable UNMOLE SINGH *v* RAM BHUNJAN MISSER 3 Agra 407

32 ——— *Suit to compel registration of document not compulsorily registrable* Under the Registration Act of 1877 a suit lies by a purchaser to compel registration of his kobala in a case in which the value of the property conveyed is under R100 and in which therefore the registration of the deed is not compulsory TOPA BIBI *v* ASHANULLAH SARDAR I L R 16 Calc 509

33 ——— and ss 23 24 76—*Limitation for registration or order of refusal of a document admitted for registration by Registrar—Denial of execution—Refusal to attend—Limitation for suit under s 77 of the Registration Act* No period is prescribed by Act III of 1877 within which a document which has been admitted for registration may be registered or within which the order of refusal by the Registrar to register the document must be made There is nothing in ss. 76 and 77 to compel the Registrar in cases where there has been no express denial of execution but where the executant refuses to attend at his office to make his order of refusal within the time limited for admission of execution by ss. 23 and 24 Limitation in respect of a suit under s. 77 begins to run from the date of such order *Mukhun Lall Panday* v *Koodun Lall 15 B L R 228 I R 2 I A 210 24 W R 75* and *Shama Churan Das* v *Joyenoolah I L R 11 Calc 750* relied on. *In the matter of Buttobehary Benerjee 11 B L R 20* dissented from. LUCKHI NARAIN KHETTRY *v* SATCOWRIE PYNE I L R 16 Calc 189

Affirming on appeal SATCOWRIE PYNE *v* LUCKHI NARAIN KHETTRY I L R 16 Calc 538

A registrable document which had been e... by the plaintiff on the one part and by the defendants *T* and one *M* on the other part was accepted for registration by the Sub Registrar of Bombay

REGISTRATION ACT (III OF 1877)
—*contd*

——— s 77—*contd*

after four months from the date of execution under s 24 of the Registration Act (III of 1877) *M*

ca e counsel for the defendants proposed to ask the Pegistrar s clerk in his examination whether any such inquiry was made *Held* (in the original Court by FULTON J) following *Durga Singh* v *Mathura Das I L R 6 All 460* that the question hould be disallowed the Court having no jurisdiction to inquire into the exerci e of the Pegistrar s discretion under s 24 of the Pegistration Act *Held* on appeal by FARRAN *C J* and STRACHEY *J* that when a Pegistrar has directed under s 34 that the document shall be accepted for registration the Court cannot inquire under ss 77 and 24 into the propriety of that direction *Durga Singh* v *Mathura Das I L P 6 All 460* approved of and followed The proviso to s 34 allows a further period of four months (in addition to the four months allowed by

register A and do all things necessary therefor and in ca e they failed to do so to pay whatever the plaintiff could claim under A if it had been registered The plaintiff obtained an order for the regi tration of A but failed to pres nt it for registration within thirty days after such order as required by s. 75 of the Pegistration Act and when he did present it regi tration was consequently refused He subsequently lodged document B for registration with A as an annexure to it and it was

as a registered document. Held on appeal by FAR

REGISTRATION ACT (III OF 1877)
—*contd*

——— s 77—*contd*

RAN *C J* and STRACHEY *J* that the decree ordering the registration of B was correct The document was a mere personal covenant to do a particular act with reference to a particular docu ment There was nothing on the face of it to show that the accompanying document referred to in it related to immoveable property The registering officer would travel out of his functions if he were to in titute an inquiry as to what was the nature of the document referred to *Held* al o (varying the decree of the lower Court) that document A should not be copied as an annexure to document B If document A were in the nature of a schedule or appendix to document B then the two documents could be registered as one but as they appeared to be two distinct documents separately stamped and executed for different objects they could not be so regi tered The Pegistrar had no power to inquire what document was referred to in the document he was asked to register If he could not register the two locuments as one neither could the Court do so under 77 TULLOCKCHAND HARNATH v GOKULBHOY MULCHAND **I L R 21 Bom 724**

s c in Court below GOKULBHOY MULCHAND v TULLOCKCHAND HARNATH **I L R 21 Bom 69**

35 ——— **and s 24**—*Suit to compel registration of document—Right of suit* No suit lies under s 77 of the Registration Act (III of 1877) against an order made under s 24 of that Act refusing to direct a document to be accepted for registration GANGAVA *v* SAYAVA

I L R 21 Bom. 699

36 ——— *Limitation—Registration—Suit to enforce registration—Limitation Act (XV of 1877) ss 6 14—Period of limitation computation of* An executant of a document not admitting execution the Sub Pegistrar refused to register it There was an appeal to the Pegistrar who also refused to register *Within thirty days of* the dismissal of the appeal an application for review was filed to the Registrar which was also di mis ed On a suit brought in the Civil Court to enforce the registration of the document after the dismissal of the said application for review — *Held* that s 14 of the Limitation Act had no application to the pre ent *ca e and that* the suit not having been brought within thirty days from the date of the dismissal of the appeal by the Registrar it was barred by limitation. *Nogendra Nath Mullick* v *Mathura Mohun Parhi I L R 18 Calc 368* followed in principle *Veeramma* v *Abbiah I L R 18 Mad 99* *Girija Nath Roy* v *Patani Bibee I L R 17 Calc 263* referred to and *Khetter Mohan Chuckerbutty* v *Dinabashy Shaha I L R 10 Calc 265* discus ed. ABDUL HAKIM v LATIFUNNESSA KHATUN (1903)
I L R 30 Calc 532 s c **7 C W N 550**

37 ——— *Making of the order—Date of the order—Date of communication—Running of time for suit* The expression making

REGISTRATION ACT (III OF 1877)
—contd

———— s 77—concld

of the order in s 77 of the Indian Registration Act III of 1877 means not merely recording the

directing a document to be registered may be filed within thirty days of the date on which the order of refusal was communicated to the party concerned ABDUL ALI v MIRJA KHAN (1904)
I L R 28 Bom. 8

38 ———— *Suit to compel registration—Limitation—Limitation Act (XV of*

39 ———— *Decree directing registration—Decree not providing for period for registration—Non presentation of document within thirty days of First Court s decree directing registration—Registration validity of* S 77 of the Registration Act does not enact that the documents of which registration is directed by a decree made

ment to be registered and said nothing about its presentation for registration within thirty days from the passing of the decree after an unsuccessful appeal the document was presented for registration within thirty days from the passing of the decree on appeal and was registered *Held* that the validity of the registration of the document could not be questioned on the ground that the document had not been presented for registration within thirty days of the passing of the first Court s decree the decree having imposed no condition to that effect GOPINATH ADHIKARY v GADADHAR DAS (1906) I L R 33 Calc 1020

———— s 82 (1871 s 80 [1868 ss 91 94)—

See CHARGE—FORM OF CHARGE—FORGERY I L R 30 Calc 822

See FALSE EVIDENCE—GENERAL CASES
I L R 10 Calc 604
I. L. R. 20 Calc 719
5 C W N 44

See FALSE PERSONATION
7 W R. Cr 99
2 B L R A. Cr 25

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACT
5 Bom. Cr 7

See SENTENCE—GENERAL CASES
8 W R Cr 16

REGISTRATION ACT (III OF 1877)
—contd

———— s 82—contd

1. ———— *Inquiry as to proper possession of receipt to take back document from Registrar s office* An inquiry made by a clerk of a registry office with a view to ascertain whether the person who brings a receipt to take back document which could not be returned in the first instance and for which a receipt was accordingly given is the person in whose possession the receipt ought to be is an inquiry within the meaning of the Registration Act VIII of 1871 s 80 *In the matter of the petition of* BUNWARY PODDAR 23 W R Cr 55

2 ———— and s 83—*Sanction to prosecution* It is not necessary that sanction could be given before instituting a charge under s 82 of the Registration Act GOPI NATH v KULDIP SINGH I. L R. 11 Calc 566

3 ———— *Act XV of 1866*

prosecution was (with the sanction of the Registrar to whom he was subordinate) instituted against the accused by the same Magistrate in his capacity of Sub Registrar Under such circumstances where it can be done it would be better if the case were tried by some other person QUEEN v HIRA LALL DASS 8 B L. R. F B 423

s c GOVERNMENT OF BENGAL v HIRA LALL DOSS 17 W R Cr 39

In the matter of RAMDYAL SING
5 B L R Ap 89

s c QUEEN v RAM LOCHUN SINGH
18 W R. Cr 15

(*Contra*) *In re* BHARAT CHUNDRA SEN
8 B L. R 426 note 14 W R Cr 74

QUEEN v NADI CHAND PODDAR
24 W R. Cr 1

4 ———— *Prosecution under —Time for ordering prosecution—Denial of execution of a document—Refusal to register—Appeal from the refusal—Limitation* On the petitioner denying the execution of a document in favour of *A* before the Sub Registrar that officer refused to register the document. Thereupon *A* lodged a

REGISTRATION ACT (III OF 1877)
—contd

——— s 82—contd

under the circumstances the petitioner should not be pro ecuted under s 82 of the Registration Act That the presentation of an appeal to the Special Registrar after the time limited therefore against the refusal of the Sub Registrar to register a document on denial of execution does not give any locus

——— ss 82 83—

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
I L R 11 Mad 500

——— s 83 (1871 s 81 1866 ss 93 to 95)—

See FALSE EVIDENCE—GENERAL CASES
I L R 10 Calc 604

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACT
5 Bom Cr 7
I L R 7 Mad 347

1 ——— Act XX of 1866 s 95—Power of Registrar—Prosecution of offence A Registrar under Act XX of 1866 was competent under s 95 to institute a prosecution for any offence under that Act QUEEN v RAMDHARY SINGH
10 W R Cr 5

2 ——— Act XX of 1866 s 95—Offence under Registration Act—Sanction for prosecution A Sub Registrar under Act XX of 1866 had no power to investigate regarding the

before an officer authorized to receive such complaint The sanction of the Registrar under s 95 Act XX of 1866 related to a prosecution to be instituted by the Sub Registrar for an offence under the Act QUEEN v HARIDAS KUNDU
4 B L R Ap 69 13 W R Cr 21

3 ——— Act XX of 1866 s 90—Offence under Registration Act—Jurisdiction

to mean commenced QUEEN v SHEOGOLAM DASS 6 B L R F B 692 15 W R Cr 58

(Contra) QUEEN v ASANULLA
6 B L R 693 note 10 W R Cr 21

——— s 84 (1871 s 82)—Evidence Act (I of 1872) s 3—Sub Registrar—Offence committed during a judicial proceeding—Meaning of word Court —Penal Code s 228 By s 82 of the Registration Act 1871 a Sub Registrar was a public officer and proceedings before him were judicial proceedings within the meaning of s 228 of the Penal Code and as he was legally authorized to take evidence he was a Court as defined by the Evidence Act s 3 In the matter of the petition of SARDHARI LAL
13 B L R Ap 40 22 W R Cr 10

——— s 87—

See ante ss 32 34 AND 87

See ante s 49 13 C W N 722

See ante s 60 5 C W N 528

1 ——— (1871 s 85 1866 s 88) —Registration after proper time The accepting of a document for registration after the expiration of the period mentioned in part IV of Act XX of 1866 is not a mere defect of procedure The Registrar who registers a document so presented acts without authority RAYA RAGHOBA KAMAT v ANAPURNABAI KOM SUBALBHAT 10 Bom 98

2 ——— Presentation for registration to officer at place where he was officiating in another capacity—Illegal procedure A bond was presented for registration to a Sub Registrar not at his public office but at a place where he was engaged in his duties as a revenue officer The Sub Registrar received the bond and registered it and entered it in the books of his sub registry He should only have received it at his public office As no person

MALI v BHAWGATI 7 N W 119

——— s 90 cl (d)—Documents purporting to be or to evidence grants or assignments by Government of land or interest in land The agent to the Governor General in a letter to the Nawab Bahadur of Moorshedabad announced the intentions of the Government as to his position and income and informed him that he was to have possession of the State lands and jewels. In a suit by the son of the Nawab to recover possession from a person wrongfully in possession of land which was held by the lower Courts to be portion of such State land it was inter alia objected that the letter required registration Held that the letter operated as a grant or an authority from Government and was exempt from registration under the provisions of s 90 cl (d) of the Registration Act HASSAN ALI v CHUTTERPUT SINGH DUGARH
I L R 19 Calc 742

REGISTRATION OF TRANSFER

See TRANSFER, REGISTRATION OF

REGISTRY TICKET

——— possession of—

See PROSTITUTE 3 B L R A Cr 70

REGULATION

See Bengal Regulation

See Bombay Regulation

See Madras Regulation

——— 1793—III—

See Limitation I L R 31 Calc 314

——— VIII s 41—

See Chaukidari Chakran Land
I L R 33 Calc 390 596

See Chaukidari Chakran Act s 50
I L R 33 Calc 596

——— XI—

See Hindu Law I L R 32 Calc 6
I L R 36 Calc 590

——— XIX—

See Grant I L R 35 Calc 931

——— XXVII—

See Market I L R 29 All 740

——— 1800—X—

See Hindu Law—Inheritance—Custom
I L R 32 Calc 6
I L R 36 Calc 590

——— 1802—XXV—

See Hindu Law 10 C W N 95

——— s. 4—*Land exempted from payment of public revenue at permanent settlement—Resumption of inam—Limitation—Exercise by Government of its prerogative of imposing assessment on land liable to be assessed—No period of limitation.* Certain land was exempted from the payment of public revenue at the time of the permanent settlement S 4 of Regulation XXV of 1802 declares that the Government at the permanent settlement has reserved to itself the entire exercise of its discretion in continuing or abolishing the exemption of such lands from liability to pay assessment to Government and the permanent settlement of the land revenue was made excluding the said land *Held* that it was competent to Government to impose a public assessment on the land Also that there is no period of limitation prescribed by any law within which alone the Government should exercise it prerogative of imposing assessment on land liable to be assessed with public revenue *Collector of Chingleput v Kosalram Naidu Second Appeal No 1352 of 1897* unreported approved Boddupalli Jagannadham v The Secretary of State for India (1901) I L R 27 Mad 16

——— 1803—II—

See Limitation I L R 32 Calc 669

——— *1805—II*—

See Limitation 9 C W N 673
I L R 32 Calc 669

REGULATION—*contd*

——— 1805—XII—

See Hindu Law—Custom
I L R 36 Calc 590
I L R 32 Calc 6
9 C W N 676

——— 1806—XVII—

See Mahomedan Law
I L R 28 All 496

See Mortgage 10 C W N 778

——— 1812—V—

See Bengal Tenancy Act s 74
10 C W N 527

——— VIII—

See Bettiah Raj 13 C W N 454

——— 1814—IV—

See Bettiah Raj 13 C W N 454

See Saltpetre I L R 36 Calc 268

——— 1817—XX—

See Evidence Act s. 32 (2)
13 C W N 71

——— 1818—III deportation under—

See Libel I L R 36 Calc 883

——— 1819—II—

See Land Registration Act (Bengal Act VII of 1876)
I L R 35 Calc 747

——— V—

See Putni Tenure
I L R 33 Calc 140

——— VIII—s 3 cl (3)—

See Rent I L R 33 Calc 140

——— s 134—

See Landlord and Tenant
I L R 35 Calc 737

——— 1822—VII—

See Market I L R 29 Calc 740
See Pre emption I L R 26 All 549

——— s 9—

See Wajib ul-Arz 10 C W N 730

——— *Evidence Act (I of 1872) s 35—Duties of Collectors and Settlement Officers—Entries in Khewats and Khataunis* Under the provisions of Regulation No VII of 1822 the settlement officers had to ascertain the real nature and extent of the interests held more especially where several persons may hold interests in the subject matter of different kinds or degrees, *held* that this included the case of mortgagors and mortgagees *Held also* that entries in *Khewats* and *Khataunis* made at settlement under Regulation No VII of 1822 are admissible

REGULATION—*contd*

——— 1822—VII—*concld*

in evidence under s 3 Indian Evidence Act 1872 ROBERT SKINNER v CHANDAN SINGH (1908) I L R 31 All 247

——— 1825—IX—

See LIMITATION ACT (XV OF 1877) SCH II ART 45 12 C W N 910

——— 1825—XI—*Alluvion and diluvion—Accretion—Auction purchaser at a sale for arrears of revenue right of to accretion—Res judicata—Civil Procedure Code (Act XIV of 1882) s 13* An auction purchaser of an entire estate at a sale for arrears of revenue is entitled to recover all lands included in the taluk at the time of its settlement as well as all lands which had subsequently accreted thereto by alluvion Where lands had in fact become dry not naturally by accretion through gradual alluvion but by the dereliction of the river by reason of the diversion of its water through an artificial channel *Held* that the mere fact that an accretion of some lands had commenced before the excavation of the channel would not give the riparian owner a title to the rest of the lands if it were found that they were not formed by allluvion KANTA PROSAD HAJARI v ABDUL JAMIR SADAGAR (1904) 8 C W N 676

——— s 4—

See LANDLORD AND TENANT I L R 33 Calc 444

1 ——— Alluvion—Gradual accession—*Change of course of a river within a short space of time* Certain land belonging to village P on the river Comti was submerged and after remaining submerged for a not very lengthened period again reappear d. But on its reappearance it was found to be on the opposite side of the river and

the village of which it formed part by a sudden change in the course of the river and this being so no change of ownership had occurred. Gradual acce ion or alluvion means an imperceptible increase and land is said to be acquired by alluvion when it is acquired so gradually that it cannot be said how much is added at any particular moment of time *Lopez* v *Muddun Mohun Thakoor 13 Moo I A 467* and *Hursuhai Singh* v *Syed Lootf Ali Khan L R 2 I A 28* referred to RAI KRISHAN CHANDRA v SAIDAN BIBI (1905) I L R 28 All 256

2 ——— cl. (2) Alluvion and diluvion—*Act XVIII of 1876—Ownership change of—Reformation—Principles* A river which separated

REGULATION—*contd*

——— 1825—XI s 4—*concld*

... inch or the re ... *Lopez* ... 467 and *The Mayor of Carlisle* v *Graham L R 4 Ex 361* referred to THAKURAIN RITRAJ KOER v THAKURAIN SARFARAZ KOER (1905) 9 C W N 889 s c L R 32 I A 165

3 ——— *Law of alluvion and diluvion (Reg XI of 1825) s 4—Non occupancy raiyat if entitled to accretion—Dastak if should be registered—Registration Act (III of 1877) s 17* A non occupancy raiyat is entitled to claim the benefit of cl. 1 s 4 of Reg XI of 1825 and

4 ——— *Law of alluvion and diluvion (Reg XI of 1825) s 4—Non-occupancy raiyat if entitled to claim an accretion.* A non occupancy raiyat can claim the benefit of s 4 of Reg XI of 1825 and is entitled to claim an accretion to his holding AMJAD ALI v KADERJAN BIBEE (1908) 13 C W N 269

See FISHERY 10 C W N 540

——— 1827—XXVII s 5—

See PRESIDENCY SMALL CAUSE COURTS ACT I L R 31 Bom. 138

——— 1828—VII—

See MADRAS REVENUE RECOVERY ACT s 59 I L R 30 Mad. 367

——— 1872—III—

See APPEAL—REGULATIONS 6 C L R 555

——— ss 5 8—

See COURT FEE 12 C W N 917

See SETTLEMENT OFFICER. 6 C L R 555

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION

See SUBORDINATE JUDGE 5 C L R 128

——— 1876—IV—

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS I L R 17 All. 483

See TERAI REGULATION 1876

——— 1877—I—

See AJMERE COURTS REGULATION I L R 2 All 819 I L R 21 All 163

See REFERENCE TO HIGH COURT—CIVIL CASES I L R 21 All 163

REGULATION—*contd*

———— 1880—II—

See ASSAM FRONTIER TRACTS REGULATION

———— 1882—VII s 9—

See HINDU LAW I L R 32 Calc 6
I L R 29 All. 487

———— VII, s 34—

See CRIMINAL PROCEDURE CODE s 145
13 C W N 104

———— 1886—I—

See ASSAM LAND AND REVENUE REGULATION

See PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION I L R 23 Calc 514
I L R 24 Calc 751

———— 1891—III—

———— Jhum cultivation in Sylhet—*Regulation extinguishing proprietary rights and giving compensation—Onus of proof as to applicability of Regulation—Question of fact concurrent decisions of Courts in India on—Proof of reason for taking profits of jhum lands into account in estimating income of settled estate—Long possession and enjoyment as proof of title* Regulation III of 1891 (issued under Statute 33 Vict C 3) recited in the preamble that the officers who effected the permanent settlement of certain estates in Sylhet included for the purposes of assessment among the assets of those estates under the designation of *jhum* the income then derived by the proprietors of those estates from shifting cultivation carried on by them or their dependents beyond the limits of those estates that the cultivation shifted from year to year over immense and altogether undefined areas and the tracts of land over which they extended were not specified at the time of the settlement and in consequence of this right of various and in some cases vague descriptions are from time to time asserted by the said proprietors over such areas that it is thus impossible for any person to obtain a safe and clear title to land in those areas and the extension of cultivation is in consequence impeded and that it is expedient that the rights if any corresponding to the said *jhum* assets should be commuted. S 2 enacted that all such rights should be deemed to have been extinguished and by s. 3 it was declared that all proprietors of such estates should be entitled to compensation. The Government extended the above Regulation to certain areas under *jhum* cultivation belonging to the appellants who and their predecessors in title had held them since 1837 In a suit brought against the Secretary of State for India in Council by the appellants they alleged that the land in dispute appertained to talukhs which had been settled with their pre[illegible]

REGULATION—*concld*

———— 1891—III—*concld*

long in the enjoyment of the predecessors in title of the appellants a Regulation which would have the effect of confiscating proprietary rights and giving compensation in exchange it lay upon the Government to show that the facts of the case were such as to bring it within the operation of the *jhum* lands Regulation *Held* also that the question whether lay within or without the limits of the settled estates was not a question of fact on which the concurrent decisions of the Courts in India could be accepted as final In a sense it was one of fact but at every point in the process of reasoning considerations of law had to be regarded It was not disputed that the taluks held by the appellants had been settled with their predecessors in title at the permanent settlement and that the profits of the *jhum* lands in dispute had then been brought into account in estimating the assets of the talukhs but the parties differed as to the reason why they had been so taken into account *Held* that on the documentary evidence in the case there was after such a lapse of time not sufficient to show whether they had been so taken into account because the *jhum* lands formed part of the settled estate as contended for by the appellants or because they had been treated as assets accruing to the owners of the settled estate but derived from land lying outside it as the Government contended. No confident conclusion therefore could be drawn from the evidence as to whether the disputed land was part of the settled estate or was beyond its limits *Held* however that the pos[illegible] of the disputed land by the [illegible] taken to [illegible] 1843 and 1855 in which it had been confirmed by the Government was sufficient to prove their title Since the last named date such possession and enjoyment had been continuous HAIDAR KHAN *v* SECRETARY OF STATE FOR INDIA (1908)
I L R 36 Calc 1
L R 35 I A 195
12 C W N 1095

———— 1893—V—

See SONTHAL PERGUNNAHS JUSTICE REGULATIONS

REGULATION LAW

See ACT OF STATE 12 B L R. 120
L R I A. Sup Vol. 10

RE HEARING

See BENGAL RENT ACT 1869 s. 103
7 B L R. 207

See CIVIL PROCEDURE CODE 1882
s 108
s 360 5 C W N 816

See COMPANIES ACT s. 169
I L R. 19 Bom. 208

See DISCHARGE OF ACCUSED
I L R 28 Calc. 652

RE HEARING—*concld*

See FOREIGN COURT JUDGMENT OF
I L R 15 Mad 82

See JUDGE—DEATH OF JUDGE BEFORE JUDGMENT 3 B L R A C 105

See PRIVY COUNCIL PRACTICE OF—RE HEARING

See REVIEW

See SMALL CAUSE COURT MOFUSSIL—PRACTICE AND PROCEDURE—NEW TRIALS

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—RE HEARING

RE INDORSEMENT

See BILL OF EXCHANGE
I L R 36 Calc 291

RELATIONSHIP

See SECURITY FOR GOOD BEHAVIOUR
I L R 25 All 131

——— and notoriety proof of publicity of—

See BURMESE LAW
I L R 36 Calc 978

——— statements as to—

See EVIDENCE ACT s 32

See EVIDENCE ACT s 32 (5)
13 C W N 1

See EVIDENCE ADMISSIBILITY OF
I L R 34 Calc 1059

RELATORS

——— *Civil Procedure Code (Act XIV of 1882) s 539—Suit by Advocate General at instance of relators dismissed—No appeal by Advocate General—Appeal by relators—Maintainability* A suit having been brought by the Advocate General he is the proper party to appeal and not the relators The relators are not parties to the suit and as relators they have no right to step in when the Advocate General who was plaintiff has not thought fit to appeal against the dismissal of the suit JAN MAHOMED *v* NURUDIN (1907)
I L R 32 Bom 155

RELEASE

See EASEMENT I L R 35 Calc 889
12 C W N 969

See MORTGAGE—DISCHARGE OF MORTGAGE.

See PROBATE I L R 33 Calc 116

See STAMP I L R 33 Bom 657

——— by coparcener—

See HINDU LAW I L R 33 Bom 267

RELEASE—*concld*

——— deed of—

See STAMP ACT 1879 s 39
I L R 11 Mad 40

See STAMP ACT 1879 SCH I ART 54
I L R 15 Mad 259
I L R 18 Mad 233

See STAMP ACT (II OF 1899) SCH I ARTS 23 55 AND 62 (e)
I L R 24 All 372

——— general words of—

See PARTNERSHIP ACCOUNT OF
11 C W N 776

——— of claim secured by mortgage—

See MORTGAGE—FORECLOSURE—RIGHT OF FORECLOSURE I L R 7 All 820

See PARTIES—PARTIES TO SUITS—MORTGAGES SUITS CONCERNING
I L R 30 Calc 755

See REGISTRATION ACT 1877 s 17 CL (b)
I L R 7 All 820
I L R 2 All 554
I L R 3 Mad 184

See REGISTRATION ACT 1877 s 17 CL (c)

——— of Government rights—

See CONFISCATION OF PROPERTY IN OUDH
I L R 4 Calc 727

——— to one of several partners—

See CONTRACT ACT s 44
I L R 4 Calc 336

RELIEF

See CONSEQUENTIAL RELIEF

——— alternative—

See BENGAL TENANCY ACT s 155
I L R 30 Calc 1063

——— consequential—

See COURT FEES ACT 1870 s 7 AND SCH II ART 17

See DECLARATORY DECREE SUIT FOR

See VALUATION OF SUIT—APPEALS

See VALUATION OF SUIT—SUITS—DECLARATORY DECREE SUITS FOR.

——— not asked for in plaint—

See PLAINT—GENERAL CONSTRUCTION OF PLEADINGS 5 C W N 20

——— specific statement of—

See DECREE—FORM OF DECREE—GENERAL CASES I L R 4 Calc 69
2 N W 415

1 ——— Foundation for relief—*Facts and documents not stated or referred to in pleadings* A plaintiff cannot be entitled to relief upon facts or documents not stated or referred to by him in his

RELIEF—*contd*

pleadings MAHOMED ZAHOOR ALI KHAN v RUTTA KOOER 9 W R P C 9 11 Moo I A 468

LALJI RATANJI v GANGARAM TULJARAM 2 Bom. 184 2nd Ed 176

KASIM ALI KHAN v BIRJ KISHORE 2 N W 182

VIRASVAMI GRAMINI v AYYASVAMI GRAMINI 1 Mad. 471

2 ———— Right to relief—*Relief consistent with facts stated in plaint* A plaintiff is entitled to ask for any remedy which the Court may think proper upon the state of facts disclosed in his plaint and established by the evidence and a mistake in asking for a particular remedy will not debar him from some other remedy similar in its nature and not more extensive provided it requires no change in the facts NUDIAR CHAND SHAHA v PRANNATH SHAHA 21 W R 8

3 ———— *Mistake by plaintiff as to relief to which he is entitled—Special relief* Where a plaintiff mistakes the relief to which he is entitled in his special prayer the Court may afford him the relief to which he has a right under the prayer for general relief provided it is such relief as is agreeable to the case made by the plaint NISTARINI DASI v MATHANLALL DUTT 9 B L R 11 17 W R 432

4 ———— *General prayer for relief—Failure to establish right to ...*

plaint and the general prayer for relief he was entitled to a decree GOBIND CHUNDER MOOKERJEE v DOORGAPERSAD BABOO 14 B L R 337 22 W R 248

5 ———— *Prayer for general relief—Ignorance of exact relief entitled to* It may very well be that a plaintiff ...

such relief as under the circumstances the Court may think fit to give GUNGARAM DUTT v JUNMAJOY MULLICK 1 C L R 144

6 ———— *Specific relief—Prayer for general relief* Under the prayer for general relief specific relief may be granted of a different description from the specific relief prayed for by the bill provided the bill contains charges putting in issue material facts which will sustain such relief COCKERELL v DICKENS 2 Moo I A 353

7 ———— *Prayer for general relief—Plaint relief inconsistent with* Upon a prayer for general relief a plaintiff is not entitled to any relief which is inconsistent with his plaint therefore where a plaintiff brought a suit to set aside his father s will on the ground that he had no power to dispose of his property but that the plaintiff was entitled as eldest son and heir at law according to Hindu law the suit should have been dismissed with costs and no account should have been decreed to the plaintiff in respect of his interest in a portion of the property the bequest of which was in the opinion of the Court below void for remoteness HIRALAL MULLICK v MATILAL MULLICK 5 B L R 682

8 ———— *Relief inconsistent with pleadings* A party may have subordinate rights awarded when they arise out of the principal right which he pleads But when a defendant pleads distinctly a jaghirdar s proprietary right against a malik s proprietary right a Court cannot award a subordinate right of occupancy in no way arising out of a jaghirdar s proprietary right but out of a raiyati right never pleaded by the defendant and in fact incompatible with his case PANDAY BISHONATH ROY v BHYRUB SINGH 7 W R 145

9 ———— *Alternative relief—Prayer for relief beyond powers of Court* Where the plaintiffs claimed possession but in the event of the defendants being found entitled to hold as tenants asked the Court to ascertain at what rate the defendants were entitled to hold and direct a lease to be executed —*Held* that whether the plaintiffs could obtain the alternative relief prayed for or not their suit ought not to be dismissed, as they might succeed in proving their title to the substantial relief sought LAND MORTGAGE BANK OF INDIA v NEELOO BHUTTO 21 W R 125

10 ———— *Alternative case where there is no inconsistency between alternatives* Where the title on which a plaintiff sues is put forward in the alternative and the two parts of the alternative are not inconsistent with each other he ought to obtain a decree if he makes out either branch of his alternative WOODIT SINGH v BEL DEO SINGH 21 W R 12

11 ———— *Relief where plaintiff asks for two inconsistent rights Quære* Whether where a plaintiff asks for the establ h ... entitled

NARAIN PERSHAD SINGH

See BIJOY KESHUB ROY v OBHOY CHURN GHOSE 16 W R 198

12 ———— *Relief granted different from that prayed for in plaint* Where the plaintiff purchased two thirds and the defendant one third of the right and interest of certain judgment-debtors sold in execution of a decree and the plaintiff paid his own and the defendant s quota of the purchase money and on defendant s failure to reimburse him sued for possession of the whole property on the ground that he should be considered ... the lower Court directed the ... money ... thou h ... nt from ... uld not

RELIEF—*contd*

be disturbed on appeal as it did substantial ju tice BRIJOO RAM MISSER v BHUGWAN DAS

7 W R 180

13 ———— *Plaint a king for more than plaintiff is entitled to* Where a plaint asks for more than the plaintiff is entitled to the Court may give him such relief as is within the Court s juri diction and as the Court may deem him ent tled to PITAMBUR SHAHA v RAMJOY GHOSE 7 W R 92

14 ———— *Suit for posses sion after dispossession—Failure to prove whole claim* A plaintiff proving a wrong done to him though not exactly to the extent of which he com plain is entitled to relief though not t the extent or on the ground on which he asks it *Baijnath Chatterjee v Lakhimani Debi 5 B L R 514 note 12 W R 248* explained and di tingui hed BISH NOO PERSHAD BUNNICK v RAM COOMAR DEB

22 W R 2

15 ———— *Prayer for relief which Court cannot give—Land Registration Act (Beng Act VII of 1876) s 89* The Civil Court has no power to set a ide an or ler pas ed under the Land Registration Act and when a prayer for such relief is contained in a plaint which also asks for a declaration of right and title to and confirmation of po es ion in property such prayer may be treated as mere surplusage LUCHMON SAHI CHOWDHRY v KANCHUN OJHAIN I L R 10 Calc 525

16 ———— *Failure to prove case—Admission by defendants as to portion of claim—Partial relief Held per* STUART C J (TURNER, J dissenting) that the plaintiff having failed to prove the averments on which their suit was based were not entitled to any relief in respect of that portion of the property in suit of which the def ndants admitted their po ession as mortgagees. RATAN KUAR v JIWAN SINGH I L R 1 All. 194

17 ———— *Title to equitable relief—Conduct of party* Where a party who as the facts really stand would be entitled to equitable relief mi repre ents his case falsely charges the op [illegible]

2 C L R. 18

18 ———— *Form of decree not indicated in the plaint but indicated in the issues—Civil Procedure Code 1882 ss 146 147* In a suit by the head of an a lhinam for declarations [illegible]

delivery of possession of the moveable and im moveable properties of the muth to a nominee of the plaintiff it was admitted that the defend ant had succeeded to the management of the muth under the will of his predeces or and that he was not a disciple of the adhinam and it was found (i) that on the evidence as to the usage in the establishment in question the head of the muth is entitled to appoint his successor but his elec tion is limited to members of the adhinam and the head of the adhinam is entitled to enforce this rule though he is bound to invest a di ciple pro perly nominated by the head of the muth (ii) that the defendant not being a disciple of the adhinam his appointment was invalid and the head of the adhinam was entitled to see that a competent mem ber of the adhinam was appointed in his stead *Held* that the plaintiff was entitled to declarations [illegible]

passed was not indicated with precision in the plaint itself GIYANA SAMBANDHA PANDARA SAN NADHI v KANDASAMI TAMBIRAN

I. L R. 10 Mad. 375

19 ———— Relief not asked for—*Vari ance between pleadings and proof* The plaintiff alleging that a certain lane was his property and that he had been obstructed by the defendants from building a door upon it sued for an injunction and for damages The Court held that the plaintiff s title to the land was not established but passed a decree declaring that both the plaintiff and the defendants were entitled to use the lane by right of easement *Held* that this declaration which had not been asked for should not have been made and that the suit should have been dismissed for want of proof of the title alleged by the plaintiff SAMBAYYA v GOPALAKRISHNAYYA

I L R 15 Mad. 489

20 ———— *Inconsistent cases set up in the alternative* Defendant 1 mortgaged certain premises to defendant 2 in 1884 and to the plaintiff in 1885 The mortgage to the plaintiff was a usufructuary mortgage In 1887 defendant 2 obtained a decree on his mortgage and in execu tion brought to sale and himself became the pur chaser of the mortgaged premises The plaintiff who was in possession under the mortgage of 1885 prayed in this suit that the prior mortgage be declared fraudulent and void and the sale in execu tion be set aside and in the alternative that she be de lared entitled to redeem the prior mortgage The plaint was stamped as in a redemption suit and the Court of first appeal passed a d cree for redemption *Held* that the suit should be dis missed since after the sale of the mortgaged pre mises in execution of the decree obtained by de fendant 2 the only right which remained to the puisne mortgagee was the right to retain posses ion until her mortgage should be redeemed *Semble Per* BEST J —It is open to a plaintiff who is not a party to the transaction in re pect of which allegations are made to come into Court seeking relief in the alternative dependent upon what may be found by the Court to be the true facts of the ca e *Quære* Whether the Court can pass a decree for redemption when the plaint seek only

RELIGION—*concld*

——— offence relating to—*concld*

dissenting) —Inasmuch as the *Vadagalais* had acted as ordinary worshippers which they were not prohibited from doing under the decree the act complained of was not illegal within the meaning of ss. 153 and 43 of the Indian Penal Code With regard to the charge under s 296 the accused had not been shown on the facts as found to have voluntarily caused disturbance to an assembly lawfully engaged in the performance of religious worship No assembly can be so lawfully engaged (within the meaning of that section) on a highway unless it be established or can reasonably be presumed that the dedication of the highway was subject to such user User of a highway as a place of worship is not the legitimate user of it as a highway The conviction was wrong on this ground and on the ground that in fact no disturbance had been proved VIJIARAGHAVA CHARIAR v EMPEROR (F B 1903) I L R 26 Mad. 554

RELIGIOUS COMMUNITY

See RELIGION

F 1 ——— Suit relating to trust among a community—*Jurisdiction of High Court in charitable trusts—Khoja Mahomedans—Regulation of rights of dissident parties in a religious community* In a suit by certain members of the Khoja community in Bombay for an account of all property belonging to or held in trust for the community come to the hands of the treasurer and accountant of the community for a declaration that the treasurer and accountant had ceased to be such officers of the community for an order directing the treasurer and accountant to deliver all the property of the community in their hands for a declaration that the property of the community was held and ought to be applied to and for the original charitable religious and public uses or trusts to or for which they were dedicated and to none other for the sole benefit of the Khoja sect and none other and that no person not being or having ceased to be a member of the same and in particular no person professing Shia opinions in matters of religion was entitled to any share or interest therein for a scheme to carry such declaration into effect and for an injunction restraining one of the defendants from interfering in the management of the property and affairs of the Khoja community or in the election and appointment of officers, from excommunicating any members of the community from celebrating marriages and from demanding or receiving any offering *Held* that the Court had jurisdiction to entertain the suit. When the Court in exercise of its charitable jurisdiction is called upon to adjudicate between conflicting claims of [illegible]

minority holding those tenets will prevail against a majority which has receded from them History given of the sects of Sunis Shias and Shia Imami Ismailis of Aga Khan and of the

RELIGIOUS COMMUNITY—*contd*

Khojas and their relations with the hereditary Imam of the Ismailis Relations of Aga Khan with the Jumat of the Khojas of Bombay discussed. The tenets of Mahomedanism to which the first Khojas were converted were those of the Shia Imami Ismaili sect In order to enjoy the full privileges of membership in the Khoja community a person must be one of that sect whose ancestors were originally Hindus which was converted to and has throughout abided in the faith of the Shia Imami Ismailis and which has always been and still is bound by ties of spiritual allegiance to the hereditary Imams of the Ismailis There is no public property impressed with a trust either express or implied for the benefit of the whole Khoja community Aga Khan as the spiritual head of the Khojas is entitled to exercise a potential voice in determining who on religious grounds [illegible] members of the Khoja co[illegible]

BAY ex r [illegible]

HUSEN HUSENI *alias* AGA KHAN 12 Bom. [illegible]

2 ——— Jews—Beni Israelite community in Bombay—*Dismissal of officers of the community by resolutions passed at a meeting—Such officers to be given opportunity of defending themselves—Domestic tribunal—Jurisdiction of Court* The plaintiffs and the defendants were members of the Beni Israelite community worshipping at a certain synagogue in Bombay The administration of the synagogue and of the funds was vested in a mukadam or headman and four managers a treasurer and a crier The mukadam succeeded to the office by family right according to the custom of the community but in matters of management he was bound to keep within his powers which were co ordinate with those of his colleagues The first defendant was the mukadam the second defendant [illegible]

[illegible] by the com[illegible]

belonged At a meeting of the community held on the 28th October 1884 which was attended by a [illegible]

[illegible] It did not appear that they had been given any notice that the question of their dismissal was to be discussed at the meeting They had received only the ordinary notice that a meeting was to be held. The defendants refused to recognize the authority of the resolutions passed at the meeting of the [illegible] th October and the plaintiffs accordingly filed this suit praying for a declaration that the defendants did not occupy any official position in the synagogue and for the recovery of certain property in

RELIGIOUS COMMUNITY—*concld*

their hands *Held* that the first defendant had not been duly dismissed He held the office of mukadam not merely at the will of the community but as long as he duly performed the duties of his office He could not be dismissed without an opportunity of making his defence and explaining his conduct and he had been given no notice that his conduct and his dismissal were to be discussed at the meeting of the 28th October *Held* also that the second defendant had not been duly dismissed No evidence was given as to the exact terms on which he held office but he was entitled to notice and to an opportunity of defending himself before dismissal *Held* as to the third defendant that he had been duly dismissed He was merely a subordinate officer and the managers had the power of dismissing him All the managers save the first and *second defendants concurred in dismissing him* and in doing so they were within their right Where a domestic tribunal has been appointed for the regulation of the affairs of a community the Court has no jurisdiction to interfere with its decisions if it acts within the scope of its authority and in a manner consonant with the ordinary principles of justice ADVOCATE GENERAL OF BOMBAY v HAJI DEVAKER I L R 11 Bom 185

RELIGIOUS ENDOWMENTS

See RELIGIOUS ENDOWMENTS ACT

1 ———— Character of appointment as head of mutt—*Hindu law—Lunacy of office holder—Effect on his position—Practice—Second counsel* Prior to 1890 first defendant in the present suit had presided over a mutt as its Swami or head having been duly appointed to that office In 1896 he became and was adjudged a lunatic Prior to his lunacy he had nominated Vidyasamudra as his successor In 1898 Vidyasamudra died without nominating a successor In the same year and after Vidyasamudra s death a person who claimed the right to fill the office in such circumstances purported to appoint plaintiff to it First defendant was then still alive and only died after the institution of the present suit which was brought by plaintiff for a declaration that he had been validly appointed and for the recovery of the property belonging to the mutt *Held* that plaintiff had not been validly appointed Assuming that the person who purported to appoint plaintiff had the power to do so (which was not decided) there was no vacancy to be filled at the date either of the appointment or of the institution of the suit The first defendant as head of the mutt was not a mere trustee and (in the absence of evidence of custom) had not forfeited his position by [illegible]

[illegible]

mutt is not a mere trustee but a corporation sole having an estate for life in the permanent endowments of the mutt and an absolute property in the income derived from offerings subject only to the burden of maintaining the institution His power to alienate or charge the corpus of the endowment is limited to purposes necessary for the maintenance of the mutt and alienations or charges will not be binding on the mutt or on his successors merely [illegible]

[illegible]

corporation sole in India both ecclesiastical and lay considered Appellants as well as respondents have a right to be heard by two counsel VIDYAPURNA TIRTHA SWAMI v VIDYANIDHI TIRTHA SWAMI (1904) I L R 27 Mad. 435

2 ———— Trust—*Uncertainty—Income of villages to be applied to charitable purposes at a dharamsala which the settlor had founded* By a deed of trust of *bhentnama* the owner of seven villages settle the income thereof to the extent of R500 a month to be applied to charitable purposes at a dharamsala which he had founded In course of time one of the villages mentioned in the deed of trust was alienated by a person who was at the time acting as trustee *Held* on a suit by the trustees to have the sale cancelled and to recover possession of the village (i) that the trust was not void for uncertainty and (ii) that it was not competent to the Court in the suit as framed to declare that the village in suit was charged with a proportionate part of the total income of the seven endowed villages *Panchordas Vandravandas v Parvatibai I L R 23 Bom 195* referred to GORDHAN DAS v CHUNNI LAL (1908) I L R 30 All. 111

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)

See ACT 1863—XX

See LIMITATION ACT (XV OF 1877) s 2 I L R 27 Mad. 192

———— ss 5 14—*Suit to remove [illegible] on account of [illegible]—Court s power to appoint receiver when right of succession not in dispute —Civil Procedure Code (Act XIV of 1882), [illegible] 3 5 539 55—Power of Appellate Court—[illegible] respondents of persons who were not parties in the original suit—Court s inherent power to add parties in suits relating to public trusts* In a suit [illegible]

[illegible]

appoint a manager only when the [illegible]

[illegible]

Civil Procedure Code [illegible] of the Civil Procedure Code gives an Appellate Court power to add as parties to the appeal [illegible]

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*contd*

——— s 5—*concld*

who were not parties to the original suit Even if this be not so s 32 is not exhaustive and an Appellate Court has inherent power in a case dealing with a public trust to add in the appeal such new parties as may be necessary for the protection of the public interests the public being interested in the appeal In this case a decree was passed by the first Court in a suit brought by a worshipper at a Hindu temple under s 14 of the Religious Endowments Act directing the removal of the defendant the mohant of the temple on account of misfeasance The mohant appealed to the High Court Whilst the appeal was pending the parties sought to effect a compromise which affected the public interests prejudicially and so was held unlawful and the High Court upon application made to it added as respondents certain other worshippers who were not parties in the first Court in order that the appeal might be properly contested. GYANANANDA ASRAM *v* KRISTO CHANDRA MUKHERJI (1904)
8 C W N 404 405

——— ss 5 18—

See ENDOWMENT I L R 34 Calc 587

——— s 7—*Rules under—Election—Giving consideration in return for votes what amounts to —Payment by candidate of expenses to voters who had undertaking to vote for him disqualifies candidate* On general principles as well as under rule 19 of the rules framed by the Local Government for the conduct of elections under s 7 of the Religious Endowments Act XX of 1863 a candidate can be held to give consideration in return for a vote only when such consideration passes as the result of a bargain Payment of train fare and carriage expenses by a candidate to voters who had under taken to vote for him will constitute such payment and such candidate will be disqualified from being elected under the rule It will be otherwise where the provision for payment is a unilateral act which might be accepted and acted upon or ignored by the other party The burden lies on the candidate so paying of proving that the payments were otherwise than in return for votes *Cooper* v *Slade 6 H L C 746* referred to *The Bolton Election Petition 31 L T 191* distinguished KRISHNASWAMI AYYANGAR *v* SIVASWAMI UDAYAR (1905)
I L R 29 Mad 166

——— s 14—

See CIVIL PROCEDURE CODE 1882 ss 10 539 I L R 33 Calc 789

See MADRAS REGULATION (VII OF 1817) s 13 I L R 29 Mad 534

1 ——— *Succession to management—Right of appointment in whom vested Held* that in the absence of express directions by the founder of an endowment the right to nominate the manager reverts to the heirs of the founder on

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*concld*

——— s 14—*concld*

failure of the persons expressly appointed *Sheoratan Kunwari* v *Ram Pargash, I L R 18 All 227* approved CHANDRANATH CHAKRABARTI *v* JADABENDRANATH CHAKRABARTI (1906)
I L R 28 All 689

2 ——— *Religious endowment suit concerning—Person interested as worshipper can be added as party* Persons interestd as [illegible]

Gurukkal v *Irulappa 12 M L J 355* followed CHEDAMBARAM CHETTIYAR *v* RANGACHARIYAR (1905)
I L R 29 Mad 106

3 ——— *Court may by decree direct the appointment by a competent person of a new trustee in lieu of the one removed and order the trustee removed to surrender possession to the trustee so appointed—Trustee to be removed when he keeps no proper accounts and makes false claims* It is competent to the Court when in a suit brought under s 14 of the Religious Endowments Act it directs the removal of a trustee to order a person competent to appoint a new trustee to make such appointment and to direct the trustee removed to surrender possession of property and pay any damage decreed to the new trustee to be appointed A trustee ought not to be detained in the trusteeship when he does not keep proper accounts and misappropriates monies and further makes false claims against the trust property MIRAJI *v* AHMED SAHIB (1908)
I L R 31 Mad 213

——— s 18—*Appeal—Order granting leave to sue— Decree —Civil Procedure Code (Act XIV of 1882) s 2* No appeal lies from an order made by the District Judge under s 18 of Act XX of 1863 granting leave to bring a suit for the purpose of having the accounts taken of a religious endowment Such an order is not a decree within the meaning of s 2 of the Code of Civil Procedure *Kazem Ali* v *Azim Ali Khan, I L R 18 Calc 382* referred to MOZAFFER ALI *v* HEDAYET HOSAIN (1907)
I L R 34 Calc 684

RELIGIOUS INSTITUTIONS

See ACT—1863—XX.

See HINDU LAW—ENDOWMENT

See MAHOMEDAN LAW—ENDOWMENT

See RIGHT OF SUIT—CHARITIES.

RELIGIOUS PERSONS

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS.

RELIGIOUS PRIVILEGES

See CIVIL PROCEDURE CODE 1882 s 11
I L R 33 Bom 278

RELIGIOUS SOCIETY

See ACT XXI OF 1860 s 20

RELIGIOUS TRUSTS

See MAHOMEDAN LAW—ENDOWMENT
I L R 34 Calc 118

RELIGIOUS AND RITUAL OBSERVANCES SUIT FOR.

See JURISDICTION OF CIVIL COURTS
I L R 30 Mad 15 158

RELINQUISHMENT

See MAHOMEDAN LAW—RELINQUISHMENT

See RELINQUISHMENT BY HEIR

See RELINQUISHMENT DEED OF

See RELINQUISHMENT OF CLAIM

See RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM

RELINQUISHMENT BY HEIR

1 ——— **Relinquishment in consideration of grant of maintenance** Where M executed on behalf of N a *ladawinamah* or deed of disclaimer disclaiming all right to an estate to which he was one of the heirs at law upon consideration of receiving a monthly allowance for maintenance and accepted a perwannah securing that allowance to himself and his heirs —*Held* that the *ladawinamah* and the perwannah amounted to a valid contract by which the parties were respectively bound and that *ladawinamah* being founded on good consideration was binding on the heirs

2 ——— **Relinquishment by mother of her interest in property**—*Subsequent suit to recover estate as heiress of son* A widow being old presented a petition in a suit by her daughter in law as guardian of the former's infant son relinquishing all her rights in the property to the daughter in law herself and as guardian of the infant The son died and the mother now sued her daughter in law for possession as heiress of her son *Held* that by the petition the mother had transferred no rights to the daughter in law as proprietor but that the mother as heiress of her son was entitled to the estate UDEY KUNWAR v LADO
6 B L R 283
15 W R P C 16
13 Moo I A 585

Affirming the decision of the lower Court in LADO v OODEY KOONWUR
Agra F B 23 Ed 1874 17

RELINQUISHMENT DEED OF

See HINDU LAW—PARTITION—REQUISITES FOR PARTITION
I L R 1 Mad 312
L R 5 I A 61

RELINQUISHMENT DEED OF—*concld*

See REGISTRATION ACT s 17
16 W R 56
9 Bom 246
I L R 20 Mad 367

RELINQUISHMENT OF CLAIM

See ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS
15 B L R 10
L R 2 I A 113
I L R 6 All 395

See PLEADER—AUTHORITY TO BIND CLIENT 3 B L R Ap 15
12 W R 279

See RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM

See WAIVER

——— ——— *Reversioner—Release—Stamp* The relinquishment of his claim by a reversioner is a release and must be stamped accordingly KRISHNAJI NARAYAN v BALKRISHNA VENKATESH (1909) I L R 33 Bom 657

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE
I L R 25 All 79

See RIGHT OF SUIT—POSSESSION SUITS FOR—CO DEFENDANTS
6 C W N 314

1 ——— **Splitting cause of action**—*Accidental or involuntary omission—Mistake—Civil Procedure Code 1859 s 7* The words if a plaintiff relinquish or omit to sue for any portion of his claim a suit for the portion so relinquished or omitted shall not afterwards be entertained in s 7 Act VIII of 1859 plainly include accidental or involuntary omission as well as acts of deliberate relinquishment The correct test when a second suit is brought for something omitted to be sued for in a previous suit is whether the claim in the new suit is in fact founded on a cause of action distinct from that which was the foundation of the former suit Where a suit was brought for a large amount of property consisting partly of Government paper which it was alleged had been fraudulently appropriated by the defendant and the plaintiff obtained a decree —*Held* (reversing the decision of the High Court) that the plaintiff was precluded by s. 7 of Act VIII of 1859 from afterwards bringing a fresh suit on a piece of Government paper which might have been but by mistake was not included in the previous suit. BUZLOOR RUHEEM v [illegible] SOONNISSA BEGUM. JUDOONATH [illegible] SOONNISSA BEGUM
8 W R P C 3
11 Moo I A [illegible]

s c in High Court [illegible] BUZLUL RUHIM Marsh. 252 [illegible]

The suit was held to be barred [illegible] down in this case in SHIB K[illegible] SOBHAN CHOWDHRY [illegible]

RELINQUISHMENT OF OR OMISSION TO SUE FOR, PORTION OF CLAIM—*contd*

2 ——— *Civil Procedure Code 1859 s 7—Statement of intention not to relinquish* The words of s. 7 of the Civil Procedure Code were imperative again t the splitting of a claim into parts The consequence of an infringe

to any sub equent suit brought for the portion of the claim omitted in the previous suit and not to such previous suit itself A plaintiff who omits to sue for a portion of his claim stating that he does not relinquish it but means to sue again for it can gain nothing by such a statement Neither can such a statement furnish a reason for holding the first suit to be barred SOONDER BEBEE *v* KHILOO MULL *alias* RAM LALL 2 N W 90

3 ——— *Suit for arrears of rent for successive years—Civil Procedure Code 1859 s 7* S 7 Act VIII of 1859 did not require a plaintiff having several distinct causes of action against one defendant to comprise them all in one suit subject to the hazard of forfeiting all those not included in the first suit The object of the clause was only to provide against splitting a cau e of action SUTTO CHURN GHOSAL *v* OBHOY NUND DOSS 2 W R Act X 31

DYARAM *v* GOUREE SHUNKER 3 N W 20

4 ——— *Negligent omission of part of claim—Obligation as to enforcing all available remedies* The 7th section of the Civil Procedure Code 1859 prohibits the splitting of a claim but does not require that all remedies by suit on all the securities which a creditor may hold be enforced together If a plaintiff from negligence or other cause omits to prefer a portion of his claim which seeks to charge the land or having preferred it is content to accept an imperfect adjudication or one which awards him only a portion of the relief claimed he cannot afterwards bring forward in a fresh suit matter which might well have been then dispo ed of MULUK FUQUEER BUKSH *v* LALLER MANOHUR DOSS 2 N W 29

5 ——— *Fresh suit in respect of same subject matter—Civil Procedure Code 1859 s 7* A party is bound to bring forward his whole ca e in respect of the matter in litigation and open to him upon the points for decision in the suit He cannot ab tain from relying upon nor abandon a ground of claim which is in question and proper for consideration and decision in the suit and afterwards make it a cause of fresh suit in respect of the same subject matter UDAIYA TEVAR *v* KATAMA NACHIYAR 2 Mad 131

6 ——— *Omission to include all grounds on which suit is based—Civil Procedure Code 1859 s 7* A plaintiff is bound to include in his plaint all the grounds upon which his suit is based A second suit upon a different ground which existed before the commencement of the first suit would not be alleged as it would be splitting the cause of action ABIRAM DOSS *v* SRIRAM DOSS 3 B L R A C 421 12 W R 336

PREMANUND GOSSAMEE *v* RAM CHURN DEB 20 W R 482

7 ——— *Omission to sue for all rights under the same or similar titles—Civil Procedure Code 1859 s 7* S 7 Act VIII of 1859 required that if all rights arising out of the same cause of action were not sued for together the portion abandoned could not be separately sued for afterwards but it did not enact a similar penalty for all rights under the same or similar titles the right to sue for which may require different issues to be tried and may arise under different dates and different cau es of action and the defendants as to which different properties may be eith r only one party or different parties altogether MOTHOOR MOHUN MUNDUL *v* KHEMUNKUREE DOSSEE 5 W R P C 182

See RAMHURRY MUNDUL *v* MOTHOOR MOHUN MUNDUL 20 W R P C 450

8 ——— *Omission to put forward case in full—Civil Procedure Code 1859 s 7* A plaintiff suing for the recovery of land is bound to put forward his whole case at once and cannot be allowed to maintain a second suit for the [illegible]

v PRIAG DUTT 2 Agra 305

9 ——— *Civil Procedure Code 1859 s 7—Title resting on different and distinct transactions* The fact that a d[illegible] [illegible] transactions [illegible]

separate suits RAM SOONDUR SHAH *v* DELANEY 20 W R 103

10 ——— *Civil Procedure Code 1859 s 7—Distinct causes of action* S 7 of Act VIII of 1859 applied whether the omission to sue had been the result of knowledge and intention or not The test as to whether a suit was barred by s. 7 of Act VIII of 1859 was whether the claim in the new suit was in fact founded on a cause of action distinct from that which was the foundation of the former suit BULWUNT SINGH *v* CHITTAN SINGH 3 N W 27

11 ——— *Omission to ask for particular relief—Civil Procedure Code 1859 s 7 Quære* Whether a relinquishment or omission under s. 7 Act VIII of 1859 extended to cases of omission to ask for any particular description of relief which a plaintiff might intend to seek against the parties to the suit in respect of his cause of action SABEER KHAN *v* KALLI DOSS DEY 1 W R 199

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

12 ———————— *Suit by co sharers some of whom have before sued—Civil Procedure Code 1859 s 7* *Held* by KEMP J that where as in this case four suits are brought with the common object of setting aside the sale of a patni talukh by four joint tenants two of whom are not estopped under s. 7 Act VIII of 1859 this Court cannot in equity declare the sale to be good or bad in part but must decide as to whether the sale is to stand or fall for the whole talukh *Per* AINSLIE J —But if one of the joint tenants in a former suit claimed a 2 anna instead of a 4 anna share she cannot now be allowed to supplement her claim or take interests in the patni which she could not have enforced independently of the sale I AM CHURN BUNDOPADHYA v. DROPOMOYEE DOSSEE

17 W R 122

13 ———— ———— *Civil Procedure Code 1859 s 7—Application to file award* The privilege given in Act VIII of 1859 s 7 to a plaintiff in a suit to abandon the excess of a claim applies also to a case where the party comes in with an application to cause an arbitration award to be filed *In the matter of the petition of* GRISH CHUNDER CHOORAMONEE GRISH CHUNDER CHOORAMONEE v. BROJONATH BHUTTACHARJEE 20 W R 56

S 7 of Act VIII of 1859 was *held* to be applicable to rent suits BHABOSOONDEREE v. BHUGWAN CHUNDER MOZOOMDAR W R 1864 Act X 88

PURBHOO TEWAREE v. PAMJEAWUN PATUCK

1 N W 65 Ed 1873 119

14 ———— ———— *Claims arising out of same cause of action—Simultaneous suits—Civil Procedure Code 1859 s 7* *Held* where two suits were instituted simultaneously and one of such suits had been determined that assuming that

SHAR PARSHAD v. JAGAN NATH

I L R 1 All 650

15 ———————— *Civil Procedure Code ss 43 aS 278 280 and 283—Intervenor claiming attached property by two separate titles—Single order raising attachment—Two suits by judgment creditors for declaration of their right to attach—Order of filing of suits* A plaintiff s cause of action consists of every fact which it would be necessary for the plaintiff to prove if traversed in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove such fact but every fact which is necessary to be proved *Read v Brown L R 22 Q B D 128* referred to The plaintiffs holding a simple money decree against

the Code of Civil Procedure in consequence of which the property was released from attachment The plaintiffs thereupon brought two suits under s 283 of the Code of Civil Procedure one in respect of the mortgagee interest and the other in respect of the house *Held* by the Full Bench (AIKMAN J *dissentiente*) that the first essential of the plaintiffs cause of action was the order made under s 280 of the Code of Civil Procedure and that until that order was made they had no cause of action The cause of action was the order under s 280, which had been obtained by M and the right and title of the plaintiffs to bring the subjects of attachment to sale in execution of their decree The title or titles which the defendant might prove formed no part of the plaintiffs cause of action nor would the defendant s allegation of different titles in herself to different portions of the property split up the plaintiffs cause of action into different and distinct causes of action Similarly the fact that the plaintiffs judgment debtors held or were alleged to hold portions of the property under different titles would not split up the plaintiff cause of action into different causes of action S 43 of the Code of Civil Procedure has nothing to do with the evidence which may be necessary or may be produced to support or defend a cause of action or with the desire of a plaintiff to bring more suit than one or with the devolution of title where the cause of action relates to land or other kind of property In the above case consequently s. 43 of the Code barred the later of the plaintiff two suits *Held* also that where two suits are filed on the same day it must be presumed until the contrary is proved that they were presented and admitted in the order in which their numbers appear in the register of civil suits prescribed by s. 58 of the Code of Civil Procedure *Kaleshar Prasad v Jagan Nath I L R 1 All 650* *Appasami v Rama ami I L R 9 Mad 279* and *Duncan Brothers & Co v Jeetmull Creedharee Lall I L R 19 Calc 372* referred to *Zahur Husain v Muhammad Hasan All Weekly Notes (1888) 14* and *Muhammad Ibrahim Khan v Habib ullah Khan All Weekly Notes (1886) 113* overruled *Per* AIKMAN J Although it was the single order in the execution department which necessitated the plaintiffs bringing their suits the plaintiffs real causes of action were the separate transactions entered into by the judgment debtors with the objector under s 278 of the Code and they were therefore entitled to bring separate suits. MURTI v BHOLA I AM I L R. 16 All. 165

16 ———————— *Simultaneous suits for balance of account after settlement—Civil Procedure Code 1882 s 43* Upon a settlement of accounts between plaintiff and defendants, R3 98 , 6 9 was found due by the defendant who agreed to pay the same They gave to plaintiff an order on their agents to pay R 700 from the profits of certain land and promised to pay the balance within a month. Plaintiff filed two suits, one for

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

R2 500 and the other for the balance of the debt Defendants pleaded that both suits should be dismissed as brought in contravention of the requirements of s 43 of the Code of Civil Procedure The lower Courts held that there were two distinct causes of action and decreed both claims *Held* on second appeal that plaintiff had only one cause of action and that the decree in one of the suits must be reversed APPASAMI *v* RAMASAMI

I L R 9 Mad 279

17 ——————— *Suit for receipt as security for advance—Suit for balance of account* *A* sued *B* for recovery of a receipt which had been deposited by the former with the latter as security for a certain advance of money *Held* that he was not thereby debarred under s. 7 Act VIII of 1859 from bringing a suit for the balance due on the whole account between them MEDHI ULLEE KHAN *v* MAHOMED WAJID ULLEE

1 N W Part II 10 Ed 1873 70

18 ——————— *Suit for sum due in account book—Addition of claim for same sum due on hath chitta—Civil Procedure Code 1859 s 7—Civil Procedure Code 1877 s 34* Where a plaintiff originally sued for a certain sum upon his khatta books and an objection was taken by the defendant that he ought to have sued upon a certain hath chitta whereupon the plaintiff amended his plaint by suing for the amount admittedly due upon the hath chitta in addition to the amount he claimed upon his khatta books —*Held* that when the plaintiff amended his plaint by suing upon the hath chitta his causes of action which when the suit was originally framed were distinct became united that there was no relinquishment in the original suit within the terms of Act VIII of 1859 s. 7 (with which s 43 Act X of 1877 corresponds) and that the plaint was rightly amended RAM TARRUN KOONDOO *v* HOSSEIN BUKSH

I L R 3 Calc 785
2 C L R. 385

19 ——————— *Civil Procedure Code 1882 s 43—Suit to cancel release obtained by duress of all claims against defendants and to recover amount of one such claim no bar to subsequent suits upon other causes of action so released* On the 1st July 1878 there was a settlement of accounts between the plaintiff and defendants and a debt was acknowledged due by the latter to the former and on the same day the plaintiff and defendants entered into a trading partnership which was carried on till August On the 30th September the defendants extorted a release from the plaintiff whereby the plaintiff s claims against them arising out of the two transactions mentioned and all other transactions between them were released. On the 23rd November the plaintiff brought a suit against the defendants and in the plaint after stating the fact of the settlement of 1st July 1878 the balance found due therein to the plaintiff the extortion of the release and the misappropriation of the sums due to the plaintiff by the defendants as the cause of action prayed for cancellation of the release and for recovery of the amount due to the plaintiff by the defendants under the settlement of 1st July 1878 *Held* in a suit to wind up the partnership of July and August 1878 that the plaintiff was not bound by s 43 of the Code of Civil Procedure to have included in his former suit his claim arising out of that partnership and that the former suit being in substance a suit upon the account stated on 1st July 1878 and not for damages for extorting the release was no bar to the present suit SUBBAYYA *v* VENKATESAPPA

I L R 8 Mad. 49

20 [illegible]

however it was found there was more land within those boundaries than the plaintiff claimed. He obtained only a decree for what he claimed though he had claimed all the land up to the boundary (the river) on one side the excess was deducted on that side *Held* reversing the decision of the High Court that a subsequent suit in which he claimed *land which had accreted to the excess* portion which was not decreed to him in the former suit was not barred by s 7 Act VIII of 1859 LAHALWAN SINGH *v* MAHESSUR BUKSH SINGH. MAHESSUR BUKSH SINGH *v* MEGHBURN SINGH

9 B L R. 150 16 W R P C 5

s c in High Court MEGHBURN SINGH *v* MAHESSUR BUKSH SINGH 5 W R. 211

21. ——————— *Civil Procedure Code 1882 s 43—Breaches of one term in a contract how sued upon—Cause of action—Contract* *Per* GARTH *C J* —A claim for the price of goods sold is a cause of action of a different nature from a claim for damages for non acceptance of goods pursuant to a contract Such claims therefore although arising under one and the same contract may be sued upon separately s 43 of the Code of Civil Procedure notwithstanding *Per* WILSON *J* —Where there is one contract for the purchase of goods and the purchaser takes some of the goods [illegible] part by not paying for the [illegible] ... ying [illegible] ... efore [illegible] ... ing is [illegible] one arising out of one cause of action and the whole claim must be included in one suit ANDERSON WRIGHT *v* Co *v* KALAGARLA SURJINARAIN

I. L. R. 12 Calc 339

22 ——————— *Civil Procedure Code 1882 s 43—Breaches of the same contract how sued upon—Contract* Where a contract for the sale and purchase of goods is broken by the purchaser in part by refusal to take delivery and in part by refusal to pay for goods delivered both breaches having occurred before any suit is brought the vendor is debarred by s 43 of the Code of Civil Procedure from bringing two suits against such

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—contd

purchaser his claim being one arising out of one cause of action and based on one and the same contract The view taken by WILSON J in *Anderson Wright & Co v Kalagarla Surjinarain* I L R 1? Calc 9 approved PETHERAM C J — The whole of the claim which the plaintiff is entitled to make in respect of the cause of action in s 43 means in the above case the entire claim which the plaintiff has against the defendant at the time the action is brought in respect of any failure or failures to accept and pay for goods purchased of him by the defendant under one contract and the whole of such claim must be included in one action PRINSEP J —The expression cause of action is to be construed with reference to the substance rather than the form of the action The claim in both the above cases being for damages on account of breaches of the same contract 43 read with the illustration debars the plaintiff from bringing two suits DUNCAN BROTHERS & Co v JEETMULL GREEDHAREE LALL I L R 19 Calc 372

23 ———— *Suit for demurrage—Civil Procedure Code 1859 s* In a suit for demurrage the cause of action being the detention of a boat plaintiff is bound to sue for the whole of the demurrage due failing to claim a portion he is barred by s 7 Act VIII of 1859 from suing subsequently for such portion MUNGHROO MANJHEE v GYARAM KUNDEE 14 W R 253

24 ———— *Civil Procedure Code 18 ~ s 4—Suit for damages for wrongful* ...

further suits month by month might be brought Two suits were accordingly brought for the two months next succeeding the date of the first suit and decrees were obtained The High Court upon an application made by the defendant set aside these decrees on the ground that after the first suit no further suits could lie SIMPSON v CLEGHORN 6 C L R 91

25 ———— *Suit for damages —Subsequent suit against another wrong doer for the same tort* Where a plaintiff had sued for and ...

in both suits being identical and satisfaction having been obtained in one the other was barred by virtue of s 7 Act VIII of 1859 MADUD ALI KHAN v SALEEM AHMED KHAN alias KUMMUN KHAN 4 N W 142

26 ———— *Civil Procedure Code 1882 s 43—Two successive suits for dam* ...

had in a prior suit recovered possession and damages Subsequently to the institution of such prior suit defendants (1) cut and removed certain standing trees and (2) removed the logs which lay stored on the ground Upon plaintiff bringing a second suit to recover damages on both grounds objection was raised (1) as to the standing timber that plaintiff s remedy was under s 244 of the Civil Procedure Code and (2) as to the logs that a claim for their value might have been included in the former suit since their conversion was effected when the plaintiff was dispossessed of the land upon which they lay and that under s 43 no claim could now be made in respect of them *Held* (i) ...

recover (ii) that a trespass on a piece of land is by itself no proof of any conversion of moveables lying upon the land at the time that the trespass takes place that notwithstanding plaintiff s eviction from the land possession of the timber lying stored upon it should be presumed to have continued in him in the absence of proof of any act on the part of the defendant with special reference to such timber and showing unequivocally that the plaintiff was entirely deprived of the use of them and that conversion of the logs was not effected by the trespass but only by their removal subsequently to the institution of the previous suit and (iii) that the causes of action now relied on were therefore different from those relied on before and the previous suit did not operate as a bar to the present claim under s 43 of the Civil Procedure Code MOYLI AYUTHRAMAN I L R 22 Mad 197

27 ———— *Suit for damages* On the 24th Joist 1286 F S (2nd June 1879) the plaintiff brought a suit to recover damages for the breach of a contract on the part of the defend ...

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

year 1286 (1878 79) *Taruck Chunder Mookerjee v Panchu Mohini Debya I L R 6 Calc 791* followed SHEO SUNKUR SAHOY *v* HRIDHOY NARAIN **I L R 9 Calc 143 12 C L R 34**

[illegible]

was brought MADAN MOHAN LAL *v* LALA SHEO SANKEP SAHAI **I L R 12 Calc 482**

28 ———— *Suit for value of cattle—Subsequent suit for damages for taking them away* A person suing for the value of cattle illegally taken away should include in his plaint whatever claim he wishes to make in respect of damages caused to him by the defendant s wrongful act and cannot afterwards maintain a new suit for any damages which he might have claimed in the former suit MOHUBUT MUNDUL *v* SHOOPENDRONATH ROY **4 W R S C C Ref 20**

29 ———— *Civil Procedure Code 1859 s 7—Suit for damages after suit for recovery of property* A suit for damages for

[illegible]

value of the same property PUNJUI OODOY **18 W R 337**

30 ———— *Civil Procedure Code (Act XIV of 1882) ss 13 43—Damages* In September 1886 the plaintiff sued in a Munsif s Court certain defendants for possession [illegible]

[illegible]

ages No appeal was made against this decision In March 1887 the plaintiff sued these defendants in the Munsif s Court for possession of 5 bighas 6 cottahs of land and for mesne profits and obtained a decree for possession of 3 bighas 6 cottahs of land with mesne profits possession of the 1 bigha the subject of the suit of 1886 being included in the 3 bighas 6 cottahs decreed He subsequently sued the same defendants in a Small Cause Court for damages [illegible]

Dec [illegible]
by e [illegible]
Mai [illegible]

I L R 16 Calc 545

31 ———— *Suit for mesne profits after setting aside sale for arrears of rent—Subsequent suit for rents wrongly collected* At a sale for arrears of rent *A* became the purchaser of a certain patni talukh. *B* whose patni right had been sold sued for and obtained a decree for reversal of the sale on the ground of irregularity In the mean time *A* had committed default and the patni was again sold for arrears of rent The zamindar drew out from the Collectorate the amount due to him. *C* who had bought *B* s right title and interest in his decree now sued *A* for recovery of the surplus proceeds of sale in the hand of the Collector and obtained a decree He afterwards sued *A* for mesne profits for the time during which he was in possession of the patni talukh. This was a suit by *C* against *A* for recovery of the amount drawn out by the zamindar on the ground that in consequence of *A* having collected the rents from the talukh which were to go towards payment of the rent due to the zamindar and having fraudulently withheld such payment he had sustained damage to the extent of the amount taken by the zamindar *Held* that the suit was barred by s 7 Act VIII of 1859 TARINI PRASAD GHOSE *v* KHUDUMANI DABI **5 B L R 184 13 W R 261**

TAPINI PRASAD GHOSE *v* PAGHAB CHUNDRA BANDHOPADHYA **5 B L R 187 note 13 W R 205**

32 ———— *Suit for refund of excess payment of rent—Civil Procedure Code 1859 s 7* *A* recovered from *B* under the terms of his lease a refund of the excess of rent paid by him in respect of the years 1861 1862 and 1863 While that suit was pending *B* recovered from *A* rent at the same rate in respect of the three succeeding years *Held* that *A* was entitled to bring another suit against *B* for damages in respect of the excess of rent paid by him during the year subsequent to the institution of the prior suit. NILMANI SINGH *v* ANNUNDAPRASAD MOOKERJEE **1 B L R F B 97 10 W R F B 41**

33 ———— *Suits for mesne profits* Mesne profits claimed for a period of dispossession are essentially damages the ground upon which the plaintiff in any case is entitled to ask for [illegible] of the defendants [illegible] possession [illegible] mesne profits [illegible] the whole claim arising out of the cause of action which gives the ground for the claim ROOKMINEE KOER *v* RAM TOHUL ROY **21 W R 223**

RAM PUTTUN AUDO *v* RAM CHUNDER PAL **25 W R 113**

34 ———— *Suit for mesne profits and possession—Subsequent suit for mesne profits* The plaintiff brought a suit for possession of land with mesne profits. The suit was dismissed He appealed on the question of possession only and obtained a decree for possession without any mention of mesne profits and in execution of the decree he obtained possession *Held* that a subsequent suit to recover mesne profits from the date of the decree for the period of six years next before the commencement of the suit exclusive of the period

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

the plaintiff was in po ession was not barred by s 7 of Act VIII of 18ɔ9 PRATAP CHANDRA BURUA v SWARNAMAYI SWARNAMAYI v PRATAP CHANDRA BURUA

4 B L R F B 113 13 W R F B 15

35 ——— *Civil Procedure Code 1859 ss 7 8 9 10—Cause of action including whole claim arising out of—Mesne profits suit for —Possession suit for* Under s 7 read with ss 8 9 and 10 of Act VIII of 18ɔ9 a plaintiff suing for mesne profits of land i not precluded from

12 C L R 434

36 ——— *Civil Procedure Code s 4ɔ—Claim for mesne profits received prior to date of former suit for land* Where a suit to recover land was brought and no claim was made for mesne profits received prior to date of plaint —*Held* that s. 43 of the Code of Civil Procedure was a bar to a subsequent suit for uch mesne profits VENKOBA v SUBBANNA I L R 11 Mad. 151

37 ——— *Civil Procedure Code 1882 s 43—Suit for land and mesne profits after dismissal of suit for mesne profits of same land* *A* leased certain land to *B* The lease expired in 1877 *B* continued to hold over and refu ed to accept a fresh lease from *A* *A* ued *B* in 1882 for mesne profits for three years but did not claim poss s ion of the land The suit was di missed on a preliminary point *A* then sued *B* to recover pos ess on of the land and mesne profits It was argued that *A* s claim to the land was barred by s. 43 of the Code of Civil Procedure becau e he omitted to claim the land in the former suit for me ne profit *Held* that the suit was not barred TIRUPATI v NARASIMHA I. L R 11 Mad 210

38 ——— *Civil Procedure Code s 43—Claims for possession and mesne profits—Distinct claims—Separate suits—Joinder of cau es of action—Civil Procedure Code (Act XIV of 1882) s 44* Claims for the recovery of posses sion of immoveable property and for me ne pro fits are di tinct claims and separate suits will lie in re pect of each claim S 44 of the Code of Civil Procedure merely permits the joinder in one suit of a claim for recovery of immoveable property with one for mesne profits in regard to the same property *Kishori Lal Roy* v *Sharut Chunder Mozumdar I L R 8 Calc 593 10 C L R 359* *Mon Mohun Sirkar* v *S cretary of State for India I L R 1ɩ Calc. 968* and *Madan Mohun Lal* v *Lala Sheosankar Sahai I L R 12 Calc 482* re ferred to *Venkoba* v *Subbanna I L R 11 Mad 151* di ented from. LALESSOR BABUI v JANKI BIBI I. L. R 19 Calc 615

39 ——— *Civil Procedure Code 1882 ss 43 and 44—Claim for possession and for mesne profits arising out of one cau e of action*

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

—*Suit for possession—Subsequent suit for mesne profits* Where a plaintiff sued for possession of immoveable property upon a forfeiture and for rent in respect of the aid property up to the date of the alleged forfeiture and having obtained a decree subsequently brought a separate suit for mesne profits including the period from the date of the forfeiture to the date of the institution of the former suit —*Held* that the claim for mesne profits for the period abovementioned was barred by s 43 of the Code of Civil Proc dure *Lalji Mal* v *Hulasi I L R ɔ All 660* and *Venkoba* v *Subbanna I L R 11 Mad 1ɔ1* referred to MEWA KUAR v BANARSI PRASAD I L R 17 All 533

40 ——— *Civil Procedure Code 1859 s 7—Suit for mesne profits* The plaintiffs having been dispos es ed of a tank and of land on its banks recovered possession by a suit under Act XIV of 1859 s 15 The defendants

(8th May 1869) the day of dispossession but the suit was compromised. The plaintiffs now claimed me ne profits with reference to fish and grass appropriated by the defendants from 1 t Bysack 1277 to 7th Bhadro 1278 (12th April 1870 to 22nd August 1871) *Held* that the present claim for the per od preceding 22nd Cheyt 1277 (the date of the former suit) was barred by Act VIII of 1859 s 7 that the previous suit as well as the present were really uits for damage and that the previous suit and compromise ought to have incl ded all claims of the plaintiffs arising out of the disposse sion SAEM SIRDAR v KAMALUDDY SIRDAR

22 W R 424

41 ——— *Civil Procedure Code 1877 s 4 —Suit for mesne profits* The plaintiffs sued the defendants for pos ession of the land upon which certain trees stood and for such tree stating that on the 19th June 18ɩ9 the defend ants had interfered with their pos ession of such trees and had wrongfully taken the fruit thereof The plaintiffs subsequently sued the defendants for

AJAIB SINGH I L R 3 All. 543

42 ——— *Civil Procedure Code 1859 s 7—Suit for possession—Subsequent suit for mesne profits* *S* the plaintiff's guardian and *D* the hu band of *M* one of the defendants in the uit held a mouzah in equal shares. *S* sold the half share held by her to *M* some portion of the mouzah being in the po es ion of the other defend

RELINQUISHMENT OF OR OMISSION TO SUE FOR, PORTION OF CLAIM—*contd*

ants *S* and *D* sued them to recover it and also for mesne profits and obtained a decree The defendants appealed whereupon *S* filed a olehnamah. The decree was upheld however by the lower Appellate Court In pecial appeal the Sudder Court refused to give the renouncing plaintiff any d cree for mesne profits of a share The plaintiff who had then come of age was not repre ented in the litigation in the Cour Shortly afterwards he sued *S* and *M* to set aside the sale to *M* and obtained a decree On *D*s death *M* obta ned possession of the land which had been the subject of the suit by *S* and *D* The plaintiff now sued to recover a half share of the land sued for by *S* and *D* and of the mesne profits recovered or recoverable by *M* under the decrees of the Sudder Court and the lower Courts and to set aside the solehnamah. *Held* that as to *M* the suit was not barred by 7 Act VIII of 1859 PAMLOCHUN LALL *v* GOOR PERSHAD 5 N W 172

43 ———— *Civil Procedure Code 1877 s 43—Suit for recovery of immoveable property—Mesne profits—Mortgage—Specific performance of contract—Compensation* According to the terms of a mortgage possession of the mortgaged property was to be delivered to the mortgagee and he was to take the mesne profits The mortgagor refused to deliver possession of the property and the mortgagee sued him to enforce specific performance of the contract to deliver possession and obtained a decree At the time this suit was brought the mortgagee had been kept out of possession of the property for two years during which time the mortgagor had taken the mesne profits The mortgagee subsequently sued the mortgagor to recover the mesne profits of the mortgaged property for those two years *Held* that as the mortgagee might in the former suit in addition to seeking the specific performance of the mortgage contract have asked for such mesne profits by way of compensation for the breach of it and as the claim for possession and mesne profits were in respect of the same cause of action —the breach of the contract to give possession —the second suit was barred by the provisions of s 43 of Act X of 1877 LALJI MAL *v* HULASI I L R 3 All. 660

44. ———— *Suit for declaration of title—Right to possession* The fact that at the time when the purchaser of certain lands sued with a view of confirming his title to the land under his purchase for a decree declaring such title he was in a position to have sued for possession of the lands was no bar under the provisions of s 7 Act VIII of 1859 to his subsequently suing for possession of the same TULSI RAM *v* GANGA RAM I L R. 1 All. 252

45 ———— *Right to possession—Suit for declaration of title—Civil Procedure Code 1859 s 7* D being able to sue for the possession of certain property omitted to do so and sued in the first instance only for a declaration of her right to such property The Court refusing to make any such declaration on the ground that she [illegible] on [illegible] 7

I L R 2 All. 358

46 ———— *Suit for declaration of title—Subsequent suit for possession—Civil Procedure Code 1882 s 43* When a suit for a declaration of title and confirmation of possession of certain land has been dismissed on the ground that the plaintiff was not in possession of the land at the time of instituting the suit a subsequent suit on the same title to recover possession is not barred under s 43 of the Civil Procedure Code A cause of action consists of the circumstances and facts which are alleged by the plaintiff to exist and which if proved will entitle him to the relief or to some part of the relief prayed for and is to be sought for within the four corners of the plaint *Jibunti Nath Khan v Shib Nath Chuckerbutty I L R 8 Calc 819* followed NONOO SINGH MONDAL *v* ANAND SINGH MONDAL I L R 12 Calc 291

47 ———— *Civil Procedure Code 1877 s 43—Splitting remedies—Suit for declaration of title and for possession—Subsequent* [illegible]

filing the suit a sub equent suit on the same title [illegible] is not barred [illegible] *Bu loor* [illegible] *A 551* [illegible] NATH CHUCKERBUTTY I L R 8 Calc 819 10 C L R 537

KOMOLA KAMINY DEBIA *v* LOKE NATH KUR I. L. R 8 Calc 825 note 11 C L R 183

48 ———— *Civil Procedure Code s 43—Splitting remedies—Suit for declaration of title and for possession—Subsequent suit for possession* Where a previous suit for a declaration [illegible] property has been dis [illegible]

LAL *v* BILASO I. L. R. 14 All. [illegible]

49 ———— *Civil Procedure Code 1859 s 7—Suit for declaration of right to share—Suit for share* A former suit brought by the daughter of one of four brothers of a joint Hindu family against her uncles for a declaration of her

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

right to a share in certain bond debts due to the joint estate (in which suit she obtained a decree is not identical under s 2 or 7 Act VIII of 1859 with a subsequent action brought by the same plaintiff against the same defendants for a distinct share in certain moneys which the defendants had since realized upon the bond debts and had appropriated to themselves a fresh cause of action accruing to the plaintiff from the time of such appropriation BURODA SOONDUREE DOOSEE v RAJ BULLOB SEN 18 W R 202

50 ———————— *Civil Procedure Code 18 , s 43—Suit for declaration of right—Subsequent suit for possession* In December 18 8 *H* a Hindu widow in possession by way of maintenance of a certain estate of which *R* owned one third and *P B* and *S* one third jointly made a gift thereof to N *H* died in January 1879 In February 1879 *P P B* and *S* joined in suing *N* for a declaration of their proprietary right in two thirds of the estates and to have the deed of gift set aside The Court treated the suits as one for a mere declaration of right and dismissed it with reference to s 42 of the Specific Relief Act 1877 on the ground that the plaintiffs had omitted to sue for possession although they were able to sue for it In November 1879 *R P B* and *S* again joined in suing *N* claiming possession of two thirds of the estate and to have the deed of gift set aside *Per* STUART *C J* and STRAIGHT and OLDFIELD *JJ* that the causes of action in the two suits being different the second suit was not barred by the provisions of s 43 of the Civil Procedure Code *Per* TYRRELL *J* that the plaintiffs being entitled to only one remedy in the former suit the provisions of s 43 were not applicable to the second suit RAM SEWAK SINGH v NAKCHED SINGH I L R 4 All 261

51 ———————— *Civil Procedure Code 1859 ss 7 and 15—Declaratory decree—Subsequent suit for consequential relief—Civil Procedure Code (Act X of 18) s 43* The plaintiffs brought a suit to have themselves declared entitled to an account and obtained such a declaratory decree without asking for or obtaining any consequential relief The defendants took no steps to render an account and the plaintiffs brought another suit against them for the amount of such Company s papers and other debts that might be found due by the defendants on an adjustment of accounts *Held* that the plaintiffs were not barred from bringing such a suit s 15 of Act VIII of 1859 being intended to modify the provisions of s 7 of the same Act *Tulsi Ram* v *Gunga Ram I L R 1 All 95* followed and approved KALIDHUN CHUTTAPADHYA v SHIBA NATH CHUTTAPADHYA

I L R 8 Calc 483 11 C L R 57

52 ———————— *Civil Procedure Code 1859 s 7—Declaratory decree—Suit for possession of immoveable property—Relinquishment of part of claim—Act VIII of 1859 s 15—Relief* In 1868 *B* made it was alleged a gift of a zamindari estate to *K* In 1869 *B* died and *K* s name was recorded in the revenue registers in the place of *B* s name in respect of the estate In 1870 *K* died and her daughter *S* applied to have her name recorded in the revenue registers in respect of the estate *M* the illegitimate son of *B* objected claiming to have his name recorded His objection having been disallowed and *S* s name having been recorded *M* in 1876 sued *S* for a declaration of his proprietary right to the estate and on the 29th June 1878 obtained such declaration In January 1880 *M* sold a moiety of the estate and in December 1880 *S* sold the entire estate In February 1881 *M* s transferees sued *S* [illegible]

claim in the suit or 1876 possession of the estate *Darbo* v *Kesho Rai I L R 2 All 256* and *Kali dhun Chatturpadhya* v *Shibo Nath Chatturpadhya I L R 8 Calc 483* followed *Held* by STUART *C J* that such suit was barred by reason of the provisions of s 7 of Act VIII of 1859 by reason of such omission *Darbo* v *Kesho Rai I L R 2 All 356* distinguished The meaning of the term relief explained and the distinction between it and the term cause of action pointed out SARSUTI v KUNJ BEHARI LAL I L R 5 All 345

53 ———————— *Civil Procedure Code 1859 s 7* [illegible]

interest of *M* as the mortgagee under a deed of mortgage which he valued at the principal sum advanced under the mortgage —[illegible] R5 000 — [illegible]

under the mortgage On this fact coming to *S* s knowledge he sued the sons of *M* to recover his share of that sum. *Held* that the second suit was not barred by s. 7 of Act VIII of 1859 *Bulwant Singh* v *Chittan Singh 3 N W 97* followed and observed upon. LACHMAN SINGH v SANWAL SINGH I. L. R 1 All. 543

54. ———————— *Civil Procedure Code 1859 s 7—Separate causes of action.* S 7 of Act VIII of 1859 required that every suit should include the whole of the claim arising out of the cause of action meaning the whole of the claim arising out of the cause of action upon which the suit was brought not that every suit should include every cause of action or every claim which the plaintiff had against the defendant. Accordingly

RELINQUISHMENT OF OR OMISSION TO SUE FOR, PORTION OF CLAIM—*contd*

where a plaintiff had sued to obtain his share of an estate in land in consequence of having been wrongfully dispossessed by the defendant whom he afterwards in the present suit sued for his share of personal property being entitled to both under a will it was held that the subsequent suit was not barred by reason of the non claim in the prior one The claim in respect of the personalty had not arisen out of the cause of action which existed in consequence of the wrongful dispossession the case was not like one of the conversion of several things and the causes of action were distinct *Bulur Ruheem* v *Shamsoonnissa Begum 11 Moo I A 551* referred to PITTAPUR RAJA v SURIYA RAU I L R 8 Mad 520

S C RAJAH OF PITTAPUR v VENKATA MAHIPTI SURYA L R 12 I A 116

55 ———————— *Civil Procedure Code 1882 s 43—Mahomedan law—Succession of a Mahomedan widow by local custom to a life interest in the estate of her husband—Cause of action in her suit for dower distinguished from that in her suit for such estate* A decree in a suit brought by a Mahomedan widow against the brother of her deceased husband declaring her right to possess for life the estate of the latter in accordance with a proved local custom with an order for possession was affirmed A decree in a suit previously brought by the widow against the same defendant for her dower gave no occasion for the application of s 43 of the Civil Procedure Code having been made upon a cause of action distinct from that on which the present suit was founded *Raja of Pittapur* v *Venkata Mahipati Surya I L R 8 Mad 520 L R 12 I A 119* referred to and followed MAHOMED RIASAT ALI v HASIN BANU

I L R 21 Calc 157
L R 20 I A 155

56 ———————— *Suit for property by person having a right in two capacities* J had a right to share in a certain estate as an heir to her father and also as an heir to her brother She transferred such right by sale to H H sued S who had acquired the whole estate by purchase at sales in execution of decrees against the other heirs of J s brother for J s share as one of her brother s heirs in such estate and obtained a decree H then sued S for J s share as one of her father s heirs in such estate *Held* that H was debarred from bringing the second suit by the provisions of s 43 of Act X of 1877 SHAFKATUNISSA v SHIB SAHAI I L R 4 All 171

57 ———————— *Civil Procedure Code 1859 s 7—Different causes of action—Suit for possession of land—Subsequent suit for trees* In 1869 P brought a suit against his grandmother K and another person for possession of a piece of land which P alleged had [illegible]

causes of action in the two suits by P were different [illegible] unlawful alienations by K of the respective properties the subject matter of the different suits S 7 Civil Procedure Code requires that every suit should include the whole of the claim arising from the same cause of action but although the Civil Procedure Code allows of claims arising from different causes of action being included in the same plaint there is no provision of law which makes it obligatory on the plaintiff to do so PRAGJI RUDARJI v ENDARJI BHIMBHAI 9 Bom 257

58 ———————— *Separate suits for property acquired under one sale deed—Civil Procedure Code ss 42 43* R purchased two houses under the same sale deed. Four years afterwards he sued for possession of one of the houses alleging that he had been dispossessed by the ancestor of the defendant. Subsequently he sued the same defendant for possession of the other alleging that at the time when he instituted the former suit he had already been dispossessed of the house now in question and by the same person *Held* that although the plaintiff s title to both houses rested on the title acquired by him under one and the same sale deed yet the cause of action [illegible] his ouster *from the two houses on different occasions* gave rise to two separate causes of action which he was not bound to join in the former suit there being nothing in the Civil Procedure Code to compel him to do so *Jardine Skinner & Co* v *Shama Soonduree Debia 13 W R 196* and *Ram Sunder Saha* v *Delanney 20 W R 103* referred to RIAYATULLAH KHAN v NASIR KHAN I L R 6 All 616

59 ———————— *Suit by heir after suit by his father for same cause of action.* A suit by an heir on the same cause of action on which a suit was previously brought by his father and for property which though different might have been included in that suit is barred by s. 7 Act VIII of 1859 SOORUJ PERSHAD TEWARY v SAHEB LALL TEWARY 3 W R 25

60 ———————— *Civil Procedure Code 1882 s 43—Relinquishment by guardian of minor of part of claim—Subsequent suit for part relinquished* While plaintiff was a minor his guardian had sued for and obtained a decree for arrears of shrotriem in respect of Faslis 1290 and 1291 Having attained his majority plaintiff now sued for similar arrears alleged to be due in respect of the previous Faslis 1287 1288 and 1289 con [illegible] of a portion of a [illegible] de a [illegible] ein [illegible] his [illegible] the [illegible] said guardian had acted [illegible] has no that s. 43 of the Code of Civil Procedure has no application to a suit in which the plaintiff is a minor The acts of a guardian in the conduct of a suit must be upheld unless it be shown that they were unreasonable or improper GOPAL RAO v NARASINGA RAO I L R 22 Mad 309

RELINQUISHMENT OF OR OMIS SION TO SUE FOR, PORTION OF CLAIM—*contd*

61. ———————— *Civil Procedure Code 1859 s 7—Suits for property purchased at different times* A former suit for a share of property purchased in the name of *G* one of the members of

latter claim being no part of the claim arising out of the cau e of action in respect of the property first mentioned so as to come within the meaning of Act VIII of 1859 s 7 PAMHURRY MONDUL *v* MOTHOOR MOHUN MONDUL 20 W R P C 450

62 ———————— *Suit for share of property not included in former suit because the permission of Government was necessary to sue* The plaintiff brought a suit in 1860 against the defendants to recover his share in the joint family property The present claim which was for a share in the rents of certain inam lands also joint family property was not included in the suit of 1860 At the date of the former suit the land in respect to which the present suit was brought was subject to the provisions of Regulation IV of 1831 and the Civil Courts had no jurisdiction to try the suit in respect to such land without the permission of the Government It did not appear that the plaintiff had applied to the Government for per mission to ue *Held* that the plaintiff was not precluded by s. 7 of the Civil Procedure Code from maintaining the present suit Meaning of the words cause of action discussed PATTA RAVY MUDALI *v* AUDIMULA MUDALI 5 Mad 419

63 ———————— *Separate claims in same right—Civil Procedure Code 1859 s 7*

SINGH *v* BAHADOOR SINGH 1 Agra 55

64 ———————— *Suits for property possessed under different rights—Distinct causes of action.* Where a lessee in one case after resuming certain rent free lands on behalf of his landlord retained them in his own possession and in another case retained portions of land which he had obtain ed by way of lease —*Held* that though the le sor s title to recover was the same the causes of action were entirely distinct DOORGA ROY NATH CHOWDHRY *v* ROY KALEE NARAIN ROY 24 W R 212

65 ———————— *Suits by heir to cancel alienations made at various times* A widow of a deceased Mahomedan alienated her husband s property by two deeds to different persons at differ ent times A suit was brought by the heirs of the decea ed first to set aside the second alienation and then a second suit to cancel the first alienation

RELINQUISHMENT OF OR OMIS SION TO SUE FOR PORTION OF CLAIM—*contd*

Held that s 7 Act VIII of 1859 did not bar the second suit The heir s cause of action against different alienees who have acquired possession under alienations made at different times and under different circumstances was not one and the same the question of right of succession to the deceased and widow s competency to alienate arising equally

sion JEHAN BEBEE *v* SAIVUK RAM 1 Agra F B 109 Ed 1874 82

66 ———————— *Suit to set aside alienations of portions of estate* A Hindu whose share in an ancestral estate had been alienated by a co proprietor instituted simultaneously three differ ent actions against the co proprietor and the per sons to whom the alienations had respectively been made to recover several distinct parcels of land which constituted his share *Held* that as the plaintiff had but one single cause of action against the co proprietor he ought to have brought but one suit against him and either included all the alienees in this suit or brought separate actions against the alienees for the several pieces of land in their possession and caused the proceedings in these suits to be stayed till the suit against the co pro prietor was determined The course of procedure last indicated is the more correct course VITHU *v* NARAYAN DABHULKAR 5 Bom A. C 30

67 ———————— *Civil Procedure Code 18 7 s 43—Act VIII of 1859 s 7—Suit for partition of portion of property* If a person in tentionally omit to sue for any portion of his claim the provisions of s 43 of Act X of 1877 as well as the provisions of s 7 of Act VIII of 1859 bar the in stitution of a second suit for the portion so omitted so that where a family property consisted of lands as well as debts and the plaintiff at first sued for a partition of debts only and then compromised and withdrew the suit without the permi sion of the Court it was *held* that his second suit to demand a partition of the whole property was not maintain able UKHA *v* DAGA I L R 7 Bom. 182

68 ———————— *Different cause of action—Suit for share of undivided property—Subsequent suit for partition of whole of the property* In applying the provisions of s 7 of the Code of Civil Procedure 1859 the first thing to be considered is whether the cause of action in the second suit is the same as the cause of action in the first If the cause of a tion be the same the second suit is barred in respect of any portion of the cla m omitted from the first suit but not otherwise Accordingly where the plaintiff as a member of an undivided Hindu family sued for a share of a particular portion of the family property leaving the rest undivided and his suit was rejected as it had not been brought for his whole share it was *held* that the suit was no bar to a second suit to

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

have the whole property divided a the causes of action in the two suits were entirely distinct KAKAJI BIN PANOJI v BAPUJI BIN MADHAVRAV 8 Bom A C 205

69 ———— *Suit for partition between co owners—Former suits for partition of parts of property—Different causes of action* The plaintiff was the Zamorin of Calicut and he sued in 1887 for a moiety of certain property in Malabar alleged to belong in equal undivided shares to his stanom and that of the defendant and to be in the occupation of tenants The cause of action was s ated to have arisen in 1881 when partition was demanded by the Zamorin and refused by the defendant In some instances the tenants in occupation repre ented the family a member of which was at one time admitted by the Zamorin under a demi e or kanom and had attorned to the defendant in other instances they were shown to have been admitted by the defendant on paying off the former tenant who had been admitted by the Zamorin It appeared that the Zamorin had previously brought suits and obtained decrees for partition of certain parcels of land as belonging equally to the two stanoms the defendant in each suit being the pre ent defendant and the tenant in occupation of the land then in que tion And on these facts a defence was rai ed under the Civil Procedure Code s 43 *Held* that the suit was not barred by s 43 by reason of the previous suits ITTAPPAN v MANAVIKRAMA I L R 21 Mad 153

70 ———— *Suit for partition of family property—Second suit for partition of property held jointly by family and others—Civil Procedure Code (Act XIV of 1882) ss 13 and 43* A suit brought by some members of a family against the other members of the same family for partition of the joint family property does not preclude a second suit by the same plaintiffs for partition of other property belonging jointly to their family and strangers PURUSHOTTAM v ATMARAM JANARDAN I L R 23 Bom 597

71 ———— *Civil Procedure Code 1859 s 7—Suit for partition omitting mortgaged lands—Subsequent suit for share of mortgaged lands* The plaintiffs in 1863 sued the defendants for the plaintiffs share in certain undivided family property and did not include in their claim certain lands then in the possession of mortgagees which lands had been mortgaged by one of the defendants as manager of the family The defendants subsequently redeemed the mortgaged lands The plaintiffs then filed a suit to recover their share of the lands so redeemed *Held* that they were entitled to maintain such suit as the mortgaged lands had not been available for an actual partition at the time of the former suit BALKRISHNA VITHAL v HARI SHANKAR 8 Bom A C 64

72 ———— *Omission of mortgaged field in suit for partition—Subsequent suit* In 1861 the plaintiff brought a general partition suit (No 1363) to recover his share of the family property in the possession of the first defendants and did not include in that claim a field then in the possession of a mortgagee The field was subsequently redeemed by the first defendant who again mortgaged it to the second defendant The plaintiff then filed the present suit to recover his share in the field The first Court allowed the plaintiff's claim but the District Judge on appeal threw it out on the ground that it was barred both by s 7 of the Civil Procedure Code 1859 and by the law of limitation The Judge based the latter finding on certain allegations made by the plaintiff in suit No 1363 and in another suit brought by him against the first defendant and the then mortgagee of the field from which allegations the Judge inferred a separation between the plaintiff and the first defendant *Held* in special appeal that the claim was not barred by s 7 of the Civil Procedure Code because the mortgaged field was not available for an actual partition at the time of the former suit [illegible] precisely that which he seeks to recover in the second and where the former suit is one for an actual division of property the plaintiff is not bound in it to ask for a declaration defining his right in property not then capable of division *Balkrishna Vithal v Hari Shankar 8 Bom A C 64* followed NARAYAN BABAJI DABHOLKAR v PANDURANG RAMCHANDRA DABHOLKAR 12 Bom 148

See KRISTAYYA v NARASIMHAM I L R 23 Mad 608

73 ———— *Civil Procedure Code s 43—Declaration of title to continue to enjoy separate possession of land—Suit for partition* The plaintiffs having obtained a declaration of title to continue to enjoy separate possession of certain lands sued the former defendants again for partition of the same lands *Held* that the suit was unnecessary and should be dismissed *Per Curiam* —The claim and the remedy mentioned in s 43 of the Code of Civil Procedure have reference to the cause of action litigated in the previous suit ANGI v THATHA I L R 10 Mad 347

74 ———— *Civil Procedure Code 1882 s 43—Relinquishment of part of claim—Suit for maintenance and suit for a share of the inheritance distinguished—Cause of action—Election Doctrine of—Succession Act (X of 1865), s 172 excep* A testator bequeathed all his property to his nephew in which he included the share of his brother s widow in the ancestral property but at the same time made a suitable provision for her maintenance and worship The widow at first sued for and obtained the allowance allotted to her under the will and afterwards brought a suit for a share in the ancestral property *Held* that although having regard to the doctrine of election (Succession Act s 172) the widow was precluded from again bringing a suit for a share of the ancestral property

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

it could not be said that the suit was barred under the provisions of s. 43 of the Code of Civil Procedure inasmuch as the two claims were distinct and indeed inconsistent and did not arise out of the same cause of action PRAMADA DASI *v* LAKHI NARAIN MITTER I L R 12 Calc 60

75 ———— *Civil Procedure Code, s 43—Suit to charge maintenance on land after suit for maintenance* The plaintiff having obtained a decree against the defendants for the payment to her of a monthly sum for her maintenance subsequently sued to have it constituted a charge on certain land *Held* that the claim in

first PANGAMMA *v* VOHALAYYA I L R 11 Mad 127

76 ———— *Civil Procedure Code s 43—Maintenance—Suit to declare maintenance fixed by a decree a charge on land* A

77 ———— *Suits to recover money misappropriated by manager of joint estate—Civil Procedure Code 1859 s 7* In a suit by members of a Hindu family which had become separate in 1862 to recover certain moneys said to have been misappropriated by the defendant while manager of the joint estate it appeared that the plaintiffs had previously sued him since the separation to recover certain other moneys belonging to the said joint estate also said to have been misappropriated by him while manager and obtained a decree *Held* that the present claim should have been included in the former suit and whether the omission was by mistake or not it must be taken to have been relinquished and under s. 7 of Act VIII of 1859 could not now be entertained. GANESH CHANDRA CHOWDHRY *v* RAM COOMAR CHOWDHRY 3 B L R A C 265

s c RADHA KISHORE DEBIA *v* RAM COOMAR CHOWDHRY 12 W R 79

78 ———— *Suit to recover*

occurred before plaintiff called upon defendant to render an account constituted a claim arising out of

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

one and the same cause of action MONOHUR DAS *v* SEETUL PERSHAD 23 W R 418

79 ———— *Relinquishment of lands in another talukh—Civil Procedure Code 1859 s 7* Where in a former suit to set aside the sale of a tenure the plaintiff in specifying the lands subject to that tenure excluded a portion of the lands once included therein as having been by a survey award included in the adjacent talukh —*Held* that the exclusion of such land from the former suit was not a relinquishment within the meaning of s 7 Act VIII of 1859 so as to affect the right of the plaintiff to maintain a suit for the land so excluded PROSUNNO CHUNDER BANERJEE *v* KALLY PERSAUD GHOSE W R 1864 134

80 ————*Estates in different districts—Civil Procedure Code 1859 s 7* The plaintiff claimed two estates as belonging to her deceased husband from which she alleged she was dispossessed by the principal defendant and others claiming under her The estates were situated in different districts A and B She obtained a decree for possession of the estate in A In a subsequent suit for the estate in B she alleged a different act of dispossession but the defendants were the same *Held* that the cause of action in both suits was the same and that as she could have proceeded under 12 of the Code and brought one suit for both estates in either A or B the suit was barred by s 7 of the Code JUMOONA DASSEE CHOWDHRANEE *v* BAMASOONDEREE DASSEE CHOWDHRANEE 2 W R 149

81 ———— *Civil Procedure Code 1877 s 43—Suit on mortgage of property in different districts—Former suit on one portion only*

their shares in E and F together with property in the district of Tirhoot to the plaintiff On the 24th March 1873 *A* mortgaged his share in E and F to *J* On the 13th November 1874 *A* and *B* mortgaged their shares in E to *K* On the 25th March 1874 *J* obtained a decree on his mortgage and the interest of *A* and *B* were purchased on the 5th January 1875 by L. On the 17th April 1874 *M* to whom the first mortgage had been assigned obtained a decree and attached the property mortgaged. *L* objected that he had already purchased the interest of *A* and on the objection being

out having obtained leave to include that portion of

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

the mortgaged property situate in the Bhagulpur district On the 17th July 1874 a decree was made in this suit On the 17th January 1877 *K* obtained a decree on his mortgage and the shares of *A* and *B* in F were sold and purchased on the 3rd September 1877 by *N* The plaintiff had his decree transferred for execution to the Bhagulpur Court and he attached the surplus sale proceeds and a 1 anna 9 gundas share in F This attachment was withdrawn on the objection of *L* who drew out the surplus sale proceeds The share purchased by *N* was also released from attachment The plaintiff now sued *L* *N* and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E property to recover the surplus sale proceeds from *L* and in case the decree should not be valid to the extent mentioned for a decree declaring his prior lien on the property in E *Held* that the cause of action had been split *Grish Chunder Mookerjee v Ramessoree Debia 22 W R 308* and *Kurun Singh v Mahomed Fyaz Ali Khan 10 B L R 1* followed BUNGSEE SINGH *v* SOODIST LALL

I L R 7 Calc 739 10 C L R 263

82 ——————— *Civil Procedure Code 1859 s 7—Multifariousness* S 7 of Act VIII of 1859 does not bar a suit for a declaration that property in the defendant s possession in subject to the mortgagee s lien on the ground that such property was part of the property mortgaged and was not included in a previous suit against other parties for other portions of the property *In the matter of the petition of* HURPY MOHUN PARAMANICK

14 B L R 418 note 15 W R 486

83 ——————— *Suit to set aside mortgage by Hindu widow—Civil Procedure Code 1859 s 7* A Hindu widow executed deeds of gift in which her late husband s mother the nearest reversioner concurred. After the death of the widow but in the lifetime of the mother the next presumable reversioner sued to set aside the deeds and for possession. Such suit was held to be no bar to a second suit by the same plaintiff to set aside a mortgage by the widow and the mother of the deceased of a portion of the property which was the subject of the first suit although in that suit the property was described as subject to the mortgage and the name of the mortgagee was mentioned The true te[illegible] of 1859 is [illegible] cause of a [illegible] KURUN SI[illegible]

[illegible] 14 Moo I A. 176 187

84 ——————— *Suit for declaration of lien—Surplus sale proceeds—Civil Procedure Code 1859 s 7* A mortgagee brought a [illegible]

to have a declaration of his lien over certain surplus moneys in the hands of the Collector who previously to the institution of the first suit had sold certain of the mortgaged properties free of all incumbrances for arrears of Government revenue *Held* that the second suit was not barred under Act VIII of 1859 s 7 KRISTODASS KUNDOO *v* RAMKANT ROY CHOWDHRY

I L R 6 Calc 142 7 C L R 396

85 ——————— *Suit for redemption—Omission of claim for improvements and accretions—Civil Procedure Code 1859 s 7* A suit [illegible]

Court omits to adjudicate upon part of the claim the mortgagor is not precluded by s 7 of Act VIII of 1859 from bringing a second suit in respect of that part BAKSHIRAM GANGARAM *v* DARKU TUKARAM

10 Bom 369

[illegible]

gagor filed a suit to redeem mortgaged lands alleging that the mortgagees in possession had been overpaid but did not in that suit claim to recover the overpayments which were therefore not awarded to him it was *held* that he could not recover such overpayments in a fresh suit brought for that purpose as his claim was barred by s 7 of the Code of Civil Procedure BALOJI TAMAJI POTHAR *v* TAMANGOUDA BIN GHANASYAM GOUDA

6 Bom. A C 97

87 ——————— *Suits for possession of mortgaged property—Civil Procedure Code 1882 s 43* N being mortgagee in possession of five eighths of a pangu (share) of certain land—[illegible]

was aware of the assignment when [illegible] into Court for *N* In 1883 *K* bought the remaining [illegible] and sued *N* and [illegible] pleaded that [illegible] s of Civil [illegible] covered the [illegible] that this [illegible]

I L R [illegible] Mad. 92

88 ——————— *Civil Procedure Code 1877 s 43—Leave to omit to sue for any remedy—First hearing of suit* The plaintiff held a [illegible] given to [illegible]

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd.*

decree The mortgage contained a personal undertaking to repay Plaintiff s counsel directly upon the case being called on for hearing and before the case had in any way been gone into applied (under s 43 of Act X of 1877 Civil Procedure Code) for leave to reserve his remedies under the mortgage taking then only a money decree—an application which it is provided by that section must be made before the first hearing *Held* that the application was not too late PESTONJI BEZONJI v ABDOOL RAHIMAN I L R 5 Bom. 463

89 ———— *Civil Procedure Code 1877 s 43—Res judicata—Dekkhan Agriculturists Relief Act XVII of 1879—Mortgagor—Mortgagee—Suit for account merely—Subsequent suit for possession* Where there has been a suit between an agriculturist mortgagor and his mortgagee for an account merely a subsequent suit for possession on payment of the money declared to be due is barred under either s 13 or s 43 of the Code of Civil Procedure BABU BALAJI v HARI NILKANTHRAV I L R 7 Bom 377

90 ———— *Civil Procedure Code 1877 s 43—Bond for the payment of money hypothecating property as collateral security for such payment—Omission of claim* The obligee of a bond for the payment of money hypothecating immoveable property as collateral security for such payment sued for the moneys due on the bond but omitted to claim the enforcement of his lien and obtained a decree only for the payment of the amount of the bond debt He subsequently sued to enforce his lien *Held* that under 43 of Act X of 1877 as amended by s 7 of Act XII of 1879 he could not be permitted to sue to enforce his lien. GUMANI v RAM PADARAT LAL I L R 2 All 838

91. ———— *Civil Procedure Code 1877 s 43—Omission to sue for one of several remedies—Mortgage* A mortgagee had two remedies in respect of the mortgagor s breach to pay the stipulated interest at the time fixed by the contract of mortgage one being a suit on foreclosure proceedings to convert the mortgage into a sale and the other a suit to recover his money against his debtor by enforcement of his lien against the mortgaged property He sued for the first remedy in respect of such breach omitting the second His suit was dismissed on the ground that he was not entitled to such remedy until the expiration of the mortgage term He afterwards sued for the second remedy *Held* that inasmuch [illegible]

92. ———— *Civil Procedure Code 1877 s 43—Lease by usufructuary mortgagee of mortgaged property to mortgagor—Hypothecation of mortgaged property as security for rent—Suit for rent in Revenue Court—Suit for enforcement of lien in Civil Court* The usufructuary mortgagee of certain land gave a lease of it to the mortgagor the latter hypothecating the land as security for the payment of the rent Arrears of rent accruing the mortgagee sued the mortgagor for the same in the Revenue Court and obtained a decree Subsequently the mortgagee sued the mortgagor in the Civil Court to recover the amount of such decree by the sale of the land claiming under the hypothecation *Held* that the second suit was not barred by the provisions of s 43 of Act X of 1877 BANDA HASAN v ABADI BEGUM I L R 4 All 180

93 ———— *Civil Procedure Code 1877 s 43—Mortgage—Decree enforcing lien—Suit against purchaser to enforce decree* [illegible]

At the time the suit was brought such property was in the possession of a third person who had purchased it at a sale in execution of a money decree against the obligor of such bond The obligee did not make the purchaser a defendant to the suit He obtained a decree in the suit for the sale of such [illegible]

his decree *Held* that such second suit was not barred by the provisions of s 43 of the Civil Procedure Code BAHRAICHI CHAUDHRI v SURJU NAIK I L R 4 All 257

94. ———— *Civil Procedure Code 1877 s 43—Lease by usufructuary mortgagee of mortgaged property to mortgagor—Hypothecation of mortgaged property as security for rent—Suit for rent in Revenue Court—Suit for enforcement of lien in Civil Court* The usufructuary mortgagee of certain land granted a lease of such land to the mortgagor the latter hypothecating the land as security for the payment of the rent Arrears of rent accruing the mortgagee sued the mortgagor for the same in the Revenue Court and obtained a decree Subsequently the mortgagee sued the transferee of such land in the Civil Court to recover the amount of such decree by the sale of the land claiming under the hypothecation *Held* following *Banda Hasan v Abadi Begum I L R 4 All 180* that such claim was not barred by the provisions of s. 43 of Act X of 1877 that it could only be made through the medium of the Civil Court and that the shape in which it was presented was perfectly regular IMAMI BEGUM v GOBIND PRASAD I L R 4 All. 318

95 ———— *Omission to claim compensation money—Subsequent suit—Civil Procedure Code 1859 s 7* A a Hindu widow

RELINQUISHMENT OF, OR OMISSION TO SUE FOR PORTION OF CLAIM—contd

granted without legal necessity a mokurari lease of certain mouzah portion of her husband s estate to *B* During *B* s possession part of the lands comprised in the granted mouzahs were taken up by Government and the compensation money was lodged in the Collectorate *A* having afterwards died the next heirs of *A* s husband on the 7th October 1871 sued *B* to recover possession of the

out of the Collectorate The heirs after obtaining a decree against *B* for possession of the mouzah on the 13th September 1875 instituted a fresh suit against him to recover the compensation money wrongfully drawn out by him from the Collectorate *Held* that the suit was not barred by s 7 of Act VIII of 1859 *Held* further that the claim of the heirs was a proper subject for a regular suit and could not have been heard and determined in the course of the proceedings in execution of the decree which they had obtained against *B* for possession of the mouzahs. NUND LALL BOSE *v* ABOO MAHOMED
I L R 5 Calc 597

s c NUND LALL BOSE *v* ABU SYED
5 C L R 45

96 ——— *Civil Procedure Code 1882 s 43—Suit for money paid under Land Acquisition Act* In 1876 *K* sued *M* on a bond dated 20th December 1869 for R5 000 by which certain land in the district of South Tanjore was hypothecated as security for the debt and obtained a decree on the 6th of April 1876 for the sale of the lands which he purchased on the 17th August 1876 for R6 000 *K* then discovered that part of the land hypothecated situated within the jurisdiction of the Subordinate Court at Kumbakonam had been acquired by a railway company under the Land Acquisition Act in 1874 and that the compensation R460 (claimed by *M* s mother who sold the land to the company) was lodged in the treasury of Kumbakonam in the name of *M* mother *K* having applied to the Subordinate Court for an order for payment out of this sum the Court by order dated 28th February 1880 directed that the question of title to the money should be decided by suit *K* then sued *M* as the sole heir of his deceased mother in the District Munsif s Court of Tiruvadi (where *M* resided) for a declaration of right to and to recover the said sum of R460 The suit was filed on the 4th September 1880 On the 10th April 1880 *M* assigned his interest in the money sued for to *I* who was made defendant in the suit on his own application and pleaded that the land having been acquired by the railway company in 1874 before the suit upon the bond was filed this suit was barred by s. 43 of the Code of Civil Procedure *Held* that *K* not having known at the date of his suit on the bond of the acquisition of the land by the railway company the suit was not so barred VENKATA VIRARAGAVAYYANGAR *v* KRISHNASAMI AYYANGAR I L R 6 Mad 344

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—contd

97 ——— *Suit not brought for whole claim—Civil Procedure Code 1882 s 43* On the 5th September 1874 *R* a Hindu and his sons borrowed R5 000 from *V* and mortgaged to him certain lands items 1 2 and 3 On the 7th September 1874 *V* borrowed R5 000 from *P V* and mortgaged his rights in items 1 and 2 and land of his own to *R V* In 1877 *R V* bought at a sale in execution of a decree against *R* the share of *R* in the said items 1 and 2 subject to the mortgage created by *R* on 5th September 1874 and to another mortgage created by *P* dated 11th January 1875 In 1889 *R V* sued *V* and the son of *R* for arrears of interest due under his mortgage bond but their suit was withdrawn with liberty to bring a fresh suit for the principal and interest due on the bond In 1885 *P V* sued *V* and the sons of *R* to recover principal and interest due under his mortgage bond *Held* that the claim of *R V* was not barred by s. 43 of the Civil Procedure Code VENCATA SHETTI *v* RANGA NAYAK
I L R 10 Mad. 160

98 ——— *Civil Procedure Code 1882 s 43—Withdrawal of suit with permission to bring a fresh suit on the same cause of action—Civil Procedure Code s 373* Where a suit is ... under the first paragraph ... the effect is ... on a that in ... it had never ... who has obtained an order under s. 373 of the Code will not be debarred by s 43 from claiming in a subsequent suit a relief which he might have included, but did not in the suit which he was permitted to withdraw *Venkata Shetti v Ranga Nayak I L R 10 Mad 160* followed BEHARI LAL PAL *v* BARAN MAYI DASI I L R. 17 All. 53

99 ——— *Civil Procedure Code 1882 s 43—Bond with alternative conditions for repayment of loan—Decree for interest—Second suit for further interest* A bond provided for the ... interest by a stated time ... provided ... mortgage ... end of the ... After the ... ment of the ... a decree for the interest which had accrued due at the date of the suit He now sued for the further interest which had since become due *Held* that the second suit was not barred by s. 43 of the Code of Civil Procedure for that the first suit being for interest merely and not for principal and interest which were then both due the plaintiff must be taken to have elected under the bond to add the principal sum to the previously existing mortgage but in which case he forfeited nothing by suing merely for arrears of interest as they became due SHRI SHAILAPA *v* BALAPA LOKANNA I L R 7 Bom. 446

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

100 ———— *Civil Procedure Code 188 s 43—Multiplicity of suits* When money is due on two or more bonds at the time of the institution of a suit and the bonds appear to have been originally pas ed in re pect of one claim it i not incumbent upon the plaintiff to sue upon

101 ———— *Suit on bond—Part of decree infructuous for want of jurisdiction—Civil Procedure Code 1859 s 7* Where a holder of a bond in which properties are hypothecated as ecurity for money lent brings a suit for the whole claim and obtain a decree but a part of that decree is infructuous for want of juri diction he is not precluded by Act VIII of 1859 s 7 from maintaining a second suit to enforce such part of his claim (as was infructuously decreed in the first suit) again t a third party who derives his title through the borrower subsequent to the date of the bond GRISH CHUNDER MOOKERJEE *v* RAMESSUREE DABEE 22 W R 308

102 ———— *Promissory note payable by instalments—Act IX of 1850 s 34* When two or more instalments of a promissory note payable on the face of it by in talments are due the holder of the note is not at liberty to sue separately for each instalment or for some of them he must sue for all the in talments due in one action A judgment recovered in a suit for one instalment when others are due is a bar to a suit sub equently brought for the latter MACKINTOSH *v* GILL 12 B L R 37 20 W R 358

103 ———— *Suit on instalment bond—Civil Procedure Code 1859 s* Plaintiff sued upon an in talment bond as each successive instalment fell due and the whole of his claim on each instalment was included in his suit He recovered the full amount of the first instalment under the first decree and a portion of the second in talment in execut on of his second decree He now sued for the unpaid portion of the econd in tal

104 ———— *Promise to pay balance found due on accounts stated in instalments—Promissory note—Note of agreement in account book* In 1876 accounts were stated between *B* and *D* and a balance of R800 was found to be due from *D* to *B* *D* gave *B* an instrument whereby he agreed

B sued *D* upon such instrument for the balance of the first in talment The Court trying this suit refused to receive such instrument in evidence on the ground that it was a promi sory note and as such was improperly stamped Thereupon *B* applied for and obtained permission to withdraw from the suit with liberty to bring a fresh one for the original debt In October 1879 *B* again sued *D* claiming the balance of the first and second in talments basing his claim upon the note made by him in his account book He obtained a decree in that suit for the amount claimed by him In 1880 *B* again ued *D* claiming the amount of the third instalment again basing his claim upon such note *Held* by SPANKIE J that the suit last mentioned was barred by the provisions of s 43 of Act X of 1877 inasmuch a *B* should in the second suit brought by him again t *D* have claimed the balance of the money found due from *D* to him upon the accounts stated between them instead of claiming the balance of the instalments due *Held* by OLDFIELD J that such suit was not so barred the causes of action therein and in the former suit being different BANARSI DAS *v* BHIKARI DAS I L R 3 All 717

105 ———— *Civil Procedure Code 1859 s 7—Suit to enforce claim against representatives of decea ed* *Held* that s 7 of Act VIII of 1859 which barred all future suits for the portion omitted or relinquished had not the effect

of the several persons who might have succeeded to it liable for the payment of his debt but he was not bound to bring his suit n such a shape a to include the whole of the repre entatives and the whole of the property at the ri k of being precluded from all future suits PURUMSOOKH *v* SOOBHAN 2 Agra 323

106 ———— *Civil Procedure Code 1877 s 43—Stamp Act 1879 s 41—Duty and penalty under Stamp Act—Costs—Suit to recover amount paid* The plaintiff in a suit on an instrument not duly stamped was compelled to pay the amount of duty and penalty the proper stamp on the instrument ought to have been pai l by the defendant In a suit with reference to s 41 of the Stamp Act to recover the amount paid —*Held* that the plaintiff could not have recovered the amount as co ts of the former uit in which it wa paid and that a fresh suit to recover it was maintainable ISHAR DAS *v* MASUD KHAN I L R 6 All 70

107 ———— *Mortgage for securing payment of rent—Decree of Revenue Court for arrears of rent—Suit for sale of mortgaged property—Civil Procedure Code s 43* In 1874 the plaintiff leased certain immoveable property to the defendant and the latter executed a deed by which he covenanted to pay the annual rent and

RELINQUISHMENT OF OR OMISSION TO SUE FOR, PORTION OF CLAIM—*contd*

fulfil other conditions of the lease and gave security in R3 000 by mortgage of landed property In 1874 the plaintiff obtained decrees in the Revenue Court for arrears of rent and the decrees were partially satisfied and then became barred by limitation In 1884 the plaintiff brought a suit to recover the balance due by enforcement of the mortgage security against the purchasers of the mortgaged property *Held* that the plaintiff had two separate rights of action one on the contract to pay rent

bar to the latter suit by reason of the suit instituted in the Revenue Court with reference to s 43 of the Civil Procedure Code CHUNI LAL *v* BANASPAT SINGH I L R 9 All 23

108 ———— *Suit under colour of suit for rent to try question of title—Civil Procedure Code 1859 s 7* Where a suit for possession would be met by a plea in bar the plaintiff cannot be permitted to have the question of title tried under colour of a rent suit such a proceeding being opposed to the principle laid down in Act VIII of 1859 s 7 RAM TUNOO KOLOO *v* SHARODA PERSHAD MULLICK. GOLAM MAHOMED SHAHA *v* SHARODA PROSAD MULLICK 19 W R 91

See DAYAL CHAND SAHOY *v* NABIN CHANDRA ADHIKARI 8 B L R 180 16 W R 235

109 ———— *Suit for abatement of rent—Subsequent suit for excess of rent paid* A plaintiff who has sued for and obtained a decree for an abatement of rent payable in respect of a patni held by him may afterwards sue for a refund of the rent paid by him before instituting the suit for abatement of rent in excess of the amount justly payable notwithstanding that he might if he had chosen have included this claim in his suit for abatement of rent OKHOY KOOMAR CHUTTOPADHYA *v* MAHAPAT CHUNDER BAHADOOR I L R 5 Calc 24

110 ———— *Civil Procedure Code 1882 s 43—Enhancement of rent suit for—Subsequent suit for rent* Under ss 42 and 43 of the Civil Procedure Code plaintiffs must bring their entire claim and every remedy enforceable in respect of that claim into Court at once and if they fail to do that in any suit they cannot afterwards avail themselves of any remedy on which they have not chosen to insist in the first suit Suits for enhanced rent and suits for rent are claims ... and a ... successive ... sue for ... INNOCK ...

I L R 9 Calc. 919 12 C L R 599

111 ———— *Suit for enhancement of rent—Dismissal of enhancement suit—Rent suit at old rate for year for which rent had been sought at enhanced rate* The dismissal of a ...

SUDDRUDDIN AHMED *v* BANI MADHUB ROY CHOWDHRY I L R 15 Calc 145

112 ———— *Civil Procedure Code 1859 s 7—Suit for arrears of rent* A suit for arrears of rent was not barred under Act VIII of 1859 s 7 by the fact that the plaintiff had split his claim *i e* the jumma but the circumstances that a part of the jumma had been omitted would be a bar to the plaintiff suing subsequently for such part PURSUN GOPAL PAUL CHOWDHRY *v* POORNANUND MULLICK 21 W R 272

113 ———— *Suits for arrears of rent—Rent for separate years—Civil Procedure Code 1859 s 7* Under s 7 of Act VIII of 1859 it was held that arrears of rent for successive years are several and distinct causes of action in respect of which a plaintiff may institute separate suits SUTTO CHURN GHOSAL *v* OBHOY NUND DOSS 2 W R Act X, 31

RAM SOONDER SEIN *v* KRISHNO CHUNDER GOOPTO 17 W R 380

KRISTO KINKUR PORAMANICK *v* RAMDHUN CHATTERJEE 24 W R 26

114 ———— *Suit for rent—Rent of separate successive years* At the close of the Bengal year 1283 which was on the 11th of April 1877 the defendant owed to the plaintiff his landlord the rents of his holding for the years 1281 1282 and 1283 The plaintiff in the month of April 1878 before the close of the year 1284 ... obtained ... uted ... ears ... r the ... 3 of the Code of Civil Procedure 1877 The cases of *Sutto Churn Ghosal* v *Obhoy Nund Doss 2 W R Act X 31 Ram Soonder Sein* v *Krishna Chunder Goopto 17 W R 380* and *Krishna Kinkur Poramanick* v *Ramdhun Chatterjee 24 W R 26* are overruled by s 43 of Act X of 1877 TARUCK CHUNDER MOOKERJEE *v* PANCHU MOHINI DEBYA I L R 6 Calc 791 8 C L R 297

See BALAJI SITARAM NAIK *v* BHIKAJI SOYARE PRABHU I L R 8 Bom 164

115 ———— *Civil Procedure Code 1882 s 43—Suit for arrears of rent—Application of the Civil Procedure Code to suits in Revenue Courts—Relinquishment of part of claim* The plaintiff sued under the provisions of Act X of 1859 to recover arrears of rent for the years 1288 and 1289 (1880—1882) after having obtained a decree for the rent due for the year 1280 (1880) in a suit instituted after the rent for the year 1289 (1882) had become due *Held* that the provisions of

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

s 43 of the Civil Procedure Code applied and that the second suit was consequently barred *Madho Prakash Singh v Murli Manohar I L R 5 All 405* cited and approved *Taruck Chunder Mookerjee v Panchu Mohini Debya I L R 6 Calc 791* cited ADHIRANI NARAIN KUMARI *v* RAGHU MAHAPATRO **I L R 12 Calc 50**

116 ——— *Civil Procedure Code 1882 s 43—Cause of action—Separate suits for rent due for successive years* Petitioners filed two suits in a Small Cause Court on the same day to recover rent due for two successive years under the same lease The sum of the two claims exceeded the pecuniary limit of the Court s jurisdiction The suit for the rent of the first year was dismissed under s 43 of the Code of Civil Procedure on the ground that the claim ought to have been included in the suit for the second year s rent *Held* that as the petitioners had no intention of abandoning either claim the proper course was to allow them to withdraw both suits and file a fresh suit in a competent Court ALAGU *v* ABDOOLA **I L R 8 Mad. 147**

117 ——— *Suit waiving difference of exchange—Civil Procedure Code 1859 s 7* An auction purchaser of a zamindari being entitled to be paid his rents in Azeemabad rupees

fresh suit MAHOMED SOADUCK GOLESTAN *v* FORBES **5 W R Act X 90**

118 ——— *Civil Procedure Code 1859 ss 7 and 97—Omission of portion of claim—Withdrawal of suit—Institution of fresh suit including claim omitted* Where the plaintiffs in a suit were permitted to withdraw from the same with a view to bringing a fresh suit which should include a portion which had been omitted of the claim arising out of the cause of action and such fresh suit was brought the additional portion of the claim in that suit was not barred by s 7 of Act VIII of 1859 ILAHI BAKHSH *v* IMAM BAKHSH **I L R 1 All 324**

119 ——— *Civil Procedure Code 1882 s 43—Act XII of 1881 (N W P Rent Act) s 140—Case struck off with liberty to plaintiff to bring a fresh suit—Omission to sue for part of claim in case struck off—Fresh suit for omitted claim not barred* A recorded co sharer of a mehal sued the lambardar for his share of the profits of the mehal for the year 1286 Fasli At the time of the institution of the suit the profits for 1287 and 1288 Fasli also were due but no claim

fresh suit Subsequently the plaintiff brought a suit against the same defendant for his share of the profits of the mehal for 1287 and 1288 Fasli *Held* that the suit was not barred by the provisions of s 43 of the Civil Procedure Code MULCHAND *v* BHIKARI DASS **I L R 7 All 624**

120 ——— *Civil Procedure Code (Act XIV of 1882) s 43—Madras Rent Recovery Act (Mad Act VIII of 1865) s 18—Suit by a landlord in the Court of the District Munsif for arrears of rent for two years—Subsequent attachment for rent of a third year accrued due at date of suit* A zamindar brought a suit in the District Munsif s Court to recover from a tenant on his estate the arrears of rent for two years Rent for the third year was also due No claim for it was included in the suit but the landlord attached the land by summary process under the Rent Recovery Act to recover it The tenants sued in the Revenue Court under the Rent Recovery Act to have the attachment set aside as illegal *Held* that the zamindar was not precluded by Civil Procedure Code s 43 from pursuing his remedies under the Rent Recovery Act and that the attachment was not illegal ESWARA DOSS *v* VENKATAROYER **I L R 21 Mad 236**

121 ——— *Joint owners—Mortgage of joint property by two co owners—Subsequent mortgage of part of same property to same mortgagee by one co owner—Suit by mortgagee on second mortgage and sale in execution—Purchase by mortgagee—Effect of such purchase on first mortgage—Subsequent suit by mortgagee on first mortgage* By a mortgage-deed dated the 24th January 1878 *S* and *F* two of three brothers constituting an undivided family jointly mortgaged to the plaintiff *B* a part of the family property On the 28th July 1878 *S* alone further mortgaged to the plaintiff for a fresh advance a portion of the property already mortgaged Subsequently the three brothers effected a partition among themselves of all the undivided property and the property jointly mortgaged by *S* and *F* fell along with other property to the share of *F* and the third brother *N* In 1881 the plaintiff *B* sued *S* on the second of the above mortgages *viz* that of the 28th July 1878 He obtained a decree and at a sale held in execution of that decree himself purchased the property comprised in that mortgage In the meantime on the 2 th January 188 and on the 6th December 1883 *F* and *N* respectively mortgaged with possession to the defendant *M* portions of the land comprised in the first mortgage of the 24th January 1878 In 1883 the plaintiff filed the present suit upon his first mortgage of the 24th January 1878 claiming to recover R316 14 0 from *S* and *F* personally He also prayed that the defendant *M* who had been in possession of the property in dispute should be prevented from obstructing him in selling the property *S* and *F* did not appear The third defendant *M* alone appeared and contended *inter alia* that the plaintiff having sued upon his second mortgage without including the earlier one was now barred

RELINQUISHMENT OF OR OMIS SION TO SUE FOR, PORTION OF CLAIM—*contd*

from suing on the latter by ss 13 and 43 of the Civil Procedure Code (XIV of 1882) He also contended that the plaintiff having purchased part of the lands comprised in the mortgage now sued upon in execution of the decree obtained by him upon his ... burden the ... the ... tion ... that ... vious ... suit on the second mortgage under the ... ons of ss 13 and 43 of the Civil Procedure Code MORO RAGHUNATH v. BALAJI TRIMBAK

I L R 13 Bom 45

122 ——— *Civil Procedure Code 1882 s 43—Transfer of Property Act (IV of 1882) s 85—Rights inter se of two mortgagees of the same property from the same mortgagor* ... the same ... mortgages ... The mort ... n the same ... n of which ... p for sale they had the mortgage ... the sale under his decree ... o other ... presen ... ders got ... d held possession of ... decree holder or ... tives ... sses ... ative ... that ... ons of ... son of ... 1882 ... BALMAKUND v. SANGARI I L R 18 All 379

123 ——— *Civil Procedure Code 1882 ss 13 and 43—Act XII of 1879 s 6 Act VIII of 1859 s 7—Inclusion of whole claim* ... been transferred to the ...

RELINQUISHMENT OF OR OMIS SION TO SUE FOR PORTION OF CLAIM—*contd*

ing of the sections of Act VIII of 1859 relating to the inclusion of the whole claim in a suit The plaintiff not then being aware of his right when he sued before it could not be regarded as a portion of his claim and he was not precluded by having omitted it from bringing it forward AMANAT BIBI v IMDAD HUSAIN I L R 15 Calc 800 L R 15 I A 106

124 ——— *Civil Procedure Code 1882 s 43—First suit to redeem—Second suit to eject—Causes of action not identical* A filed a suit against B to redeem the land in dispute alleging that it had been mortgaged to B and that the mortgage debt had been more than paid off ... restoration ... ght be ... ll get ... found due ... mortgage was not proved and dismissed the suit Thereupon A filed a suit in ejectment against B *Held* that the ejectment suit was not barred under s 43 of the Code of Civil Procedure (Act XIV of 1882) Failure in a redemption suit does not bar a subsequent suit in ejectment the causes of action in the two suits being essentially different *Shridhar Vinayak v Narayan 11 Bom 224* followed. NARO BALVANT v. RAMCHANDRA TUKDEV I L R 13 Bom 326

125 ——— *Civil Procedure Code s 43— Distinct cause of action —Suit for possession after cancellation of Court-sale* In execution of a decree the defendant who was sued as the representative of her deceased brother objected under s 244 of the Code of Civil Procedure to the attachment of certain lands to which she set up independent title The objection was disallowed and the land was sold She then sued the execution purchaser to set aside the Court sale and obtained a decree against which no appeal was preferred She now sued for possession and it was found that at the date of the previous suit she was not aware that the execution purchaser had obtained possession *Held* that the suit was not barred by the Civil Procedure Code s. 43 AMBU v KETLILAMMA I L R 14 Mad. 23

126 ——— *Civil Procedure Code s 43— Omit to sue meaning of* The plaintiff having previously obtained against his brother defendant 1 who had been the manager member of their family a decree for partition of the family property including certain debts scheduled in the plaint therein now sued to recover his share of certain other family debts collected by defendant 1 without the plaintiff's knowledge *Held* that the claim was not barred by the Civil Procedure Code s. 43 MARIATHODI v APPU I L R 15 Mad. 296

127 ——— *Civil Procedure Code s 43—Suit by usufructuary mortgagee excluded from possession for unpaid interest—Subsequent suit for principal and residue of interest.* A deed of mortgage executed in 1879 for a considera

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

tion of R300 provided that the term of the mortgage should be four years certain that certain interest should be payable that the mortgagee should have possession that the profits should be appropriated first in lieu of yearly interest and any balance appropriated in payment of the principal debt and that the mortgagor should be entitled to redeem if the principal and interest were paid at the expiration of the four years The mortgagee never obtained possession and in 1882 he brought a suit against the mortgagor to recover the unpaid interest then due and obtained a decree which was satisfied by the sale of property belonging to the judgment debtor In 1886 he brought another suit for recovery of the principal together with the residue of interest up to the date of suit *Held* that the cause of action in the suit of 1882 was the mortgagor's non delivery of possession of the mortgaged property by reason of which the mortgagee had been unable to realize his interest from the usufruct that the cause of action accrued to the mortgagee from the moment the instrument came into operation and possession was not delivered that the cause of action to recover the principal accrued at the same time and was the same cause of action that the plaintiff was therefore bound in the suit of 1882 to sue for the principal and that the present suit was consequently barred by s 43 of the Civil Procedure Code HIKMUTULLA KHAN *v* IMAM ALI **I L R 12 All 203**

128 ———————— *Civil Procedure Code 1882 s 43—Suit for interest on a bond waiving right already accrued to sue for principal —Second suit for principal and interest subse*

the endowment of certain mosques having been rejected at the inam inquiry The hypothecation

the 30th October of each year we shall pay in full the principal amount on the 30th October 1878

cutants of the above instrument and their heirs and representatives to recover the principal together with interest up to date *Held* that this suit was not barred by the Civil Procedure Code s 43 although the creditor's election not to seek a decree for the full amount in the suit of 1887 had not

been communicated to the debtor before that suit BADE BIBI SAHIBAL *v* SAMI PILLAI **I L R 18 Mad 257**

129 ———————— *Civil Procedure Code 1882 s 43—Covenant to pay interest on mortgage —Suit to recover arrears of interest—Subsequent suit for principal and interest* The breach of covenant in a mortgage bond to pay interest each year which covenant is not confined to the fixed period of the mortgage and is distinct from and independent of the claim of the mortgagee to recover the principal sum and the performance of which is secured in a different manner gives rise to a distinct cause of action which can be sued upon without suing for the principal and a decree obtained on such bond for overdue interest does not under s 43 of the Civil Procedure Code (Act XIV of 1882) bar a subsequent suit to recover the principal and interest by sale of the mortgaged property YASHVANT NARAYAN KAMAT *v* VITHAL DIVAKAR PARULEKAR **I L R 21 Bom 267**

130 ———————— *Civil Procedure Code s 43—Decree against three of four uralans of a devasom—Suit to declare the decree binding*

devasom property *Held* that the suit was not barred under the Civil Procedure Code s 43 RAMAN *v* SRIDHARAN **I L R 16 Mad 449**

131 ———————— *Civil Procedure Code s 43* In 1889 the plaintiff sued the defendant for possession of a piece of land which the defendant had included in her homestead by building walls In that suit the plaintiff alleged that on that land there were two palm trees which belonged to him and that the defendant had wrongfully prevented the plaintiff from going to those trees to

affirmed on appeal In a suit brought in 1890

I L R .. Calc 522

132. ———————— *Civil Procedure Code s 43—Joint property suits for exclusion from and partition of—Co sharers* One co sharer

RELINQUISHMENT OF OR OMISSION TO SUE FOR, PORTION OF CLAIM—*contd*

suing another for exclusion from joint property and omitting to exclude in his claim a portion of the property of which he seeks possession is not debarred by s 43 *of the Code of Civil Procedure from* suing to have the joint estate partitioned including the portion omitted from the former suit the causes of action in the two suits being different ABDUR NASIR *v* RASULAN I L R 20 Calc 385

133 ———————— *Civil Procedure Code (Act XIV of 1882) s 43—Onus of proof* Where a plaintiff has sustained at the same time an injury in respect of his proprietary or permanent interest in an estate and also an injury in respect of a temporary or leasehold interest in such estate and files suits for redress in both causes of action it cannot be said that the two causes of action are so identical that he is precluded by s. 43 of the Civil Procedure Code from filing separate suits *The onus is on the defendant to show* that the causes of action are identical UPENDRA LAL MUKERJEE *v* SECRETARY OF STATE FOR INDIA I L R 20 Calc 716

134 ———————— *Civil Procedure Code 1882 s 43—Transfer of Property Act s 85—Ejectment suit by a mortgagor s vendee against the purchaser under a mortgage decree—Subsequent suit to redeem* Certain land mortgaged to *A* was sold to *B* *A* brought a suit on his mortgage without joining *B* as a party obtained a decree for sale and became the purchaser under the decree *B* then sued to eject him praying for a declaration that the sale was not binding on him The suit having been dismissed he now sued to redeem *Held* that the suit was not barred under the Civil Procedure Code s 43 and the plaintiff was entitled to redeem KUPPU NAYUDU *v* VENKATA KRISHNA REDDI I L R 20 Mad 82

135 ———————— *Civil Procedure Code 1882 s 43—Suit for money by mortgagee against sons of a deceased judgment debtor —Former suit on mortgage against father* A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on the 19th October 1877 The decree provided for payment of the secured debt in various instalments by May 1895 The mortgagor died in 1883 having discharged part of the debt The decree holder having attached certain family property in execution the mortgagor s two younger sons who had not been born at the date of the above decree [illegible]

[illegible]

interval one of them leaving infant sons The decree holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews for the payment out of the family property of all the unpaid instalments *Held* that the plaintiff was not precluded from maintaining the suit against the sons of the mortgagor by the Civil Procedure Code s 43 RAMAYYA *v* VENKATARATNAM I L R 17 Mad 122

136 ———————— *Civil Procedure Code 1882 s 43—Suit for specific performance of a contract of sale and to execute a sale-deed—Sale-deed subsequently executed by the Court under s 262 of the Civil Procedure Code—Suit on sale deed to recover possession* The plaintiff claiming specific performance of a contract of sale sued the defendant to compel him to execute a deed of sale alleging that *he had paid the purchase money to the defendant* and had obtained possession but was subsequently dispossessed The plaintiff had claimed the value of standing crops or damages for the same The Court found that the plaintiff had paid the purchase money but had not got possession and ordered defendant to execute a deed of sale On failure of the defendant to do so the Court executed a deed of sale in plaintiff s favour under s 262 of the Civil Procedure Code (Act XIV of 1882) The plaintiff thereupon brought the present suit to recover possession on the strength of the deed of sale Defendants pleaded that this second suit was barred under s 43 of the Civil Procedure Code *Held* that s 43 was not applicable and did not bar the present suit because the alleged cause of action was not the breach of the contract but a new and distinct one arising from the deed of sale which the defendant had contracted to pass NATHU PANDU *v* BUDHU BHIKA I. L. R 18 Bom. 537

137 ———————— *Civil Procedure Code 1882 s 43—Decree for specific performance of a contract for sale of land—Subsequent suit for possession* The defendant having agreed to sell [illegible] convey [illegible]

conveyance the suit was not maintainable *Nathu Pandu v Budhu Bhika I L R 18 Bom. 537* distinguished NARAYANA KAVIRAYAN *v* KANDASAMI GOUNDAN I L. R. 22 Mad. 24

138 ———————— *Civil Procedure Code 1882 s 43—Application for leave to sue in formâ pauperis—Application rejected—Subsequent suit for same relief* S 43 of the Code of Civil [illegible] to bar a subsequent [illegible] was not a [illegible] leave to sue *in formâ pauperis* which [illegible] NARAIN SINGH *v* JASWANT SINGH I L. R 21 All. 359

139 ———————— *Civil Procedure Code 1882 s 43—Whole claim in respect of cause of action—Mortgage—Redemption—Mortgage sued on not proved—Admission by defendants of mortgage right—Subsequent suit on admission* In a previous suit plaintiff had sued to redeem a kanom of 1859 The kanom not being established,

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

the suit failed At the time of bringing the suit plaintiff was aware that the defendants in possession had in various documents admitted that they were

[illegible]

the alternative on the admissions instead of confining that suit to the specific mortgage which he failed to prove Having chosen to take the course which he did he was barred from bringing a fresh suit by s 43 of the Civil Procedure Code as it must be taken that he abandoned or relinquished his claim

[illegible]

PILLAI I L R 2[illegible] Mad [illegible]

140 ———————— *Civil Procedure Code (Act XIV of 188[illegible]) s 43—Transfer of Property Act (IV of 188[illegible]) s 99—Agreement to pay a debt partly in cash and to secure balance by mortgage or in default to execute mortgage for whole amount—Failure to pay part in cash—Decree for such part—Second suit to enforce giving of mortgage for balance barred* On a settlement of account between plaintiff and defendant No 1 it was found that R15 505 were due by the first defendant to the plaintiff and an agreement was made between them that R4 000 of this debt was to be paid off by the first defendant before the 18th September 1895 and that a mortgage on certain specified immoveable property was to be given for the balance but in the event of his failing to pay the R4 000 within the stipulated period the mortgage was to be for the full amount The agreement was dated 15th June 1895 was put into writing and was duly registered The first defendant failed to pay the R4 000 as agreed or to execute the mortgage and the plaintiff on the 16th September 1899 brought a suit against him to recover the R4 000 with interest thereon and obtained a decree on the 29th September 1899 On the 30th September the plaintiff commenced the present suit against defendant No 1 and against defendant No 2 who as judgment creditor of defendant No 1 had attached the property specified in the agreement praying that either the first defendant should be ordered to pass to the plaintiff a mortgage bond for the balance due or that a decree should be passed

[illegible]

claimed *Held* that the suit was barred under s 43 of the Civil Procedure Code (Act XIV of 1882) GOVIND HARI DEV *v* PARASHRAM MAHADEV JOSHI (1900) I L R 25 Bom 161

141 ———————— *Civil Procedure Code (Act XIV of 18[illegible]) s 43—Limitation Act (XV of 1877) Sch. II Art 9 —Suit for specific performance—Subsequent suit for money paid on a consideration that failed* Defendant having failed to convey certain property belonging to himself and his son to plaintiff as agreed plaintiff obtained a decree for specific performance in pursuance of which the price was paid and a conveyance executed Plaintiff was then obliged to sue for possession when it was found that the sale did not bind the son s interest and on grounds of convenience plaintiff was awarded the value of defendant s share instead of a decree for partition He now sued to recover the balance of the price paid and it was contended that the suit was in fact one for damages for breach of the contract to convey and as such was barred under s 43 of the Code of Civil Procedure inasmuch as the damages claimed could have been sued for in the alternative in the previous suit for specific performance *Held* that the suit was not barred it being in fact for the recovery of money paid on a consideration that had failed and the cause of action being different from that in the suit for specific performance *Held* also that the suit was not barred by limitation inasmuch as the failure of consideration must be taken to have occurred when it was found in the suit for possession that the plaintiff was not entitled to recover the son s share

[illegible]

142 ———————— *Civil Procedure Code s 43* The owners of certain property wishing to raise a sum of R10 500 on mortgage executed two mortgages in favour of the same mortgagees, over the same lands on the same day one for R10 000 and another for R500 The latter instrument recited the bond for R10 000 as a prior mortgage The mortgagees then sued on the mortgage for R500 and obtained a decree under which portions of the security were sold subject to liability under the mortgage for R10 000 The mortgagees now sued on the mortgage for R10 000 when it was objected that the suit was not maintainable by reason of s 43 of the Code of Civil Procedure *Held* that this objection was not

[illegible]

143 ———————— *Civil Procedure Code s 43—Purchaser s suit for specific performance—Former suit for disturbance of possession* In a suit by purchasers against vendors for specific performance of their agreement it appeared that both parties had previously sued praying relief only as

[illegible]

RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM—*contd*

144 ——————————— *Civil Procedure Code s 43* *Quære* Can a mortgagee who has ... treat them ... of the Civil ... f action or ... must he bring one suit on all his mortgages? GOPAL *v* PIRTHI SINGH (1902)

I L R 24 All 429
s c L R 29 I A 118 6 C W N 889

145 ——————————— *Civil Procedure Code s 53—Suit on a mortgage for sale or any other relief to which the plaintiff might be entitled —Subsequent prayer for money decree relinquishing claim for sale* The plaintiff a mortgagee came into Court asking for a decree for sale on his mortgage or any other relief to which the plaintiff might be entitled The mortgage sued upon con ... for payment in addition ... of payment ... e mortgaged property *Held* that ... g to prevent such plaintiff in the course of the suit relinquishing his claim for sale of the mortgaged property and asking merely for a simple money decree Such an amendment of the pleadings did not amount to a conversion of the suit into a suit of another and inconsistent character SUKHDEO PRASAD *v* LACHMAN SINGH (1902)

I L R 24 All 456

146 ——————————— *Civil Procedure Code ss 43 44—Cause of action—Misjoinder of* ... claiming to recover certain ... To that suit belonging to one Sahai deceased To that suit B P and B who had previously brought a suit for certain immoveable property belonging to the same estate applied to be and were added as defendants. After this H L the son of R D brought a suit claiming possession of a house which originally belonged to Sahai and which was alleged to be then in the possession of B R and B *Held* that the provisions of s 43 of the Code of Civil Procedure did not apply to these facts so as to bar the suit brought by H L HINGU LAL *v* BALDEO RAM (1902)

I L R 24 All 553

147 ——————————— *Civil Procedure Code (Act XIV of 1882) s 43—Former suit for ... restrain defendants from removing shells* ... ble ... ral ... of ... be ... he ... ke ... (in ... out the absence of local custom) ... in the landlord and the tenant has no right to convert them to his use Defendants who held land for the cultivation of paddy had dug up from the land shells which are used for the manufacture of lime and stored them on the land The landlord had let the right to dig these shells to plaintiff who in conjunction with the landlords and while the shells were still on the land sued for a perpetual injunction restraining defendants from di ... shells and also to restrain them from carrying away those which they had already dug and which were stored on the land That case was dismissed, as ... could be not being one in which an injunction could be ... fendants ... rn ... it ... of ... nt the Code of Civil Procedure *Held* ... was not barred CHALADOM THOLAN *v* KAKKATH KUNHAMBU (1902)

I L R 25 Mad 669

148 ——————————— *Civil Procedure Code (Act XIV of 1882) s 43—Omission to include present claim for land in a former suit for other land—Ground of title similar in both suits but defendants different and different lands claimed—Maintainability* ... different plots of land ... a widow ... ow who ... r of her ... epted to life also died The daughters ... take possession of the lands B from a person who held possession of them and who wrongfully refused to relinquish that possession They as the heirs of their late father thereupon namely in 1887 instituted a suit and obtained a decree against that person for the recovery of lands B In 1896 the daughters attempted to take possession of the lands A which were in the possession of another person who also wrongfully refused to relinquish his possession They thereupon instituted the present suit against that other person in which they also claimed as the heirs of their late father to recover possession of the lands A The persons who had withheld possession of the lands B and A respectively were different and the High Court found as a fact that there had been no combination or privity between them in respect of the lands which they had severally withheld Upon the objection being raised that the present suit was barred under s 43 of the Code of Civil Procedure by reason of the fact that the plaintiffs had omitted to include their present claim in the previous suit —*Held* that the suit was maintainable DAMPANABOYINA GANGI *v* ADDALA PAMASWAMI (1902)

I L R 25 Mad 736

RELINQUISHMENT OF SHARE

See MAHOMEDAN LAW I L R 31 Bom 271

RELINQUISHMENT OF TENANCY

See LANDLORD AND TENANT—ABANDONMENT RELINQUISHMENT OR SURRENDER OF TENANCY

See RELINQUISHMENT OF TENURE.

RELINQUISHMENT OF TENURE

See LANDLORD AND TENANT—ABANDONMENT—RELINQUISHMENT AND SURRENDER OF TENURE

1 ———— **Lease for specific term**—*Act X of 1859 s 19—Tenant* S 19 Act X of 1859 did not apply to a raiyat who had taken a lease for a specific term KASHEE SINGH *v* ONRAET
5 W R Act X 81

2 ———— **Contract for definite specified interest in land**—*Notice of relinquishment—Act X of 1859 s 19* *Held* that the provisions of s. 19 Act X of 1859 were not applicable to a lessee who had contracted for a definite specified interest in the land and that the contract or lease must regulate the whole relationship between the lessor and lessee not only in regard to the time of commencement and continuance but also in regard to the termination of the holding DWARKA DOSS *v* GOKUL DOSS
1 Agra Rev 22

3 ———— **Contract by lessee not to relinquish**—*Act X of 1859 s 19* A perpetual contract by a lessee for his heir reciting that they shall never relinquish the jote could not operate [illegible]

[illegible] PERSHAD GHOSE [illegible] W R [illegible]

4 ———— **Proof of relinquishment**—*Onus of proof* Where a tenant is found to have taken steps required by law in furtherance of his intended relinquishment it is for the landlord to prove his continued possession notwithstanding But where it is found that the tenant has not gone through the necessary steps it will be for him to prove that the landlord took possession of the land and enjoyed the profits by holding it khas or by letting it to others ERSKINE *v* RAM COOMAR ROY
8 W R 220

5 ———— **Waiver of right to tenure**—*Failure to take up mál land after survey and assessment—Forfeiture of claim* A person who fails at the survey to take up *mál* land which he held without assessment before the survey and allows it to be taken up by another cultivator who pays the assessment upon it must be held to have forfeited his claim to such land BALKRISHNA GOVIND GADGIL *v* NARAYAN SAKHARAM
8 Bom A C 180

6 ———— **Relinquishment by mirasidar**—*Effect of delivery of possession without reservation—Title extinction of* *B* a mirasidar addressed a razinama to the mamlatdar resigning certain miras land in favour of *L* (to whom at the same time he delivered possession of the lands) and containing no reservation or qualification *Held* that the transfer to *L* was complete and the rights of *B* wholly extinguished TARACHAND PIRCHAND *v* LAKSHMAN BHABANI
I L R 1 Bom 91

7 ———— *Right of ejectment—Razinama* A mirasidar who has given in a razinama is entitled to eject the tenant put in possession of his miras lands by the Collector provided he sue within the period of limitation and the razinama contain no stipulation whereby he expressly abandons his miras rights JOTI BHIMRAO *v* BALU BIN BAPUJI
I L R 1 Bom 208

8 ———— *Relinquishment after mortgage effect of—Right of transferee—Mortgagee s right—Sale for arrears of revenue* *D* widow of a Hindu mirasidar by a duly registered deed dated the 24th of November 1869 mortgaged the mirasi land of her deceased husband to *R M* for R150 Subsequently on the 5th July 1872 *D* executed a razinama of the land in favour of *R G* *Held* that the mortgage bound *D* s estate in the mirasi land as a Hindu widow that whether the property was regarded as mirasi or as that of an ordinary occupant it was transferable under s 36 of Bombay Act I of 1865 that when *D* executed the razinama there was nothing left in her to relinquish or otherwise deal with more than the equity of redemption that consequently *R G* took nothing [illegible]

a purchase at a sale for arrears of Government land revenue is that at such last mentioned sale the purchaser takes the land discharged of all encumbrances inasmuch as the Government land revenue is the paramount charge upon the land RAMACHANDRA MANKESHWAR *v* BHIMRAO RAOJI
I L R 1 Bom 577

9 ———— **Notice of relinquishment**—*Beng Act VIII of 1869 s 20* S 20 Bengal Act VIII of 1869 does not apply when the raiyat holds under a lease for a limited period which has expired In such a case no written notice of relinquishment is necessary TILAK PATAK *v* MAHABIR PANDAY
7 B L R Ap 11 15 W R 454

10 ———— *Act X of 1859 s 19* Where a raiyat holding a considerable portion of land wishes to relinquish a portion he must specify in his notice what portion he relinquishes in order to relieve himself of liability to payment HABELA SIRCAR *v* DOORGA KANT MOZOOMDAR
11 W R 456

11 ———— *Act X of 1859 s 19* When a landlord served a notice on an ootbundi raiyat that unless he paid at an enhanced rent for the ensuing year he was to quit the land and the raiyat thereupon intimated to the landlord s agent his intention to relinquish the land —*Held* that there was a sufficient compliance with s 19 Act X of 1859 KENNY *v* ISSUR CHUNDER PODDAR
W R 1864 Act X, 9

12 ———— *Act X of 1859 s 19* S 19 Act X of 1859 did not imperatively require an application for service of notice of relinquishment of land by a raiyat to be made to the Collector The non service of notice by the Collector cannot affect the rights of the tenant if he can prove that previous to his application to the Collector he had given actual notice direct to the landlord himself or to his authorized agent The

RELINQUISHMENT OF TENURE—*concld*

application to the Collector is not bad because it was not made in the month of Chyet preceding ERSKINE v RAM COOMAR ROY 8 W R 220

13 ——— Relinquishment by some of several co sharers effect of—*Bengal Tenancy Act (VIII of 1885) ss 20 21 86 78 88—Holding bonâ fide under a person having no title* A relinquishment made in favour of the landlord by some of several tenants of a joint occupancy holding does not operate by way of enlarging the right of the other co sharers who did not relinquish and depriving the landlord of what ordinarily would belong to him. The rule laid down in the case of *Binad Lal Pakrashi* v *Kalu Pramanik I L R 20 Calc 708* is based upon the assumption that the tenant entered upon the land and held under a *de facto* proprietor who might not be the real owner in good faith That element being wanting in the present case plaintiffs cannot get any relief PEARY MOHAN MONDAL v RADHIKA MOHAN HAZRA (1904) I L R 31 Calc 315

REMAND

See AGRA TENANCY ACT (II OF 1901) s 193 I L R 28 All 88 283

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.
I L R 18 Mad 94
I L R 24 Calc 98
I L. R. 23 Mad. 447

See APPELLATE COURT—INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT I L R 1 All 545
I L R 11 All 35

See CIVIL PROCEDURE CODE 1882 s 158 (1859 s 148) 3 B L R Ap 91
13 W R 464

See CIVIL PROCEDURE CODE 1882 s 544
I L R 11 All 35

See CIVIL PROCEDURE CODE 1882 ss 562 564

See CRIMINAL PROCEDURE CODE s 105
I L R 30 Mad 311

See ISSUES—DECISION ON ISSUES
10 Moo I A 476

See ISSUES—OMISSION TO SETTLE ISSUES
11 Moo I A 25
2 B L R P C 72
12 Moo I A 495
24 W R 275

REMAND—*contd*

See LANDLORD AND TENANT—PAYMENT OF RENT—NON PAYMENT
I L R 18 Bom 250

See ONUS OF PROOF
I L R 29 All 184

See PARTIES—ADDING PARTIES TO SUITS—GENERALLY I L R 18 All 332

See PRACTICE I L R 32 Bom 441

See PRACTICE—CIVIL CASES—REMAND

See PROCEDURE I L R 30 All 367

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT I L R 23 Calc 179
I L R 24 Calc 98

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—REMAND

See STAMP DUTY REFUND OF
B L R Sup Vol 511
11 B L R 372 note

——— entailing delay and expense—

See DECLARATORY DECREE SUIT FOR—REQUISITES FOR EXISTENCE OF RIGHT
I L R 4 Calc 190

——— findings on—

See JUDGMENT—CIVIL CASES
I L R 19 Bom 551
I L R 20 Mad 498
I L R 22 Mad 344

——— order of—

See APPEAL—EX PARTE CASES
5 C W N 153

See APPEAL—ORDERS
W R 1864 363
W R 1864 Mis 39
1 W R 405
6 W R 61
Marsh 469 600
7 W R 331 425
I L R 13 Calc 45
I L R 3 All 19
I L R 7 Bom 293
I L R 10 Calc 623
I L R 16 All 375
I L R 19 Mad 167 391
I L R 22 All 405
I L R 22 Mad 179
I L R 29 All 659
7 C W N 440
11 C W N 862

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS
I L R 1 All 726
I L R 17 All 112
L R 22 I A 1
I L R 25 All 629
I L R 35 Calc 616

REMAND—*contd*

——— order of—*concld*

See CIVIL PROCEDURE CODE 1882 s 562
12 C W N 590

See LETTERS PATENT—APPEAL.
I L R 35 Calc 1098

See LETTERS PATENT HIGH COURT CL 15
I L R 19 Mad 422
I L R 20 Mad. 152

See RES JUDICATA
I L R 30 Mad 203

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
I L R 24 Calc 774
I L R 21 All 291
I L R 29 Calc 60

——— refusal of—

See PARTITION—MISCELLANEOUS CASES
6 C W N 698

——— to custody—

See BAIL I L R 36 Calc 166 174

——— to take fresh evidence—

See PRIVY COUNCIL PRACTICE OF—REMISSION OF CASE TO INDIA
I L R 3 Calc 645

1 POWER OF REMAND

1 ——— Appellate Court power of —*Power of Court of special appeal—Irregular order —Civil Procedure Code 1859 ss 351 354 and 355* A Court of special appeal has indirectly the same powers as are vested in a Court of regular appeal by ss 351 354 and 355 Act VIII of 1859 in respect to a wrong order passed by a lower Appellate Court WUZEER ALI *v* KALEE COOMAR CHUCKERBUTTY 11 W R 228

(*Contra*) s 354 relating to trial of additional issues is only applicable to regular appeals KEBUL KISHEN MOZOOMDAR *v* AMBALA 7 W R 326

KALI KRISTO TAGORE *v* JUDOO LAL MULLICK
24 W R 20

2 ——— *Special appeal— Act VIII of 1859 ss 351 354 and 355* In a suit on a bond executed under a mukhtarnamah which was not produced the Court of first instance admit

Act VIII of 1859 on the Court of regular appeal are not directly given to the Court of special appeal yet the Court when it found the order of a lower Appel

REMAND—*contd*

1 POWER OF REMAND—*contd*

late Court was wrong could point out the error and direct the lower Appellate Court to make such order as would rectify the error AZUR ALI *v* KALI KUMAR CHUCKERBUTTY 2 B L R A C 315

3 ——— *Remand order— Civil Procedure Code (Act X of 1877) s 562* An Appellate Court has no power to remand a case except under the provisions of s 562 of the Code of Civil Procedure MUDUN MOHUN PODDAR *v* BHAGGOMANTO PODDAR I L R 8 Calc 923

4 ——— *Local investigation* An Appellate Court is not competent to remand a case for re trial after a local investigation JEEBUN KISHEN ROY *v* DWARKANATH ROY CHOWDHRY W R 1864 363

5 ——— *Powers of Court of first and second appeal—Civil Procedure Code 1882 ss 574 5 8* Observations by MAHMOOD J upon the distinction between the duties of the Courts of first appeal and those of the Courts of

v *Bhawanidin I L R 9 All* 79 *note* and *Sheodin ber Singh* v *Lallu Singh I L R 5 All 14* referred to SOHAWAN *v* BABU NAND I L R 9 All 26

6 ——— *Civil Procedure Code ss 562 564— Suit* S 562 of the Civil Procedure Code authorizes a remand only where the entire suit and not merely a portion of it has been disposed of by the Court below upon a preliminary point BANWARI LAL *v* SAMMAN LAL
I L R 11 All 488

7 ——— *Decision of lower Court not confined to preliminary point— Civil Procedure Code s 56[illegible]* Where the Deputy

the Code of Civil Procedure open to the Commissioner to make an order under s 562 HAFIZ ABDUL RAHIM *v* KHAN HAFI RAJ SINGH
I L R 22 All. 405

8 ——— *Civil Procedure Code ss 56[illegible] 564—Illegality of remand in contravention of s 564—Construction of statutes—Distinction between affirmative commands and negative prohibitions—Irregularities and illegalities* Where a Court of first instance decided a suit not upon a preliminary point so as to exclude any evidence of facts but upon the merits and upon all the evidence tendered and issues framed —*Held* by the Full Bench that with reference to ss 562 564 of the Civil Procedure Code the lower Appellate Court had no jurisdiction to remand the case under the former

REMAND—*contd*

1 POWER OF REMAND—*contd*

section and that both the remand order and all proceedings subsequent thereto were ...

which a Court or an official does something which a statute enacts shall not be done In the former case the omission may not amount to more than an irregularity in procedure In the latter the doing of the prohibited thing is *ultra vires* and illegal and therefore without jurisdiction PAMESHUR SINGH *v* SHEODIN SINGH I L R 12 All 510

9 ——— *Civil Procedure Code s 562—Civil Procedure Code Amendment Act (VII of 1888) s 49— Preliminary point* It is competent for an Appellate Court to remand a case when the Court of first instance records evidence on all the issues and at the final hearing decides the suit erroneously on some particular point without expressing any opinion on the other issues RAMACHANDRA JOISHI *v* HAZI KASSIM I L R. 16 Mad. 207

10 ——— *Civil Procedure Code 1882 ss 562 568 569* The defendant in a suit on a mortgage applied on the day fixed for the hearing for an adjournment on the ground of illness Her application was refused and the Court heard the case *ex parte* and passed a decree for the plaintiff The defendant appealed to the District Judge who reversed the decree and remanded the case on the ...

s 562 but ought to have proceeded under ss. 568 569 PARVATISHANKAR DURGASHANKAR *v* BAI NAVAL I L R 17 Bom 733

11 ——— *Civil Procedure Code Chs XLI XLII ss 540 587* The sections in Chs. XLI and XLII Civil Procedure Code relating to the hearing of appeals provide the only powers that can be exercised by an Appellate Court in remanding a suit for the consideration of evidence by the Court from which the appeal is preferred. VENKATA VARATHA THATHA CHARIAR *v* ANANTHA CHARIAR I L R 16 Mad. 299

12 ——— *Civil Procedure Code 1882 ss 562 566 and 552—Order made on appeal to amend plaint* On appeal from the decision of a District Munsif in favour of the plaintiffs in a suit for the recovery of rent the District Judge set aside the decree of the lower Court ordered a new trial and directed the amendment of the plaint by inserting the exact boundaries of the land on which plaintiffs claim the rent *Held* that the order for amendment in the plaint was bad under s. 562 of the Code of Civil Procedure since the original Court had not disposed of the suit upon a preliminary point and that it was likewise bad under s. 566 since there had been no dispute as to the boundaries of the land before the original Court If the information was necessary the District Judge should have sent down an issue on the point for trial under s 566 of the Code KRISHNAYA NAYADA *v* PANCHU I L R 17 Mad. 18

13 ——— *Civil Procedure Code (Act XIV of 1882) ss 562 566* In a suit for recovery of mesne profits subsequent to the date of suit brought by plaintiff for recovery of possession the Munsif found that defendant was not in possession and the Subordinate Judge on appeal reversed the decision and remanded the case under s 562 Civil Procedure Code for the determination of the question of the amount of mesne profits *Held* that s 562 was not applicable and that the remand ought to have been made under s. 566. LALLA CHUNILAL *v* MOHIJI SINGH 1 C W N 340

14 ——— *Suit tried out by Court of first instance—Civil Procedure Code 1882 ss 562 566* When a Court of first instance has ...

RAM DAS MONDAL *v* INDROMONI DASI 3 C W N 395

15 ——— *Civil Procedure Code 1882 s 562—Court to which remand must be made* When a suit is not disposed of on a preliminary point it is not competent to a Court of appeal under s. 562 of the Code of Civil Procedure (Act XIV of 1882) to remand the case for a fresh trial The section moreover contemplates a remand back to the Court which first disposed of the suit and to no other Court BAI SHRI MAJIRAJBA *v* MAGANLAL BHAISANKAR I L R 19 Bom. 303

16 ——— *Remand of case not tried on preliminary issue—Civil Procedure Code 1882 ss 562 and 578—Irregularity affecting the merits* Where a District Court reversed the District Munsif s decree and remanded the case for a revised finding on the merits —*Held* that the procedure was *ultra vires* and illegal. *Held* further that as the irregularity might have affected the merits of the case s 578 Civil Procedure Code was inapplicable MALLIKARJUNA *v* PATHANENI I L R. 19 Mad 479

17 ——— *Civil Procedure Code 1882 s 562—Dismissal of suit for want of cause of action* Where a District Munsif without entering into the merits of the case dismissed a suit on the ground that the plaintiffs had no cause of action and on appeal the Appellate Court reversed his decree and remanded the case *Held* that the suit had been disposed of upon a preliminary point within the meaning of s 562 Civil Procedure Code and that the remand was right KANAKAMMAL *v* RANGACHARIAR I L R. 20 Mad 25

18 ——— *Civil Procedure Code 1882 ss 562 564 and 565—Refusal of*

REMAND—*contd*

I POWER OF REMAND—*contd*

Court of first instance to record evidence tendered —Refusal of Appellate Court to record additional evidence. The plaintiffs in the Court of first instance produced both documentary and oral evidence in support of their claim The Court being satisfied with the documentary evidence produced by the

evidence before it. On appeal by the plaintiffs to the High Court it was held that though there was no section of the Code of Civil Procedure strictly applicable to the circumstances of the case the Court was notwithstanding s 554 of the Code warranted *ex debito justitiæ* in setting aside all proceedings of both Court below and in directing the Court of first instance to re try the case admitting all admissible evidence which had previously been tendered to the Court of first instance and which that Court had refused to record DURGA DIHAL DAS v ANORAJI

I L R 17 All 29

19 ———————— *Civil Procedure Code 1882 s 566—Issue not disposed of by the lower Appellate Court—Procedure* In a suit for money due under a bond the plaintiff tendered three witnesses in the Court of first instance to prove execution of the bond. That Court having examined one of such witnesses declined to examine the others being satisfied on his evidence of the genuineness of the bond and passed a decree in favour of the plaintiff On appeal by the defendant the lower Appellate Court disposed of the sole issue in the appeal viz execution or non execution in the following words I do not think the claim made out by the plaintiff on his own evidence *Held* that under the circumstances above described it was competent to the High Court in second appeal to act under s 566 of the Code of Civil Procedure and refer an issue as to the execution or non execu

Dihal Das v *Anoraji I L R 17 All 29* referred to GANGA PRASAD v LAL BAHADUR SINGH

I L R 17 All 117

20 ———————— *Civil Procedure Code 1882 ss 562 564—Ex parte decision in Court of first instance after hearing plaintiffs evidence—Order by Appellate Court reversing decree and remanding suit for decision after hearing further evidence—Validity of such an order* One of three defendants failed to appear at the final hearing of a case at the Court of a District Munsif and the other two though they appeared adduced no evidence The District Munsif after hearing witnesses for the plaintiffs passed a decree in their favour as prayed The absent defendant applied unsuccessfully under s 108 of the Code of Civil Procedure that the decree might be set aside and then appeared to the Subordinate Judge who reversed the decree and remanded the suit for decision after taking such further evidence as the said defendants or other parties might produce On its being contended that under ss 562 and 564 of the Code of Civil Procedure the Subordinate Judge had no power to remand the suit for re trial —*Held* that notwithstanding ss. 562 and 564 an Appellate Court has inherent power in such a case not only to reverse a decree passed on evidence given by the plaintiff only the defendant being *ex parte* but also to direct a re trial of the case PERUMBRA NAYAR v SUBRAHMANIAN PATTAR

I L R 23 Mad 445

21 ———————— *Order reversing decree of lower Court on account of exclusion of evidence* A trial took place in the Court of the District Munsif who heard evidence decided issues and passed a decree On appeal the Subordinate Judge reversed the decree and remanded the suit for re trial on the ground that certain documentary evidence which had been tendered by a defendant had been excluded and plaintiff s witnesses who had been cited in the list had not been examined *Held* that s 562 was not applicable to such a case that the proper course for the Subordinate Judge to take was to act either under s 568 or 569 by himself taking the evidence which he considered had been wrongly excluded or to direct the Munsif to take it *Perumbra Nayar* v *Subrahmanian Pattar I L R 23 Mad 445* distinguished SESHAN PATTAR v SESHAN PATTAR

I L R 23 Mad 447

22 ———————— *Civil Procedure Code ss 562 564 566—Appeal—Power of Appellate Court to remand for trial on the merits otherwise than under the provisions of s 562* S 564 of the Code of Civil Procedure must be read subject to the other provisions of the Code for example those contained in s 27 32 or 53 An Appellate Court has power to make an order under any of those sections and in order to give effect to the provisions of the section which is applicable it is necessary that it should in certain cases send back the case in the Court of first instance Under such ... preclude ...se to the ... *Sheodan* ... v *Faujdar Kuar All Weekly Notes (1891) 105 Mullu Khan* v *Than Singh All Weekly Notes (1891) 187 Durga Dihal Das* v *Anoraj I L R 17 All 29 Salima Bibi* v *Sheikh Muhammad I L R 18 All 131 Mihin Lal* v *Imtiaz Ali I L R 18 All 332 Rajit Ram* v *Katesar Nath I L R 18 All 396 Ganesh Bhikaji Juvekar* v *Bhikaji Kishna Juvekar I L R 10 Bom 393* and *Kelu Mulacheri Nayar* v *Chendu I L R 19 Mad 157* referred to HABIB BAKHSH v BALDEO PRASAD (1901)

I L R 23 All 167

REMAND—*contd*

1 POWER OF REMAND—*contd*

23 ———— Illegal remand—*Limit to remand—Custom opposed to Statutes validity of—Rent Recovery Act (VIII of 1865) s 11—Cultivation by wells constructed at tenants cost liability to enhanced rent fc*— ... *years* ... *and cc* ... *of occi* ... *permis* ... rights of occupancy in a zamindari constructed wells at their own cost without obtaining the permission of the zemindar and cultivated dry lands with garden crops for period ranging from 1 to 18 years. Suits were brought by the ryots before the Sub Collector under s 8 of the Rent Recovery Act to compel the defendant the zamindar to grant them proper pattas for fasli 1312 alleging that the pattas tendered were illegal as they charged the higher garden rate for dry lands cultivated by them with the aid of wells constructed at their own cost The defendant pleaded that he was entitled to the enhanced rate (i) by custom (ii) by virtue of a contract to be implied from previous payments No consideration for such a contract was however alleged The Sub Collector framed two issues—one as to the existence of the custom set up by the defendant and another as to whether the previous payments by the plaintiffs operated as an estoppel or evidenced an implied contract to continue to pay the enhanced rates The Sub Collector did not record evidence as to custom holding that such custom even if proved could not deprive the plaintiffs of the benefits ... should ... there was no contract express or implied the rent must be fixed in accordance with the other provisions of s 11 of the Rent Recovery Act He reversed the decrees of the Sub Collector and remanded the case for re trial under s 562 of the Code of Civil Procedure. On appeal to the High Court —*Held per* SUBRAHMANI AYYAR, J that the order remanding the case was not legal as all the questions raised between the parties and on which they went to trial had been decided and the questions so raised were purely questions of law A custom can be upheld only so far as it is not in conflict with statute law and a custom to pay enhanced rent for ... is ... *Mad* ... referred to It makes no difference whether a tenant constructed wells at his cost prior to or after the passing of Act VIII of 1865 In either case no additional rent can be claimed *Nagasami Kamia Naick* v *Iyodi Rama Goundan 6 Mad R R 5* Payment for a number of years of enhanced rent may be evidence of an *agreement* to pay at that ... considera ion a lawful origin may not be presumed *Gann* v *Free Fisheries of Whitestable 11 H L C 192 103* referred to No such presumption can be made when the payments have been only for a period extending from one to eighteen years. Tenants with permanent rights of occupancy are entitled to construct wells without the permission of the landholder and a custom requiring such permission may be bad as unreasonable and is certainly illegal as opposed to the policy of s. 11 of the Rent Recovery Act *Venkatanarasimha Naidu* v *Dhandamudi Kotayya I L R 30 Mad 229* referred to *Held per* MOORE J that the Sub Collector having disposed of the case on two preliminary issues the District Judge was right in remanding the cases under s 562 of the Code of Civil Procedure ARUMUGAM CHETTI *v* JAGAVEERA RAMA VENKATESWARA ETTAPPA (1905)

I. L. R. 28 Mad. 444

24. ———— *Whether consent of parties can validate an illegal remand under s 564 of Civil Procedure Code—Waiver effect of—Effect of illegal remand by lower Appellate Court on points properly decided* Where the Court of first instance ... issues and decided ... s 564 is not merely irregular but ... it is not on that account absolutely void so as to render any consent of the parties of no avail. It can be objected to by a party if he has not given his consent to such a course and even a party ... estopped ... order ... does not necessarily vitiate the decision of the lower Appellate Court on questions properly decided by it which can be attacked only on grounds legally open to the parties on second appeal. It cannot be treated as void for want of jurisdiction so as to be incapable of being validated by consent or waiver *Mohesh Chandra Dass* v *Jamirudd n* ... *I L R 28 Calc. 324* referred to *Pattanem I L R 19 Mad 4 9* referred to *Subrahmania Ayyar* v *King Emperor I L R* ... *Mad 61 97* followed *Per* MOORE J—The order of remand was illegal and no consent of parties could make it valid MANAGER OF THE COURT OF WARDS KALAHASTIE ESTATE *v* RAMASAMI REDDI (1905)

I. L. R. 28 Mad. 437

REMAND—*contd*

1 POWER OF REMAND—*concld*

25 ——— Irregularity—*Civil Procedure Code s 578—Order for remand* Where an order of remand by the lower Appellate Court was not strictly in accordance with the provisions of s 562 Civil Procedure Code —*Held* that this amounted

DASI *v* KALI PROSANNA GHOSE (1907)
11 C W N 380

2 GROUNDS FOR REMAND

1 ——— Error in law—*Civil Procedure Code 1859 s 3* To justify a remand it must be shown that the lower Court has committed some error in law or that the case comes in some other way within the terms of s 372 Civil Procedure Code HURISH CHANDER SHAHA *v* HURISH CHUNDER PAUL 25 W R 325

2 ——— *Erroneous decision of first Court—Civil Procedure Code 1859 s 351* Where a Subordinate Judge s decision in

3 ——— Decision given when Court was closed The fact that the decision of the Court of first instance was passed on a day when the Court was closed does not necessitate the lower Appellate Court remanding the case WABRISH ALLY *v* LALLA RAM SHAHAYE 1 Hay 197

4 ——— Undervaluation of suit—*Pre emption suit* Where a pre emption suit was valued at R31 though the consideration was R2 000 the High Court in special appeal refused to remand the case to enable plaintiff to make up the deficient stamp duty MEWA LALL *v* BEHAREE LALL 14 W R 195

5 ——— Addition of parties—*Rejection of application to make intervenor a party—Act X of 1859 s 77* Where a Deputy Collector rejects an application by a third party to intervene under s 77 Act X of 1859 a Judge has no jurisdiction on that party s appeal to remand the case to the Deputy Collector for re trial with directions to make the intervenor a party KHONDKAR KEFAETOOLLAH *v* MAHOMED KABEL 9 W R 345

6 ——— *Question as to validity of alienation—Improper remand by Appellate Court* M a Hindu widow executed a deed of usufructuary mortgage in J s favour the property hypothecated being the separate property of her husband in which she only had a life interest On the latter applying for mutation of names B objected that she was in proprietary possession under a deed of gift executed by M and the objection

REMAND—*contd*

2 GROUNDS FOR REMAND—*contd*

was allowed In virtue of a clause in the deed of

tion to the validity of the mortgage based on the deed of gift pleaded that it was invalid under

with instructions to make certain persons who had applied to that Court to be made parties to the suit on the ground that they were the nearest heirs to M s deceased husband but whose application that Court had rejected defendants in the suit as also any other persons who might claim to be near heirs and to determine as between them who was the next reversioner and to further determine whether such next reversioner had relinquished his rights in favour of B and whether the validity of the mortgage could be questioned on the ground that M having only a limited interest had alienated for an indefinite period It was held that the suit was improperly remanded and the Court decreed J s claim in respect of the property BULAKI SINGH *v* JAI KISHEN DAS
7 N W 203

7 ——— *Order of remand—Civil Procedure Code (XIV of 1882) ss 562 564 and 566—Addition of necessary parties not a ground for remand on a first appeal* Where a Court of first appeal remanded a case to the Court of first instance for the addition of all necessary parties and at the same time decided an issue as to the merits and it apeared that the Court of first instance had not disposed of the case on preliminary point so as to exclude any evidence of fact

of remand was not based was not before the High Court on appeal and further that the order of remand was unsustainable under ss 562 and 564 of the Civil Procedure Code (Act XIV of 1882) which are strictly binding on all Courts of first appeal The proper course for the lower Appellate Court would have been to join the parties whom it found to be necessary and then to raise the proper issues as between the plaintiff and those parties and if necessary to refer the issues to the Court of first instance for trial under s 566 GANESH BHIKAJI JUVEKAR *v* BHIKAJI KRISHNA JUVEKAR
I L R 10 Bom 398

8 ——— Examination of witness—*Application to have witness examined—Omission*

REMAND—*contd*

2 GROUNDS FOR REMAND—*contd*

to make order Where in the first Court the defendant applied for a witness to be examined but no order was made on the subject and on the case coming up on appeal the Appellate Court on its notice being called to the omission remanded the case to the lower Court to entertain the application —*Held* that there was nothing illegal in such a remand though the remand sections of Act VIII of 1859 did not expressly apply to it BONOMALEE CHURN MYTEE v HAFIZUDDIN

13 B L R 247 note 12 W R 317

9 ———— *Refusal to summon witnesses* If a defendant s case is not closed he

score was not noticed by the lower Appellate Court the High Court on special appeal remanded the case for a fresh hearing BROJO NATH MOOKHOPADHYA v PROTAB CHUNDER THAKOOR

22 W R 296

10 ———— *Insufficient examination of witness—Bad legal advice* Where the oral evidence taken fell short of the requirements of the Evidence Act s 63 only because the witnesses were not properly questioned the High Court on special appeal *held* it to be unjust to let the plaintiff suffer on account of the inefficiency of his legal adviser and so remanded the case for re trial LOCHUN SINGH v HET NARAIN SINGH

24 W R 232

11. ———— Local inquiry order for—*Civil Procedure Code 1859 ss 351 354—Further evidence* A Judge on appeal in a suit to open roads leading to a kotee expressing an opinion that the facts had not been sufficiently ascertained directed a further local inquiry to be made and remanded the case to the lower Court to be again decided there after such local inquiry *Held* that he had no authority upon such a ground to remand the case for re decision there being no suggestion under Act VIII of 1859 s 351 that the lower Court had erroneously decided a preliminary point excluding evidence and the reference not being on an issue framed by the Appellate Court under s 354 NUNDOCOOMAR BANERJEE v BAPRY

Marsh 121 1 Hay 260

12 ———— Necessity of further evidence—*Civil Procedure Code 1859 ss 351 352—Cases heard together* *Quære* Whether under ss 351 and 352 Act VIII of 1859 when several cases are tried together remand can be allowed for a new trial on the ground that the plaintiff s evidence had not been completely heard and that it was an error in the Court below to determine all the cases at once SNADDEN v TODD FINLAY & Co

7 W R 313

13. Defect in pleadings—*Jurisdiction.* When it did not appear on the face of the pleadings or on the evidence under what kind of bastu the land in dispute fell and no plea to the jurisdiction of the Court under Act X of 1859 had been taken in the Courts below the High Court would not remand the case to inquire under which class of bastu land the subject matter of the suit fell nor entertain the point of jurisdiction on appeal NAIMUDDA JOWARDAR v SCOTT MONCRIEFF

3 B L R A C 283

S C NYMOODDEE JOARDAR v MONCRIEFF

12 W R 140

14 ———— Defect in plaint—*Civil Pro*

under Act VIII of 1859 s 354 KASSEENATH MOOR v REEJOONISSA Marsh 198 1 Hay 467

15 ———— Omission to settle issues—*Remand for re trial* Where no issues have been settled in a suit the High Court will remand the case for re trial JOGESHUR RAE v DOOLUY PAE

2 N W 183

16 ———— Omission to raise material issue—*Suit for arrears of rent—Parties* A case was remanded for re trial on its merits because it was found on special appeal that material error had been committed in consequence of the omission on the part of the lower Appellate Court to frame issues between the parties *e.g* the suit being for arrears of rent the issue *inter alia* whether the plaintiffs who were shareholders with others were entitled to claim the fraction of the rent for which they sued SHEO SAHOY SINGH v BECHUN SINGH

23 W R 31

17 ———— *Improper demand by Appellate Court—Raising fresh issues* A sued to eject a raiyat on the ground of his holding over after the term of his pottah had expired. The raiyat denied that he had ever held under a pottah from *A* and alleged that the jote belonged to *B*. Plaintiff s allegations were found to be false and his suit was dismissed. The lower Appellate Court directed *B* to be made a defendant and remanded the suit to have the question of ownership tried between *A* and *B* at the same time agreeing with the Court of first instance that the allegations in the plaint were false *Held* that the lower Appellate Court should have dismissed the case and was wrong in so remanding it. *Per* CUNNINGHAM J —The right of framing new issues arises where the issues framed are insufficient to dispose of the matters raised in the plaint. *F* ... *Dhun Khan* v *Haradhun Puramanik* 9 B L R 107 note 12 W R 404 cited and distinguished. BHOOBUN DASS MUNDUL v BILASHMONEY DE ...

1 C L R 415

18 ———— Remand on point raised on issue in lower Court. A case ought not as a rule to be remanded upon a point which has been framed as an issue by the Court below and brought

REMAND—*contd*

2. GROUNDS FOR REMAND—*contd*

to the attention of the parties and where they had failed at the trial to give any evidence upon it PAM PROSAD v ABDUL KARIM
I L R 9 All 513

19 ——— Raising fresh issues—*Appellate Court—Reference of issues for trial* An

NATH SURMA

20 ——— *Appellate Court—Defective or insufficient issues* Where no preliminary point has been wrongly decided by the Court of first instance and no evidence has been excluded ... never ... is the ... to re ... itself

14 W R 69

21. ——— *Civil Procedure Code 1882 ss 566 and 566—Illegal Order of remand—Duty of Appellate Court when fresh parties or addition or amendment of issues is necessary* In a suit by mortgagees to redeem a prior mortgage issues were framed and tried and disposed of in ...

questions had not been properly considered and set

raise all questions properly arising and should have referred them for trial to the Court of first instance KELU MULACHERI NAYAR v CHENDU
I L R 19 Mad. 157

22 ——— *Trial on erroneous issues—Appellate Court* Where the Munsif acting erroneously forced the plaintiffs to amend their plaint and in consequence of that amendment the

23 ——— *Wrong issue framed by lower Court—Finding in judgment on the point raised by correct issue* Where the lower Appellate Court framed a wrong issue for decision

GANESH APPAJI CHAUDHARI
I L R 21 Bom 325

24. ——— Illegal remand—*Civil Procedure Code 1859 s 354* In a suit for a declaration of plaintiff s title to and possession of a share of certain property she alleged that her title was derived by purchase from one *R* who held under a deed of gift from *T* the wife of the original holder Defendant s case was that their title was derived from the three grandsons of one *R K* by his daughter *C* The first Court dismissed the suit considering that the defendants title was proved and that *T* was not competent to dispose of the property by gift to plaintiff s vendor The lower Appellate Court finding that it was not satisfactorily proved that the defendants alleged three vendors were really the daughter s sons of *R K* remanded the case for a finding on that issue *Held* with reference to s 354 Act VIII of 1859 that the order of remand was illegal HURO SOONDUREE DEBIA v UNNO POORNA DEBIA
11 W R 550

25 ——— *Civil Procedure Code 188 s 566* The karnavan of a tarwad in Malabar sued to recover property acquired by his sister (deceased) and now in the occupation of the defendants her children The parties were Mapil

the first mentioned plea to be good and dismissed the suit and also found that the family was governed by Marumakkatayam law The Court of first appeal dissented from the above finding as to

on that issue *Held* that the order of remand was not one which should have been made under the Civil Procedure Code s 566 and the proceedings taken under it were irregular ILLIKA PAKRAMAR v KUTTI KUNHAMED I L R 17 Mad. 69

26 ——— Dismissal of case on point not arising—*Suit under s 230 Civil Procedure Code 1859*

the Court of first instance upon a point which did not properly arise under that section —*Held* that it should have remanded the case to the first Court for trial and decision under that section SABIR KHAN v RAM LUCKHEE CHOWDHRAIN
10 W R 4

REMAND—*contd*

2 GROUNDS FOR REMAND—*contd*

27 ——— **Remand for further evidence**—*Civil Procedure Code 1859 ss 352 354 Held by Jackson J* that that such lo so but it is not competent to remand a case for a second decision upon any of the issues such a course being forbidden by s 352 Act VIII of 1859 *Held* by Markby J (dissenting) that a lower Appellate Court has power under s 354 to send back a case for trial upon an issue not satisfactorily tried by the Court of first instance UMBIKA CHURN MUNDUL v RAMDHUN MOHURRIR 11 W R 35

28 ——— **Remand for re trial on particular issue**—*Improper remand—Civil Procedure Code 1877 ss 562 566 567—Decision by lower Court on the merits* A decree in a suit having been passed on the merits by the Court of first instance the Court of appeal being of opinion that an issue not tried by the former Court ought to have been tried reversed the decree and under s 562 of the Civil Procedure Code remanded the case for trial upon that issue *Held* that the order reversing the decree and remanding the case for trial of the issue was improper and that the proper course for the Appellate Court to have taken was that laid down by ss 566 and 567 of the Code MOKUND LAL v HURBULLUBH NARAIN SINGH 12 C L R 136

29 ——— **Obscurity in judgment**—*Affirming judgment of lower Court* Where an Appellate Court has considered a case and come to the same conclusion as the Court of first instance occasional obscurity in the judgment of the former does not constitute a proper ground for a remand. BROJO NATH SEN v SOORJA KANT SEN 25 W R 276

30 ——— **Omission to try ground of appeal taken**—*Review of judgment* Where a ground of appeal stated in the ...

his judgment. In neither case is the omission ground for remand on appeal. YUSOOF ALI CHOWDHRY v FYZOONISSA KHATOON CHOWDHRAIN 15 W R 296

31 ——— **Omission to decide point raised**—*Issue though trifling left undecided* Where the lower Courts have come to no decision on a point raised the plaintiff in special appeal has a right to a remand for the point to be tried even though very trifling MULLICK AMANUT ALI v UKLOO PASEE 25 W R 140

32 ——— **Improper reception of evidence by lower Court**—*Ground for decision consideration of* On second appeal, the High Court has generally speaking no right to look at the

REMAND—*contd*

2. GROUNDS FOR REMAND—*contd*

evidence to decide whether the remaining evidence in a case other than that which has been improperly admitted is sufficient to warrant the finding of the Court below The only cases which can be with propriety disposed of under such circumstances without a remand are those where independently of the evidence improperly admitted the lower Court has apparently arrived at its conclusions upon other grounds WOMES CHUNDER CHATTERJEE v CHONDEE CHURN ROY CHOWDHRY I L R 7 Calc. 293

33 ——— **Mistake in admitting or rejecting evidence**—*Error affecting merits.* An act done by a party with the view of defeating a claim made against him does not estop him from disputing afterwards the validity of that act. BYKUNT NATH SEN v GOBOOLLA SIKDAR 24 W R 393

34. ——— **Omission to consider evidence**—*Civil Procedure Code 1859 s 372* When important evidence has not been carefully examined by the Judge in the lower Court the Appellate Court will on special appeal remand the suit under s 372 of Act VIII of 1859 DEGUMBER DOSSEE v KISSEN DHUR NUNDY 1 Ind. Jur N S 35

35 ——— **Omission to decide material issue**—*Decree based on point not in issue* The lower Appellate Court not having decided material issues and having based its decree on a document not recorded in the case the decree was reversed and the case remanded for a fresh decision on the merits NICHHABHAI PRAGJI v ISSE KHAN HAJI ABDULL KHAN 2 Bom 313 2nd Ed. 287

DALPAT SINGH v NANABHAI 2 Bom 323 2nd Ed. 306

BAI VIJKOR v FAKIRBHAI 2 Bom. 335 2nd Ed. 317

CHANDRABHAGABHAI v KASHINATH VITHAL 2 Bom. 341 2nd Ed. 323

BALAJI VISHVANATH JOSHI v DHARMA 2 Bom. 385 2nd Ed. 363

LUCHEE RAM v MAHANI RAM 1 Agra 10

COOLJEHAN v BUNNO 1 Agra 252

SHAMA NUND v RAMAVATAR PANDEY 1 Agra Rev 1

SAJAN v ROOP RAM 2 Agra 61

SHIAM LALL v NARAIN DASS 2 Agra 106

SHADEE RAM v SURMA 2 Agra 110

LUTCHMUN v JOGUL KISHORE 3 Agra 69

MUHAMMAD VALAD ABDUL MULNA v ISRAF VALAD HASAN 3 Bom. A. C. 160

PARVATI v BHIKU 4 Bom. A C. 25

ATURAM MANIRAM v KUSAJI 4 Bom. A C. 43

GOLUCK CHUNDER DUTT v AMRUT KISHORE GOSSAIN 25 W R. 73

REMAND—*contd*

2. GROUNDS FOR REMAND—*contd*

36 ———— *Civil Procedure Code.* After a case is closed in the lower Court and [illegible]

FUZOOLUN BEEBEE *v* OMDAH BEEBEE
10 W R 469

37 ——— Omission to try issue—*Reversal of finding on first issue—Omission to decide second issue* The finding of the Court below on the first issue being reversed the suit was remanded for trial of the second issue the Judge [illegible] defend[illegible] in con[illegible] him on [illegible] GANBHAI

HEMCHAND *v* MANCHABHAI KALLIANCHAND
3 Bom. O C 79

38 ———— *Civil Procedure Code 1859 s 351 352* In remanding a case to a Court of first instance for the trial of an issue which that Court had been directed to try but had not tried a Judge was *held* to have acted with strict propriety and in conformity with the provisions of ss 351 and 352 Act VIII of 1859 RAM CHAND MOOKERJEE *v* KAMENEE DEBEA 10 W R 236

39 ———— *Finding on issues framed* The High Court will not in a special appeal remand the case where there has been a distinct finding by the District Judge on the only issue framed by him though he may have omitted to find on another issue raised before the Munsif but not called for by other party on appeal MOTI BHAGVAN *v* HARJIVAN GIRDHURDAS
2 Bom. 34 2nd Ed 32

40 ———— *Civil Procedure Code 1859 s 352* Where the lower Court had decided a case on the merits and the Appellate Court did not find that there had been any omission to try

any such issue or question —*Held* that the Appellate Court was in error in remanding the case under s 352 for a fresh trial MAHESH CHUNDRA DAS *v* MADHAB CHANDRA SIRDAR
2 B L R S N 13 10 W R 388

41 ——— Insufficiency of evidence for decision of material issue—*Civil Procedure Code 1859 ss 351 354* Where there is no suffi[illegible]

s 351 RAM PERSHAD *v* KISHNA 3 Agra 146

42 ———— *Civil Procedure Code 1859 s 354* Where an Appellate Court finds that there is no evidence upon the record to enable it to decide a question at issue between the parties and remands the case under s 354 of the Code for additional evidence it ought to require such evidence with the finding of the first Court to be sent up to it for decision SHUMBOO CHUNDER SURNOKAR *v* RUSSICK CHUNDER CHUNG
15 W R 346

43 ———— *Absence of evidence on material issue* The lower Appellate Court has no power to remand a case which has come before it on appeal to the Court of first instance for a second trial except where the first Court has decided the case upon a preliminary issue in such a way as to cause an absence of material evidence bearing upon the issues on the merits between the parties LALLA SHOOBH NARAIN *v* NURSINGH NARAIN 20 W R 148

44 ——— Case decided on preliminary point—*Hearing on entire evidence* Where all the evidence has been taken and the case decided on a preliminary point no remand should be made RAMA KOER *v* LALA BHUGWAN LALL
22 W R 224

45 ——— Point not raised in Court below—*Sufficiency of evidence for decision* The Appellate Court will not remand a case for re trial on a point not raised in the Court below if the evidence already recorded is sufficient to enable the Appellate Court itself to decide the point HARIDAS PURSHOTAM *v* GAMBLE 12 Bom 23

46 ——— Decision on sufficient evidence—*Appellate Court—Improper remand* A case should not be remanded when the Appellate Court is of opinion that the lower Court cannot properly come to a different decision upon the evidence than that to which it has already come BONOMALEE CHURN MITTEE *v* SHOROOP HOOTAIT
14 W R 60

47 ——— Decision on preliminary point—*Appellate Court having all the evidence before it* Where a lower Appellate Court has before it all the evidence which the parties wish to adduce and decides upon a preliminary point (*e g* the genuineness of a pottah) it has no authority to remand the case but should itself try it RAM JOY SEIN *v* NUNDO MOYEE DABEA
10 W R 374

48 ——— Decision on one issue out of many—*Decision after hearing all the evidence—Civil Procedure Code 1882 ss 562 565 566—Illegal order of remand* A District Munsif having taken all the evidence offered on the issue in a suit disposed of the suit upon his finding on one of the issues without deciding the rest On appeal the District Judge reversed the decree and remanded the suit for the trial of the issues left untried *Held* that under s 562 of the Code of Civil Procedure the order of remand was illegal AMMA *v* KUNHUNNI
I L R 9 Mad. 355

49 ——— Trial on one of several issues—*Civil Procedure Code s 562 563 564 566—Reversal on that issue on appeal* In a suit

REMAND *contd*

2. GROUNDS FOR REMAND—*contd*

for possession of property by right of inheritance the Court framed six issues four of which it tried and decided With reference to its finding upon the principal of these issues which related to the plaintiff s legitimacy the Court dismissed the suit observing that in the view which it took of the case the determination of the remaining issues was unnecessary Some of the defendants had filed a statement of defence upon which no issues were framed and no evidence taken apparently in consequence of the attention of the Court being directed almost exclusively to the main issue as to the plaintiff s legitimacy There was no formal order excluding evidence on any point. On appeal the High Court reversed the first Court s finding on the issue with reference to which the suit had been dismissed below *Held* by EDGE C J and MAHMOOD J (STRAIGHT J dissenting) that s. 562 of the Civil Procedure Code applied not only to cases where the first Court had expressly excluded evidence, but also to cases where the parties were or might have been misled by the act of the Court as to the issues or the evidence necessary and where in consequence of the Court erroneously considering one issue only the parties did not tender or bring forward their evidence and that as in the present case evidence had been excluded in this broad sense s. 562 (the operation of which in such cases should be rather expanded than limited) was applicable and the case should be remanded for trial of the remaining issues *Held* by STRAIGHT J *contra* that with reference to ss. 562 563 and 564 the case could not be remanded under s. 562 because it had not been disposed of upon a preliminary point so as to exclude evidence of fact and the Court should therefore proceed to dispose of it upon the evidence on the record if any and that an issue should be remitted to the lower Court under s 566 MUHAMMAD ALLAHDAD KHAN *v* MUHAMMAD ISMAIL KHAN I.L. R 10 All 289

50 ———— **Omission to decide on point for decision.** The District Judge not having come to any positive finding in his decree on the point for decision laid down by himself on appeal, the suit was remanded for a trial on the merits RAMDAS SAKHARLAL *v* GANGADHAR RAGHUNATH DONGRE 2 Bom. 186 2nd Ed. 178

51. ———— **Order of execution on insufficient evidence**—*Duty of Appellate Court* When a lower Court on insufficient evidence of a decree having been kept in force orders execution the Appellate Court should not summarily reverse the order but should remit the case that the decree holder may give further proof of the fact NILKUNT CHUCKERBUTTY *v* SHEO NARAIN KOONWAR 8 W R. 276

52. ———— **Omission to decide on merits of case**—*Suit dismissed on preliminary point—Power to decide case if reversed on that point on appeal—Remand* When a Court of first instance after taking evidence dismisses a suit upon a preliminary objection without giving a decision upon the merits of the case and the decree is reversed on appeal the Court of appeal, if it considers the evidence on record sufficient, may decide the case and is not bound to remand it for trial under s 562 of the Civil Procedure Code 1[illegible] BANDI SUBBAYYA *v* MADADAPALLI SUBANNA I L. R 2 Mad 96

53 ———— **Decision by lower Court of preliminary point**—*Civil Procedure Code 1859 s. 351* An Appellate Court is not justified in sending back a case for re trial under s. 351 of the Code of Civil Procedure merely because the lower Court has disposed of it upon a preliminary point, unless such point has been so disposed of as to exclude evidence of fact which appears to the Appellate Court essential to the rights of the parties JOGOMAYA DEBIA *v* RAMCHUNDER CHATTERJEE 10 W R 375

54. ———— **Evidence insufficient for decision on merits**—*Decision in favour of suit proceeding reversing lower Court s* The Judge after disposing of the case on the only point on which the Munsif had decided —viz. whether there was a cause of action —and having satisfied himself that there was not sufficient evidence on the record to enable him to pass a proper decision upon the merits was *held* clearly right in remanding the case to the Munsif BROMMO MOYEE DEBIA *v* KOOMODINEE KANT BANERJEE PYRODA KANT BANERJEE *v* KOOMODINEE KANT BANERJEE 17 W R. 466

55 ———— **Evidence sufficient, but further inquiry necessary**—*Reference of issue for trial—Civil Procedure Code 1859 s. 351* S 351 Act VIII of 1859 is meant for those cases in which a lower Court has disposed of a case on a purely preliminary point When abundant evidence has been taken if the lower Appellate Court think any further inquiry necessary the proper course is not to remand the case to the lower Court but to frame an issue and to refer the same to the lower Court for trial under s. 354 RAM CHUNDER GOOPTA *v* BHAGESSUR SURMA. W R 1864 35.

LUCHMUN LALL DOOBEY *v* HURSORY LALL. W R. 1864, 361

HUREENARAIN GOSSAIN *v* SUMBHOONATH [illegible] DUL 1 W R. 6

HEBRIKOSIMA *v* STEPHENSON 1 W R. 293

HILLS *v* OSMAN BISWAS 25 W R. 55

BUNGO CHUNDER BANERJEE *v* CHUNDER NATH CHUCKERBUTTY 25 W R 4[illegible]

GOLUCK CHUNDER SEN *v* PURESH MAHAJUN 25 W R. 254

56 ———— **Preliminary issue as to right to bring suit**—*Remand for trial on merits* Where a suit for rent was decided and dismissed by the lower Court on the issue whether or not the plaintiff s title to sue could be made out —*Held* that it was not competent to the lower Appellate Court to remand the case in order that it might be

REMAND—*contd*

2. GROUNDS FOR REMAND—*contd*

tried on its merit GOPAL CHUNDER GOOHO v JUGGODUMBA DOSSIA 10 W R 411

57 ——— **Dismissal of suit as brought in wrong Court**—*Suit instituted in Revenue instead of Civil Court—Appellate Court duty of—N W P Rent Act 1881 s 208* Where a suit instituted in the Revenue Court is dismissed by the Court of first instance on the ground that it should have been instituted in the Civil Court and the Appellate Court affirms the decision of the first Court the Appellate Court should under s 208 of the N W P Rent Act 1881 remand the case to the Civil Court competent to entertain it for disposal on the merits. AHMAD UD DIN KHAN v MAJLIS RAI I L R 5 All. 438

58 ——— *N W P Rent Act (XII of 1881) s 208—Jurisdiction suit dismissed on ground of want of* An Assistant Collector

diction as he had power in any event under s 208 of the N W P Rent Act to remand the suit to the Assistant Collector and he remanded it accordingly *Held* that the Judge had rightly construed s. 208 of the Rent Act and that the remand was proper *Ahmad ud-din Khan* v *Majlis Rai I L R 5 All 438* distinguished. GIRWAR SINGH v SITA RAM I L R 10 All. 31

59 ——— *Suit instituted in Revenue instead of Civil Court—N W P Rent Act 1881 ss 207 208* In a suit instituted in the Court of an Assistant Collector an objection was taken that the suit was not maintainable in the Revenue Court The objection was allowed and the suit dismissed On appeal by the plaintiff the Assistant Collector s decision was affirmed. The Appellate Court had not before it the materials necessary for the determination of the suit *Held* reading together ss 207 and 208 of Act XII of 1881 (N W P Rent Act) that though the objection to the jurisdiction was taken in the first Court and repeated before the Appellate Court the latter should only have *pro tanto* entertained it for the purpose of determining to what Court it should direct its order of remand and should not have passed an order the effect of which was to maintain the dismissal of the suit DEBI SARAN LAL v DEBI SARAN UPADHIA I. L R 6 All 378

SHEO PRASAD v ANRUDDH SINGH I L R 6 All 440

60 ——— **Reversal of lower Court on point of limitation**—*Trial on merits and limitation—Remand for trial on merits* The lower Court found the suit barred by limitation but also heard and dismissed the suit on its merits *Held* that though in appeal limitation be held not to bar the suit there should be no remand for re trial on the merits. KERTEENARAIN CHOWDHRY v PERTHENARAIN CHOWDHRY 1 W R 32

REMAND—*contd*

2. GROUNDS FOR REMAND—*contd*

61. ——— **Suit held not barred by limitation**—*Trial on merits—Civil Procedure Code 1859 s 351* Where an Appellate Court decides that a suit is not barred by limitation after it has taken evidence and gone into the whole case the decision is not one within s. 351 and the Court is not competent to remand the case but ought to try it upon the evidence HUSSUN ALI CHOWDHRY v MANOOWAR ALI 21 W R 413

62. ——— **Decision on limitation and on the merits**—*Insufficiency of evidence—Civil Procedure Code 1859 ss 353 357—Power to*

PERSHAD DUTT v SREENATH BANERJEE 15 W R 314

63 ——— **Decision on merits**—*Insufficiency of evidence—Civil Procedure Code 1859 s 354* When the decision of a lower Court is not on a preliminary point the lower Appellate Court ...

to take the necessary evidence KALLEE SUNKUR ROY v KISHTO DOOLAL CHOWDHRY W R 1864 286

64. ——— **Additional evidence**—*Issue trial of by lower Court—Defect of parties—Successor of Judge making remand power of* When an Appellate Court remands a case under s 351 of the Civil Procedure Code 1859 for the trial of an issue which the lower Court may have omitted to raise or to try it is not limited to the evidence

try the issue so raised Where the evidence is accepted by a Subordinate Judge as sufficient to warrant a decree and the case is only remanded for a defect of parties his successor is justified when the case is returned by the first Court in respecting the former judgment and looking upon the evidence as *primâ facie* good and sufficient WISE v ISHAN CHUNDER BANERJEE 14 W R 380

65 ——— **Decision as to costs**—*Power to remand case for trial on merits where appeal is only as to costs* On an appeal as to costs only the Appellate Court had no jurisdiction to return the case for trial on its merits MUTHRA PERSHAD v BUNDEE ROY 4 N W 20

66 ——— **Decision on second trial**—*Insufficiency of evidence—Evidence taken at first*

REMAND—*contd*

2 GROUNDS FOR REMAND—*contd*

trial In a suit to obtain possession of miras land the Court of original jurisdiction decreed for plaintiff on the evidence but on appeal its decision was reversed on the ground that the claim had not been properly valued and plaintiff was permitted to bring a fresh action At the trial of the second action the Munsif recorded his previous decree and some additional evidence which the District Judge on appeal considered to be insufficient *Held* that under the peculiar circumstances of the case the Judge if not satisfied with the evidence taken at the second trial should have allowed the plaintiff to give again the evidence adduced at the former trial The lower Court s decree was therefore reversed and the suit remanded in order that this might be done JOTI BIN NIMBAJI *v* SOMAJI BIN BAPAJI GURAV 1 Bom 166

67 ———— **Decision as to admission of evidence**—*Additional evidence—Civil Procedure Code 1859 s 354* The defendant pleaded payment and produced a letter of acknowledgment said to have been written by the plaintiff The plaintiff denied its genuineness and the Principal Sudder Ameen rejected the testimony of two pyadas who deposed to the payment On appeal the Judge remanded the case requiring the lower Court to give the appellant the opportunity of proving the le er and after recording a fresh finding to return the case to his Court. *Held* that the lower Court was bound to pronounce a distinct opinion as to the value of the evidence and not to have rejected it altogether *Held* also that the Judge was wrong in remanding the case under s 354 Act VIII of 1859 as he could have decided the case himself taking such additional evidence as might appear necessary PUNPAL SINGH *v* JOY MUNGUL SINGH 11 W R 106

68 ———— **Finding on evidence**—*Improper remand—Duty of Appellate Court* Where the ground of regular appeal to the lower Appellate Court was that the Court of first instance ought to have found that an ijara existed it was the duty of the Appellate Court to determine whether that fact had been proved and not to remand the case for re trial MAHOMED AHSAN *v* MAHOMED YASIN 9 W R. 106

69 ———— **Issue of minority raised on appeal**—*Facts entitling mortgagee to decree* Where in a suit to make absolute a conditional sale and to obtain a share in a certain village mortgaged to plaintiff (the usual year of grace having been given and money been paid into Court in satisfaction considerably after the term allowed by law) there is no issue respecting the minority of some of the mortgagors the case will not be sent back to the Appellate Court for inquiry whether certain of the mortgagors were minors or whether the others mortgaged for such purposes as would bind the minors, notwithstanding one of the lower Courts has found the fact of the minority of one of the mortgagors. SURDUL *v* BULDEO 2 N W 23

REMAND—*contd*

2 GROUNDS FOR REMAND—*concld.*

70 ———— **Case inconsistent with plaint**—*Power of Appellate Court to remand—Civil Procedure Code 1859 s 354* If the Appellate Court is of opinion that the plaintiff in argument before itself is endeavouring to obtain something other than what he claims in the plaint it is bound to dismiss the suit but if it thinks that the plaint can be re[illegible] appeal an[illegible] evidence [illegible] to make an order under Act VIII of 1859 s 354 TILUCK CHUNDER DUTT CHOWDHRY *v* BROJO SOONDUR MITTER 24 W R. 191

71. ———— **Decision of only portion of claim**—*Improper order of remand—Confirmation of portion of case while remanding substantial issue* A lower Appellate Court which remanded a suit to the first Court for decision of the substantial part of the dispute should not have confirmed the decision of the first Court regarding only one part of the claim MADHUB CHUNDER DEY *v* RAM DHAN GUHO 8 W R 303

72 ———— *Remand—Preliminary* [illegible] *reference to some only* [illegible] competent to [illegible] s 5[illegible] [illegible] Court of [illegible] remanded all [illegible] to [illegible]

v [illegible] *Ramchandra Joshi* v *Ka[illegible] Hassim I L R 16 Mad 207* followed MATA DIN *v* JAMNA DAS (1905) I. L. R. 27 All. 691

3 SECOND REMAND

1. ———— **Power of Appellate Court**—*Decree reversed on appeal—Error or defect affecting merits of case or jurisdiction* An Appellate Court can remand a case a second time on account of error defence or irregularity of procedure in passing a decree or order provided the error defect or irregularity be such as to affect the merits of the case or the jurisdiction of the Court When a suit has been regularly heard and determined and on appeal the decree is reversed the Appellate Court has the discretionary power to remand the case only if the decree should have been upon a preliminary point and have the effect of excluding the consideration of evidence essential to the rights of the parties. MUNIAPPAH NAIDU *v* IYASAMY MUDELY 5 Mad. 313

2. ———— **Omission to carry out first order of High Court**—*Substantial trial on the merits* Where the lower Court had not [illegible] carried out an order of the High Court remanding the case but the case appeared to have been substantially tried fully on its merits, the High Court thought there should not be a second remand KASHEENATH DEB *v* SHIBESSUREE DEBIA 8 W R. 503

REMAND—*contd.*

3 SECOND REMAND—*contd*

3. ——— **Remand after trial and decision on evidence**—*Appellate Court powers of—Objection taken on appeal—Act VIII of 1859 s. 351—Costs* A lower Appellate Court is not competent to remand a ca e for a second decision except as provided by s. 351 Act VIII of 1859 and therefore has no power to remand a ca e when a Court of first instance has investigated the merits of the case and passed its judgment upon the evidence The objection that a case has been improperly remanded by the lower Appellate Court can be taken in special appeal from the decree pas ed upon the remand although a special appeal might have been preferred from the order of remand but the appellants were held not entitled to their costs. MAJORAM OJHA v NILMONEY SINGH DEO 13 B L R 198 21 W R 328

BRINDABUN DEY v BISONA BIBEE 13 B L R 200 note 13 W R 107

4. ——— **Form of second order of remand**—*Defects in lower Court s judgment on first remand* A lower Appellate Court in remanding a case a second time ought to state what the main requirements of the first order were and how the lower Court s deci ion shows that they have not been carried out RADHABULLUB SURMA v ANUND MOYEE DEBEA W R 1864 Mis 39

4 PROCEDURE ON REMAND

1. ——— **Order of remand effect of**—*Civil Proc ...*

2 ——— *Re opening of entire case* The effect of an order of ...

12 W R 112

3 ——— *Remand for re trial—Re-opening of whole case* Where a suit was remanded by the lower Appellate Court for a re trial the intention of the order of remand was *held* to be that the whole case was to be gone into *de novo* the plaintiff being allowed to prove her case in any way she could. GUDADHUR DUTT v SHUSHEE MONEE DOSSIA 21 W R 7

4 ——— *Re opening of case as regards limitation—Res judicata* Where a ...

5 ——— **Power of Court hearing remanded cases**—*Remand on particular issue—Power to proceed on other issues* A Court to which a case is remanded for re trial on a particular issue amongst others cannot on remand allow that issue to be abandoned and proceed to try the case upon the other issues raised SHIB CHUNDER LAHIRI v JOYMALA DASI 7 C L R 103

6 ——— *Remand on one point—Re opening of others* When a case is remanded to the lower Appellate Court for decision of a question —*e g* one of title —that Court has no authority to go beyond the order of remand and re open a matter already adjudicated upon between the parties SHAHEB TEWAREE v KISHOREE SAHOY SINGH 24 W R 230

7 ——— *Remand for trial of issue under s 354 Civil Procedure Code 1859 effect of* Where an Appellate Court in pursuance of Act VIII of 1859 s 304 sends an issue down to the first Court in order that such evidence as the parties desired to adduce ...
ret
re
res
ready considered and determined GOSSAIN DOWLUT GEER v BISSESSUR GEER 22 W R 207

8 ——— *Case remanded for consideration except on one point—Finding of error on that point* Where a case was remanded for reconsideration of the whole evidence with the exception of one specified point and the Judge after consideration came to the conclusion that his finding on that point had been erroneous it was *held* that he could not without a miscarriage of justice allow that finding to remain unchanged HUREE NATH SHAHA v ISSEN CHUNDER SHAHA 24 W R 316

9 ——— *Absence of Judge who passed decree—Jurisdiction of his successor* Where a case is remanded to the lower Court to record reasons for its judgment if the Judge who passed the decree is absent the superior Court should be informed of it by his successor Under such circumstances his successor has no jurisdiction Application should be made to the Bench which granted the order of remand for an order for the present Judge to re try the case *de novo* MANICK SETT v KHETTERMOHUN GOSSAMEE 1 Ind Jur N S 101

10 ——— *Remand for record of reasons—Re trial de novo by Judge s successor* When a case is remanded to a particular Judge merely for him to record the reasons for his finding his successor if the deciding Judge has left the district acts without jurisdiction when he re hears the whole appeal *de novo* BHYRUB SHEET v KHETTUR MOHUN GOSSAIN 5 W R 124

LALLA BHOYEO LALL v LALLA MOKOOND LAL 2 W R 275

11 ——— *Remand for particular issue—Right to open case in full* A rent case having been remanded to a lower Appellate Court with a view to its being ascertained whether an amulnamah produced by the plaintiff was the same as a pottah filed in a survey case the Judge found that it was the same but the pottah was not

REMAND—*contd*

4 PROCEDURE ON REMAND—*contd*

the one which the defendant had given to the plaintiff to file in the survey case He accordingly reversed his predecessor s decree for rent and adjudged plaintiff to pay damages under s 3 Act VI of 1862 *Held* that the additional finding was not opposed to the order of remand that the whole case was reopened and that the Judge had authority to award the damages without appeal on that point PAM CHANDRA SURMA CHOWDHRY *v* DAGOO KHAN 10 W R 339

12 —————— *Civil Procedure Code 1882 s 562—Order of remand—Issues undecided—Procedure* A Subordinate Judge decided a suit on the ground (i) that it was *res judicata* (ii) that it was barred by limitation On appeal the Assistant Judge upheld the decree on the first mentioned ground without deciding the point of limitation On second appeal the High Court reversed the Assistant Judge s decision holding that the suit was not *res judicata* and remanded the case to be tried on the merits On receipt of the order of the High Court the Assistant Judge reversed the decree of the Subordinate Judge without giving any decision on the point of limitation and remanded the case to the Subordinate Judge to be tried on the merits From this order the defendant appealed to the High Court *Held* that the order of remand by the Assistant Judge was unauthorized under s 562 of the Civil Procedure Code (Act XIV of 1882) When the High Court remanded the case to be tried on the merits the whole case was left open to the Assistant Judge and before he could reverse the Subordinate Judge s decree he was bound under s 562 of the Code to determine whether the decision of the Subordinate Judge on the question of limitation was right or not RAISINGJI *v* BALVANTRAO I L R 11 Bom 663

13 —————— *Civil Procedure Code 1882 s 566—Power of Court to disregard findings returned—Appeal under Letters Patent High Court N W P cl 10* A single Judge of the High Court hearing a second appeal made an order of reference under s 566 of the Code of Civil Procedure On the return of the reference the appeal came before another Judge who holding that the reference was unnecessary and that the original findings of fact in the Court below were sufficient to dispose of the appeal disregarded the findings on the reference and dismissed the appeal. In appeal under s 10 of the Letters Patent it was *held* that it was competent to the Judge before whom the appeal had subsequently come to disregard the findings on the order of reference MUBARAK HUSAIN *v* BIHARI I L R 16 All 306

14 —————— *Case remanded on issue of limitation—Right to open whole appeal* In a case remanded to the lower Appellate Court for trial by the Court of first instance of the issue of limitation which the appellant had not been allowed the opportunity of meeting it was ruled that upon the decision of that issue it would be open to the parties to appeal upon the whole case notwithstanding the appeal already had PROHOO NUNDUN PERSHAD SINGH *v* CHUTTUR PAUL SINGH 10 W R 335

15 —————— *Re opening of case* Under an order of remand in a boundary suit in which the Privy Council had made an order in a former appeal —*Held* that the High Court had no power to go behind the order of the Privy Council, and that so much of the High Court s decision as re opened on fresh evidence what had previously been decided must be set aside but that the evidence that had thus been brought to bear on the case was entitled to consideration so far as it bore on those portions of the suit in respect of which the former decision of the Privy Council was not conclusive COURT OF WARDS *v* LEELANUND SINGH 25 W R. P C 157

16 —————— *Case sent by Judge to lower Court for further evidence* In a suit [illegible] remanded [illegible]

it was for the Judge to give an opinion how far the plaintiff was able to rebut that presumption *Held* that there was nothing objectionable in the Judge directing the first Court to hear further evidence upon the point RAKHAL CHUNDER TEWAREE *v* KINOORAM HALDAR 10 W R. 442

17 —————— *Giving evidence on issue raised on remand* Where a case is remanded for the trial of an issue which had not been laid down by the Court which tried the case the parties are entitled to have the opportunity of giving evidence upon it although the order of remand contains no express direction to that effect KISTO CHURN CHUCKERBUTTY *v* MUGGUN CHUCKERBUTTY 10 W R 491

18 —————— *Additional evidence power to take* Where a case is remanded [illegible] being taken [illegible] nd is not at [illegible] other addi [illegible] *v* ARJUT [illegible] CHOWBEY [illegible] W R. 303

19 —————— *Object of remand —Civil Procedure Code 1859 s 354* The object of a remand under s 354 Act VIII of 1859 is not that the Judge should try the issues on the evidence already taken because that the Court sitting in [illegible] but that he should [illegible] KEY [illegible] 244

20 —————— *Remand to Appellate Court—Power to take additional evidence* Where a case is remanded to a lower Appellate Court under s 354 of the Civil Procedure Code 1859 the Judge may under s 355 admit additional

REMAND—*contd*

4 PROCEDURE ON REMAND—*contd*

evidence provided he records his reasons for doing so on the proceedings of the Court KALIKRISTO TAGORE v JUDOO LALL MULLICK 24 W R 20

21. ——— *Taking evidence on remand—Power to take additional evidence on remand where order of remand does not so order—Civil Procedure Code ss 56 566 and 568* Suit by the adoptive daughter of a temple dancing woman deceased to compel the trustees of the temple to permit the performance of a certain ceremony in view to her entering on the duties and emoluments attached to the office of her adoptive mother On second appeal the High Court directed the return of a finding on the issue (previously framed but not tried) whether the plaintiff s adoption was valid Fresh evidence was taken and the finding was that the adoption was made with the intention that the girl should be prostituted while she was still a minor *Held* that the lower Court had power to take additional evidence on the ...

22 ——— *Civil Procedure Code s 566—Remand for decision of particular issues* When a case is remanded, under s 566 of the Code of Civil Procedure to the lower Appellate Court for findings on certain issues it is not competent to that Court to delegate the decision of those issues to a Court subordinate thereto SABRI v GANESHI I L R 14 All 23

23 ——— Remand with fresh issues —*Fixing day for further evidence* When fresh issues are fixed by the Appellate Court and remanded to the lower Court to be tried the parties are entitled to have a day fixed for the reception of any further evidence which they may wish to adduce thereon WATSON v KUNHYE BAHADOOR 9 W R 294

24. ——— Examination of witnesses —*Fresh evidence* In a case remanded for a finding as to whether a confirmatory pottah had been really given or not it was held that as the order of remand did not restrict the Judge to the evidence on the record he was at liberty to examine the witnesses who were in Court. RAM SUNKER SEIN v NILKANT BISWAS 20 W R 392

25 ——— Hearing fresh evidence— ...

ence may properly be received even from defendant who had appeared and *à fortiori* from a defendant who had not appeared KOONJ BEHARY AWUSTEE v TARINEE KANT LAHOREE 8 W R 285

26 ——— Objection taken at former hearing and disposed of—*Remand for re hearing—Objection to chitta* Where a review had been ...

27 ——— Remand assuming possession—*Power of Judge to try question of possession* ...

satisfied that the act complained of was so recent and of such a nature as to entitle plaintiffs to a declaratory decree it was held (by KEMP J decree ...

parties it PUR ... CHUCKE ...

Held on appeal under the Letters Patent that the lower Appellate Court was competent under the terms of the order of remand to inquire into the question of possession BYKUNT CHUNDER CHUCKERBUTTY v PUREE JAN KHATOON 11 W R 77

28 ——— Alteration of law since remand—Full Bench ruling Where a Full Bench ruling is brought to the notice of a Judge re trying a case on remand he is bound whether the ruling has been published or not either to ask the pleader to produce the decision relied on or to take other means for satisfying himself as to the ruling of the High Court so as to apply the correct law to the case TUMEEZOODDEEN KHONDKAR v MOHIMA CHUNDER MOOKERJEE 11 W R 227

29 ——— Trial on issue not stated in order of remand—*Effect of irregularity* Where the High Court had been misled into making an order of remand upon an issue other than that on ...

fendant MAHOMED HASHIM v KALEECHURN BANERJEE 13 W R 91

30 ——— Reference of remanded case to arbitration—*Civil Procedure Code 1859 s 354—Irregularity in remand order and trial—Objection on special appeal* An Appellate Court in referring a case under Act VIII of 1859 s 354 has no power to order the first Court to call upon the parties to the suit to agree to arbitration or on their failing to do so to appoint arbitrators.

REMAND—*contd*

4 PROCEDURE ON REMAND—*concld*

Where this is done and the parties waive the irregularity and consent to the matter being tried by arbitrators they cannot afterwards on special appeal object to the proceedings PUNA BIBEE v KHODA BUKSH BEPAREE 22 W R 396

31 ——— Effect of repeal—*Suit for rent instituted under Act X of 1859—Remand after Beng Act VIII of 1869 (s 108) came into operation* A suit was instituted under Act X of 1859

..

should have been continued under the older Act and the remand should have been to the Collector and that the proceedings before the Munsif and Judge were nullities DEELUN CHOWDHRY v JEFTOO KAIJEE 24 W R 353

5 OBJECTIONS TO FINDINGS ON REMAND

1 ——— Time for filing objections—*Civil Procedure Code 1859 s 354* Sufficient time must be allowed to the parties under s 354 Act VIII of 1859 to file their objections to the revised finding of the lower Court BUKHTOUREE v MEHEEN LALL 3 Agra 96

2 ——— *Civil Procedure Code 1859 s 354—Objections taken after remand and not within time fixed* Where the Appellate Court remanded a case to the lower Court and under the provisions of s 354 Act VIII of 1859 allowed the parties a week s time within which to file objections —*Held* that the terms of the section were merely permissive and that though no objections had been taken within the time specified there was nothing in the law to the effect that an objection taken after the time fixed shall not be listened to MUNRAKHUN LALL v RAHEEM BUKSH 4 N W 72

3 ——— Alteration of findings to which no objection is taken—*Civil Procedure Code 1859 s 354—Objections taken after time* When a case has been remanded under s 354 Act VIII of 1859 and a time fixed within which objec

1 Agra 50

Nor will the parties be allowed to take objections filed after time SHEO GHOLAM v RAM JEAWUN SINGH 5 N W 114

of
C

issues for trial to a lower Court and fixes a time within which after the return of the finding either party to th appeal may file a memorandum of objections to the same neither party is entitled

REMAND—*contd*

5 OBJECTIONS TO FINDINGS ON REMAND—*contd*

without the leave of the Court to take any objection to the finding orally or otherwise after the expiry of the period so fixed without his having filed such memorandum RATAN SINGH v WAZIR I L R 1 All 165

5 ——— *Civil Procedure Code 1882 s 567—Discretion of Court* Where a first Appellate Court has remanded a case to the Court of first instance for the trial of issues and where on the return of findings on these issues

to An Appellate Court because it remands issues does not therefore in the absence of subsequent objection by either or both of the parties to the findings when returned divest itself of its power to exercise its judicial mind as to the property of such findings but apart from any objection by the parties it should examine and test them to see whether or not they ought to be accepted *Akbari Begam* v *Wilayat Ali I L R 2 All 908* followed *Umed Ali* v *Salima Bibi I L R 6 All 383* referred to MUMTAZ BEGAM v FATEH HUSAIN I L R 6 All 361

6 ——— *Reference of issue ... objections—Civil* ... case in which ... VIII of 1859 ... nd the findin

was returned with the evidence as no memorandum of objections was filed within the time fixed

9 W R 108

7 ——— Findings to which no objection is preferred—*Civil Procedure Code 1877 s 566—Appellate Court powers of—Error or irregularity* *Held* that an Appellate Court is not bound to accept a finding returned to it by a Court of first instance under s 566 of Act X of 1877 merely because no objections to such finding are preferred but is competent to examine the evidence on which such finding is founded and to satisfy itself that it is correct and fit to be accepted *Noorun* v *Khoda Baksh 1 Agra 50* dissented from *Pitam Singh* v *Wazir I L R 1 All 165* followed *Held* also that assuming that an Appellate Court in deciding a case in a manner inconsistent with and ... Court of ... ence of ... not be reversed or the case remanded on account of such irregularity such irregularity not affecting the

REMAND—contd

5 OBJECTIONS TO FINDINGS ON REMAND —concld

ments of the case r the juri di tion of the Court AKBARI BEGAM v WILAYAT ALI
I L R 2 All 908

8 ———— Duty of Appellate Court—Civil Procedure Code 188 ss 5 , 574 Where a fir t Appellate Court has remanded a case to the Court of fir t in tance for the trial of i sues and where on the return of the findings on the e i sues no objections have been preferred under s 567 of the Civil Procedure Code the Appellate Court after the period fixed for presenting objection may at its discretion receive or decline to receive any written objection but i in any ca e bound to con ider the findings of the lower Court on the merits and is not precluded from hearing arguments for and again t the findings at the hearing of the appeal. *Akbari Begam v Wilayat Ali I L R 2 All 908* followed The imperative provisions of s 574 of the Civil Procedure Code apply alike to cas s remanded by the first Appellate Court for the trial of issue and to those in which no such remand has taken place UMED ALI v SALIMA BIBI
I L R 6 All 383

9 ———— Lower Appellate Court power of on remand—*Possession suit for—Civil Procedure Cod (Act XIV of 1882) ss 561 566* The plaintiff s suit for posses ion of certain lands after determination of the boundary between two e tates was partially decreed by the Munsif The defendant appealed but the plaintiff did not appeal nor file any objection under s 561 of the Civil Procedure Code The Subordinate Judge on appeal modified the decree in favour of the de fendant Plaintiff then appealed to the High Court and the case was remanded for trial on a fre h investigation The Subordina e Judge after a fresh enquiry passed a decree in favour of the plaintiff giving him more lands than what was given by the Court of first instance On second appeal by the defendant *Held* that under the circum tances the Subordinate Judge had no power to award to the plaintiff more than what he re covered in the Munsif s Court *Bikramjit Singh v Hossaini Begam I L R 3 All 643* distinguish ed AGHIUL HOSAIN v DINO NATH DUTT (1907)
I L R 34 Calc 996

6 CASES OF APPEAL AFTER REMAND

1. ———— Remand for specific pur pose—*Statement on merits of whole case* Where the Appellate Court remands a case for a specific inquiry it will not receive any tatement on the part of the Zillah Judge as to what he considers the merits of the whole case DONZELLE v RAMNARAIN SINGH
1 Ind. Jur N S 51

2. ———— Appeal from order of re mand—*Civil Procedure Code 1877 s 562—What questions can be raised—Extent of appeal from order of remand* An appeal from an order on appeal

REMAND—contd

6 CASES OF APPEAL AFTER REMAND—contd

Appellate Court on the preliminary point i correct or not may also be raised and determined in such an appeal BADAMI v IMRAT I L R 2 All. 675

3 ———— Power of Appellate Court to deal with whole appeal after return of findings —*Civil Procedure Code ss 561 566* In a second appeal by the defendant in which the plaintiff filed objections to the decree under s 561 of the Civil Procedure Code the High Court without giving judgment on the appeal stated (giving reasons) the opinion that the appellant would be entitled to succeed and at the same time remitted an issue under s 566 of the Code with reference to the

the findin s on remand the Court could not treat the appeal as already decided and the objections the sole matter for consideration but must con ider both appeal and objections and decide the whole ca e *Held* however that where Judges have heard arguments on some of the issues and have expre ed their views thereon and have remitted another issue or issues under s 566 they are not bound on the return of findings to hear the case *de novo* but may confine coun el to argument upon the findings LACHMAN PRASAD v JAMNA PRASAD
I L R 10 All. 162

4 ———— *Civil Procedure Code (Act XIV of 1882) s 562—Power of the High Court to go into the merits on app al from a remand order* The Court of first instance di mi sed a suit as barred by limitation. In appeal that decision was reversed and the case was remanded under s 562 of the Civil Procedure Code (Act XIV of 1882). Against the order of remand the defendant appealed to the High Court under cl. 28 of s 588 of the Civil Procedure Code It was contend ed by the plaintiff that the High Court had no power to decide the point of limitation but could only con ider whether the order of remand was [illegible] requirements of s 562 of the Civil Procedure Code *Held* by the Full Bench that in an appeal [illegible] uch an order of remand the power of the [illegible] Court is not confined to the qu [illegible]

BALA v BAPAJI BAPUJI I L R [illegible]

5 ———— [illegible] on preliminary point—[illegible] of decree on such [illegible] case under s 562 Civil Procedure Code [illegible] trial of a certain issue—[illegible]

REMAND—*contd*

6 CASES OF APPEAL AFTER REMAND—*contd*

of Appellate Court to re try such point A Court

Mr *B* reversed the decree upon such preliminary point and remanded the suit under s 562 of Act X of 1877 for the trial of a certain issue The Court of fir t in tance tried such issue and made a decree in accordance with its finding thereon On appeal against the decree of the Court of first instance the defendant again rai ed such preliminary point The then Judge of the Appellate Court Mr *K* dismissed the suit upon such preliminary point *Held* that as although Mr *B* had irregularly remanded the suit under s 562 of Act X of 1877 his decision dis posed of such preliminary point and only left open for trial the issue which he had directed to be tried Mr *K* was not competent to re try and decide such preliminary point SURAJ DIN *v* CHATTAR
I L R 3 All 755

6 ——————— *Prac ice—Civil Procedure Code 1877 s 588* Upon an appeal under s 588 cl (*u*) of the Civil Procedure Code from an order of an Appellate Court under s 562 remanding a case which has been disposed of upon a preliminary point in the Court of first instance the High Court may enter into the merits of the ad judication by the Court of first instance on the pre liminary point and may if it finds the order of the lower Appellate Court defective allow the party who had the benefit of a decree in the first Court to retain that benefit LOKI MAHTO *v* AGHOREE AJAIL LALL
I L R 5 Calc 144 4 C L R 465

7 ——————— *Civil Procedure Code 1882 ss 562 564 566 584 588 (28) 590* Where a lower Appellate Court instead of remand ing a suit under s 566 of the Civil Procedure Code erroneously remands it under s 562 and the party aggrieved by its order appeals to the High Court

101 and *Sheoamber Singh* v *Lallu Singh* *All Weekly Notes (1882) 108* ref rred to SOHAN LAL *v* AZIZ UNNI SA BEGAM I L R 7 All 136

8 ——————— *Power of succes sor of Judge to set aside order of remand* An order of remand by a Subordinate Judge is final so far as the purpose of the remand goes and cannot be set aside by his successor LULEET PANDEY *v* BYJNATH SINGH 14 W R 285

9 ——————— *Power of succes sor to alter order—Remand a second time on mis take of Judge on first remand* An Acting District Judge having made a decree reversing the decree of the Munsif who threw out plaintiff s claim omitted to pass a decree himself in favour of the plaintiff which his finding showed he intended to do The case was remanded on special appeal by the High Court to the District Judge (who had mean while returned to his appointment) who re opened the whole case and passed a decree directly opposed to that of his predecessor in which he confirmed the Munsif s decree *Held* that the decree of the Judge should be reversed and the suit again re manded in order that he might pass a decree for the plaintiff in accordance with the view of the case expres ed by the Acting Judge with which the High Court saw no ground upon the special appeal before it to interfere BABAJI BIN PAMJI *v* KASIM BHAI VALAD AZAMBHAI 3 Bom A C 60

10 ——————— *Procedure when case comes on appeal after remand—Erroneous order of remand* A Subordinate Judge on appeal having framed an issue remanded the case under s 351 Civil Procedure Code 1859 to the first Court for trial thereof but instead of directing that the finding should be returned to his own Court he directed the Munsif to give the plaintiff a decree

Judge was simply to confine himself to considering whether the decision of the Court below on the issue directed was correct or not he had no power to go behind the order of the Subordinate Judge on the previous occasion BODUN BUROOAH *v* ABDOOL GUNNY 19 W R 281

11 ——————— *Civil Procedure Code 1882 ss 588 590—Objections to its validity taken in appeal against final decree—Omission to appeal from the order* A party aggrieved by an interlocutory order of remand may object to its validity in his appeal against the final decree though he might have appealed against the order under s 588 of the Civil Procedure Code (Act XIV of 1882) and has not done so SAVITRI *v* RAMJI
I L R 14 Bom. 232

12 ——————— *Civil Procedure Code ss 588 (28) 591—Remand illegal where in contravention of s 564—Omission to appeal from remand order—Objection to order allowed on appeal*

the lower Appellate Court had no jurisdiction to remand the case under the former section and that both the remand order and all proceedings subse quent thereto were *ultra vires* and illegal *Held* further that the legality of the remand order and the subsequent proceedings could under s 591 of the Code be questioned in second appeal from

REMAND—contd

6 CASES OF APPEAL AFTER REMAND—contd

decree in the suit though no appeal had been preferred against the order itself under s 588 cl 28 RAMESHUR SINGH v SHEODIN SINGH I L R 12 All 510

13 ———— Practice—Civil Procedure Code (Act XIV of 1882) ss 562 588 cl 28 Upon an appeal under cl 28 of s 588 of the Civil Procedure Code against an order of remand under s 562 the High Court is not restricted to the consideration of the form of the order but may examine it on its merits Where an Appellate Court passed an order under s 562 remanding a case which had been disposed of in the Court of first instance

14 ———— Civil Procedure Code ss 562 591—Objection to previous order in the case—Such objection to be taken in memorandum of appeal Unless such objection is taken in his memorandum of appeal it is not open to an appellant at the hearing of an appeal from the decree to question the validity of an order of remand previously made in the case under s 562 of the Code of Civil Procedure TILAK RAJ SINGH v CHAKARDHARI SINGH I L R 15 All 119

Nor of an order under s 32 adding a defendant BANSI LAL v RAMJI LAL I L R 20 All 370

15 ———— Civil Procedure Code s 562—Effect of findings of facts and findings of law On an appeal from an order of remand under s 562 of the Code of Civil Procedure the High Court is bound to accept the findings of fact of the Court which made the remand that Court being a Court of first appeal provided that there is evid

suit and in any appeal which may subsequently be made to the High Court *Deo Kishen v Bansi I L R 8 All 172* referred to GAURI SHANKAR v KARIMA BIBI I L R 15 All 413

16 ———— Civil Procedure Code 1882 s 562—Appeal from order of an Appellate Court—Findings of fact of the Court below In an appeal from an order of an Appellate Court the High Court is bound to accept as in a second appeal from a decree the findings of fact arrived at by the lower Appellate Court *Gauri Shankar v Karima Bibi I L R 15 All 413* approved TIKA RAM v SHAMA CHARAN I L R 20 All 42

17 ———— Civil Procedure Code 1882 s 562—Decree in appeal from order of remand dismissing appeal from decree in the suit—Civil Procedure Code s 13—Res judicata It is competent to a High Court in an appeal from an order of remand under s 562 of the Code of Civil Procedure to pass a decree dismissing the appeal preferred to the lower Court from the decree in the suit *Bhau Bala v Bapaji Bapuji I L R 14 Bom 14* and *Abrahim Khan v Fatimunnessa I L R 17 Calc 168* referred to HASAN ALI v SIRAJ HUSAIN I L R 16 All 252

18 ———— Civil Procedure Code s 566—Power of High Court in second appeal A revenue paying talukh was sold for arrears of dak cess under the Public Demands Recovery Act The sale was set aside on appeal by the Revenue Commissioner but on an application for review made to his successor the sale was confirmed and the purchaser took possession In a suit to recover possession of an 8 annas share of the talukh on the grounds among others that the order on review was passed without jurisdiction and without notice to the plaintiffs and as such conferred no title on the purchaser the District Judge on appeal held that the order on review not having been set aside remained in force but he remanded the case under s 566 for trial of the question of notice On the case coming back to the Appellate Court before another Judge he held the order on review to be *ultra vires* and the trial of the question of notice to be unnecessary The defendants preferred a second appeal against the last judgment *Held* that on the hearing of the appeal the entire case including the order of remand was open to consider ation and that the High Court had power to determine whether that order or the order subsequently passed was correct on the merits LALA PRYAG LAL v JAI NARAYAN SINGH I L R 22 Calc 419

19 ———— Civil Procedure Code 1882 ss 562 590 and 591—Power of High Court in second appeal On an appeal from a decree of a District Munsif it appeared that he had decided all the issues framed in the suit but in the opinion of the District Judge he had based his judgment upon evidence improperly taken The District Judge remanded the case to be retried and ...

been appealed against the subsequent proceedings should be treated as non existent and the appeal to the District Court should be remanded to be disposed of in accordance with law *Savitri v Ramji I L R 14 Bom 232* and *Rameshar Singh v Sheodin Singh I L R 12 All 510* referred to SUBBA SASTRI v BALACHANDRA SASTRI I L R 18 Mad 421

20 ———— Omission to appeal from remand order—Objection to order allowed in appeal from final decree The contention that a map was admissible in evidence was held to be open

REMAND—*contd*

6 CASES OF APPEAL AFTER REMAND—*contd*

to the appellant on second appeal although he had not appealed against an order of remand made by the lower Appellate Court rejecting the map as not being admissible *Savitri* v *Pamn I L R 14 Bom 232* and *Rameshar Singh* v *Sheodin Singh I L R 12 All 510* followed KANTO PRASHAD HAZARI v JAGAT CHANDRA DUTTA

I L R 23 Calc 335

21 ———— *Finding of fact —Civil Procedure Code 1882 ss 584 and 588* Where an appeal is preferred against an appellate order under s 588 Civil Procedure Code the finding of fact by the lower Appellate Court is conclusive as between the parties on the proper construction of ss 584 and 588 Civil Procedure Code VEN A NAYYAN v RAMASAMI AYYAN

I L R 19 Mad 422

22 ———— *Civil Procedure Code 1882 ss 562 588 and 591—Conditions under which an order passed in the course of a suit may be questioned in an appeal from the decree in such suit—Limitation* An order made under the Code of Civil Procedure from which an appeal is

ing *Rameshar Singh* v *Sheodin Singh I L R 12 All 510* *Mu har Hossein* v *Bodha Bibi I L R 17 All 112* distinguished *Held* (by EDGE C J and AIKMAN J) that s 591 of the Code of Civil Procedure does not enable an appellant to avoid limitation by coming up under s 591 when the only ground of appeal is an order made under s 562 S 591 contemplates two things—there being a regular appeal about something else and in that appeal the insertion of a ground of objection under s 591 SHEO NATH SINGH v RAM DIN SINGH

I L R 18 All 19

23 ———— *Civil Procedure Code 1882 s 591—Appeal from decree in suit the grounds of appeal being solely directed against an interlocutory order in the suit* No appeal will lie where the appeal being ostensibly against the decree in the suit the grounds of appeal were solely directed against an interlocutory order passed in the suit *Sheo Nath Singh* v *Ram Din Singh I L R 18 All 19* followed SHER SINGH v DIWAN SINGH

I L R 22 All 366

See HEM KUNWAR v AMBA PRASAD

I L R 22 All 430

24 ———— **Appeal from order of remand**—*Civil Procedure Code (Act XIV of 1882) ss 53 562—Remand order informal—Appeal* When an Appellate Court directs the Court of first instance to do what could be directed only under s 562 Civil Procedure Code but the order is informal in that the decree of the first Court is not set aside —*Held* that the order in substance is one under s 562 Civil Procedure Code and is therefore appealable LALA RAM SARAN LAL v NEM NARAIN SINGH (1902) 6 C W N 328

25 ———— *Civil Procedure Code (Act XIV of 1882) s 588 (28)—Appeal against order remanding case for disposal—Decision by Sub Collector in summary suit under Rent Recovery Act—Remand by District Court—Appeal—Rent Recovery Act (Mad Act VIII of 1865) s 69— Judgment* In a summary suit under the Rent Recovery Act, the Sub Collector held a *patta* to be improper and released certain property from attachment On an appeal being preferred the District Judge reversed the finding of the Sub Collector and remanded the case under s 562 of the Code of Civil Procedure for disposal according to law Plaintiff appealed to the High Court against the order of remand when it was objected that no appeal lay *Held* that an appeal lay It was competent to the District Judge to make the order of remand under s 562 of the Code of Civil Procedure The adjudication by the Collector was a formal expression of an adjudication on a right claimed, within the meaning of the definition of decree contained in s 2 of the Code of Civil Procedure It was also a formal expression of a right claimed in a Civil Court VEERASWAMY v MANAGER, PITTAPUR ESTATE (1902) I L R 26 Mad 518

26 ———— **Validity of order of remand** —*Civil Procedure Code (Act XIV of 1882) ss 5?, 566 578 588—Jurisdiction meaning of the term —Remand order in contravention of s 561—Whether the remand and the subsequent proceedings null and void—Whether legality of the remand order could be questioned on an appeal from the final decree* The term jurisdiction in s 578 of the Civil Procedure Code is used in the sense of pecuniary or local jurisdiction or jurisdiction relating to the subject matter of a suit It does not mean the

first in

upon the

sed the

the case

decision of the first Court and ... On remand under s 562 of the Civil Procedure Code a partial decree was passed by the Court in favour of the plaintiff On appeal the decree was modified by the lower Appellate Court. On a

... Court —

s of s. 578

order and

the subsequent proceedings were not null and void, as by the remand there was no error affecting the jurisdiction of the Court or the merits of the case. *Rameshur Singh* v *Sheodin Singh I L R 12 All 510* dissented from. *Held* also that the legality of a remand order and the subsequent proceedings could be questioned on second appeal from the final decree although no appeal had been preferred against the order itself under s. 588 *cl.* (*28*) of the Civil Procedure Code MOHESH CHANDRA DASS v JAMIRUDDIN MOLLAH (1901)

I L R 28 Calc 324

s c 5 C W N 509

REMAND—*contd.*

7 CRIMINAL CASES

1 — Object of remand—*Criminal Procedure Code (Act VIII of 1869) s 4?2—Act X of 18 2 s ?8?—Power of Appellate Court* A remand of a ca e under s. 42? Act VIII of 1869 could only be for the purpose of taking further evidence and certifying the result thereof to the Appellate Court and not for the purpo e of retrying the case upon such fresh evidence After remand under thi section the Appellate Court could only try the ca e as an ordinary appeal and had no power to enhance the punishment ANONYMOUS
3 B L R A Cr 62

2 ——— Ground for remand—*Improper admission of examination of accused—Criminal Procedure Code 1861 s ?05* When the examination of the pri oner had not been recorded in full as required by s 205 of the Criminal Procedure Code 1861 and was therefore inadmis ible without further proof of it but if admissible would either alone or with other evidence be sufficient for the conviction of the accused the proper course was *held* to be to remand the ca e to the Court of Se sion in order that proof might be taken of the examination When the evidence exclusive of the inadmis ible examination is sufficient to support the conviction it may be affirmed by the High Court without remanding the ca e REG v KALLA LAKHMAJI
2 Bom 419 2nd Ed 395

REG v PEVADI BIN BASAPPA
3 Bom 420 2nd Ed 397

REG v VITHOJI 2 Bom. 421 2nd Ed. 398

REG v GANU BAPU
2 Bom. 422 2nd Ed 398

3 ——— Remand for further evidence—*Criminal Procedure Code 1861 s 4?? and ss 169 and 171—Jurisdiction of Magistrate* When an Appellate Court directed further evidence to be taken by a subordinate Court under s 422 of the Code of Criminal Procedure it was competent to the subordinate Court before which such evidence was given if any offence against public justice as described in s 169 was committed before such Court by a witne s whose evidence was being recorded therein to end the case for investigation to a Magistrate under the provisions of s. 171 QUEEN v BAKTEAR MAIFARAZ
6 B L R F B 698 15 W R Cr 64

4 ——— Remand for further inquiry —*Power to remand—Criminal Procedure Code 1861 s 42?—Omitting to give information of an offence* Where a person had been found guilty by a

REMAND—*concld*

7 CRIMINAL CASES—*concld*

s c *In re* WOODOY CHAND MOOKHOPADHYA
18 W R Cr 31

5 ——— Detention of prisoner in custody pending remand—*Power of Magis*

petition of ZUHURUDDEEN HOSSEIN
25 W R Cr 8

See MUTHOORANATH CHUCKERBUTTY *v* HEERA LALL DOSS 17 W R Cr 55

6 ——— *Appeal—Sessions Judge power of—Jurisdiction—Practice* A Sessions Judge while disposing of a criminal appeal has no authority under the Code of Criminal Procedure to remand the case when the judgment of the Court below is unsatisfactory directing it to write out a proper judgment after rehearing the parties if they so desire It is the duty of the Sessions Judge in such a case to go fully into the whole facts and dispose of the app al He cannot devolve this duty on the Court below TARA CHAND SINGH v EMPEROR (1905)
I L R 32 Calc 1069

RE MARRIAGE

See HINDU LAW—DISQUALIFICATIONS—RE MARRIAGE

REMOTENESS

See DAMAGES—REMOTENESS OF DAMAGES

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES TRUSTS BEQUESTS TO A CLASS AND REMOTENESS

See WILL—CONSTRUCTION

RENT

See ABATEMENT OF RENT

See APPEAL I. L. R. 33 Calc 580

See APPEAL—N W P ACTS—N W P RENT ACT I. L R 13 All 193
I. L R 16 All. 51
I L. R 18 All 302
I. L. R 21 All. 247

See APPORTIONMENT OF RENT

See BENGAL TENANCY ACT 1885 s 3 CL. (5)

See BENGAL TENANCY ACT 1885 s 52
10 C W N 46

See BENGAL TENANCY ACT 1885 s ?4
12 C W N 175

See BENGAL TENANCY ACT 1885 s 1?0
10 C W N 547

See BENGAL TENANCY ACT 1885 s 182
9 C W N 416

RENT—*contd*

See BENGAL TENANCY ACT 1885 s 188
9 C W N 34

See CESS I L R 35 Calc 82

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) ss 13 373
I L R 35 Calc 979, 990

See CO SHARER LANDLORD
10 C W N 1042

See DEBUTTER PROPERTY
12 C W N 63

See DECREE LANDLORD AND TENANT
I L R 32 Calc 463, 972

See ENHANCEMENT OF RENT

See ILLEGAL CESS
I L R 31 Calc 834

See LANDLORD AND TENANT—RENT

See LANDLORD AND TENANT
I L R 31 Calc 707
9 C W N 96
I L R 33 Calc 786 837
I L R 35 Calc 737

See LIMITATION ACT (XV OF 1877) SCH II ART 109 I L R 35 Calc 996

See MADRAS RENT RECOVERY ACT

See MESNE PROFITS
I L R 35 Calc 996

See PARTIES I L R 35 Calc 182

See RENT SUIT FOR.

See RES JUDICATA
I L R 35 Calc 979

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—RENT

See TRANSFER OF PROPERTY ACT 1882 s 50 I L R 33 Bom 96

See TRANSFER OF PROPERTY ACT s 73
9 C W N 11

———— additional for additional area—

See BENGAL TENANCY ACT—

s 52 I L R 29 Calc 247
6 C W N 318 360

s 158 6 C W N 592

———— appeal in suit for—

See APPEAL—ACTS—BENGAL TENANCY ACT s 153 7 C W N 908

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—RENT

———— arrears of—

See APPEAL—N W P ACTS—N W P RENT ACT I L R 1 All 366
I L R 4 All 237

See BENGAL TENANCY ACT SCH III—ART 2

ART 6 5 C W N 783

RENT—*contd*

———— arrears of—*concld*

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT

See LIMITATION ACT 1877 SCH II ART 110

See RENT SUIT FOR.

See SALE FOR ARREARS OF RENT

See SALE IN EXECUTION OF DECREE—IMMOVABLE PROPERTY
5 C W N 497

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
I L R 28 Calc 539
5 C W N 515

See VENDOR AND PURCHASER—BREACH OF CONTRACT 7 C W N 805

———— arrears of suit for—

See BENGAL RENT ACT 1869 s 29

See BENGAL TENANCY ACT SCH III

See CO SHARERS—SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY—RENT

See JURISDICTION OF REVENUE COURT

See LIMITATION ACT 1877 ART 110 (1859 s 1 cl. 8)

See ONUS OF PROOF—LANDLORD AND TENANT

———— arrears of suit for ejectment for—

See BENGAL RENT ACT 1869 s 5?

———— decree against registered tenant, if binds unrecorded tenant—

See LANDLORD AND TENANT
13 C W N 746

———— decree for—

See INSTALMENTS 11 C W N 857

———— decree for arrears of two tenures—

See BENGAL TENANCY ACT s 170
13 C W N 650

———— deposit of in Court—

See BENGAL TENANCY ACT s 61
I L R 21 Calc 680
I L R 15 Calc 166
I L R 25 Calc 289

See BENGAL TENANCY ACT SCH III ART 2 (a) I L R 29 Calc. 283

———— enhancement of—

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE

———— evidence as to rate of—

See EVIDENCE—PAROL EVIDENCE—EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES
6 C W N 242

RENT—*contd.*

——— in lieu of interest—

See MORTGAGE — CONSTRUCTION — USUFRUCTUARY MORTGAGE
L R 29 I. A 148

——— kattubadi—*Charge on the land*
Kattubadi is rent and does not constitute a charge on the land GAJAPATI RAJAH *v* SURYANARAYANA
I L R. 22 Mad. 11

See MUTTAPUDI BALAKRISHNAYYA *v* VENKATA NARASINHA APPA RAU I. L. R 19 Mad. 329

See LAKSHMINARAYANA PANTULU *v* VENKATA RAYANAM I L R. 21 Mad. 116

——— liability for—

See INHERITANCE 5 C W N 189

See JOINT TENANCY 6 C W N 111

See LANDLORD AND TENANT—

OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION 5 C W N 816

LIABILITY FOR RENT

HOLDING OVER AFTER TENANCY
I L R. 27 Bom. 262

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS

——— limit of—

See BENGAL TENANCY ACT s 48 cl. (a)
I L R 28 Calc 166

——— non payment of—

See LANDLORD AND TENANT—PAYMENT OF RENT—NON PAYMENT

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT

——— payment of—

See LANDLORD AND TENANT—

CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT

PAYMENT OF RENT

——— payment of, for a number of years—

See LEASE I. L R 36 Calc 604

——— payment and acceptance of—

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY

——— presumption as to amount of—

See BENGAL TENANCY ACT s 51
6 C W N 589

——— presumption as to fixity of—

See BENGAL TENANCY ACT s 50
5 C W N 60

RENT—*contd*

——— rate of—

See KHOTI SETTLEMENT ACT s 8
I L R. 27 Bom. 71

See LANDLORD AND TENANT
10 C W N 1084

——— receipts for—

See BENGAL TENANCY ACT s 88
I L R. 16 Calc. 155
I L R 25 Calc 531 530 note

See EVIDENCE—CIVIL CASES—RENT RECEIPTS

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT

——— receipt of proportionate parts of from various tenants—

See BENGAL TENANCY ACT s 88
6 C W N 823

——— receipt recognising mortgage—

See OCCUPANCY HOLDING
13 C W N 833

——— recovery of—

See LAND REGISTRATION ACT (BEN ACT VII OF 1876) s 78 5 C W N 360

See MADRAS RENT RECOVERY ACT

——— sale—

See CIVIL PROCEDURE CODE 1882 s 310A 13 C W N 224

——— sale—priority—

See BENGAL TENANCY ACT s 167
13 C W N 412

——— settlement of—

See BENGAL TENANCY ACT s 104 J
13 C W N 210

See BENGAL TENANCY ACT s 107
I. L. R 28 Calc 676

——— suit for—

See RENT SUIT FOR.

——— suspension of—

See DILUVION I L. R. 36 Calc 856

See LANDLORD AND TENANT
13 C W N 702

See N W PROVINCES RENT ACT (XII OF 1881) s 23 I. L. R. 24 All 465

——— system of—

See CUSTOM 11 C W N 703

See PRESIDENCY SMALL CAUSE COURTS ACT I L R 31 Bom. 138

——— to whom payable—

See LANDLORD AND TENANT—TRANSFER BY LANDLORD 7 C W N 454

RENT—*concld*

——— **unchanged**—

See LANDLORD AND TENANT
I L R 34 Calc 902

RENT, SUIT FOR

See ACQUIESCENCE 7 C W N 170

See APPEAL—N W P ACTS—N W P RENT ACT (XII OF 1881) s 189
I L R 23 All 283

See BENGAL RENT ACT 1869

See BENGAL TENANCY ACT
8 C W N 1 248 575 695

See CIVIL PROCEDURE CODE 1882 s 13
10 C W N 820

See COMPROMISE DECREE
13 C W N 217

See CO SHARERS—SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY —RENT

See ESTOPPEL—
ESTOPPEL BY JUDGMENT
I L R 28 Calc 318
ESTOPPEL BY CONDUCT
I L R 29 Calc 126

See JURISDICTION—SUITS FOR LAND—RENT

See JURISDICTION OF REVENUE COURT

See LANDLORD AND TENANT
8 C W N 172 235 297
I L R 31 Bom 159
13 C W N 635 1110

See LANDLORD AND TENANT ACT s 66
8 C W N 721

See LANDLORD AND TENANT—
LIABILITY FOR RENT
PAYMENT OF RENT

See LAND REGISTRATION ACT s 42
8 C W N 193 196

See LIMITATION ACT 1877 s 22
13 C W N 186

See LIMITATION ACT 1877 SCH II ART 110
8 C W N 162
8 C W N 695

See N W PROVINCES RENT ACT (XII OF 1881) CH II AND s 93
I L R 23 All 270

See ONUS OF PROOF—LANDLORD AND TENANT

See PARTIES—PARTIES TO SUITS—RENT SUITS FOR AND INTERVENORS IN SUCH SUITS

See RENT

See RES JUDICATA—
ESTOPPEL BY JUDGMENT
6 C W N 66
MATTERS IN ISSUE—ILLEGAL CESS
I L R 28 Calc 17

RENT, SUIT FOR—*concld*

See RESUMPTION—EFFECT OF RESUMPTION—EFFECT ON PATTA
L R 30 I A 159

See SMALL CAUSE COURT—MOFUSSIL—JURISDICTION—RENT

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
I L R 28 Calc 118

——— **rent of tank, suit for**—

See RENT SUIT FOR
I L R 31 Ca[illegible] 9?7

— **under R100**—

See BENGAL RENT ACT 1869 s 10

1 ——— **Nature of suits under Act X of 1859**—*Regular suits* Suits for rent under Act X of 1859 were not summary suits but to all intents and purposes regular suits only tried by Collectors NUBO TARINEE DOSSEE v GREY
11 W R 7

S C BHABATARINI DASI v GREY
2 B L R A C 152

2 ——— **Suits cognizable under Rent Act**—*Suit partly for rent in district where Act not in force Held* that a suit brought to recover rent partly due in respect of estates situate in a district in which the Act was not in force could be brought under the Rent Act OOSMAN FEIN v CHOWDHRY SHEORAJ SINGH
6 N W 42

3 ——— *Basis of suit—Jurisdiction of Collector* A suit for rent was cognizable only by the Collector under cl 4 s 23 Act X of 1859 whether it was based upon [illegible] kabuliat or agreement or neither DHUNPUT SINGH v MILLS
7 W R 473

4 ——— *Suit for rent of lands held in excess* The Revenue Courts had under Act X of 1859 jurisdiction in a suit for rent in respect of lands held in excess of the lands for which the defendant was paying rent where there was no lease or express contract limiting the lands of the tenancy SHAM JHA v DOORGA ROY
7 W R 123

5 ——— *Suit for rent payable under agreement—Variable rate* A suit valuable under agreement [illegible] for rent payable under an [illegible]
[illegible] 437

SINGH v BEHAREE SINGH

6 ——— **Suit for rent in kind**—*Beng Act VIII of 1869* A suit for rent in kind is cognizable under Bengal Act VIII of 1869 MULLICK AMANUT ALI v UKLOO PASEE
25 W R 140

KRISHTO BUNDHOO BHUTTACHARJEE v ROY SHAIKH
25 W R 307

RENT SUIT FOR—*contd*

See LACHMAN PRASAD *v* HOLAS MAHTOON
2 B L R Ap 27 11 W R 151

and PATKISORI DASI *v* BONOMALI CHARAN MAITI
1 B L R S N 14 10 W R 209

7 ———— *Suit for rent in kind* The Rent Act applies where rent is reserved in kind just the same as in the case of suits for rent in money but not where articles are to be delivered under a separate agreement unconnected with the question of rent BHUBO SOONDUREE DEBIA *v* JYNUL ABDIN 8 W R 393

8 ———— *Suit for rent in kind—Beng Act VIII of 1869—Jurisdiction* The defendant took from the plaintiff s ancestor a small portion of endowed land for a garden and in consideration thereof paid him a certain fixed amount of grain for his maintenance and support and subsequently that payment was commuted into a monthly allowance of R3 8 which was regularly paid till 12"f and then stopped To a suit under Bengal Act VIII of 1869 to recover the amount the defence was that a suit for a claim of such a nature could *not be brought under that Act but the objection* was overruled and the plaintiff held entitled to recover the amount sued for JAILALOODDEN *v* BURNE 15 B L R 261 note 18 W R 99

9 ———— *Suit for rent in kind—Damages Held* that damages on account of the wanton destruction of trees though stipulated for in a kabuliat cannot be claimed as rent but that a stipulation to supply a number of mangoes yearly is one to pay a part of the rent in kind and the value of the mangoes is realizable as rent in a Revenue Court NUBO TARINEE DOSSEE *v* GRAY 11 W R 7

s c BHABATARINI DASI *v* GREY
2 B L R A C 152

10 ———— *Suit to maintain money rent and prevent substitution of rent in kind Held* that a suit for maintenance of money rent and to prevent the zamindar from substituting a rent in kind for the money rent previously paid is not a suit cognizable under the Rent Acts (Act X of 1859 or Act XIV of 1863) BAINEE *v* MAHOMED ALI KHAN 2 Agra 307

11. ———— Suit to enhance julkur tenure A suit for enhancement of a julkur tenure is cognizable under the Rent Act PURAN SAUTRA *v* TAJOODDEEN 5,W R Act X 20

ALLUM CHUNDER SHAHA *v* BHURUT BABOO
5 W R Act X 92

And so is a suit for a kabuliat for payment of the rent of a fishery KOYLASH CHUNDER DEY *v* JOY NARAIN JALOOAH 7 W R 93

12 ———— Suit for rent of land in a town—*Beng Act VIII of 1869* Bengal Act VIII

RENT SUIT FOR—*contd*

13 ———— *Suit for rent of house situated in town* A suit for a kabuliat or surkhut will lie under Bengal Act VIII of 1869 in the case of a house situated in a town RAM LALL *v* CHUMMON GHUTTUCK 24 W R 271

[illegible] of rent of [illegible] uit for en [illegible] in a village [illegible] DOOL HAMID [illegible] R Ap 133

15 ———— Suit for rent of land with buildings A suit for the rent of land is not altered by the fact of houses or buildings standing thereon and therefore such a suit is one cognizable under the Rent Act (X of 1859) MATHURANATH KUNDU *v* CAMPBELL
9 B L R 115 note 15 W R 463

16 ———— *Suit for rent of land with buildings—Jurisdiction* The Revenue Courts had no jurisdiction to entertain a suit for rent of land with buildings upon it when the rent included the rent of the buildings as well as of the land DHIRAJ MAHATAB CHAND BAHADUR *v* MAKUND BALLABH BOSE
9 B L R Ap 13 14 W R 246

17 ———— *Suit for house rent including ground rent* Where house rent in [illegible]

rent the claim to the extent of the ground rent may be cognizable by the Revenue Court under Act X of 1859 RAM CHURN SINGH KETTREE *v* MEADHUN DURJEE 8 W R 90

18 ———— *Liquidated damages under agreement with respect to house* The [illegible]

stipulated sum from date of purchase *Held* that this was not an action for rent but a suit for liquidated damages and as such cognizable in the Civil Court DEBNATH ROY CHOWDHRY *v* KALLY KISTO ROY CHOWDHRY 1 W R 2

19 ———— *Jurisdiction under Beng Act VIII of 1869—Suit for rent of houses* The rulings applicable to suits for rent of houses or of portions of land covered with houses or markets have no reference to suits in which rent is claimed in respect of a mouzah or of an entire estate or the aliquot part of an estate Hence a suit for rent of 8 annas of a mouzah which was part of the plaintiff s zamindari held in farm as a whole by the defendant may be properly brought in a Civil Court under the provisions of Bengal Act VIII of 1869 GANEEMUT HOSSEIN *v* RUNGOO SAHOO
3 C L R 8

20 ———— *Suit for rent of lands appurtenant to dwelling house* The defendant had been declared entitled under s 9 Bengal

RENT, SUIT FOR—*contd*

Regulation XIX of 1814 to hold certain lands as attached to his dwelling hou e at an equitable rent payable to the landlord The landlord subsequently sued under the Pent Act for enhancement of rent of these lands *Held* that a suit for the rent of such lands could not be maintained under that Act KHAIPUDDIN AHMED v ABDUL BAKI
3 B L R A. C 65 11 W R 410

21 ——————— *Suit for house and ground* If a house and two parcels of ground were held and enjoyed together forming as it were one compound or set of premises the suit as to the whole was not cognizable under the Rent Act If one of the parcels of land lies at a distance or is wholly separate and distinct from the other the suit as to the former was cognizable under that Act BIPRODOSS DEY v WOLIEN 1 W R 222

TAREENY PERSAUD GHOSE v BENGAL INDIGO COMPANY 2 W R Act X 9

22 ——————— *Suit for rent of land let for purpo e of factory and dwelling house* A suit lies under Act X of 1859 for the rent of land let for the purposes of a factory including the dwelling house of the proprietor of the factory it being immaterial for what purposes the lands were demised TAREENY PERSAUD GHOSE v BENGAL INDIGO COMPANY 2 W R Act X 9

23 ——————— **Suit for rent of lands covered by arhâts ghats and bazars** A suit for rent of land where the rent comes from arhats ghats and bazars situated upon it as well as from the land was held not to lie under the Rent Act HARI MOHAN SIRKAR v MONCRIEFF
9 B L R Ap 14 15 W R 464 note

MADAN SING v MADAN RAM DEB
1 B L R S N 11

24 ——————— *Suit for g ound rent of land on which golah is built* A suit for ground rent of the land on which a *golah* stands is not cognizable under the Rent Act DELAWUR ALI v DABEP PERSHAD 11 W R 203

25 ——————— **Suit for ferry tolls** The rent law in Bengal does not apply to ferry tolls *Hari Mohan Sirkar v Moncrieff 9 B L R Ap 14* applied RACHHEA SINGH v UPENDRA CHANDRA SINGH I L R 27 Calc 239

26 ——————— **Suit for rent of bastu lands** Where the rent for bastu lands was paid by the raiyats to their landlord separately from the rent paid for the cultivated land but the tenure of the bastu lands was a raiyatwari tenure it was *held* that as a matter of law the distinction in the mode of paying the rent did not exclude those lands from the operation of Act X of 1859 or Bengal Act VIII of 1869 POGOSE v PAJOO DHOPEE 22 W R 511

27 ——————— **Suit for rent of garden attached to a house** *Held* that a suit by a lessee against a sub lessee to obtain rent of a garden which was attached to a house and was ancillary to the enjoyment of the house was not cognizable by the Revenue Court but by the Civil Court SHTAB SINGH v PUNCHUM MAJEE 2 Agra 243

28 ——————— **Suit for rent of land on tenancy not strictly agriculturable** The class of cases cognizable under the Pent Act includes suits for rent in cases of tenancies not strictly agriculturable provided the subject of the lease is land and the rent issues out of the land and is due on account of and for the use of the land whatever may be the purpose for whi h the surface of the land is used WATSON v GOBIND CHUNDER MOZOOMDAR W R 1864 Act X 48

29 ——————— **Garden land where trees** [illegible]

[illegible] tion of the malguzari land of the [illegible] occupant who brings it under cultivation is liable to the payment of rent If the landowner and himself cannot by agreement fix the rent a suit for the [illegible] under determin[illegible] cl. 1 s 2[illegible] pant wh[illegible] [illegible] a contest [illegible] hts and [illegible]
SINGH v RAI SEETARAM 3 N W 18

30 ——————— **Suit for tolls from persons coming to hât**—*Beng Act VIII of 1869* A suit for rent derivable by a le sor from t ll col lected by the lessee from persons resorting to a hat is not cognizable under *Bengal Act VIII* of 1869 SAVI v ISSUR CHUNDER MUNDUL
20 W R 146

31 ——————— **Suit to enforce right to erect golahs at ghâts and to collect duties** —*Act X of 1859 s 23* A suit for enforcing an alleged right to erect golahs at certain hâts, and to collect duties from persons using them was not a suit on account of any right of pastura e [illegible] rent right fi heries or the like within s 23 of Act X of 1859 and the Collector had no jurisdiction to entertain it. FURLONG v JOHURREE LOLL
Marsh 194 1 Hay 453

32 ——————— **Suit for rent from a toll on river or canal**—*Act X of 1859 s 23 cl 4* A suit to recover rent on *lease of toll arisin fr m* a canal or river navigation was not cognizable under cl. 4 s 23 Act X of 1859 GARLAND v [illegible] MOHUN HAZRAH 1 W R 15

33 ——————— **Suit for tolls for u e of a ferry**—*Act X of 1859 s 23 cl 4* A suit f r t [illegible] for the use of a ferry belonging to the plaintiff was not maintainable under Act X of 1859 s 23 cl 4 FURLONG v TREELOCHUN SINGH
Marsh 504 2 Hay 593

34 ——————— **Suit for dustoorut**—*Beng Act VIII of 1869*—*Objection on appeal* A suit for *dustoorut* is not a suit for rent and is there[illegible]

RENT SUIT FOR—*contd*

not cognizable under Bengal Act VIII of 1869 The ground that even supposing the suit was not a suit for rent it was not liable to be dismissed in order that a fresh suit might be instituted under Act VIII of 1859 not having been taken in the Court below nor in the ground of special appeal was overruled at the hearing of the special appeal RAM CHURN BANERJEE v TORITA CHURN PAUL 18 W R 343

35 ———— Suit for rent of stone quarries—*Act X of 1859 s cl 4* In a suit for rent under a lease of 8 annas of a certain hill and of 14 bighas of land by which the lessee reserved a yearly rent of R?00 for the land and the right of levying a yearly tax on the parties who were employed in quarrying the stone —*Held* that this was not a suit cognizable under Act X of 1859 *Khalut Chunder Ghose v Unto 1 Ind Jur N S 4 6* considered and approved SHALGRAM v KUBIRUN 3 B L R A C 61 11 W R 400

36 ———— Suit to recover payment for use of land for stacking timber In a suit to recover money due or payment in kind for the use of the plaintiff s land by stacking timber thereon and keeping it there for a specified time —*Held* that the claim was of the nature of one for rent and governed by the law of limitation applicable to money claims of that kind Where there are well known terms upon which the use of land for stacking timber is permitted by its owner and a party with the knowledge of this custom or practice uses the land in this way he is bound as by an implied agreement to pay accordingly for such use JUMNA DOSS v GAWSEE MEAH 21 W R 124

37 ———— Huqajiri—*Usufructuary mortgage—Reserved rent* The plaintiff had borrowed money on security of a zur i peshgi lease of pro[illegible] edeem [illegible] credit [illegible] o him [illegible] 4 W *R 103*) and if it were it was not claimed as such in this case [illegible]

that a suit by a zamindar to recover a rent reserved on land which has been let out on a zur i peshgi lease should be brought in a Civil Court *Held* also that the plaintiff was justified in bringing his [illegible]

38 ———— Huq i zamindari—*Deposit as security for rent* The fact that a sum of money was deposited by the lessee with the lessor as security for the payment of the rent did not remove a suit for rent from the jurisdiction of the Revenue Courts A claim for huq i zamindar was not cognizable under Act X of 1859 JOWAHUR LALL v SULTAN ALI 12 W R 214

39 ———— Suit for zamindari dâk charges A suit by a zamindar against a patnidar for zamindari dak charges under Bengal Act VIII of 1869 [illegible] kabuliat [illegible] RUTTUN[illegible] TAGORE [illegible]

40 ———— Suit for sum in nature of rent charge—*Act XIV of 1863 s 1 cl 4—Nuzzerana* A certain sum was paid to Government as nuzzerana during the existence of the maafee grant through a lambardar After the maafee was [illegible] upon [illegible] the [illegible] was [illegible] After [illegible] the amount to the lambardar by deducting it from the amount of Government revenue paid by him *Held* that under the circumstances the payment of nuzzerana being a present in acknowledgment of proprietary title in the nature of a rent charge the suit was cognizable under cl. (4) s 1 Act XIV of 1863 ZAHOOR HOSSEIN v ASSUD ALI 2 Agra Pt II 178

41 ———— Suit for arrears of cess A suit for arrears of a cess which is not in the nature of rent could not be brought under Act X of 1859 KASIM ALI v SHADEE 3 N W 21

42 ———— *Suit to recover cesses in excess of rent—Jurisdiction* Act X of 1859 gives no jurisdiction in suits to recover cesses over and above the rent OBJOON SAHOO v ANUND SINGH 10 W R 257

43 ———— Suit to [illegible]

44 ———— Suit for price of trees—*Act X of 1859 s 23 cl 4* A suit for half the price of trees cut down by the tenant and claimed by the landlord by right of usage was not cognizable under cl. 4 s 23 Act X of 1859 TOHUL ROY v MAHADEO DUTT W R 1864 327

45 ———— Suit for rent of zerait lands A suit for rent from a party holding lands as zerait in his own possession was one for rent as between landlord and tenant and cognizable under Act X of 1859 CHOWDRY v SEEB MISSER 12 W R 4

46 ———— Suit for rent of land covered by buildings *L* having claimed certain lands as lessee from the zamindar and *A* having pleaded that he held them under a mirasi tenure from the zamindar the Court held that the two leases could co exist and that *L* was entitled to recover actual possession and to pay to *A* as an intermediate holder the rent due to the zamindar In execution of the decree *L* was put in possession of all the land

RENT, SUIT FOR—*contd*

except a portion covered by factory buildings in the possession of *A* which buildings the Court held did not go with the land Unable to get possession *I* brought a suit to recover rent for the land covered by the building *Held* that no suit for rent could lie *A* s representative being a trespasser and his mere statement of willingness to pay rent being insufficient to constitute the relation of landlord and tenant LYONS v BETTS 13 W R 94

47 ———— **Payment by one co-sharer to others**—*Beng Act VIII of 1869* A co sharer in an estate who cultivates a portion belonging to himself and the other shareholders should *pro tanto* be considered their tenant and payment by such co sharer for land so cultivated by whatever name it be called is substantially rent and a suit for such rent comes properly under the provisions of Bengal Act VIII of 1869 ALLADINEE DOSSEE v SREENATH CHUNDER BOSE 20 W R 258

48 ———— **Suits for rent by goondahs against under tenants** Suits for rent between goondahs and those cultivating under them were cognizable under the Rent Act LIKHUN PATHUK v ROOP LAL 3 N W 48

49 ———— **Suit against co sharer for share of rent**—*Act X of 1859 s 23* S 23 Act X of 1859 was not applicable to a suit in which the plaintiff claimed as entitled to a moiety of the rent of certain land in the possession of his co sharer MITTUNLAL SAHOO v NADUE 1 W R 53

KALEE PERSHAD v LUTAFUT HOSSEIN 12 W R 418

50 ———— *Suit for share of rent against tenant and co lessors* A suit for a share of rent against a tenant and co lessors was not cognizable as a suit for rent within the meaning of cl 4 s 23 Act X of 1859 JALIA ISREE PERSHAD v STUART W R 1864 Act X 28

51 ———— *Suit for rent and damages against co sharers for sub lease* Suit against co sharers and darijaradar for rent and damage in respect of a mehal of which a sub lease was granted by the defendant co sharers As plaintiff did not get possession of his share until after the expiry of the sub lease and then only by the aid of the Civil Court and as his title during the subsistence of the lease was merely nominal and as he exercised no rights of a landlord during this period and could not have sustained against the darijaradar an action for rent under Act X of 1859 —*Held* that his suit was properly brought in the Civil Court. PADHAJEEBUN MUSTAFEE v DENONATH BANERJI W R 1864 Act X 49

52 ———— **Suit by patnidar for his share of rent.** A suit by one of a body of [illegible]

[illegible] W R 1864 Act X [illegible]

RENT SUIT FOR—*contd*

HYDER ALI v OMRIT CHOWDHRY W R 1864, Act X, 43

53 ———— **Shikmi talukdars**—*Permanent settlement* Where shikmi talukhs at the time of the permanent settlement were comprised within the zamindar s estate the talukhdars were subordinate to the zamindar and the zamindar could therefore sue them for their rents in the Revenue Courts CHUNDER KANT CHUCKERBUTTY v DUT BEEANEA ODEA 1 Ind. Jur N S 6 4 W R Act X, 41

CHUNDER KANT CHUCKERBUTTY v MAHOMED HOSSEIN 6 W R, Act X, 1

54 ———— **Suit for money advanced to naib for works on salaries** Money advanced to a naib for the construction of a bund, or for the payment of the salaries of tahsildars and peadahs comes within the terms of s 23 Act X of 1859 with regard to the management of land, and a suit by a manager of an estate to recover such advance was cognizable by the Revenue Courts RAM DYAL BANERJEE v COURT OF WARDS 12 W R 239

55 ———— **Suit for profits of [illegible] property** A suit for profits of [illegible] ited by a [illegible] Court and [illegible] not by the Collector [illegible] 3 W R 111 ANUND ROY

56 ———— **Suit on bonds secured by assignment of rent.** *A* lent money to *B* on bonds payment of which was secured by assignment of the rents of *B* s estate. *A* instead of liquidating the bonds from the collections of the estate assigned brought a suit on the bonds and obtained a decree *B* then sued for a refund of the collections made and not appropriated to the payment of the bonds *Held* that such a suit was not one for rent and was not cognizable under the Rent Act ALI MAHOMED v KANIZAH [illegible] 8 W R 195

57 ———— **Suit for rent against purchaser of crops**—*Purchase of crops on condition that they were subject to claim for rent.* Where a party purchases crops belonging to a raiyat at auction sale with notice and assenting to the condition of sale that the crops were subject to the landlord s claim for rent and the landlord also being aware of the terms of sale allows the purchaser to remove the grain on the understanding that the purchaser assented to and became liable to pay the rent a suit to recover the amount from the purchaser is a suit as an implied contract between the landlord and the purchaser and was not cognizable under the Rent Act. ACHUL v [illegible] PERSHAD 2 Agra 73

58 ———— **Suit against sezawul to recover loss**—*Default of sezawul.* A lease empowered the landlord on default of payment of any of the kists by the tenants, to appoint a kurk sezawul the tenants being responsible for any loss accruing A default having occurred and a kurk

RENT SUIT FOR—*contd.*

sezawul having been appointed the landlord sued to recover the lo s u tained by him *Held* that such a suit would not lie under the Rent Act ANUND MOYEE DEBIA *v* KHIRODHUR HALDAR
2 W R, Act X 46

59 ——— **Suit to settle future rate of rent.** A suit to settle the rent of future years between owner and occupi r of land will not lie MUDHOO SOODUN ROY *v* SREEPUTTY BHUTTA CHARJEE 25 W R 488

60 ——— *Suit to determine future rates of rent—Beng Act VIII of 1869 s 28 35* A suit to determine not merely current but pro pective rates of rent will lie under the rent law A pottah i not nece sarily mokurari becau e it confers a contingent holding on the lessee and his po terity AUGUR ALI *v* WOOMA KANT MOOKERJEE 25 W R 318

61 ——— **Suit to collect rents as a sharer or representative sharer** The Civil Court had jurisdiction in a suit which involved the right to collect rents a a share or representative or as deriving from a sharer and the deci ion of which depended on proof of a certain alleged partition HUREOCHUNDER ROY *v* OBHOY CHURN SIRCAR
2 W R, Act X 72

62 ——— **Suit raising question of extent of share as kutkeenadar** Where the kutkeenadar of an alleged share sued the kutkeenadar of the remaining portion for a proportion of rent and defendant while admitting himself to be plaintiff s tenant disputed the extent of the alleged share —*Held* that the question of the extent of the share of the parties as co kutkeenadars could only be decided by a Civil Court which could give complete relief on the whole case with reference both to shares and rent VEBASUT HOSSEIN *v* JUGH DHAREE SING 13 W R 59

63 ——— **Disputed title to rent—*Intervenor*** In a suit for rent paid in kind in which defendant did not deny plaintiff s right as land lord, but in which intervenors appeared and objected that the Civil Court had no jurisdiction and pl aded also that defendant was their tenant and paid rents to them —*Held* (by LOCH J) that neither defendant s appropriation of the rent nor the fact of his disputing plaintiff s share nor the act of the

matter which the Court had jurisdiction to decide GOLAM MAHOMED AKBUR *v* PADHA KISHEN MOHUNT 9 W R 287

64. ——— **Suit by assignee of right to recover rent** A claim to rent made by a person to whom the zamindar has assigned the right to recover the rent was cognizable under the Rent Act SHAMASOONDEREE DOSSEE *v* BINDABUN CHUNDER MOZOOMDAR Marsh 199 1 Hay 574

65 ——— *Suit for rent after assignment of rent in consideration of loan* In a suit for rent where the original landlord had in

jurisdiction to enquire into the allegation because plaintiff s cause of action was the original cau e of action of the landlord and the only effect of subsequent events was to deprive defendants of an answer to the claim. ISHAN CHUNDER SEIN *v* KEVARAM GHOSE 12 W R 381

66 ——— **Suit for rent against benami and actual cultivator—*Act X of 1859 s 23 cl 4*** A suit for rent against two persons one as the benami and the other as the actual farmer was cognizable under cl. 4 s. 23 Act X of 1859 In such a suit the plaintiff could only obtain a decree against one or other not both of the defendants HEERALALL BUKSHEE *v* RAJKISHORE MOZOOMDAR
W R F B 58 1 Ind Jur O S 81
1 Hay 449

s c RAJKISHORE MOZOOMDAR *v* HEERALOLL BUKSHEE Marsh. 188

67 ——— **Suit to recover rent wrongfully collected by unauthorized person** A suit would not lie under Act X of 1859 to recover rent wrongfully collected by a person not the agent of the landholder and without his authority SEETAL KISTO ROY *v* GOSSEENATH SHAH
Marsh 465

68 ——— **Suit raising questions of payment by burrat** In a suit for rent where payment by a *burrat* is pleaded by the tenant and execution of it is proved by the landlord the Revenue Court had jurisdiction to try the question of *burrat* POORNO CHUNDER ROY *v* NUND LALL GHOSE 7 W R 25

and of payment DABIMBA DEBIA *v* NILMONEE SINGH DEO 13 W R 286

69 ——— **Claim to deduction of rent—*Bond*** In an action for rent before the Collector the tenant set up that by a tamasook entered into between himself and his landlord after his lease it was stipulated that in consideration of an advance of money by him to the landlord a

EDUN *v* BEECHUN Marsh 409

70 ——— **Mode of payment of rent—*Revenue*** In a suit by the Court of Wards on the part of the Durbhunga Rajah for unpaid instalments of rent where the agreement under which the defendant held his zamindari was that he should pay his Government revenue into the

RENT, SUIT FOR—*contd*

Collectorate through the Rajah —*Held* that the rule which prevailed in that part of the country amongst ordinary tenants of paying rent month by month was not applicable to defendant and that the instalments of rent and interest thereon were to be calculated according to the Government rules for the payment of revenue GRIDHAREE SINGH *v* COURT OF WARDS 10 W R 368

71 ——— **Apportionment of rent.** Where a tenant held lands in six villages under a patnidar at an admitted rent and the patnidar subsequently granted dar patnis to two different parties of two and four of the said villages

of the land in all six villages and the admitted rent of the land situated in the two villages BRAJA LAL ROY *v* SYAAMA CHARAN BHUTTO
6 B L R 523 15 W R 20

72 ——— **Suit for arrears of rent instituted before but decided after the abolishing of Revenue Courts**—*Suit for arrears of rent* A suit for arrears of rent which had been instituted in the Civil Court before Bengal Act VIII of 1869 came into operation was decided by that Court after the jurisdiction of the Revenue Courts had ceased to exist *Held* that the Civil Court had no jurisdiction in the case KULLYA NESSUREE DOSSEE *v* NARAIN KYBURTO
15 W R 241

See DHIRAJ MAHATAB CHAND BAHADOOR *v* MAKUND BULLABH BOSE
9 B L R Ap 13 14 W R 246

73 ——— **Suit for arrears of phulkur**—*Suit for arrears of rent—Jurisdiction of Civil Court* A suit for arrears of rent of the description known as *phulkur* being of a nature cognizable by a revenue officer when Act X of 1859 was in force can now be brought before a Munsif a Small Cause Court has no jurisdiction to try it. GOBIND SOOKOOL *v* GOKOOL BHUKUT
23 W R 304

74. ——— **Suit for rent of a hât**—*Suit for arrears of rent—Act X of 1859 s 23 cl 4* A suit for arrears of rent of a hat was cognizable under cl. 4 s. 23 Act X of 1859 GAETREE DEBEA *v* THAKOOR DOSS W R. 1864 Act X, 78

75 ——— **Suit for arrears of rent of indigo factory**—*Suit for arrears of rent—Act X of 1859 s 23 cl 4* A suit for arrears of rent due on account of an indigo factory was not a suit for arrears of rent due on account of land within cl. 4 s 23 Act X of 1859 ODDIT CHUNDER PAUL *v* COMOLO KANTO PAUL
Marsh 401 2 Hay 529

76 ——— *Suit for arrears of rent—Suit for rent of land with indigo factories on it* A suit by a lessor for arrears of rent was triable under Act X of 1859 if the principal matter

RENT SUIT FOR—*contd*

demised under the lease was land and if indigo factories on such land were merely the adjuncts or appurtenances. SHARODA PERSHAD MOOKERJEE *v* SREENATH MOOKERJEE 15 W R 590

77 ——— **Suit on covenant in lease to recover arrears of rent of mine**—*Suit for arrears of rent* A leased to B for 25 years commencing from October 1855 certain [illegible] pieces of ground at certain rent payable monthly B entering into a covenant to pay the rent. The property leased was a loha mehal or iron mine and the lessee used it as such and erected smelting furnaces *Held* that a suit by A against B on the covenant in the lease to recover arrears of rent was properly not brought under the Rent Act that "land" as understood in reference to Act X of 1859 had a limited signification and referred to such as is made use of for the purposes of vegetable or animal reproduction. KHALUT CHUNDER GHOSE *v* MINTO
1 Ind. Jur N S 426

78 ——— **Suit for arrears of rent under assignment**—*Suit for arrears of rent.* A suit for arrears due under an assignment of rent was a suit to recover arrears of rent and as such was only cognizable under cl. 4 s 23 Act X of 1859 KISHEN KOOMAR MITTER *v* MOHESH CHUNDER BANERJEE W R 1864 Act X, 3

79 ——— **Suit against mortgagee for rent**—*Mortgagee executing lease to mortgagor* A mortgagee who executes a lease in favour of a mortgagor stipulating to pay him a certain amount annually as rent is as far as the payment of that sum is concerned a tenant of the mortgagor and must be sued under the Rent Act for any arrears of such rent BISOROOP DUTT *v* BINO [illegible] SEIN W R. 1864, Act X, 93

80 ——— **Suit to recover money due for jumma between dates of resumption and settlement** A suit by Government to recover what the defendants have by a writ agreed to pay in respect of Government jumma between the date of resumption and settlement, was not a suit for arrears of rent cognizable under Act X of 1859 GOVERNMENT *v* [illegible] NISSA BIBEE 2 W R. Act X, 106

81 ——— **Suit for damages**—*Suit for arrears of rent* Plaintiff having paid arrears of rent to defendant as his landlord's authorized agent was afterwards sued for those arrears by the landlord, who obtained a decree the Court holding that the payment to the mukhtear was one which did not bind the landlord Plaintiff then sued the mukhtear who had received the money. *Held* that the suit was an action for damages and not one cognizable under the Rent Act. [illegible] NATH SANDYAL *v* KALEE CHURN PAUL 13 W R 3.9

82 ——— **Suit for arrears of rent after kabuliat had been given up and after default in payment under agreement** The defendant gave up a lease of certain property which he had taken from the plaintiff On doing so he agreed in writing that [illegible]

RENT SUIT FOR—*contd*

ever rent was due to the plaintiff should be paid in a certain time Having failed to carry out the agreement the plaintiff sued him on the kabulat for arrears of rent *Held* that the suit was not cognizable under the Rent Act JAIRAM GEER v SHEO SUMPUT DOOBEY 5 N W 84

83 ———— **Suit against talukhdar for arrears of rent** A suit against a talukhdar for arrears of rent at an enhanced rate would lie under Act X of 1859 even though it were not brought for determination of the rate at which defendant should be required to give a kabulat ROWSHUN BIBEE v CHUNDERMADHUB KUR 16 W R 177

84. ———— **Suit for arrears of enhanced rent.** *A* took a farming lease from *B* by which he agreed to pay *B* a certain yearly rent and stipulated further to pay to *B* half of any enhanced rent which he might succeed in realizing from the raiyats *Held* that a suit by *B* to recover arrears of this moiety of enhanced rent would lie under the Rent Act BHABATARINI DASI v GREY 2 B L R A C 152

s.c. NUBO TARINEE DOSSEE v GRAY 11 W R 7

85 ———— **Suit for rent against lessee in possession** A Collector could give a decree for arrears of rent against the real lessees in possession, although no previous realization of rent directly from them was established and no written agreement was shown to have been executed by them, in their own names another party being the ostensible holder of the lease and not denying liability JUDOONATH PAUL v PROSUNNO NATH DUTT 9 W R 71

86 ———— **Suit for rent against lessee and surety**—*Act X of 1859 s 23 cl 4* A suit for arrears of rent under cl. 4 s 23 Act X of 1859 could be entertained both against the lessee who was made originally liable and against the surety who would be liable on the default of the lessee BHOOBUN MOHUN *alias* PROLAD SANDYAL v BHUBO SOONDEREE DEBIA CHOWDHRAIN 8 W R 452

87 ———— *Suit for arrears of rent—Suit against lessees and their sureties—Decree against lessees* There was no provision in Act X of 1859 which conferred on the Collector jurisdiction to take cognizance of a suit against the sureties of a lessee Although in a suit under Act X of 1859 against lessees and their sureties for arrears of rent the decree passed against the sureties could not be maintained still the decree passed against the lessees themselves was good DOORGA PERSHAD v SHEORAJ SINGH 5 N W 222

GUNESH KOOER v OOMDUTOONNISSA BEGUM 6 N W 77

88 ———— *Suit for arrears of rent—Act X of 1859 s 23—Surety for payment of rent—Decree form of* In a suit for arrears of rent in a Revenue Court under Act X of 1859 the lessors joined as defendants the lessee and another

RENT SUIT FOR—*contd*

[illegible]

alleged surety s land was sold and the decree holders were the purchasers at the sale An appli [illegible]

the plaintiff s title was bad on the ground that the decree did not purport to bind the surety for the payment of the money awarded and on the ground that a Revenue Court is not competent to entertain a suit against a person who has become surety for payment of rent BHUGWAN CHUNDER ROY CHOWDHRI v MANICK BIBEE I L R 9 Calc 383 11 C L R 577

89 ———— **Benami lease**—*Suit for arrears of rent—Landlord and tenant—Act X of 1859* *A* brought a suit in the Collector s Court against *B C D* and *E* for arrears of rent in respect of land demised under a pottah to *F* He joined *G* and *H* as defendants. According to the terms of the pottah they were sureties for *F* It was admitted that *F* s name was used benami in the pottah and that he took no interest. *A* sued *B C D* and *E* as the parties interested and in possession *C* objected that a new settlement had been made and a new pottah granted that he held a moiety only of the lands and was not liable for more and that *D* was his raiyat and ought not therefore to have been made a defendant *D* and *E* contended that they were liable in respect of the lot comprised under the pottah and had already paid rent for it to *A* under a decree but objected that they ought to have been sued separately from *B* and *B* did not appear The lower Court held that *C* had failed to make out his case and that *D* and *E* were liable in this suit and passed a decree ordering them to pay the amount admitted by them to be due from them and the other defendants to pay the remainder of the claim *C* appealed On the appeal PEACOCK *C J* (MITTER *J* *contra*) *held* that the plaintiff s suit must be dismissed the lease being to *H* and not to the defendants that the Court below had founded its decision on matters extraneous to the lease which it had no jurisdiction to inquire into *Held* per MITTER *J* that the suit was properly

[illegible]

s c PREONATH CHOWDHRY v BEEPIN BEHAREE CHUCKERBUTTY 11 W R 120

C appealed under s. 15 of the Letters Patent *Held* by KEMP and JACKSON *JJ* that the Collector had full jurisdiction to entertain the suit which was properly brought against those who were in

RENT SUIT FOR—*contd*

the actual possession of the land and that these persons were really the tenants that the form of the decree passed by the Collector was correct the plaintiff having consented to the decree being given in that form that the sureties had really made themselves responsible for those who were really interested under the lea e and not for *F* *Prosunno Coomar Pal Choudry* v *Koylash Chunder Pal Choudry* *B L R Sup Vol 759* distinguished *Held* by NORMAN *J* (dissenting) that the terms of the lease under which *F* was alone interested could not be contradicted by oral evidence that *F* alone was bound to the lessor under the lease that the defendant could not be sued as tenant unless subsequent to the pottah and kabuliat something had occurred creating the relation of landlord and tenant between them and the lessor that no such relation or any contract cr ating such relation bet ween the parties could be implied from the circum stances of the case and the suit should be dismissed. The Revenue Court had therefore no jurisdiction But whether in the Revenue or Civil Court *D* and *E* could not be sued jointly with *B* and *C* nor could *G* and *H* BIPINBEHARI CHOWDRY *v* RAM CHANDRA ROY **5 B L R 234 14 W R 12**

90 ———————— *Benami lease—Beneficiary interest* In a suit for arrears of rent on a lease granted to one of two defendants in the name of the other where the former admitted benami execution of the agreement but the latter denied that any relation of landlord and tenant existed between himself and the landlord —*Held* that the question whether the latter defendant was the party beneficially interested in the lease was not one which was intended by the Legislature to be tried by the Revenue Court KISHEN BUTIEE MISRAIN *v* HICKEY **11 W R 406**

91 ———— **Questions relating to rent**—*Suit for arrears of rent* In execution of a de cree of the Revenue Court in a suit brought by *K* for arrears of rent of a certain patni the patni was put up for sale and purchased in the name of *G* The rent having again fallen into arrear *K* took proceedings against *G* under Regulation VIII of 1819 for the sale of the patni but the arrears having been paid the patni was not sold. In a suit for arrears of rent of the same patni subsequently brought by *K* against *G* *P* and *B* (the wife of *P*) jointly on the allegation that the patni had been purchased by *G* benami for *P* and *B* —*Held* that the Collector had no jurisdiction to try questions relating to rent d pending upon equitable rights and liabilities arising from circumstances other than those of the relationship of landlord and tenant PROSONNO COOMAR PAL CHOWDRY *v* KOYLASH CHUNDER PAL CHOWDHRY

B L R Sup Vol 758
2 Ind. Jur N S 327 8 W R 429

PROSONNO COOMAR PAL CHOWDHRY *v* MUDDUN MOHAN PAL CHOWDHRY

11 B L R Ap 31 note 13 W R 390

HURISH CHUNDER ROY *v* POORNA SOONDUREE DEBEE **18 W R 35 125**

92 ———————— **Title**—*Suit for arrears of rent—Title* *A* died leaving four sons *B* *C* *D* and *E* by a wife deceased and a widow *K* and three other sons *F* *G* and *H* by her *K* brou ht a suit against *B* *C* *D* and *E* and against her three sons *F* *G* and *H* to establish her title to a certain talukh which she alleged had been conveyed to her by *A* under a deed of gift *B* *C* *D* and *E* set up a prior deed of partition whereby the property of the deceased including this talukh was divided [illegible]

[illegible] of rent in respect of another talukh also [illegible] the deed of partition against the raiyats and *F* *G* and *H* The raiyats admitted that they held at the rent claimed but stated that they had not paid their rent on account of a dispute between the brothers as to the shares in which they were entitled to the same *F* *G* and *H* raised the defence that this suit could not be maintained in the Collector s Court a suit in the Civil Court should be brought for the determination of their shares and the decision [illegible] against them *H H* [illegible]

2 B L R [illegible]

93 ———————— *Suit for arrears of rent—Question of joint title* In a suit for arrears of rent under Act X of 1859 where defendant admitting plaintiff s interests in the land alleged that it was the ijmali property of him elf and the [illegible] the suit on [illegible] Judge [illegible] ntiff s [illegible] l gone [illegible] decree *Held* that even [illegible] simply into the question of title and decided whether the estate was joint or separate and on that deci sion based a decree he would not have been wron[illegible] MOHESH DUTT *v* BEO NARAIN SINGH **16 W R 83**

94 ———————— **Suit for arrears of rent and** [illegible] claim for arrears of [illegible] for [illegible] rent [illegible] sion [illegible] Act [illegible] into [illegible] full relief he required BISHOON [illegible] *v* SARUB NARAIN SINGH **4 N W 33**

95 ———————— **Act X of 1859—Mini**[illegible] lease—*Land—Act X of 1859 s 23 cl 4—Revenue Courts jurisdiction of—Suit cognizance of* The word land in s. 23 cl. 4 of Act X of 1859 refers to land granted for agricultural or horticultural pur[illegible] and not to land granted for minin[g] purposes and not to land granted for [illegible] and for purposes of building making roads and so forth The words *or the like* in the same clause must be taken *ejusdem generis* with the rights spoken of therein and do not cover the right of takin[g] coal

RENT SUIT FOR—*contd*

from the land demised POOKE *v* BENGAL COAL COMPANY LTD (1901) I L R 28 Calc 485
s c 5 C W N 840

98 ——— Rent of tank suit for—*Revenue Court—Land—Fishery right of* A suit for recovery of arrears of rent of a tank which is not a part of an agricultural holding but is used for rearing and preserving fish is not maintainable in a Revenue Court the provision of Act X of 1859 not being applicable to such a suit The term land in s 6 of Act X of 1859 means cultivated land and does not include a tank regarded as land covered with water *Siboo Jelya v Gopal Chundra Chowdhry 19 W R 200 Nilu Krishna Bose v Ram Doss Sen 9 W R 341 Nidhi Krishna Bose v Nistarini Dossee 21 W R 386* and *Doorga Soondurce Dossee v Oomdutoonissa 18 W R 235* referred to *Semble* Where the grant is merely of a right of fishery the lessee acquires no interest in the sub soil nor is he entitled to retain possession when the water dries up *Duke of Somerset v Fogwell 5 B & C 875 6 W R 449 Suroop Chunder Mozoomdar v Jardine Skinner & Co Marsh 534 Bessen Lal Doss v Khyrunissa Begum I W R 79 Munohur Chowdhry v Nursingh Chowdhry 11 W R 202 Radha Mohun Mundul v Neel Madhub Mundul 24 W R 200* and *David v Girish Chunder Guha I L R 9 Calc 183* referred to MAHANANDA CHAKRAVARTI *v* MONGALA KEOTANI (1904) I L R 31 Calc 937
s c 8 C W N 304

97 ——— By what Court triable—*Jurisdiction—Munsif jurisdiction of—Bengal Tenancy Act (VIII of 1885) s 144—Civil Procedure Code (Act XIV of 1882) ss 15 and 17—Civil Courts Act (XII of 1887) s 19—Cause of action—Pecuniary limitation—Second appeal* S 144 of the Bengal Tenancy Act is controlled by ss 15 and 17 of the Civil Procedure Code A suit for rent is therefore to be instituted subject to pecuniary limitations in the Court of the lowest grade competent to try it FAZLUR RAHIM ABU AHMED *v* DWARKA NATH CHOWDHRY (1903) I L R 30 Calc 453
s c 7 C W N 402

[illegible]

in the first instance ... the defendant ... [illegible]

of the second suit was not however allowed to be executed till the first suit was finally decided in appeal Plaintiff brought the suit in the double capacity *viz* in his own right and as *shebait* of a certain deity though his name was not registered in that double capacity under Bengal Act VII of 1876 (Land Registration) *Held* that it was sufficient for the purpose of bringing the suit that plaintiff's name was registered as *shebait* of the deity RANSGIT SINGHA *v* BHAGABUTTY CHARAN ROY (1900) 7 C W N 720

99 ——— Suit for rent and enhanced rent—*Landlord and tenant—Maintainability of suit—Civil Procedure Code (Act XIV of 1882) s 45—Onus—Raiyat at fixed rate* A suit for both enhancement and arrears of rent at an enhanced rate is maintainable The causes of action although separate may be combined under s 45 Civil Procedure Code In a suit for enhancement of rent the *onus* is upon the defendant to prove that he is a *raiyat* at a fixed rate GURDAR TEWARY *v* BRIJ NANDAN PERSHAD (1901) 5 C W N 880

100 ——— Settlement proceedings—*Bengal Tenancy Act (VIII of 1885) Ch X—Record of rights—Publication of record—Rate of rent* In a suit for rent which accrued due after the final publication of a record of rights the plaintiff relied upon the proceedings of the Settlement-officer and the defendant relied upon a rent decree passed previous to those proceedings declaring a lower rate of rent *Held* that the plaintiff was entitled to claim the rate of rent as stated in the Settlement proceedings PUDMANUND SINGH *v* GHANSHYAM MISSER (1902) 6 C W N 914

RENTAL OF LANDS

See COMPENSATION
I L R 34 Calc 599

RENTS AND PROFITS

See HAT I L R 36 Calc 665

RENUNCIATION AND RETRACTATION

See PROBATE APPLICATION FOR
I L R 35 Calc 156

RENUNCIATION OF REVERSIONARY RIGHTS

See LIMITATION ACT SCH II ART 127
I L R 30 Mad 201

RENUNCIATION OF RIGHTS

See WAIVER.

REPAIRS

See MORTGAGE. I L R 32 Bom 32

REPEAL OF ACT EFFECT OF

See ABATEMENT OF SUIT—APPEALS
I L R 7 Mad. 195

See APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON

See BENGAL REGULATION VII OF 1799
B L R Sup Vol. 626

See CALCUTTA MUNICIPAL ACT 1899
ss 391 AND 449 7 C W N 374
s 449 7 C W N 554

See CIVIL PROCEDURE CODE 1882 s 3 (1877 s 3)

RENT SUIT FOR—*contd*

the actual possession of the land and that these persons were really the tenants that the form of

was bound to the lessor under the lease that the defendant could not be sued as tenant unless subsequent to the pottah and kabuliat something had occurred creating the relation of landlord and tenant between them and the lessor that no such

But whether in the Revenue or Civil Court D and E could not be sued jointly with B and C nor could G and H BIPINBEHARI CHOWDRY v RAM CHANDRA ROY 5 B L R 234 14 W R 12

90 ———— *Benami lease—Beneficiary interest* In a suit for arrears of rent on a lease granted to one of two defendants in the name of the other where the former admitted benami execution of the agreement but the latter denied that any relation of landlord and tenant existed —*Held* that the

Revenue Court KISHEN BUTTEE MISRAIN v HICKEY 11 W R 406

91 ———— Questions relating to rent—*Suit for arrears of rent* In execution of a decree of the Revenue Court in a suit brought by K for arrears of rent of a certain patni the patni was put up for sale and purchased in the name of G The rent having again fallen into arrear K took proceedings against G under Regulation VIII of 1819 for the sale of the patni but the arrears having been paid the patni was not sold. In a suit for arrears of rent of the same patni subsequently brought by K against G P and B (the wife of P) *jointly on the allegation that the patni had been* purchased by G benami for P and B —*Held* that the Collector had no jurisdiction to try questions relating to rent depending upon equitable rights and liabilities arising from circumstances other than those of the relationship of landlord and tenant PROSONNO COOMAR PAL CHOWDRY v KOYLASH CHUNDER PAL CHOWDHRY

B L R Sup Vol 758
2 Ind Jur N S 327 8 W R 429

PROSONNO COOMAR PAL CHOWDHRY v MUDDUN MOHAN PAL CHOWDHRY

11 B L R Ap 31 note 13 W R 390

HURISH CHUNDER ROY v POORNA SOONDUREE DEBEE 18 W R 35 125

RENT SUIT FOR—*contd*

92 ———— Title—*Suit for arrears of rent—Title* A died leaving four sons B C D and E by a wife deceased and a widow K and three other sons F G and H by her K brought a suit against B C D and E and against her three sons F G and H to establish her title to a certain talukh which she alleged had been conveyed to her by A under a deed of gift B C D and E set up a prior deed of partition whereby the property of the deceased including this talukh, was divided between all his sons in the proportion of ten annas to B C D and E and six annas to F G and H The High Court on appeal held that the deed of

of rent in respect of another talukh

their prior suit was no evidence against that the question was really one of title between the brothers and such suit could not be maintained in the Revenue Courts GIRISH CHANDRA ROY CHOWDHRY v RAJ CHANDRA ROY CHOWDHRY 2 B L R A C 1

93 ———— *Suit for arrears of rent—Question of joint title* In a suit for arrears of rent under Act X of 1859 where defendant, admitting plaintiff s interests in the land alleged

decree *Held* that simply into the question of title and decided whether the estate was joint or separate and on that decision based a decree he would not have been wrong MOHESH DUTT v BEO NARAIN SINGH 16 W R 82

94 ———— Suit for arrears of rent and for possession Where a claim for arrears of rent was joined to a claim for recovery of possession the suit could not be brought under the Rent Act In such cases a plaintiff was not to be forced into two Courts for the purpose of obtaining the full relief he required BISHOON DYAL SINGH v SARUP NARAIN SINGH 4 N W 3

95 ———— Act X of 1859—*Mining lease—Land—Act X of 1859 s 3 cl 4—Revenue Courts jurisdiction of—Suits cognizance of* The word land in s 23 cl 4 of Act X of 1859 refers to land granted for agricultural or horticultural purposes and not to land granted for mining purposes and for purposes of building making roads and so forth. The words or the like in the same clause must be taken ejusdem generis with the rights spoken of therein and do not cover the right of taking coal

REPRESENTATIVE.

See BENGAL TENANCY ACT (VIII OF 1885) s. 106 — 12 C W N 8

See CIVIL PROCEDURE CODE 1882 s 244—PARTIES TO SUIT

See CIVIL PROCEDURE CODE 1882 ss 244 583 — I. L. R 33 Calc 857; 10 C W N 247

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES

See HINDU LAW—DEBT — 11 C W N 163

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES

REPRESENTATIVE OF DECEASED PERSON

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS — I L R 26 Mad 101

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES

See PARTIES—SUBSTITUTION OF PARTIES

——— appeal by—

See MALICIOUS PROSECUTION — I L R 26 Mad. 499

——— execution of decree—

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES

——— not made party—

See APPEAL—ORDERS — I L R 24 All. 532

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT DEBTOR BEFORE SALE. — I. L R 6 All 255; I L R 12 All. 440; I L. R 19 Bom. 276; I L R 23 Calc 686; I L R 21 Bom 424; I L R 22 Mad 119

——— suit against—

See HINDU LAW—DEBTS

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—MINOR. — I. L. R 25 Bom. 574

See LIMITATION ACT 1877 s 17 (1871 s 18) — 3 B L R A C 233; I L. R 7 Calc 627

See LIMITATION ACT 1877 SCH. II ART 120 — I L R 25 All 55

See MAHOMEDAN LAW—DEBTS

See SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES

REPRESENTATIVE OF DECEASED PERSON—*contd*

——— suit by—

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE

See CIVIL PROCEDURE CODE 1882 s 424 — I L R 25 All 187

1 ——— **Representative meaning of**—*Civil Procedure Code 1859 s 203* A person may be a representative within the meaning of s 203 of Act VIII of 1859 (corresponding with s. 252 of Act X of 1877) so as to make the decree effectual for the purpose therein stated although that person is not the heir ASSAMATHEM NESSA BIBEE v LUTCHMEEPUT SINGH — I L. R 4 Calc 142 2 C L R 223

2 ——— **Legal representative** —*Civil Procedure Code 1882 s 234—A stranger to a decree against a deceased person in possession of his property* The words legal representative in s 234 of the Code of Civil Procedure do not include any person who does not in law represent the estate of the deceased person Consequently a stranger in possession of property of a deceased person who was not a party to a decree against such person cannot be proceeded against in execution otherwise than by a regular suit CHATHAKELAN v GOVINDA KARUMIAR — I. L R 17 Mad. 186

3 ——— **Liability of representative for papers of deceased** The heirs of a deceased person are liable for papers in their custody for which a claim is established against the estate of the deceased as well as for debts due therefrom to the extent of assets taken by them LUCHMEE PUT SINGH v NUND COOMAR GOOPTO — 22 W R 388

4 ——— *Civil Procedure Code 1882 s 252—Suit against the heir and possessor of the assets of a deceased person* Where a party is sued for money as the heir and possessor of the assets of a deceased debtor and it is proved that he has received sufficient assets to meet the debt a personal decree therefor can be passed against him. NATHURAM SIVJI SETT v KUTTI HAJI — I. L. R 20 Mad. 446

5 ——— **Hindu estate person taking possession of**—*Liability for debt—Executor de son tort* Where a Hindu died leaving a widow and brother and the brother took possession of the deceased s estate during the widow s lifetime —*Held* that the brother was liable to pay a debt of the deceased out of the estate come into his hands. *Held* also that he was liable as legal representative of deceased the widow having relinquished her rights as

6 ——— *Subsequent proof of will by executor—Liability of estate in hands of executor—Creditor s right to execute decree or bring suit against executor* The person taking

REPRESENTATIVE OF DECEASED PERSON—*contd*

possession of the estate of a deceased Hindu (who has left a will of which however no probate has been granted) must in the present state of the law be treated for some purposes as his representative until some other claimant comes forward A judgment obtained against such a person even if it can not be executed against the estate in the hands of an executor when he has taken out probate is at any rate sufficient to enable a plaintiff to bring a suit against the executor in order to have the decree satisfied PROSUNNO CHUNDER BHUTTACHARJEE v KRISTO CHYTUNNO PAL

I L R 4 Calc 342 3 C L R 154

7 ———— *Suit by creditor against estate of deceased debtor—Heirs of intestate debtor—Parties* In a suit by a creditor against the estate of a deceased debtor who has died leaving a will his heirs on intestacy do not represent his estate and the suit is bad unless the estate is represented. MATANGINI DASSEE v CHOONEYMONEY DASSEE

I. L R 22 Calc 903

8 ———— *Administrator appointed under Bom Reg VIII of 1827 s 10—Act XIX of 1841 s 9—Administrator General's Act (II of 1874) s 18—Civil Procedure Code 1882 ss 365 and 582—Death of appellant—Abatement of appeal* An administrator appointed under s 10 of Bombay Regulation VIII of 1827 does not by such appointment become the legal representative of the deceased or entitled to continue an appeal filed by him MALAPA SIDAPA DESAI v DEBI NAIK

I L R 21 Bom 102

9 ———— *Heir of deceased Hindu allowing stranger to enter into possession of deceased's property—Effect of decree against party in possession* If the heir of a deceased Hindu stands by and allows a stranger to enter into possession of the deceased's property every person claiming under him will be bound by the decree in a suit of which he had notice instituted *bond fide* against the party in possession for the recovery of a debt due by the deceased to the plaintiff UMA SUNDARI v NITTYANUND SHAHA PAI

3 C L R 157

10 ———— **Liability of representative** —*Money debts—Damages for breach of contract* The heirs and representatives of a deceased person are liable according to equity and good conscience to pay not merely the actual debts of the deceased, but also the damages which arise from his breaches of contract DELANNEY v BIBEEJAN

22 W R 449

11 ———— **Widow of deceased Hindu** —*Creditor's right on decree against widow as representative* Where a Hindu died leaving a childless widow and a separated brother it was *held* that until a legal representative was appointed to the deceased's estate his widow was the only person who could defend a suit as his representative and that [illegible]

REPRESENTATIVE OF DECEASED PERSON—*contd*

yet a decree obtained against the remainderman would not enable the creditor to touch the estate in the hands of the widow NATHA HARI v JAMNI

8 Bom. A C 37

12 ———— *Sale in execution of decree against estate of deceased—Suit against representatives of deceased husband's estate.* In 1862 a suit for mesne profits was brought against certain persons as being the heirs of one *R L* deceased among whom were his widow and two infant sons During the pendency of this suit the two [illegible]

perties against which execution was sought, was the property of her adopted son whom she alleged to have adopted in 1874 The adopted son was not made a party to the suit This objection was overruled but the same objection was taken by the adopted son through his natural father as his guardian and next friend and the Court released [illegible]

of the plaintiffs ap[illegible] s 622 of the Code of Civil Procedure to have the order set aside The Court whilst refusing to interfere with the order inasmuch as there appeared to be no material irregularity therein pointed out [illegible] *L's* and her hus[illegible] answer adopted son represented the estate supposing the decree to have been properly obtained. The principle in *Ishan Chunder Mitter* v *Buksh Ali Soudagur Marsh 614* followed SOTISH CHUNDER LAHIRY v NILCOMUL LAHIRY

I L. R. 11 Calc. 45

13 ———— **Sale in execution of decree** [illegible] estate— [illegible] only [illegible] woman [illegible] children died leaving her husband and several [illegible] as her representatives. In execution of a money decree obtained against *I* the creditor attached certain land which belonged to *I* and made her husband and two of her children parties to the execution proceedings. The land was sold and purchased by the decree holder *Held* in a suit brought [illegible] to set aside the sale on the [illegible] were no parties [illegible] but the others, [illegible] represented [illegible] that the sale [illegible]

I. L. R. 13 Mad. 90

14 ———— **Representation of estate by mother**—*Decree against mother when adopted son in existence null* Plaintiff obtained a decree co[illegible]

REPRESENTATIVE OF DECEASED PERSON—*contd*

a bond executed by *S* against the mother of *S* whom he believed to be the heirs of *S* In attempting to execute this decree against the estate of *S* plaintiff was obstructed by the defendant who was the adopted son of *S* Plaintiff sued the defendant for a declaration that he was entitled to execute his decree against the estate of *S* in the hands of the defendant. *Held* that the suit must fail inasmuch as the estate of *S* was not properly represented in the former suit *Sol h Chunder Lahiry v Nil Comul Lahiry I L R 11 Calc 45* distinguished SUBBANNA v VENKATAKRISHNAN

I L R 11 Mad. 408

15 ———— Son as representative of father—*Suit against son—Assets* Where a suit is brought against a Hindu son personally and as representative of his father to recover a debt due by the father a decree ought to be given against his son whether he has inherited any property or not the result of such a decree in the case of non inheritance being that it cannot be executed against the non inheriting son. BAPUJI AUDITRAM v UMED BHAI HATHE SING 8 Bom A C 245

17 ———— *Son's liability for father's debts—Decree against legal representatives of a deceased debtor—Assets* Where a suit is brought against the son and legal representatives of a deceased Hindu for debts contracted by the latter the Court ought to pass a decree although the deceased debtor may have left no assets *Bapuji v Umedbhai 8 Bom A C 245* followed LALLU BHAGVAN v TRIBHUVAN MOTIRAM

I L R 13 Bom. 653

17 ———— Suit against legal representative—*Assets—Decree—Execution—Civil Procedure Code (Act XIV of 1882) s 252* A plaintiff is entitled to sue the legal representative of his deceased debtor and to obtain a decree against him without proving that assets have come into his hands It is sufficient if there are assets of which he may become possessed. The decree should mention that it is against the defendant in that character and should be executed as directed by s 252 of the Civil Procedure Code Act XIV of 1882 *Rajappa Chetti v Ali Sahib 2 Mad 335* followed GIRDHARLAL v BAI SHIV I L R 8 Bom. 309

18 ———— Suit against heir for debts of ancestor—*Onus probandi* In a suit against an heir for debts of his ancestor in the absence of special circumstances it lies upon the plaintiff in the [illegible]

that they had been disposed of in satisfaction of other claims KOTTALA UPPI v SHANGARA VARMA 3 Mad 161

19 ———— Liability of representative with assets to account—*Mesne profits* When a party is proceeded against as the representative of a deceased judgment debtor and it is proved that property which belonged to the deceased judgment debtor has come into his hands it lies upon him to account for such property and to include in his accounts mesne profits whether accruing in the shape of rents or of interest ASEEMOONNISSA v AMEER ONNISSA 15 W R 285

20 ———— Denial of assets—*Decree against estate—Costs* In a suit brought against the representatives of a deceased Mahomedan alleged to be in possession of his estate for recovery of the amount of a bond debt due by the deceased the [illegible]

[illegible] hed is one to be regarded in framing the decree The decree in such a case should be for payment out of the property of the deceased And ordinarily the Court should not direct payment of the costs by the defendant personally but out of the estate MADHO RAM v DILBUR MAHUL 2 N W 449

21 ———— *Person in possession of estate without assets—Act VIII of 1859 s 205* The plaintiff sued the defendants on the ground that they were in possession of his deceased [illegible]

the petition of HIRALAL MOOKERJEE

6 B L R Ap 100

s c HEERA LAL MOOKERJEE v DIGUMBUREE KULOONEE 14 W R 431

22 ———— Representatives of debtor—*Right to decree to extent of assets against heirs* A decree was obtained against *A* and on his death execution was taken out against his widows. *B* came in and alleging that *A* was merely a benami holder for *B* applied to be substituted for the widows as defendant *Held* that the Court was not right in exempting from liability *A's* heirs to the extent of any assets which might have come into their hands. DOORGA SOONDUREE DEBIA v SOORJOMONEE DEBIA 8 W R 101

23 ———— *Civil Procedure Code 1859 s 203—Right to have decree executed out of property coming to hands of representative* Plaintiff sought to recover the amount of a bond executed by the father of the defendant and prayed for

REPRESENTATIVE OF DECEASED PERSON—*contd*

a judgment against certain land which belonged to the defendant's father and the right to which passed by succession to the defendants *Held* that the plaintiff was entitled to a decree for payment by the defendants of the amount of the bond out of any property which passed to them as the representatives of their father the plaintiff in execution of the decree being at liberty to proceed in respect of the immoveable property if there should be no moveable property left or if it should prove insufficient when sold to satisfy the decree PAYAPPA CHETTI *v* ALI SAHIB 2 Mad 336

24. ———————— *Execution of decree against son—Civil Procedure Code 1859 s 203—Issues* Where the defendant in a suit for the payment of money died before decree his sons were made parties and a decree for the debt due by the deceased was given against them In execution of this decree the decree holder attached certain property in the hands of one of the sons who objected on the ground that it was his self acquired property *Held* that the proper issues to be determined were (i) whether the property attached by the decree holder had formed a part of the estate of the deceased debtor and if not (ii) whether if it was separate property of the son that son had misapplied any property received by him from his father and if so to what extent MOORAREE SINGH *v* PURYAG SINGH 2 C L R 189

25 ———————— *Responsibility of representative—Rights of creditors* When a defendant against whom a decree was passed in his representative capacity has made payments in satisfaction of the decree to the full value of the property of the deceased which has come or but for the default of the defendant might have come to his

BEGUM 12 W R 177

26 ———————— *Liability of representatives—Onus probandi—Mode of accounting* Before judgment debtors can claim exemption

has been applied In a claim of this kind the onus of proof is on the judgment debtors and on their failure to sustain it a presumption arises in favour of the decree holder JOOGUL KISHORE SINGH *v* KALEE CHURN SINGH 25 W R 224

27 ———————— *Payment of debt to representative—Refusal to pay uncertificated representative* The defendant gave a bond on unstamped paper to the plaintiff's eldest brother On the obligee's death the succession was disputed and the obligor refused to pay the subsequent interest to the plaintiff *Held* that as the plaintiff had failed to take out a certificate of succession to the obligee the obligor was justified in such refusal *Held* also that the plaintiff could not recover the stamp penalty from the obligor GARUDA PEDDI *v* GUDI JANAKAYYA PEDDI GUDI JANAKAYYA GARU *v* GARUDA REDDI 1 Mad. 1[?]4

28 ———————— *Payment of debts to heir of deceased without certificate—Certificate subsequently granted—Liability of debtor—Bom.*

to show that he has paid his debt to a person whom he *bonâ fide* believed to be such heir PURSHOTAM MANSUKH *v* RAMCHHOD PURSHOTAM 8 Bom. A C 150

29 ———————— *Succession Act (X of 1865) s 187—Hindu Wills Act (XXI of 1870) s 2—Estate of deceased Hindu—Legal representative—Right of suit* A Hindu who was of one of the defendants in a suit died leaving a will. The executors appointed by the will did not take out probate and the property of the deceased came

mother of the deceased who would apart from the will have been his legal representative then sued to set aside the above decree having previously obtained a declaration that she was entitled to the property of the deceased in the suit against his brothers above referred to *Held* that the plaintiff was not entitled to maintain the suit JANAKI *v* DHANU LALL I L R 14 Mad. 434

30 ———————— *Certificate under Act XXVII of 1860—Suit to set aside certificate granted by the Resident at Cochin—Jurisdiction of Foreign Court—Right of suit* Defendant 1 who

same as that of defendant 1 then sued in British Cochin for a declaration of his right to receive the interest accrued due on certain Government promissory notes being the property of his deceased Karnavan *Held* that the suit did not lie and that the appellant should either have established his representative right by suit in the Court of Native Cochin and then applied to the Resident for a certificate or have brought his action against the

REPRESENTATIVE OF DECEASED PERSON—*contd*

Government of India joining defendant 1 as a party to such action AMMUNNI v KRISHNA I L R 16 Mad. 405

31. ——— *Decree for maintenance obtained by wife against her husband—Appeal by husband against decree—Death of wife pending appeal—Legal representative of the deceased for the purpose of the appeal* A Hindu wife obtained a decree against her husband for maintenance He appealed and while the appeal was pending [illegible]

I L R 17 Bom 758

32 ——— *Representative of insolvent debtor—Civil Procedure Code 1882 s 252—Suit against widow of insolvent as his legal representative* The husband of the defendant was adjudicated an insolvent in 1891 and the usual order was made vesting his estate in the Official Assignee He subsequently died without having filed his schedule and no schedule had ever been filed After his death a suit was brought by a creditor against the defendant as the widow heiress and legal representative of the deceased insolvent in which suit a decree was made against her the amount to be levied out of the assets of the deceased in her hands In an application by the defendant to have the decree set aside on the grounds that the Official Assignee was a necessary party to the suit and that the decree should have been against him as her husband s representative as his estate was in his lifetime and since had continued to be vested in the Official Assignee —*Held* that on the death of the insolvent his widow the defendant became his legal repre[illegible]

I L R 8 Bom 309 and *Kashi Prasad* v *Miller I L R 7 All 752* referred to CHANDMULL v PANEE SOONDERY DOSSEE I L R 22 Calc 259

33 ——— *Death of plaintiff subsequent to decree—Right of survivorship vested in defendant—Effect on vested right of plaintiff s representative* A decree for partition operates as a severance of the joint ownership Where therefore *M* a minor and only son by his next friend sued his father and certain alienees of the family property for partition and obtained a decree and subsequent to decree and pending appeal the plaintiff died and *M* s mother was brought on the record as deceased plaintiff s legal representative —*Held* that any right of survivorship which the defendant might have had if the plaintiff had died before decree was extinguished and did not affect the rights of his mother who properly represented him SUBBARAYA MUDALI v MANIKA MUDALI I L R 19 Mad. 345

34 ——— *Death of the judgment debtor leaving minor sons—Widow in possession—Sons not parties to execution proceedings—Sale in execution after judgment debtor s death—Minor sons represented by their mother and guardian on record—Purchase of judgment debtor s interest by decree holder—Subsequent suit by sons to recover the property—Civil Procedure Code 1859 s 210—Civil Procedure Code 1882 s 234* Under s 210 of the Civil Procedure Code (Act VIII of 1859) an execution sale of the property of a deceased judgment debtor was binding if the estate of the deceased was sufficiently represented *quoad* such property A Hindu judgment debtor died leaving a widow and two sons who were minors His widow was placed on the record as his heir and not his son Certain property of the deceased was sold in execution The sale certificate issued to the purchaser stated that he had purchased the right title and interest of the judgment debtor in the property In a suit subsequently brought by the sons —*Held* that they were bound by the sale The widow of the deceased judgment debtor who as natural guardian of the minor sons was in possession of the property was upon the record and it was clear that it was the interest of the judgment debtor and not that of the widow that was intended to be sold ACHUT RAMCHANDRA PAL v MANJUNATH VENKATNARNAPPA I L R 21 Bom 539

35 ——— **Heir at law and residuary legatee**—*Decree holder—Judgment debtor—Substitution of heir at law and residuary legatee as legal representative—Residuary legatee in possession effect of—Executor de son tort—Probate and Administration Act (V of 1881) ss 4 12 14 15 19 38 8 18 —Succession (Act X of 1865) s 190—Civil Procedure Code (Act XIV of 1882) s 234* Pending the execution of a decree the judgment debtor died leaving a will under which *R K* was the residuary legatee She took possession of the estate and applied for letters of administration with the will annexed The will was ultimately found to be true and letters ordered to be granted In the meantime *R K* and the heir in law were substituted in place of the judgment-debtor in the execution proceeding and an order was made [illegible]

Kristo Chytunno Pal I L R 4 Calc 342 Janaki v *Dhanu Lall I L R 14 Mad 451 Chathakelan* v *Govinda Karumiar I L R 17 Mad 186* referred to CHUNI LAL BOSE v OSMOND BEEBY (1903) I L R 30 Calc 1044

36 ——— Hindu estate—*Contract Act (IX of 1872) s 45—Right of succession by legal representative—Aliyasantana law—Fund settled on*

REPRESENTATIVE OF DECEASED PERSON—*concld*

marriage of husband and wife—Interest payable to both jointly—Death of husband—Claim by widow by right of survivorship—Right of husband's legal representative to his share Upon the marriage of first defendant with K a sum of money was settled by first defendant's mother on first defendant or on K. This money was lent on mortgage and by the terms of the mortgage interest was payable by the mortgagors to first defendant and to her husband K jointly with the exception of that which would accrue in respect of the last year of the term which together with the principal sum secured by the mortgage was to be paid to first defendant herself K died whereupon plaintiff as K's legal representative brought the present suit to recover the interest due under the mortgage *Held* that plaintiff was entitled under s 45 of the Contract Act as the legal representative of K to a moiety of [illegible]

not pass by survivorship to first defendant The circumstance that K and first defendant intended to live and did in fact live together as husband and wife under the *Aliyasantana* law was insufficient to raise the presumption of a contract that there was to be a right of succession by survivorship between K and first defendant in respect of the settled fund KANTHU PUNJA v VITTAMMA (1901)

I L R 25 Mad 385

37 ———— *Hindu law—Rights of unsecured creditors by way of charge or lien on the inheritance—Position of legal representative—Distribution of assets* The unsecured creditors of a deceased Hindu have no charge or lien on the inheritance If payments are not made by the heir rateably it does not follow that he has failed to apply the assets duly Every payment on account of a debt is perfectly lawful irrespective of its effect upon the other creditors and is a due application of the assets within the meaning of s 252 of the Code of Civil Procedure There is no analogy between the case of an executor who is governed by the special provisions of the Succession Act and that of a legal representative under the Hindu law with [illegible]

considered is the real effect of what has been done and where payments have been made by the legal representative to the extent of the full value of the property of the deceased which has come into his [illegible] although [illegible] which [illegible]

[illegible] Mad. 792

REPRESENTATIVE OF JUDGMENT-DEBTOR

See CIVIL PROCEDURE CODE 1882 s 244

11 C W N 433

REPRESENTATIVE OF JUDGMENT DEBTOR—*concld*

———— *Civil Procedure Code (Act XIV of 1882) s 244—Rent sale of occupancy holding—Application to set aside sale by* [illegible]

sale in execution of a rent decree is a representative of the judgment debtor within the meaning of s 244 Civil Procedure Code and may apply to set aside the sale under that section *Ishan Chunder Sirkar v Beni Madhub Sirkar I L R 24 Calc 62* and *Asgar Ali v Asaboddin Kazi 9 C W N 131* followed NISSA BIBI v RADHA KISHORE MANIKYA (1906)

11 C W N 312

REPUBLICATION OF SEDITIOUS ARTICLES

See SEDITION I L R 35 Calc. 141

REPUDIATION

See COMPROMISE I L R. 34 Calc. 70

REPUTE

———— evidence of—

See CRIMINAL PROCEDURE CODE 1[illegible]3

13 C W N 318

See SECURITY FOR GOOD BEHAVIOUR.

11 C W N 413

———— proof of—

See MARRIAGE I L R 35 Calc. 232

RE SALE

See CONTRACT—BREACH OF CONTRACT

I L R 24 Calc 124 177

I L R 19 All. 535

I L R. 25 Calc 505

I L R 23 Mad. 18

7 C W N 563

See SALE IN EXECUTION OF DECREE—RE SALES

———— of goods, notice of—

See CONTRACT ACT s 73

16 B L R. 276

RESCUE

See ESCAPE FROM CUSTODY

13 W R. Cr 15

21 W R Cr 22

I L R 11 Mad. 441

RESCUE FROM LAWFUL CUSTODY

See PENAL CODE (ACT XLV OF 1860) s 2[illegible]

I L R 29 All. 575

———— *To deter public servant from discharge of duty—Arrest by dafadar for theft whether committed in his presence—Theft whether a continuing offence—Penal Code (Act XLV of 1860), ss 225 353 and 379—Village Chaukidari Act (Bengal Act VI of 1870) s 39 cl (5).* The arrest by a dafadar of a person for theft on complaint

RESCUE FROM LAWFUL CUSTODY—*concld*

made to him but not committed in his presence is illegal under s 39 (?) of Bengal Act VI of 1870 and neither the rescue of such person from his custody nor the threat to beat him does amount to any offence under s 225 or s 353 of the Penal Code The offence of theft is not a continuing one BOLAI DE v EMPEROR (1907)
I L R 35 Calc 361

RESERVATION

——— grant—

See LANDLORD AND TENANT
10 C W N 425

RESERVED ACCOMMODATION

See RAILWAY COMPANY
I L R 30 Mad 417

RESERVOIR

See PENAL CODE s 277
I L R 2 Calc 383

RESIDENCE

See FOREIGN COURT JUDGMENT OF
5 C W N 741

See HINDU LAW—
HUSBAND AND WIFE
I L R 28 Calc 751

MAINTENANCE—RIGHT TO MAINTENANCE—SON S WIDOW
I L R 29 Calc 557

See INSOLVENCY ACT s 5

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING OR CARRYING ON BUSINESS OR WORKING FOR GAIN

See LUNATIC 2 B L R A C 246
I L R 24 Calc 133

See RECOGNIZANCE TO KEEP PEACE
I L R 24 Calc 344
I L R 6 All 26
I L R 11 Calc 737
I L R 12 Calc 133
I L R 14 All 49
I L R 23 Bom 32

See SECURITY FOR COSTS—SUITS
I L R 3 Bom 227
I L R 9 Bom 244

See SECURITY FOR GOOD BEHAVIOUR
5 C W N 29

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—DWELLING OR CARRYING ON BUSINESS

——— condition for—

See WILL—CONSTRUCTION
12 B L R 1
14 B L R 60
I L R 20 Calc 15

——— constructive—

See FOREIGN COURT JUDGMENT OF
I L R 20 Mad 112

RESIDENCE—*concld*

——— proximity of—

See CERTIFICATE OF ADMINISTRATION—ISSUE OF AND RIGHT TO CERTIFICATE
I L R 4 Calc 411

——— right of—

See HINDU LAW—FAMILY DWELLING HOUSE

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW
12 B L R 238
L R I A Sup Vol 203
W R 1864 3
I L R 3 Bom 44 372 415
L R 6 I A 114
I L R 4 Bom. 261
I L R 13 Bom. 218
I L R 14 Bom. 490
I L R 15 Bom 236
I L R 22 Bom. 52

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES TRUSTS BEQUESTS TO A CLASS AND REMOTENESS
I L R 15 Bom 543

——— stipulation as to—

See RESTITUTION OF CONJUGAL RIGHTS
I L R 17 Calc 670

RESIDENT S COURT

See ADEN COURTS ACT (II OF 1864) ss 8 9
I L R 33 Bom 708

RESISTANCE

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

——— to execution—

See LIMITATION I L R 34 Calc 491

——— to execution of warrant of attachment issued by Civil Court—

See WARRANT OF ATTACHMENT
I L R 29 Calc 244

RESISTANCE OR OBSTRUCTION TO ARREST

See CRIMINAL PROCEDURE CODE ss 75 76
13 C W N 1091

See WARRANT OF ARREST—CIVIL CASES
5 C W N 843
6 C W N 845

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

See APPEAL—ORDERS
2 B L R A C 303 note
W R 1864 Mis 24
1 W R 140
5 Mad. 183
13 W R 264
21 W R.
I L R 16 Mad
I L R
I L R

REPRESENTATIVE OF DECEASED PERSON—*concld*

marriage of husband and wife—Interest payable to both jointly—Death of husband—Claim by widow by right of survivorship—Right of husband s legal representative to his share Upon the marriage of first defendant with K a sum of money was settled by first defendant s mother on first defendant or on K This money was lent on mortgage and by the terms of the mortgage interest was payable by the mortgagors to first defendant and to her husband K jointly with the exception of that which would accrue in respect of the last year of the term which together with the principal sum secured by the mortgage was to be paid to first defendant herself K died whereupon plaintiff as K s legal representative brought the present suit to recover the interest due under the mortgage *Held* that plaintiff was entitled under s 45 of the Contract Act as the legal representative of K to a moiety of the interest which had accrued since the death of K first defendant being entitled to the other moiety and that the right to the whole of the interest did not pass by survivorship to first defendant The circumstance that K and first defendant intended to live and did in fact live together as husband and wife under the *Aliyasantana* law was insufficient to raise the presumption of a contract that there was to be a right of succession by survivorship between K and first defendant in respect of the settled fund KANNHU PUNJA v VITTAMMA (1901)
I L R 25 Mad 385

37 ———————— *Hindu law—Rights of unsecured creditors by way of charge or lien on the inheritance—Position of legal representative—Distribution of assets* The unsecured creditors of a deceased Hindu have no charge or lien on the inheritance If payments are not made by the heir rateably it does not follow that he has failed to apply the assets duly Every payment on account of a debt is perfectly lawful irrespective of its effect upon the other creditors and is a due application of the assets within the meaning of s 252 of the Code of Civil Procedure There is no analogy between the case of an executor who is governed by the special provisions of the Succession Act and that of a legal representative under the Hindu law with reference to the question of the distribution of the assets among creditors Where property of a deceased remains in the hands of the legal representative it does not necessarily follow that a creditor is entitled to proceed against it as assets in the hands of the legal representative The question to be considered is the real effect of what has been done and where payments have been made by the legal representative to the extent of the full value of the property of the deceased which has come into his hands a decree cannot be executed even although he may still have in his possession property which originally belonged to the deceased VEERASOKKARAJU v PAPIAH (1902) I L R 26 Mad 792

REPRESENTATIVE OF JUDGMENT DEBTOR

See CIVIL PROCEDURE CODE 1882 s 244
11 C W N 433

REPRESENTATIVE OF JUDGMENT DEBTOR—*concld*

———————— *Civil Procedure Code (Act XIV of 1882) s 244—Rent sale of occupancy holding—Application to set aside sale by mortgagee—Transferable holding—Representative of judgment debtor* A person to whom a transferable occupancy holding was mortgaged before its [illegible]

the sale under that section *Ishan Chunder Sirkar v Beni Madhub Sirkar I L R 24 Calc 62* and *Asgar Ali v Asaboddin Kazi 9 C W N 134* followed NISSA BIBI v RADHA KISHORE MANIKYA (1906)
11 C W N 312

REPUBLICATION OF SEDITIOUS ARTICLES

See SEDITION I L R 35 Calc 141

REPUDIATION

See COMPROMISE I L R 34 Calc 70

REPUTE

———————— evidence of—

See CRIMINAL PROCEDURE CODE s 123
13 C W N 318

See SECURITY FOR GOOD BEHAVIOUR
11 C W N 413

———————— proof of—

See MARRIAGE I L R 35 Calc 233

RE SALE

See CONTRACT—BREACH OF CONTRACT
I L R 24 Calc 124 177
I L R 19 All 535
I L R 25 Calc 505
I L R 23 Mad 18
7 C W N 562

See SALE IN EXECUTION OF DECREE—RE SALES

———————— of goods, notice of—

See CONTRACT ACT s 73
15 B L R 276

RESCUE

See ESCAPE FROM CUSTODY
13 W R Cr 75
21 W R Cr 23
I L R 11 Mad 441

RESCUE FROM LAWFUL CUSTODY

See PENAL CODE (ACT XLV OF 1860) s 225
I L R 29 All 575

———————— *To deter public servant from discharge of duty—Arrest by duffadar for theft not committed in his presence—Theft whether a continuing offence—Penal Code (Act XLV of 1860) s 225 353 and 379—Village Chaukidari Act (Bengal Act VI of 1870) s 39 cl (2)* The arrest by a duffadar of a person for theft on complaint

RESCUE FROM LAWFUL CUSTODY—*concld*

made to him but not committed in his presence is illegal under s 39 ( ) of Bengal Act VI of 1870 and neither the rescue of such person from his custody nor the threat to beat him does amount to any offence under s 225 or s 353 of the Penal Code The offence of theft is not a continuing one BOLAI DE *v* EMPEROR (1907)
I L R 35 Calc 361

RESERVATION

——— grant—

See LANDLORD AND TENANT
10 C W N 425

RESERVED ACCOMMODATION

See RAILWAY COMPANY
I L R 30 Mad 417

RESERVOIR

See PENAL CODE s 2 7
I L R 2 Calc 383

RESIDENCE

See FOREIGN COURT JUDGMENT OF
5 C W N 741

See HINDU LAW—
HUSBAND AND WIFE
I L R 28 Calc 751

MAINTENANCE—RIGHT TO MAINTENANCE—SON S WIDOW
I L R 29 Calc 557

See INSOLVENCY ACT s 5

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING OR CARRYING ON BUSINESS OR WORKING FOR GAIN

See LUNATIC 2 B L R A C 246
I L R 24 Calc 133

See RECOGNIZANCE TO KEEP PEACE
I L R 24 Calc 344
I L R 6 All 26
I L R 11 Calc 737
I L R 12 Calc 133
I L R 14 All 49
I L R 23 Bom 32

See SECURITY FOR COSTS—SUITS
I L R 3 Bom 227
I L R 9 Bom 244

See SECURITY FOR GOOD BEHAVIOUR
5 C W N 29

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—DWELLING OR CARRYING ON BUSINESS

——— condition for—

See WILL—CONSTRUCTION
12 B L R 1
14 B L R 60
I L R 20 Calc 15

——— constructive—

See FOREIGN COURT JUDGMENT OF
I L R 20 Mad 112

RESIDENCE—*concld*

——— proximity of—

See CERTIFICATE OF ADMINISTRATION—ISSUE OF AND RIGHT TO CERTIFICATE
I L R 4 Calc 411

——— right of—

See HINDU LAW—FAMILY DWELLING HOUSE

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW
12 B L R 238
L R I A Sup Vol 203
W R 1864 3
I L R 3 Bom 44 372 415
L R 6 I A 114
I L R 4 Bom 261
I L R 13 Bom 218
I L R 14 Bom 490
I L R 15 Bom 236
I L R 22 Bom 52

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES TRUSTS BEQUESTS TO A CLASS AND REMOTENESS
I L R 15 Bom 543

——— stipulation as to—

See RESTITUTION OF CONJUGAL RIGHTS
I L R 17 Calc 670

RESIDENT S COURT

See ADEN COURTS ACT (II OF 1864) ss 8 9
I L R 33 Bom 708

RESISTANCE

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

——— to execution—

See LIMITATION I L R 34 Calc 491

——— to execution of warrant of attachment issued by Civil Court—

See WARRANT OF ATTACHMENT
I L R 29 Calc 244

RESISTANCE OR OBSTRUCTION TO ARREST

See CRIMINAL PROCEDURE CODE ss 75 76
13 C W N 1091

See WARRANT OF ARREST—CIVIL CASES
5 C W N 843
6 C W N 845

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

See APPEAL—ORDERS
2 B L R A C 303 note
W R 1864 Mis 24
1 W R 140
5 Mad 183
13 W R 264
21 W R 39
I L R 16 Mad 127
I L R 21 Bom 392
I L R 22 Calc 830

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*contd.*

See LIMITATION ACT 1877 SCH II ART 11 I L R 5 Bom 440
I L R 8 Mad 82
I L R 26 Bom 146
I L R 34 Calc 491

See LIMITATION ACT 1877 SCH II ART 144—ADVERSE POSSESSION
I L R 18 Bom. 37

See LIMITATION ACT 1877 SCH II ART 167 I L R 5 Calc 331
I L R 5 Mad 113
I L R 11 Bom. 473
I L R 13 Mad 504

See LIMITATION ACT 1877 SCH II ART 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS
I L R 16 Bom 294
I L R 20 Bom 175
I L R 24 Bom 345

See MAMLATDARS COURTS ACT s 17
I L R 14 Bom 157

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE I L R 10 Calc 50
I L R 22 Bom 967

See PENAL CODE s 183
I L R 15 Bom 564
I L R 25 Calc 274
I L R 21 Mad 78

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY
I L R 29 Calc 25

See SALE IN EXECUTION OF DECREE—OBJECTION TO SALE
I L R 3 Calc 729

1. ———— **Application by decree holder on obstruction being made**—*Month—English calendar—Civil Procedure Code 1859 s 226* The word month in s 226 of the Code of Civil Procedure means a month according to the English calendar An applicant under that section had a clear calendar month exclusive of the day of dispossession within which to prefer his application DADU VALAD ANSAR v BALGOUDA BIN SHANKARAPPA 5 Bom A. C 39

2 ———————— *Civil Procedure Code 1859 s 226—Procedure* The Court could not be put in motion under s 226 of the Code of Civil Procedure without an application from the decree holder under that section *In the matter of* MAHTAB KOOMAREE 19 W R 62

3 ———— **Remedies of decree holder**—*Obstruction in execution of decree—Decree holder option of to proceed under s 328 or by a separate suit* S 328 of the Civil Procedure Code (Act XIV of 1882) does not make it obligatory on a decree holder who is obstructed in execution of the decree to pursue his remedies under that section Consequently his failure to do so does not prevent him from proceeding against the defendant by a regular suit. BALVANT SANTARAM v BABAJI
I L R 8 Bom. 602

This was the case under s 226 of Act VIII of 1859 JUGMOHUN TEWAREE v BULDEO NAIK
3 Agra 169

4 ———— **Proof of obstruction**—*Civil Procedure Code 1859 ss 226 227* In order to bring a case under ss 226 and 227 of the Civil Procedure Code 1859 it was necessary to show that obstruction had been offered arising from the circumstance that lands had been taken which were not included in the decree PRANNATH ROY CHOWDHRY v PREONATH ROY CHOWDHRY
8 W R 393

5 ———— **Procedure**—*Civil Procedure Code 1859 ss 226 227—Obstruction in execution of decree for immoveable property* Procedure to be observed where while execution of a decree was going on against immoveable property the decree holder alleged that he was *obstructed* in getting possession of certain lands included in the decree BROJO MOHUN SUTPUTTY v SHOODA MONEE DABEE
8 W R 79

6 ———————— *Objection to investigation by Ameen under order of remand—Civil Procedure Code, 1859 ss 226 227* Where the order on remand directed the lower Court to as- [illegible]

was objected to have proceeded under ss 227 of Act VIII of 1859 and allowed both parties to adduce proofs of their claims SHADHOO SURAN v BHUGGO LALL 12 W R 98

7 ———— **Power of Courts**—*Civil Procedure Code 1877 s 329* The power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed [illegible]

fact that the obstruction is made at [illegible] of the defendant. GOVINDA NAIR v KESAVA
I L R 3 Mad. 61

8 ———————— *Civil Procedure Code 1882 ss 331 and 647—Civil Courts Act Madras 1873 s 12—Jurisdiction—Claim below ordinary pecuniary limit* A Court executing a decree obtains by virtue of s. 331 of the Code of Civil Procedure a special jurisdiction which enables

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*contd*

it to try a claim of which the value of the subject matter falls below the pecuniary limit of its ordinary jurisdiction By virtue of s. 647 of the Code of Civil Procedure a superior Court may for sufficient cause transfer a claim registered under s. 331 to a subordinate Court for trial. SITHALAKSHMI v VYTHILINGA
I. L. R 8 Mad. 548

9 ———— **Person put into formal possession**—*Civil Procedure Code 1859 s 229 and s. 224—Execution of decree for possession* The provisions of s. 229 of the Code of Civil Procedure 1859 are not applicable to the case of a person put in possession of land under a decree in the manner prescribed by s. 224 of the same Code GUNESH PERSHAD v JYKI ...
1 N W 134 Ed. 1873 218

10 ———— **Bona fide claimant other than debtor**—*Civil Procedure Code 1859 s 229* Under s. 229 a *bona fide* claimant other than the defendant obstructing the execution of the decree instead of being looked upon as an intervenor must be regarded as one of the substantial parties to the suit DHIRAJ MAHTABCHAND v NADUROON NISSA BEBEE 4 W R. 82

11. ———— **Obstruction otherwise than to officer of Court**—*Civil Procedure Code 1859 s 229—Resisting execution of decree—Jurisdiction* A and B obtained a decree for possession of land against C On their proceeding to execute their decree D who was in possession presented a petition to the Munsif complaining that they were thereby attempting unlawfully to interfere with his possession. The case was tried on remand from the Judge as a suit under the provisions ...

had no jurisdiction to take summary cognizance of the case BUHAL SING CHOWDHRY v BEHARILAL
1 B L R A C 206 10 W R 318

12 ———— **Right to question legality of decree**— *Claimants under Civil Procedure Code 1859 s 229* In claims arising under s. 229 of Act VIII of 1859 there was nothing to prevent the claimants from questioning the legality of the decree obtained by the decree holder against the judgment debtor MAHOMED ALI KHAN v KALUNDER ALI KHAN 4 N W 81

13 ———— **Question for trial**—*Title—Possession—Civil Procedure Code 1859 ss 229 ...* ...

DYAL 2 N W 252

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*contd*

14 ———— *Civil Procedure Code 1859 ss 229 230—Question of title Held* that the principle of the Full Bench ruling in *Radha Pyari Debi v Nabin Chandra Choudhry 5 B L R 708 13 W R F B 80*—that a suit under s 230 of the Code of Civil Procedure must be treated as an ordinary suit for the recovery of property and that the whole question of title between the parties ought to be gone into—is equally applicable to a case under s 229 ABDOOS SOBHAN v BRAHMA DEO NARAIN 14 W R 140

(*Contra*) TALEB HOSSEIN KHAN v GOOROO PERSHAD ROY 20 W R 57

15 ———— *Purchaser of under tenure—Plea of limitation* Where a decree holder sought to execute his decree against an under tenure which had been sold for arrears of rent and the purchaser objected on the plea of limitation —*Held* that the purchaser being no party to the suit was not entitled to contend that execution was barred he could only be heard under s. 229 or s. 230 Act VIII of 1859 and if under the former a very wide discretion could be exercised by the Court MOHESH CHUNDER BANERJEE v CHUNDRA MONEE DEBIA 9 W R 486

16 ———— **Order on application made after time limited**—*Civil Procedure Code 1859 ss 229 231—Right to bring fresh suit* The holder of a decree for land having been resisted in obtaining possession thereof by a person other than the ...

decree ... The Court rejected such application on the ground that it had been made after the time limited ...

... MAN PRASAD I L R 4 All. 131

17 ———— **Nature of investigation**—*Civil Procedure Code 1859 s 229—Subject matter of suit—Execution—Appeal—District Judge juris* ...

plaintiff s claim was numbered and registered as a suit under s. 229 of Act VIII of 1859 Upon investigation the first class Subordinate Judge made an order staying execution of the decree The plaintiff appealed to the District Judge who held that no appeal lay to him as the subject matter of the original suit out of which the execution suit arose exceeded R5 000 The plaintiff appealed against this decision to the High Court *Held* that the investigation of a claim under s. 229 of Act VIII of 1859 was not to be regarded as a fresh suit but was merely a continuation of the original suit and that there was therefore no appeal against the order

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*contd*

in question to the District Judge RAVLOJI TAMAJI *v* DHOLPA RAGHU **I L R 4 Bom 123**

(*Contra*) MUTTAMMAL *v* CHINNANA GOUNDEN **I L R 4 Mad 220**

in which it was *held* that such a claim was a fresh suit and not a continuation of the suit in which the claim had been made

18 ——— Question of possession—*Civil Procedure Code (Act XIV of 1882) s 331—Investigation under that section—Question of title* The investigation of claims under s 331 of the Code of Civil Procedure (Act XIV of 1882) is not limited to the fact of possession Any question of title arising between the contending parties in connection with their right of possession may be finally determined in such investigation as in an ordinary action of ejectment MOULAKHAN *v* GORIKHAN **I L R 14 Bom 627**

19 ——— *Civil Procedure Code ss 13 278 331—Munsif jurisdiction of* The plaintiff having obtained a decree for possession of certain land applied for execution by delivery of possession whereupon a third party filed an objection in the Court of the Munsif that he held a prior decree for possession of the same land and therefore the plaintiff s decree was incapable of execution This objection was allowed and the plaintiff then sued for establishment of his right to possession of the land jointly with the objector making the former judgment debtor and the objector defendant to the suit The Subordinate Judge in first appeal held that the Munsif had acted under s 331 of the Code of Civil Procedure and applying s 13 of the same Code dismissed the plaintiff s suit The plaintiff then appealed *Held* that circumstances did not exist to give the Munsif jurisdiction to act under s 331 and that his order must be taken to have been made as it purported to have been made under s 278 *Buhal Singh Choudhry* v *Behari Lal 1 P L R A C 206* referred to The scope and application of s 331 of the Civil Procedure Code commented upon MAHABIR PRASAD *v* PARMA **I L R 14 All 417**

20 ——— *Civil Procedure Code ss 328 331—Obstruction offered by a tenant—Decree for partition—Possession decree for* Obstruction was offered to the execution of a decree for partition of certain property by a person claiming to be entitled to occupy part of the land in question as a mulgeni tenant The decree holder presented a petition to the Court under the Civil Procedure Code s 328 this petition was rejected and the claim was not numbered and registered as a suit *Held* that the decree for partition was a decree for possession of property within the meaning of the Civil Procedure Code s 328 and that that section was not rendered inapplicable by the fact that the obstructor claimed to be a mulgeni tenant GOPALA *v* FERNANDES **I L R 16 Mad 127**

21 ——— Decree in possessory suit—*Civil Procedure Code 1859 s 230—Decree in*

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*contd*

suit under Act XIV of 1859 s 15 A had been dispossessed of certain land in execution of a decree which B had obtained in a suit against C under s 15 Act XIV of 1859 A applied under s 230 Act VIII of 1859 to recover the land *Held* that the decree obtained by B was a decree within the meaning of s 230 of Act VIII of 1859 and therefore A had rightly applied under that section BRAHMA MAYI DEBI *v* BARKAT SIRDAR **4 B L R F B 94**

S C BROHMO MOYEE DABEE *v* BURKUT SIRDAR **12 W R F B 25**

(*Contra*) GOBIND CHUNDER BAGDEE *v* GOBIND GHOSE MUNDUL **7 W R 171**

22 ——— Defendants dispossessed in execution objection by—*Civil Procedure Code 1859 s 230* S 230 Act VIII of 1859 does not authorize the registry as a suit of objections by defendants or purchasers from defendants dispossessed of immoveable property in execution of a decree and disputing the right of the decree-holder to be put into possession of such property HURO PERSHAD ROY *v* RAM LOCHUN MUNDUL **6 W R 148**

23 ——— Claimant to right of way over land taken in execution—*Civil Procedure Code 1859 s 230* A plaintiff claiming a right of way over land taken possession of in execution [illegible] 230 Act [illegible] suit to [illegible] OOMDAR [illegible] R 289

24. ——— Person other than defendant as to particular portion of land in dispute—*Civil Procedure Code 1859 s 230—Suit on dispossession by Ameen—Cause of action period from which it accrues* S 230 Act VIII of 1859 though was applicable to the case of a person who was personally the defendant in the original suit was legally other than the defendant as regards the particular portion of land in dispute in execution Where an Ameen was appointed to measure and give possession of land in execution of a decree the one month allowed for preferring a claim under [illegible] the date when [illegible] from the [illegible] Do s [illegible] BHOWANEE DOSSEE W R 1864 Mis 18

25 ——— Intervenor—*Party to suit—Right to apply under Civil Procedure Code, 1859 s 230* D having sued to recover possession of certain lands P intervened and D s claim was decreed without prejudice to P s rights In execution of that decree D took possession and thereupon P applied to be heard under the provisions of s 230 Act VIII of 1859 *Held* that having been a party to the decree P had no remedy under that law RAMGOPAL CHUCKERBUTTY *v* POORNACHUNDER BANERJEE **13 W R 475**

26 ——— Possession by receipt of rent—*Personal occupation—Civil Procedure Code,*

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*contd*

1859 s 230 Possession by receipt and enjoyment of rent is as good in law as actual occupation and s. 230 Act VIII of 1859 was not restricted to case of personal occupation BHYRUB SIRCAR v SHAM MANJEE 15 W R 70

27 ———— Objector with bona fide title—*Right to apply under Civil Procedure Code 1859 s 230* An objector who did not claim to be in possession on his own account or on account of some person other than the defendant but whose sole ground of intervention was that he held a *bona fide* title derived from the defendant was not entitled to be heard under s. 230 EUSUF ALI KHAN v SHIB SHUNKUR SHUHAYE KURIM BUKSH v SHIB SHUNKUR SHUHAYE W R 1864 384

28 ———— Claimant to possession through mortgagee—*Right to apply under Civil Procedure Code 1859 s 230* Possession through a mortgagee is sufficient to bring a claim under this section A GUB ALI v A GUT ALI 20 W R. 373

29 ———— Party not in actual occupation of land—*Right to benefit of s 230 Civil Procedure Code, 1859* A party who has parted with the actual occupation of land to another was not thereby as an absolute rule without restriction barred from taking advantage of Act VIII of 1859 s. 230 BANEE MADHUB DUTT v NUND LALL MOJOOMDAR 22 W R. 123

30 ———— Mortgagee in possession—*Civil Procedure Code 1877 s 332—Execution of decree—Act VIII of 1859 s 230—Repeal* A mortgagee who is in possession of the mortgaged property under the mortgage is in possession on his own account within the meaning of s. 230 Act VIII of 1859 and s 332 of Act X of 1877 Where in pursuance of an order made in the execution of a decree while Act VIII of 1859 was in force certain

the benefit of that section A person claiming under s 332 of Act X of 1877 need not prove his title but only the fact of possession SHAFI UDDIN v LOCHAN SINGH I L R 2 All. 94

31. ———— Nature of evidence requisite—*Possession and dispossession proof of—Civil Procedure Code 1859 s 230* To entitle a

———— disposses
230—Suit to
plication pro
Act VIII of

1859 plaintiff affirmed that he was in possession and sued to have his rights affirmed —*Held* that as plaintiff was not dispossessed he had no cause of action and that he was not entitled to be heard nor had the Court jurisdiction to hear and determine his cause under the extraordinary provisions of that section KALEE NARAIN SINGH v PROTAPCHUNDER BUROOAH 12 W R 231

33 ———— Dispossession evidence of—*Sufficiency of proof—Planting bamboo and making proclamation—Civil Procedure Code 1859 s 230* Planting a bamboo and making proclamation to the occupants of an estate that it has been adjudged to some other is sufficient dispossession of a landlord to warrant him in applying to the Court under s. 230 COLLECTOR OF BOGRA v KRISHNA INDRA ROY 2 B L R A C 301 11 W R 191

34. ———— Procedure on application—*Civil Procedure Code 1859 s 230—Examination of applicant* When an application is made by a party on the ground that he was in possession and that he has been dispossessed in execution of a decree in a suit in which he was not a party the proper order to be made under s. 230 Act VIII of 1859 is in the first instance to examine the applicant OBHOY CHURN DEY v RAJENDRO COOMAR GHOSE 16 W R 288

35 ———— *Dispossession under decree of person not a party to it—Civil Procedure Code 1859 s 230* A party dispossessed of land under colour of a decree to which he was not a party
s 230
gation
HASSUN

36 ———— *Trial as regular suit—Civil Procedure Code 1859 s 230* Where a party complains under s 230 Civil Procedure

defendants LULEET NARAIN GOSSAMEE v KESHUB DEB GOSSAMEE 15 W R 209

BANEE MADHUB DUTT v NUND LALL MOZOOMDAR 22 W R 123

YUSAN KHATUN v RAMNATH SEN 7 B L R Ap 26

s c ESHAN KHATOON v RAMNATH SEIN JUH KUR 15 W R 327

AJOO KHAN v KISTO PERSHAD LAHOORY 8 W R 477

SAHOO GOKUL PERSHAD v ZYNUB 1 N W 176 Ed 1873 255

The express provisions of the later Acts of 1877 and 1882 s 332 are in accordance with these cases

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*contd*

37 ——— **Question of title**—*Question of possession—Civil Procedure Code 1859 s 230* Where an objection takes the form of a suit under s. 230 of the Code of Civil Procedure the real question to be tried is whether the objector has a better right to the property in dispute than the decree holder SHEERO COOMAREE DABEE v KESHUB CHUNDER BOSE

1 Ind. Jur N S 188 5 W R 224

Under Act VIII of 1859 s 230 it was *held* that the title might be gone into as well as the question of possession YUSAN KHATUN v RAMNATH SEN 7 B L R Ap 26

s c ESHAN KHATOON v RAMNATH SEIN LUSHKUR 15 W R 327

RADHA PYARI DEBI v NABIN CHANDRA CHOWDHRY 5 B L R 708 13 W R F B 80

NUGENDER CHUNDER GHOSE v RAM COMUL MUNDUL 3 W R 213

JADUNATH SING v KALIPRASAD 6 B L R Ap 55 14 W R 358

AJOO KHAN v KISTO PERSHAD LAHOORY 8 W R 477

38 ——— *Civil Procedure Code, 1859 s 230—Claim—Possession* When a person making a claim to certain property under s 230 of Act VIII of 1859 had been allowed to bring a suit under that section to try his right to the property it was *held* to be sufficient in the first instance for him to prove his possession without proof of title but if he took this course it was open to the defendant to show that although possession might be in the plaintiff yet he had no good title to the property and that he (the defendant) had a better title DILBASSEE KOONWAREE MOTHEE v GUNGA PERSHAD I. L R. 5 Calc 278

39 ——— *Possession—Limitation—Civil Procedure Code 1859 s 230* The defendant purchased in 1856 from the Official [illegible] property belonging to one *D* In [illegible] heirs of *D* for [illegible] he obtained a decree in May 1869 under which he obtained possession in May 1870 In June 1870 the plaintiff filed a petition under s. 230 Act VIII of 1859 [illegible]

[illegible] was barred more than twelve years having elapsed from the date of his purchase and that the plaintiff was entitled on mere proof of *bonâ fide* possession and that he was not a party to the suit by the defendant in 1867 to put the defendant to proof of his own title and on the defendant s failing to prove his title to be restored to possession BRINDABUN CHUNDER ROY v TARACHAND BANDOPADHAY

11 B L R 237 20 W R 114

40 ——— **Separate adverse claims**—*Dispossession—Procedure—Civil Procedure Code 1859 s 230* Four persons made separate applications to the Court under s. 230 Act VIII of 1859 alleging that the defendant having obtained a decree against Government for possession of fisheries in a suit to which they were no parties had in execution dispossessed them of fisheries of which they were severally in possession On inquiry it appeared that each and several of the four applicants claimed possession of the same portions of the fisheries The lower Court holding that it was impossible for each of several parties setting up adverse claims to the same property to show that it had been *bonâ fide* in his possession and that he had been dispossessed from it referred all parties to a regular suit *Held* that the Judge should have tried each case by itself as between the applicant and the decree holder SARADAMAYI CHOWDHRAIN v NABIN CHANDRA ROY CHOWDHRY

2 B L R A C 333 11 W R 255

41 ——— **Dispute between mokurraridar and dar patnidar**—*Civil Procedure Code, 1859 s 230* In a dispute between a mokurraridar and dar patnidar it was held that the khas possession of the dar patnidar having been established by a decree under s 230 Act VIII of 1859 could not be disturbed except by a regular suit by the mokurraridar for confirmation of his title as mokurraridar and for direct possession SHEEO COOMAREE DEBEE v KESHUB CHUNDER BOSE 8 W R 131

42 ——— **Transfer of land in dispute from one jurisdiction to another**—*Intervenor—Civil Procedure Code 1859 s 230* In a suit brought by an intervenor under s. 230 Code of Civil Procedure if during the pendency of the execution case the land in dispute is passed by transfer from one district to another and thereby the Court is deprived of jurisdiction *it is the duty of* the Court to transfer the record to *the Court of the* district to which the land has been transferred KALEE DOSS NEOGY v HURONATH ROY CHOWDHRY 3 W R 4

43 ——— **Purchaser at execution sale**—*Civil Procedure Code 1859 ss 269 68* A person coming in under s. 269 Act VIII of 1859 more than a month after dispossession, had no *locus standi* under that section. S. 268 of Act VIII of 1859 was solely for the benefit of purchasers at a sale in execution and no person had any ground to come in under the application of a purchaser except the party who was complained of as resisting or obstructing the purchaser in obtaining possession. HEERA LALL BANERJEE v BURODA KANT ROY ONOOKOOL CHUNDER MOOKERJEE v BURODA KANT ROY 13 W R 467

44 ——— *Civil Procedure Code 1859 s 269—Objection to khas possession made before attempt to deliver possession in execution of decree—Construction of decree for possession of* [illegible] decree against *J* and in execution [illegible] bought [illegible] and [illegible] but [illegible]-debt [illegible]

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*contd*

had executed and registered a patni pottah for a three annas share of one of the zamindaris in dispute and granted it to *D* who having objected under s 246 Civil Procedure Code 1859 to the above sale an order was made at the time of the auction sale that it should be proclaimed that *D* claimed a patni right and this was accordingly done Before *M* was put into actual possession he was required to find security Delaying to do this the lands were attached and sold under a judgment obtained by others who purchased and entered into possession *M* having furnished security petitioned to be put into possession but her petition was rejected She then brought a suit to cancel the order refusing her possession In her plaint she claimed khas possession but did not refer to the patni claimed by *D* Her plaint was decreed the decree was appealed and it was finally upheld by the Privy Council but throughout the litigation no issue was raised as to the patni In the proceeding to execute the decree *M* claimed actual possession Before process had been issued *D* objected to khas possession being given of his patni mouzah The Judge ruled that the objection fell within the spirit of s 269 Act VIII of 1859 and that he had therefore jurisdiction to entertain it *Held* that 269 did not apply inasmuch as no attempt had been made to deliver possession. *Held* also that the only intention of the decree was to confirm the plaintiff in the position which she occupied when the property was sold in [illegible] ation [illegible] khas [illegible] DHUN [illegible] 219

45 ——— *Civil Procedure Code 1859 ss 269 and 64 (1882 s 334)—Delivery of possession—Resistance or obstruction to giving possession* Delivery of possession under s 264 Code of Civil Procedure was complete as soon as the steps prescribed by that section had been taken and any subsequent act of resistance on the part of the claimant to the land was not the resistance or obstruction referred to in s 236 and could in no way give the Court a right to interfere in the summary way provided by that section WAJED HOSSEIN *v* ABDOOL KADIR 13 W R 418

46 ——— *Civil Procedure Code 1859 s 269—Suit by auction purchaser for possession* An auction purchaser of the right title and interest of his judgment debtor plaintiff got an award under s. 269 Code of Civil Procedure but in attempting to get actual possession was suc [illegible]

47 ——— *Civil Procedure Code 1859 s 269—Dispossession in execution of decree against another party* A person dispossessed of property in execution of a decree against another person and claiming to be entitled to possession was not bound to proceed under s. 269 of Act VIII of 1859 PROTAB CHUNDER CHOWDHRY *v* BROJOLAL SHAHA B L R Sup Vol 638 7 W R 253

JADOONATH CHOWDHRY *v* PADHAMONEE DOSSEE B L R Sup Vol 643 7 W R 256

48 ——— *Person dispossessed in execution of decree—His remedy by suit or application under s 332 of the Code of Civil Procedure (Act XIV of 1882)* A person dispossessed of his land in execution of a decree [illegible]

49 ——— *Civil Procedure Code 1859 s 269—Suit by auction purchaser to recover possession* It was not compulsory upon an auction purchaser under a decree when resistance was offered to his taking possession of the property purchased to proceed under 269 of the Civil Procedure Code It was open to him to proceed at once by regular suit against the person in possession of the property purchased by him. MADAREE *v* BULLOO KOOEREE 2 N W 450

50 ——— *Inquiry as to right to possession—Civil Procedure Code 1859 s 269* Where a Subordinate Judge proceeding under Act VIII of 1859 s 269 looked into the circumstances of a case with reference to the relative rights of the parties and came to the conclusion that he could not refuse possession to the execution purchaser he was held to have made the kind of inquiry contemplated by the section HURO PERSHAD ROY CHOWDHRY *v* RAMESSUR MISSRY MALIA 24 W R 461

51 ——— *Civil Procedure Code 1859 s 269—Proof of title—Onus probandi of* When the defendant was in possession by virtue of an order under s 269 of Act VIII of 1859 the plaintiff could only succeed on the strength of his own title KALLAPA *v* VENKATESH VINAYAK I L R 2 Bom. 676

52 ——— *Civil Procedure Code 1859 ss 246 and 269—Order as to right to* [illegible]

[illegible] 15 W R 451

53 ——— *Civil Procedure Code 1859 s 269—Limitation— Suit to establish his right —Right contradictory to summary order*

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*contd*

or consistent with it The words suit to establish his right in s 269 of the Civil Procedure Code meant a suit to establish his right to present possession but where there was a subsisting right which was contradicted by the summary order under that section and which was to be properly asserted by such a suit the suit by the person dispossessed or refused possession to establish his right had to be brought within one year from the date of the order failing which he could not sue afterwards on any portion of such right It was otherwise where his right was consistent with the order and the possession given under it PANGO VITHAL v RIKHIVADAS BIN PAYACHAND 11 Bom 174

54 ———— *Order not made against parties to proceedings—Civil Procedure Code 1859 ss 268 269* A purchaser of immoveable property at a Court sale having been obstructed by the defendant made an application to the Court under s. 268 of Act VIII of 1859 for the removal of the obstruction but subsequently with

that section contemplating at least an order against one party or the other BHIKA v SAKARLAL I L R 5 Bom 440

In HAPASATOOLLAH v BROJONATH GHOSE I L R 3 Calc 729 1 C L R 517

In a case governed by the Civil Procedure Code 1877 it was *held* that there being no provision in that Code similar to that contained in s 269 of Act VIII of 1859 enabling the Court to do so the Court could not enquire into a complaint made by a person other than the defendant on the ground of dispossession in the delivery of possession to the purchaser of immoveable property sold in execution of a decree and therefore the only remedy of a person so dispossessed was by regular suit This omission in the Code of 1877 was rectified by the amending Act XII of 1879 and under the present Code Act XIV of 1882 a person other than the defendant may make an application for an inquiry

55 ———— *Application against a claimant resisting execution, how treated —Order under Civil Procedure Code s 331 nature of* An application in furtherance of execution of a decree for possession against a person who resists execution claiming the property as his own is an application within s. 331 of the Civil Procedure Code and should be treated as a plaint FONINDRO DEB RAIKUT v JUGODISHWARI DEBI I L R 14 Calc 234

56 ———— *Civil Procedure Code 1882 s 335—Effect of order unappealed from* An order rejecting a claim petition under s. 335 of the Civil Procedure Code not being appealed against within one year acquires the force of a decree *Velayuthan v Lakshmana I L R 8 Mad. 506* followed. ACHUTA v MAMMAVU I L R 10 Mad. 357

57 ———— *Civil Procedure Code (Act XIV of 1882) ss 331 335—Order under s 335—Decree—Dispossession* An order under s. 335 Civil Procedure Code is not a decree a person in whose favour such an order is made is not entitled to claim the benefit of s. 331 Civil Procedure Code If a purchaser of immoveable property at an execution sale who has obtained delivery of the same from Court is subsequently dispossessed he is not entitled to claim the benefit of 335 as such purchaser SRINATH GHOSH v ANNODA PROSAD ROY 1 C W N 192

58 ———— *Civil Procedure Code 1882 ss 319 335—Land in the occupancy of raiyat—Symbolical possession under s 319—Dispossession of a third party* Where a person is found to
rent fror
under s

so as to entitle him to complain within the meaning of that section KISORI LAL GOSWAMI v LALA SHIB LAL 1 C W N 343

59 ———— *Civil Procedure Code ss 318 335—Suit to recover possession of property sold in execution of decree* S attached certa
agai
Code
es
ed
S purchased the said land and house in
and obtained a sale certificate In 1884 S sued M to recover possession of the land and house alleging that in execution proceedings in 1882 he had been put into possession of the land but not of the house which was found locked up by the Court Ameen and that M prevented him from enjoying both the land and house M pleaded that S had never been put into possession and again set up his title as purchaser from R and possession under such title The Munsif found that S had been put into formal but not of the

ing to the provisions of
Procedure to recover possession and could not
a separate suit *Held* that whether there had been legal delivery or not the suit was not barred SEVU v MUTTUSAMI I L R 10 Mad. 53

60 ———— *Civil Procedure Code ss 244 332 588—Death of judgment-debtor between order for possession in execution of decree and delivery of possession—Appeal against appellate order reversing an order under s 33* A decree-holder in a District Munsif s Court obtained an order for possession of land in execution of his decree on 20th August on which day the judgment-debtor

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—contd

died Possession was delivered on 28th August The person dispossessed presented a petition under s. 335 of the Code of Civil Procedure disputing his right to be put into possession on the ground *inter alia* that the judgment debtor was not represented on the record On appeal against the appellate order of the District Judge —*Held* assuming that the order for possession was made prior to the death of the judgment debtor there was no necessity for the decree holder to bring any other person on to the record between the date of that order and the date on which the order was executed *Janakiram* v *Bagirathi I L R 6 Mad 180* distinguished BHYYAKKA v FAKIRA I L R 12 Mad 211

61 ———————— *Civil Procedure Code 1882 s 335—Joint manager—Mortgage by one of such manager —Sale of mortgage in execution of decree on mortgage and dispossession of the other manager—Application for restoration of possession by other joint manager* A the owner of certain pr
three nep
property
and got a
property was sold and purchased by L who was put in possession by the Court G one of the managers then applied for possession under s. 335 of the Civil Procedure Code (Act XIV of 1882) alleging that he had been wrongfully dispossessed *Held* that the mortgagee got no title to the property by his mortgage from A against the real owner K and G who was in actual possession as his manager (whether or not there were others equally entitled to share in the management) was entitled to prevent the purchaser L taking possession and having been dispossessed had a claim to be restored to possession under s 335 of the Civil Procedure Code GOBIND BALVANT SHIVNEKAR v LAKSHMAN BIN NANA TELI I L R 18 Bom 522

62 ———————— *Civil Procedure Code 1882 ss 334 and 335—Application by usufructuary mortgagee ejected by auction purchaser to be restored to possession—Representative of party to suit—Auction purchaser who was also assignee of decree—Judgment debtor* In a suit for sale upon a mortgage the plaintiff having obtained a decree assigned the same and the assignee brought the property decreed to be sold to sale and purchased it himself and obtained possession A usufructuary mortgagee of the property who had been a party to the suit and in whose favour the decree was in so far that it declared his right to continue in possession applied to be restored to possession and obtained an order in his favour Thereupon the assignee auction purchaser applied in revision

the meaning of s 244 nor was the usufructuary mortgagee a judgment debtor within the meaning of s. 334 or s 335 but he was a person other than a judgment debtor within the meaning of s 335 SABHAJIT v SRI GOPAL I L R 17 All 222

63 ———————— *Resistance or obstruction to execution—Limitation—Renewal of resistance or obstruction—Fresh cause of action* The period of limitation provided for in s 328 of the Code of Civil Procedure is a limitation which governs a cause of action arising out of a particular resistance or obstruction. So far as that resistance or obstruction is concerned the decree holder if he wishes to take proceedings under s. 328 must do so within one month from the time of such resistance or obstruction But the bar created by the limitation imposed by this section does not extend to and hold good so as to bar complaints against acts of resistance or obstruction made upon fresh proceedings taken by the decree holder *Ramasekara* v *Dharmaraya I L R 5 Mad 113* followed *Balvant Santaram* v *Babaji I L R 8 Bom 602* and *Vinayak Rao Amrit* v *Devrao Govind I L R 11 Bom 473* distinguished NARAIN DAS v HAZARI LAL I L R 18 All. 233

64 ———————— Dispossession—*Symbolical possession effect of—Civil Procedure Code (Act XIV of 1882) ss 318 335—Jurisdiction* Symbolical

65 ———————— Obstruction—*Civil Procedure Code (Act XIV of 1882) s 331— Possession — Constructive possession—Obstruction to possession in execution of decree—Construction* The word possession as used in s 331 of the Civil Procedure Code (Act XIV of 1882) is not limited to actual physical possession. It includes also constructive possession such as possession by a tenant So *held* by CANDY and TYABJI JJ (WHITWORTH J dissenting) Where premises sought to be recovered

I L R 20 Bom 416

66 ———————— *Civil Procedure Code (Act XIV of 1882) s 331—Specific Relief Act (I of 1877) s 9—Suit for possession—Execution of decree—Obstruction—Application for removal of obstruction registered as a suit—Questions arising in such suit* In the case of a claim numbered and registered under s. 331 of the Civil Procedure Code (Act XIV of 1882) as a suit between a decree holder and an obstructing claimant the only issues arising are whether the person obstructing was in possession of the property in question on his own account or on account of some person other than the judgment-debtor (i e the defendant in the original suit) No question requiring the decree

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*contd*

to be reopened can be raised MAHOMED ISUB v BASHOTAPPA BIN TAKAPPA (1903)
I L R 27 Bom. 302

RES JUDICATA

See ADMINISTRATOR
I L R 29 Bom 96

See AGRA TENANCY ACT (LOCAL) II OF 1901 s. 199 I L R 29 All 160
I L R 31 All. 323

See APPEAL I L R 29 All. 730

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—RES JUDICATA
I L R 4 All 69
Marsh 276 2 Hay 154
3 W R Act X 146

See BENAMIDAR I L R 30 All 30

See BENGAL TENANCY ACT—
s 51 6 C W N 589
s. 107 I L R 28 Calc 676
s 109 9 C W N 610

See CIVIL PROCEDURE CODE 1882
I L R 26 All. 61 501 601
8 C W N 30

See CIVIL PROCEDURE CODE 1882 s. 13
I L R 27 All. 37 59 142 148 163
10 C W N 40
I L R 29 All. 519
I L R 31 Bom 527
I L R 31 All. 19

RES JUDICATA—*contd*

See COMPROMISE—CONSTRUCTION ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE
I L R. 25 All 546

See CONTRACT ACT s 69
I L R 30 Mad. 461

See DECREE I L R 31 Calc 62[?]

See EJECTMENT SUIT FOR
I L R 29 All. 601

See ERROR IN LAW
I L R 30 Mad. 461

See ESTOPPEL—ESTOPPEL BY JUDGMENT

See ESTOPPEL BY JUDGMENT—MESNE PROFITS I L R 32 Calc 118, 357

See EVIDENCE ACT s. 13
I L R 31 Bom. 143

See EXECUTION PROCEEDINGS
I L R 28 Mad 26 338

See FOREST ACT s. 45
I L R 24 Calc 504
L R 24 I A 33

See FUTURE MAINTENANCE DECREE FOR
I L R 30 Mad. 504

See GOVERNOR IN COUNCIL
9 C W N 257

See GUJARAT TALUKDARS ACT (BOM ACT VI OF 1888)
I L R 30 Bom. 2 0

See HINDU LAW—ALIENATION
I L R 29 All. 331

See INJUNCTION—DISOBEDIENCE OF ORDER FOR INJUNCTION
I L R 23 All. 465

See JURISDICTION I L R 33 Calc 193

See LAMBARDAR AND CO SHARER
I L R 29 All. 287

See LANDLORD AND TENANT
I L R 34 Cal 922

See LIMITATION ACT (XV OF 1877) s 7 SCH. II ART 11
I L R. 33 Cal 790

See LIMITATION ACT 1877 SCH II ARTS 95 120 I L R 30 Mad. 402

See LIMITATION ACT (XV OF 1877) s SCH. II ART 118
I L R 28 All. 727

See MADRAS RENT RECOVERY ACT SS. 4 11 I L R 30 Mad. 510

See MORTGAGE 8 C W N 385
12 C W N 345

See PATTA OBJECTION TO
I L R. 30 Mad. 400

See POSSESSION—SUITS FOR POSSESSION
I L R. 26 Mad. 514

See RIGHT OF SUIT—POSSESSION SUITS FOR—CO DEFENDANTS 6 C W N 314

RES JUDICATA—*contd*

See TRANSFER OF PROPERTY ACT (IV OF 1882) s. 6 (a) I. L. R. 30 Mad. 255

—— erroneous decision—

See RES JUDICATA—PARTIES
I. L. R. 31 Bom. 128

1 GENERAL CASES

1. ——— **Requisites for plea of res judicata**—*Civil Procedure Code 1859 s 2—Parties—Subject matter of suit and cause of action identical.* To plead *res judicata* under s. 2 Act VIII of 1859 it is necessary that the parties should be the same or their representatives that the subject matter of the suit should be the same and the cause of action the same MAHARAJ SINGH v BEELA KOOER W. R. 1864 320

MUNNA JHUNNA KOONWUR v LALJEE ROY 1 W. R. 12

UDHAR SINGH v PANEE KOONWUR 1 Agra 234

SHUMBOO CHUNDER SINGH v RAM NARAIN DOSS 9 W. R. 217

RAJ DOOLLUB SIRCAR v OOMA CHURN BISWAS 21 W. R. 109

2 ——— *Final decision granting or withholding relief* To conclude a plaintiff by a plea of *res judicata* it is not sufficient to show that there was a former suit between the same parties for the same matter upon the same cause of action it is necessary also to show that there was a decision finally granting or withholding the relief sought SAIKAPPA CHETTI v KULANDA PURI NACHIYAR *alias* KATTAMA NACHIYAR 3 Mad. 84

3 ——— *Final decision in former suit* To give effect to the plea of *res judi*[illegible]

[illegible] YAR 2 Mad. 131

Affirmed in PAGHOUNADDA PERIA OODYA TAVER v KATTAMA NAUCHEAR 10 W. R. P. C. 1

s.c. VIJAYA RAGANADHA BODHA GOOROO SAWMY PERIA ODAYA TAVER v KATAMA NATCHIAR 11 Moo. I. A. 50

4. ——— **Execution proceedings**—*Execution of decree—Principal of res judicata as applied to execution proceedings—Succession certificate—Succession Certificate Act (VII of 1889) s 4* The principle of *res judicata* applies to prevent parties raising a second time in the same suit or in the same execution proceeding an issue which in that suit or in the execution proceedings in that suit had previously been determined The principle of *res judicata* does not depend for its application upon the question whether the decision which is to be used as an estoppel was a right decision or a wrong decision in law or on facts. A defendant respondent cannot avoid the application of the principle of *res judicata* by saying that he did not appear at the trial of the suit and a plaintiff who has got an *ex parte* decree on proof of his title or on failure of the defendant to prove a defence the *onus* of proving which was on him *cannot be deprived of the full benefit of the decree* which he has obtained by the fact that the defendant did not appear in Court to protect his own interest *Ram Kirpal v Rup Kuari I L R 6 All 269* referred to BEHARI LAL v MAJID ALI (1897) I. L. R. 24 All. 138

5 [illegible] —*Civ*[illegible] 13 [illegible] with [illegible] issue was [illegible] in regard to that matter a subsequent suit involving the same matter would not be barred by reason of the previous suit UMESH CHUNDER DEY v SHARBESSUR CHUNDER (1901) 5 C. W. N. 304

6 ——— *Court of Agent of Governor—Appeal to Governor in Council—Dismissal of suit on ground of political expediency—Legality—Res judicata—Jurisdiction want of—Consent of parties—Act XXIV of 1839 ss 2 3 4—Rules XXI and XXII* A suit instituted in the Cour[illegible] patam wa[illegible] with out[illegible] ed by the[illegible] e District[illegible] at no sufficient evidence had been given to establish the plaintiff's case Subsequently the High Court decided that it had no jurisdiction to order such a transfer and the consent of parties could not confer jurisdiction The plaintiff thereafter instituted a fresh suit in the Agent's Court on the same cause of action The Agent dismissed the suit as *res judicata* and an appeal to the Governor in Council was rejected on the ground that it would be inexpedient and set a bad example and encourage a multitude of suits for the same cause of action *Held* by the Judicial Committee that the legal right to bring a suit and to have it determined by the proper Court created for the purpose of determining such suits cannot be barred upon considerations of policy or expediency *Held* also that the former decision of a Court adjudged by the High Court to be without jurisdiction cannot be treated as *res judicata* and the plaintiff was entitled to have his suit tried on the merits by the Agent's Court SRI VIKRAMA DEO MAHARAJU LUGARU MAHARAJA OF JEYPORE v GUNAPUTAM DEENABANDHU PATNAICK (1905) I. L. R. 28 Mad. 42
s.c. 9 C. W. N. 257

7 ——— *Agra Tenancy Act (Local II of 1901) s 199—Suit for ejectment in Revenue Court—Omission on part of defendant to plead title in himself—Res judicata* In a suit for ejectment under Act No II of 1901 the defendants

RES JUDICATA—contd

I. GENERAL CASES—contd

and MILLER, JJ (Chief Justice dissenting) that such subsequent suit was barred Per SIR ARNOLD WHITE CJ —The question whether a matter ought to have been made a ground of attack within the meaning of s 13 Expl II of the Civil Procedure Code will depend on the facts of each case Where the two different kinds of heirship under which a person claims property cannot co exist he is not bound in a suit based on one kind of heirship to join the other in the alternative when the former if proved will necessarily negative the latter It cannot be said that a party might and ought to have claimed alternatively in the view that the ground of title set up was false or that he would be unable to prove it Per WALLIS J —The question of what ought to be made a ground of attack under s 13 Expl II must be determined by the provisions of s 42 of the Civil Procedure Code The first question to be considered in such cases is whether the provisions of s 42 required the plaintiff to join in the former suit the ground of attack in the subsequent suit Where a person claims as heir the matter within the meaning of s 42 is his heirship and he is bound to include in one suit all the different grounds on which he bases his heirship as far as practicable It will not be practicable to join in one suit the different grounds only when the evidence in support of one ground will be destructive of the other *Ramaswami Ayyar v Vythinatha Ayyar I L R 26 Mad 60* followed MILLER J —The construction of the word ought in s 13 Expl II of the Code of Civil Procedure must to a great extent depend on considerations of hardship and inconvenience caused to the parties There is no hardship or inconvenience in requiring a plaintiff suing as heir to state all the facts on which he bases his heirship even though it may result in the presentation of an alternative case while great inconvenience and hardship may be caused to the defendant by allowing the plaintiff to keep a ground in reserve *Muthumadeva Naik v Sundramuthum deva Naik 7 Mad H C 160* approved MASILAMANIA PILLAI v THIRUVENGADAM PILLAI (1908) **I L R 31 Mad 385**

13 —————— *Successive purchase of the same land at two execution sales—Suit to set aside one such sale—Purchaser's defence—Whether he is bound to set up title acquired at the other sale—Ground of defence which ought to have been taken* A purchased village S in execution of a decree obtained by him against C in the Small Cause Court Subsequently A through B insti

succeeded In this suit A did not set up as a ground of his defence the title obtained by him at the mortgage sale *Held* that A was not bound to do so and a suit by A to recover the lands in village S purchased at the mortgage sale is not *res judicata* under Expl II of s 13 of the Civil Procedure Code Per BRETT J —Expl II of s 13 of the Civil Procedure Code refers to the title litigated in the former suit as distinguished from the relief claimed When several independent grounds of action are available a party is not bound to unite them all in one suit though he is bound to bring before the Court all grounds of attack available to him with reference to the title which is made the ground of action This rule equally applies to the converse case of a defendant when pleading in his defence *Pittapur Raja v Venkatta Mahipati Surya I L R 12 I A 116* and *Rama Swami Aiyar v Vythinath Aiyar I L R 26 Mad 760* relied on MOHABIR TEWARI v PURBHOO NATH CHOWBEY (1908) **12 C W N 292**

14 —————— *Civil Procedure Code (Act XIV of 1882) s 13—Plea of res judicata can prevail even where its effect is to sanction what is illegal—Bhagdari and Narwadari Tenures Act (Bom Act V of 1862) s 3* A plea of estoppel by *res judicata* can prevail even where the result of giving effect to it will be to sanction what is illegal in the sense of being prohibited by statute CHHAGANLAL v BAI HARKHA (1909) **I L R 33 Bom 479**

2 ESTOPPEL BY JUDGMENT

1 ———— **Rule as to estoppel by judgment**—*Civil Procedure Code 1859 s 2* The doctrine laid down in the *Duchess of Kingston's Case 2 Smith's L C 6th Ed 679* as to estoppel by judgment is applicable to cases tried under Act VIII of 1859 the second section of which is consistent with that rule But the Judicial Committee reversing the decision of the Court below considered that the doctrine had no application in the present case the judgment relied on not being the judgment of a Court of concurrent jurisdiction directly upon the point upon the same matter and after an examination of the whole evidence restored the judgment of the first Court KHUGOWLEE SING v HOSSEIN BUX KHAN **7 B L R 673 15 W R P C 30**

2 ———— **Judgment not inter partes**—*Evidence Act (I of 1872) ss 11 13 40 41 43—Admissibility in evidence of judgments not inter partes* Per CARTH CJ JACKSON PONTIFEX and MORRIS JJ (MITTER J dissenting) —A former judgment which is not a judgment in rem nor one relating to matters of a public nature is not admissible in evidence in a subsequent suit either as a *res judicata* or as proof of the particular point which it decides unless between the same parties or those claiming under them In a suit between A and B the question was whether C or D was the heir of H If C was the heir of H then

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

A was entitled to succeed otherwise not The same question had been raised in a former suit brought by Y against *A* and decided against *A* and this former judgment was admitted in evidence in the suit between *A* and *B* and dealt with by the Courts below as conclusive evidence against *A* upon the point so decided *Held* (MITTER J dissenting) that the former judgment was not admissible as evidence in the suit between *A* and *B* either as a transaction under s 13 or as a act under s 11 or under any other section of the Evidence Act GUJJU LALL v FATTEH LALL
I L R 6 Calc 171 6 C L R 439

3 ———— *Evidence Act (I of 1872) ss 11 13 40 41 42 and 43—Onus probandi* Judgments and decrees recognizing rights between parties to a suit or between persons whom they represent although they are not conclusive under the Evidence Act (I of 1872) as they were before that Act came into operation are yet admissible in evidence under s 13 of the Act even if the parties in the former suit be entire strangers Where the parties are the same or representatives of those in the former suit such judgments and decrees may be evidence so nearly conclusive as when produced by the party in whose favour they are to shift the burden of proof from him to his opponent *Semble* Under s 13 of the Civil Procedure Code (Act X of 1877) the law is now the same as it was under Act VIII of 1859 prior to the passing of the Evidence Act NARANJI BHIKABHAI v DIPA UMED
I L R 3 Bom 3

4 ———— *Evidence Act (I of 1872) ss 11 and 13—Admissibility in evidence of judgment in former case The subject matter of the former suit not being identical with that of the latter suit* The rule laid down in the cases of *Gujju Lall* v *Fatteh Lall I L R 6 Calc 171* and of *Surender Nath Pal Chowdhry* v *Brojo Nath Pal Chowdhry I L R 13 Calc 352* has been materially qualified by the decisions of the Privy Council in the cases of *Ram Ranjan Chakerbutty* v *Ram Narain Singh I L R 22 Calc 533 L R 22 I A 60* and *Bitto Kunwar* v *Kashi Pershad I L R 24 I A 10* Under certain circumstances in certain cases the judgment in a previous suit to which one of the parties in the subsequent suit was not a party may be admissible in evidence for certain purposes and with certain objects in the subsequent suit In a case where the previous suit was to recover a two thirds share of the property in question and the subsequent suit was by a different plaintiff to recover the remaining one third share of the same property — *Held* that in the subsequent suit the judgment in the previous suit was not admissible in evidence the subject matter in the two suits not being identical TITU KHAN v RAJANI MOHAN DAS
I L R 25 Calc 522
2 C W N 501

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

5 ———— **Ex parte decree**—*Finality of with regard to its subject matter—Civil Procedure Code (Act X of 1877) s 13 Expl 4* A decree obtained *ex parte* is not final within the meaning of Expl 4 s 13 of Act X of 1877 NILMONEY SINGH v HEERA LALL DASS
I L R 7 Calc 23 8 C L R 257

6 ———— *Suit for arrears of rent—Onus probandi* In a suit for arrears of rent of a half share of land the plaintiffs relied upon an *ex parte* decree for rent at a certain rate which they had obtained in 1869 against the tenants of this share The defendants relied upon a subsequent decree in a contested suit by the plaintiff against the tenants of the other half share in which a lower rate of rent had been given No other evidence than the decrees was produced on either side It did not appear whether the *ex parte* decree had ever been executed *Held* that it was open to the defendants to dispute the rate of rent claimed and that the plaintiffs were bound to prove that they were entitled to recover it *Nilmoney Singh* v *Hera Lall Dass I L R 7 Calc 23* followed BHUGIRATH PATONI v RAM LOCHUN DEB
I L R 8 Calc 275 10 C L R 159

7 ———— *Suit for rent* A decree obtained *ex parte* is in the absence of fraud or irregularity as binding for all purposes as a decree in a contested suit BISCHUNDER MANICKYA v HURRISH CHUNDER DOSS
I L R 3 Calc 383 1 C L R 565

8 ———— **Decrees in rent suits**—*Suit for arrears of rent—Subsequent suit for enhancement* The plaintiff sued the defendant in the year 1873 for arrears of rent at a certain rate per bigha The defendant pleaded that the land had been held by him at a uniform rent for more than twenty years and this contention was supported by the Court The plaintiff then give the defendant notice of enhancement and sued to recover rent for two years at the rate stated by the defendant and for one year at an increased rate To this suit the defendant raised substantially the same defence *Held* that the decision in the previous suit was not a bar to the present suit there being two questions for consideration one whether there had been a uniform payment of rent for twenty years and if so whether the presumptions which the law directs to be drawn from a uniform payment of rent for twenty years had been rebutted by the plaintiff neither of which questions were concluded by the previous decision GOPEE MOHAN MOZOOMDAR v HILLS
I L R 3 Calc 789

9 ———— *Decision as to amount of land held as tenant* In an action for rent defendant pleaded by way of estoppel to part of the plaintiff claim that in a prior action for rent previously due brought by the plaintiff against the defendant it had been found that the defendant

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

was tenant to the plaintiff of a less quantity of land only than that in respect of which the plaintiff claimed rent in his suit *Held* that there was no estoppel and that the plaintiff might show notwithstanding such previous judgment that the defendant was in occupation of the larger quantity OJOODHYA PERSAD *v* BHUGWANTAJAH **Marsh. 1**

S C BHUGWANTAJAH *v* OJOODHYA PERSAD **1 Hay 31**

10 ———— *Decision as to amount of land held as tenant—Suit for arrears of rent* A brought a suit against B for arrears of rent B admitted the sum claimed but contended that the rent was due for a larger area of land than that specified in the plaint An issue was framed on such contention and decided against B In a subsequent suit by B to have it declared that a sum of money equal in amount to the sum paid on admission in the former suit comprised the rent due on all the lands held by him under A —*Held* (on appeal under the Letters Patent reversing the decision of the Court below) that such suit was barred as being *res judicata* BUSSUN LALL SHOOKUL *v* CHUNDER DASS

I L R 4 Calc 686 4 C L R 1

11. ———— *Decision as to measurement of land held* In a previous suit the present plaintiff had sued the defendant for the amount of rent originally fixed in the lease and the defendant claimed in that suit to have the rent reduced in accordance with the term of the lease and a measurement was thereupon made which showed that the quantity of land held by the defendant was in excess of that named in the lease that suit was decided in favour of the plaintiff for the rent claimed *Held* that the measurement adopted by the Court in the former suit was not as regards the amount of the excess binding upon the defendant EKRAM MUNDUL *v* HOLODHUR PAL

I L R 3 Calc 271

LUCHMUN PERSAD GORGO *v* LUKHUN CHUPRUK **3 C L R 74**

12 ———— *Suit for refund of excess of rent after suit for arrears of rent* The defendant (a zamindar) refused to receive rent from the plaintiffs talukdars at the rate asserted by the latter who therefore deposited the amounts from time to time in the Zillah Court The zamindar having drawn out the e amounts sued for arrears of rent alleging that the money paid into Court covered only the principal and interest for a certain period and obtained an *ex parte* decree In a suit brought for a refund of the money paid into Court which had without the plaintiff s consent been irregularly carried to the account of interest —*Held* that the claim was barred as *res judicata* GOBINDNAUTH SUNDYAL *v* ROMANAUTH THAKOOR **1 Hay 501**

13 ———— *Decision as to right to rent—Dismissal of former suit for rent* *Held* that the plaintiff having failed in a regular suit in 1853 to establish his right to rent a subsequent suit for rent was not admissible unless since that date rent was paid or his title recognized in some way SOOKHNUND *v* NUNDO SINGH

2 Agra 221

14. ———— *Decision as to amount of rent—Subsequent suit for abatement of rent* The plaintiff obtained a patni lease of certain villages from the defendant in 1861 at an annual rent and in 1865 was evicted from a portion of the property She took no steps to obtain an abatement but inasmuch as she did not pay any rent for the year 1871 the defendant brought a suit against her for the rent of that year The plaintiff set up the defence that she was entitled to an abatement of R155 from her rent the R155 representing the annual value of the property which she had lost in consequence of the eviction In that suit it was decided that the amount of abatement she was entitled to was R42 No appeal was made against that decision In a suit brought by the plaintiff for the purpose of obtaining a permanent abatement of her rent she claimed the precise measure of abatement *viz* R155 which she had claimed in the suit brought against her by the defendant *Held* that the question was *res judicata* it having been raised and decided in the former suit NOBO DOORGA DOSSEE *v* FOYZBUX CHOWDHRY

I L R 1 Calc 200 24 W R 40

15 ———— *Decision as to amount of rent* Where the plaintiff sued the defendant for a year s rent at the same rate which had been decreed to him for the previous year in a suit which he had brought against the same defendant for rent of the same property and relied upon the former decree which had been obtained *ex parte* as evidence of the rent due to him from the defendant —*Held* (following *Nobo Durga Dossee v Foy Bulsh Choudhry I L R 1 Calc 200*) that the decree in the first suit determined the amount of rent due from the defendant to the plaintiff *Held* further that the decree was properly admissible as evidence though the plaintiff had not taken out execution upon that decree and his right to take out execution was barred by limitation BIRCHUNDER MANICKYA *v* HURRISH CHUNDER DASS

I L R 3 Calc 383 1 C L R 585

16 ———— *Decree as to amount of rent payable in former years—Decree on admission* The plaintiff in a suit for rent [illegible] plaintiff sued the defendant in respect of the same holding for the rent of a subsequent year and he claimed at the same rate as he had claimed

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

in the previous suit *Held* (MITTER J dissenting) that the decree in the former suit was *res judicata* as to the proper rent payable by the defendant *Punnoo Singh v Nirghan Singh I L R 7 Calc 298 8 C L R 310* explained and distinguished JEO LAL SINGH v SURFUN 11 C L R 483

17 ———— *Decision as to possession as tenants—Admissibility in evidence of decree in former suit* The plaintiffs as purchasers of a share of an estate sued to recover their share of the rent of certain tenures held in that estate by the defendants The defendants denied being in possession as alleged Another co sharer in the same estate had previously brought a suit against the same defendants for the rent of the same tenures and in that suit the present plaintiffs and other co sharers of the estate were made co defendants and the decision in that suit was that the present defendants were in possession and were liable to pay to the then plaintiff his share of the rent *Held* (MITTER J dissenting) that the decree in the former suit was not a *res judicata* or even admissible as evidence in the present suit SURENDER NATH PAL CHOWDHRY v BROJO NATH PAL CHOWDHRY I L R 13 Calc 352

18 ———— Decision in former suit—*Decision as to right to property—Subsequent suit for rent* It having been decided in a former suit wherein the present plaintiff and appellant was defendant and the present defendant was plaintiff that the latter could not claim from the former a share of certain property set apart for the maintenance of a samsthan —*Held* that after that decision it was not competent to the present defendant to collect the rents of the property He was accordingly ordered to make them over to the present plaintiff DADO RAVJI v DINANATH RAVJI 2 Bom. 77 2nd Ed 72

19 ———— *Decision as to title to drain—Suit for trespass—Proceedings between same parties in another suit* B had instituted a suit in the Court of the Munsif of the 24 Parganas against A on account of an alleged trespass to a certain drain which B then alleged to be his property that suit was dismissed on the ground that B had not proved his title to the drain in question In a suit arising out of an alleged trespass to the same drain brought by A against B in which A stated it was his property the judgment of the Munsif in the former suit was tendered in evidence on behalf of the plaintiff and it was contended it was an estoppel The Court admitted it in evidence but doubted whether it would be an estoppel MAHOMED SHAHABOODEEN v WEDGEBERRY 10 B L R Ap 31

20 ———— Decision on title in proceedings under Land Acquisition Act 1870 In proceedings under the Land Acquisition Act 1870 to apportion the compensation payable a decision by the Judge on a question of title does not operate as *res judicata* between the parties to those proceedings MAHADEVI v NEELAMANI I L R 20 Mad. 269

21 ———— [illegible] —*Civil* [illegible] *law* A[illegible] against [illegible] French territory upon a cause of action which arose in British India imposes no duty on the defendant to pay the amount decreed so as to bar a suit in British India HINDE & Co v POONNATH BAIRU I L R 4 Mad 359

22 ———— Judgment on award—*Finality of arbitrator's award when judgment is passed thereon—Question dealt with by such award raised in a subsequent suit* Where a case was referred to arbitration and the award was subsequently filed and judgment passed in accordance therewith and subsequently in another suit between the same parties a question dealt with in the award was raised —*Held* that such question was *res judicata* between the parties the judgment on the award having the same effect as an ordinary judgment of a Court and being conclusive on the point WAZEER MAHTON v CHUNI SINGH I L R 7 Calc 727 9 C L R 377

23 ———— *Judgment and decree upon an award—Civil Procedure Code 1882 ss 13 and 522* A judgment and decree passed in terms of an award under s. 522 of the Civil Procedure Code (Act XIV of 1882) constitute a *res judicata* *Wazeer Mahton v Chuni Singh I L R 7 Calc 727* followed. VYANKATESH CHINTAMAN JOSHI v SAKHARAM DAJI I L R 21 Bom. 465

24 ———— Decision as to status of endowment—*Suit for possession* In 1801 A the shebait and proprietor of the gaddee of a debsheba at A alienated part of the land by deed of gift to B for the purpose of founding a sheba at C which was accordingly done In 1873 the then shebait of the debsheba of A instituted a suit for the recovery of the alienated lands [illegible] and in that suit [illegible] ndent of the [illegible] ref rred t[illegible] of d[illegible] in [illegible] ld that the decree in the former suit operated as an estoppel against the plaintiff KISSONUND [illegible] DEVI v NURSING DASS BYRAGEE Marsh. 485

25 ———— Order dismissing claim for maintenance—*Subsequent suit for maintenance—Decree Agreement as to amount of maintenance—Decree limited to agreed amount* An allowance for the maintenance of a younger member of a family was charged upon the inheritance to which the eldest male member alone succeeded. In a suit for such an allowance brought by a younger brother against the elder who had succeeded their deceased father —*Held* that an order made dismissing a claim for maintenance in the possession of the estate

RES JUDICATA—*contd*

2. ESTOPPEL BY JUDGMENT—*contd*

preferred by such younger brother against their father in his lifetime founded on an ikrarnama did not afford a defence under s 13 of the Code of Civil Procedure *Held* also that the brothers having made an agreement fixing the allowance for maintenance at a certain sum the younger brother agreeing to receive a less sum for a defined period he could only obtain a decree for the allowance so reduced. AHMED HOSSEIN KHAN *v* NIHAL UD DIN KHAN I L R 9 Calc 945 L R 10 I A 45

s c MAHOMED HOSSEIN KHAN *v* MAHOMED NEHLUDDIN KHAN 13 C L R 330

26 ——— Order as to payment of maintenance—*Subsequent suit for maintenance charged on estate of Sovereign Prince—Former suit making maintenance charge on estate in British territory* In a suit against the Maharaja of Hill Tipperah, which is an independent Sovereign State for maintenance it appeared that in a former suit tried in British India in respect of the same claim the Court had ordered the amount of the maintenance for which he gave a decree to be paid by the defendant Maharaja from his estate in *R* which was in British India. *Held* that the decree in the former suit was not *res judicata* to show that the maintenance claimed in the present suit was a charge on the zamindari of R80 a to give the Court jurisdiction BIR CHUNDER MANIKHYA *v* ISHAN CHUNDER TAGORE 12 C L R 473

27 ——— Decree awarding fixed money allowance in lieu of maintenance—*Subsequent suit for partition* A former decree decided that the plaintiff (a widow) always received a certain fixed amount and was not entitled to recover more in the shape of profits in respect of the share claimed *Held* that it was not a decision that such fixed payment represented a mere claim to maintenance and not a substantial right or interest in the property itself so that on partition she must be regarded as having no claim to share in the land. It should be inquired into (the decree being so construed) whether the acceptance of a fixed payment was on forfeiture of all rights to the property and whether it extended only so far as the widow's right is concerned or whether it affected the son's right likewise MAN KOONWER *v* DILAWAR HOSSEIN KHAN 1 Agra Rev 36

28 ——— Decision on question of fact—*Subsequent suit between other parties* On a question of fact the decision of one Court cannot bind another in a suit between other parties. ASSANOOLLAH *v* KALEE MOHAN MOOKERJEE 18 W R. 469

29 ——— Attempt to control the descent of property Two brothers having divided to the sons and grandsons and so on of us both but must not go to any others On the death of one brother having a widow and daughters the widow obtained possession of the villages which formed her husband's share and a suit

ter who e right to the possession as against the brother was declared in the present suit on the ground that as between the widow and the brother the question of the widow's title was *res judicata* VENKATADRI APPA RAU *v* PEDA VENKAYAMMA I L R 10 Mad. 15

30 ——— Benami transaction for purpose of defrauding creditors—*Deed of conveyance not in real purchaser's name—Collusive suit by nominee against real owner—Decree obtained by fraud—Subsequent suit by real owner against nominee for possession—Right of party to fraud to set fraudulent decree aside—Collusive transaction when held binding and when set aside* In 1874 the plaintiff *P* bought a house from *G* but caused the conveyance to be executed by *G* in the defendant *C*'s name This was done with the object of protecting the property against the claims of the plaintiff's creditors. The plaintiff occupied the house ostensibly as tenant to the defendant for a nominal rent In 1880 the defendant brought a suit against the plaintiff to recover possession of the house and obtained an *ex parte* decree He applied for execution of the decree but allowed the execution proceedings to drop In 1883 he made a fresh application for execution Thereupon the plaintiff filed the present suit for a declaration of his title to the house in question and of his right to retain possession alleging that the defendant was a mere benamidar that the sale deed and the *ex parte* decree were sham and collusive transactions in fraud of the plaintiff's creditor and that the defendant was merely a trustee for him *Held* that the plaintiff was bound by the decree passed in 1880 in the defendant's favour though it was a collusive decree The plaintiff could not get the judgment set aside which the defendant had obtained against him by his own contrivance The plaintiff alleged that the defendant held in trust for him the object of that trust being to protect the plaintiff's property in fraud of his creditors Even if such a trust enforceable by the Court could arise out of such a *turpis causa* the question was whether this continued to subsist and would be enforced when the original relations of the parties had become merged in the decree obtained by the defendant against the plaintiff. The general principle is that where a defendant has suffered a judgment to pass against him the matter is then placed beyond his control. *Held* also upon the general principle of *res judicata* that the plaintiff was estopped from raising the question of fraud in the present suit which he might and ought to

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

have urged in the former litigation CHENVIRAPPA BIN BIRBHADRAPPA *v.* PUTTAPPA BIN SHIVBASAPPA

I L R 11 Bom 708

31. ———— Civil Procedure Code 1882 s 13—*Matter adjudged in a former suit—Purchase pendente lite* A zamindar having granted a patni lease mortgaged the zamindari to the patnidar who having afterwards obtained a decree against the zamindar upon the mortgage attached and purchased at the sale in execution the zamindari interest subject to the mortgage Before that purchase though after the attachment another holder of a decree against the zamindar brought the right title and interest in the zamindari to sale in execution of his decree and himself became the purchaser He then claiming to have obtained the zamindari estate sued the patnidar for rent due under the lease This suit was dismissed save as to rent due for the time intervening between the two sales in execution on the ground that the relation of zamindar to lessee had ceased on the purchase by the latter The present suit was brought by the purchaser from the zamindar stating his title acquired at the prior of the two sales and claiming to redeem the mortgage *Held* that the dismissal of the rent suit which involved the title barred the present one and the opinion was expressed that the plaintiff had been rightly adjudged in the rent suit to be bound by the proceedings taken by the mortgagee pending which the purchase relied upon had been made PADHAMADHUB HOLDAR *v.* MONOHUR MUKERJI

I L R 15 Calc 756
L R 15 I A 97

KASISWAR MUKHOPADHYA *v.* MOHENDRA NATH BHANDARI I L R 25 Calc 136

32 ———————— *Identity of cause of action with that of prior suit to which the plaintiff in a subsequent suit had been a party—Effect of judgment that a will had been revoked to bar between the parties any claim founded solely on the will* The widow of a talukhdar acting under his supposed will appointed the present appellant to succeed to the talukh and other estate which had belonged to the deceased. The heir of the deceased under the Oudh Estates Act I of 1869 obtained the judgment of the Judicial Committee declaring that he was entitled to the talukhs as against the present appellant whose title was under the will which had been revoked as the Committee found Another suit brought by the present appellant for a decree declaring that in virtue of his appointment by the widow under the will he was entitled to the whole of the estate of the deceased talukhdari and non talukhdari was dismissed by the Judicial Committee on the ground that he had no such title to the whole or any part of the estate *Held* that this prior judgment was conclusive to bar the present suit which being founded entirely upon the appellant s appointment in pursuance of the will was brought for possession of all the estate of the deceased as well as a declaration of right thereto Although the heir was not entitled to possession of the estate of the deceased other than talukhdari inasmuch as the widow took her estate therein nevertheless the claim of the present appellant being only founded upon her appointment under the will as if unrevoked and not being a claim for property as descending to the widow upon her husband s intestacy the prior judgment was binding in the present suit TRILOKI NATH SINGH *v.* PERTAB NARAIN SINGH

I L R 15 Calc 808
L R 15 I A 113

33 ———— and s 43—*Act XII of 1879 s 6* The present suit was preceded by others in which the plaintiff sought to establish a right in the same part of the talukhdari estate that he now claimed to redeem from mortgage The first suit in which he with another claimed as under proprietors was dismissed in 1866 on the ground that they had not shown themselves to have held such right under the *talukhdars* within the period since 1841 Proceedings not to be recorded ... taken under Circular ... the dismissal ... having been ... conditional sale ... ther suit was ... right under ... been alleged ... the talukhdar ... account. The ... had been paid on the ... suit was also dismissed *Held* that the present suit to redeem the same property under a mortgage ... was not barred under s 13 of Act X of 1877 as amended by s. 6 of Act XII of 1879 ... BIBI *v.* IMDAD HOSAIN I L R 15 Calc. 803
L R. 15 I. A. 103

34 ———————— *Clause of conditional sale in mortgage—Suit by mortgagee for declaration of title—Decree ordering delivery of property to mortgagee in default of payment of mortgage debt by mortgagors within one month—Default of payment by mortgagors—Effect of such Default—Mortgaged property taken by mortgagee in execution of such decree not as mortgagee but absolutely—Subsequent suit for redemption* In 1863 *B* and *C* mortgaged certain land to one *G* under a mortgage-deed, which provided that if the mortgage debt was not paid at the stipulated time the land should become the absolute property of the mortgagee In 1871 *G* filed an ejectment suit against *B* and *C* and one *H* alleging that he had become owner of the land by operation of the above clause and that he had subsequently let it to *H* who now in collusion with the other two defendants (the mortgagors) denied his title The ejectment suit was subsequently converted into one for a declaration of *G*'s title as owner as against the mortgagors *B* and *C* who claimed a right to redeem. A decree was passed in 18— ordering *B* and *C* to pay R100 to *G* within one month, or

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

in default to deliver up to him possession of the land. The money was not paid and F as purchaser from G got possession in execution of the above decree in August 1873. In September 1885 the plaintiff as B's heir and legal representative filed a suit against G and F to redeem the property. The Court of first instance dismissed the suit holding that the plaintiff's claim was *res judicata* by virtue of the decree passed in 1872 and that the right to redeem was lost. On appeal, the Court reversed this decision and passed a decree for redemption on payment of R100 by the plaintiff within six months. The defendant F then applied to the High Court under its extraordinary jurisdiction. *Held* that the plaintiff's claim was *res judicata*. In the suit brought by G (the mortgagee) in 1871 he had claimed the land as owner through the forfeiture clause in the mortgage-deed and the mortgagors insisting in that suit on a right still to redeem the decree plainly meant to give them by way of indulgence one month within which to regain the land by payment of R100 to G. It renewed the mortgage but with a condition which was a material part of the decree. They having failed to pay the mortgage was extinguished. After the lapse of the month G could not have recovered the R100. Had he sought to recover that money he would have been met by the terms of the decree. He was entitled to the land and nothing else. So too was F as his vendee. As then there was no debt that could be recovered there was and could be no subsisting mortgage that could be redeemed. VISHNU CHINTAMAN *v* BALAJI BIN RAGHUJI I. L. R. 12 Bom. 352

35 ——— Partition suit—*Declaratory decree*. A suit for partition of certain land was withdrawn as against one of the defendants who was entitled to part of the land. The plaintiff and the remaining defendants entered into a compromise in the terms of which the Court passed a decree for delivery of a share of the land to the plaintiff. The decree holder having died without executing the decree his heir now sued for partition of the land and delivery of the above share joining as defendants the various persons entitled to shares. *Held* that the decree in the former suit could only operate as a declaratory decree and did not preclude the plaintiff from bringing the present suit. BEEMABAI *v* YAMUNABAI I L R 13 Mad. 313

36 ——— Landlord and tenant—*Service tenure with rent—Enhancement of rent—Resumption*. In a suit brought in 1886 by a zamindar to recover an estate granted by his predecessor to the predecessor of the defendant on a service tenure a small money rent being also reserved it appeared that in 1864 the right of the plaintiff's predecessor to rent had been established by suit but there was no evidence that the service was then dispensed with but in 1885 it was intimated to the defendant that the service was dispensed with and a notice to quit was given to him the option of holding the estate at an enhanced rent was however given to him at the same time. *Held* that the suit was not precluded by the Civil Procedure Code s 13 or s 43. MAHADEVI *v* VIKRAMA I L R 14 Mad 365

37 ——— The dismissal of a suit to have set aside an order made in one district for the sale of the plaintiff's interest in property therein is not a bar under ss 13 and 43 of the Civil Procedure Code to another suit to obtain relief against an order in another district for the sale of property therein belonging to the same plaintiff or of other property not included in the order for sale against which the dismissed suit was directed. RADHA PRASAD SINGH *v* LAL SAHAB RAI I L R 13 All. 53
L R 17 I A 150

38 ——— Judgment in rem—*Decision of Court as to construction of will and ordering grant of letters of administration—Probate and Administration Act (V of 1881) ss 19 and 59—Evidence Act (I of 1872) s 41*. The High Court of the North Western Provinces on the 2nd February 1890 in determining under s 19 of Act V of 1881 the question whether certain persons were entitled to letters of administration with the will annexed construed the testator's will, and finding that the applicants were residuary legatees under the will held that they were entitled to such letters of administration. The widow of the testator who had unsuccessfully opposed the grant in the Court of the North-Western Provinces then filed a suit in the Court of the Subordinate Judge of the 24 Parganas for, amongst other things the construction of her late husband's will. *Held* on appeal in such suit that the application for letters of administration was not a suit properly so called and that the finding on the construction of the will by the Court of the North Western Provinces being incidental and for the purpose of determining the question of the representative title of the applicant could not be regarded as concluding the plaintiff by *res judicata* from obtaining a construction of the will in the suit brought by her. ARUNMOYI DASI *v* MOHENDRA NATH WADADAR
I L R 20 Calc 888

39 ——— Application by executors for probate—*Order refusing probate—Subsequent suit by executors as persons entitled under will to property of deceased—Probate and Administration Act (V of 1881) s 1, Ch I ss 59 and 83*. The plaintiffs applied to the District Court at Poona under the Probate and Administration Act (V of 1881) for probate of a will of which they were appointed executors. The defendants opposed their application and on appeal the High Court rejected it holding that on the evidence the execution of the will was not proved. The plaintiffs thereupon filed the present suit as the persons beneficially entitled under the

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

will for a declaration that the property of the deceased belonged to them and for an injunction to restrain the defendant from obstructing them in the enjoyment of it The defendant contended that the suit was barred as *res judicata* *Held* that the suit was not barred by the order refusing probate of the will The refusal to grant probate does not conclusively show that the will propounded is not the genuine will of the testator GANESH JAGANNATH DEV *v* RAMCHANDRA GANESH DEV

I L R 21 Bom 563

40 ———————— *Suit by reversioners—Former suit by widow—Suit for construction of will* A suit by reversioners after the death of the widow of a testator for the construction of his will and codicil and for a declaration of the plaintiff s rights was held under the circumstances of the case not to be barred as being *res judicata* by the dismissal of a former suit which had been brought by the widow claiming the estate on the ground that the will and codicil were forgeries and in which they were found to be genuine CHUKKUN LAL ROY *v* LOLIT MOHAN ROY

I L R 20 Calc 906

41. ———————— *Suit to set aside sale for arrears of rent accrued due against female heir after death of last full owner—Subsequent suit by reversioner to recover immoveable property sold* A previous suit brought by a female heir to set aside a sale in execution of a decree for arrears of rent accrued due against her after the death of the last full owner was dismissed In a subsequent suit by the reversioner for recovery of possession of the immoveable property so sold the defence was that the suit was barred as *res judicata* *Held* that the dismissal of the previous suit which was for recovery only of the limited estate of female heir would not be a bar to the subsequent suit which was for the recovery of the absolute estate which vested in the reversioner BRAJA LAL SEN *v* JIBAN KRISHNA ROY

I L R 26 Calc 286

42 ———————— *Evidence Act (I of 1872) s 41—Judgment in rem—Judgment in personam—Guardians and Wards Act (VIII of 1890) s 48—Probate and Administration Act (V of 1881) s 6?* On an application for probate of a will under the Probate and Administration Act 1881 which was opposed by the widow of the alleged testator and her father it appeared that an application had previously been made under the Guardians and Wards Act 1890 on behalf of the widow for a declaration that she was the guardian of the person and the property of the infant son of the alleged testator and that that application had been opposed by the present petitioners who claimed to be testamentary guar[illegible]

[illegible] f the proceedings under the Probate and Administration Act CHINNASAMI *v* HARIHARABADRA

I L R 16 Mad 380

43 ———————— *Agreement not to execute regarded as satisfaction of decree* M and A were partners and as such were indebted to H A died and subsequently the debt was settled between H on one side and M and A's widow as guardian of her minor son on the ot[illegible]

[illegible]

bond. The Court allowed her objection that [illegible] was not competent to give a bond binding [illegible] sons personally and of its own accord mad[e] M [illegible] defendant and passed a decree against M and A's estate H assigned this decree to R who appli[ed] for execution against M M thereupon filed th[is] suit against H and P praying for an injunc[tion] against the execution of the said decree and for damages against H He alleged that during the pendency of the suit in which the said decree had been passed H had agreed that he would [illegible] obtain a decree against him and that if such a decree were passed he would not execute it. The lower Appeal Court rejected the plaint hold[ing] (i) that as between the plaintiff M and the defendant R the question in issue was *res judicata*, and (ii) that there was no cause of action against the defendant H On appeal to the High Court— *Held* that as between M and R the suit was not res judicata. The alleged agreement by its terms provided for the event of the decree being passed and was only intended to prevent it being executed. *Chennirappa v Puttappa I L R 11 Bom 708* distinguished MUKUND HARI [illegible] *v* HARIDAS KHEMJI

I. L. R. 17 Bom. 93

44 ———————— Mesne profits ascertainment of—*Execution of decree—Deductions claimed* The Court having awarded a particular sum as annual mesne profits without setting forth in the judgment the details thereof and it having therefore become impossible to say that the right to a particular deduction therefrom claimed by the defendant was adjudicated on by the Court— *Held* that the rule of *res judicata* did not apply to the question as to the payment by the defendant. KACHAR ALA CHELA *v* OGHADBHAI THAKARSHI OGHADBHAI THAKARSHI *v* KACHAR ALA CHELA

I. L. R. 17 Bom. 35

45 ———————— Soundness in law of previous decision immaterial. Where a judicial decision pleaded as constituting *res judicata* in all other respects fulfils the requirements of s 13 of the Code of Civil Procedure and no appeal has been preferred against it within limitation it is immaterial whether such decision is or is not sound law *Parthasaradi Ayyangar v Chinna Krishna Ayyangar I L R 5 Mad. 304* dissented from. PHUNDO *v* JANGI NATH

I. L. R. 15 All. [illegible]

RES JUDICATA—*contd*

2. ESTOPPEL BY JUDGMENT—*contd*

46 ———— —— *Erroneous decision on point of law in previous case* An erroneous decision on a pure question of law in a previous suit may operate as *res judicata* *Goursi Koer* v *Audh Koer* I L R 10 Calc 105 and *Thundo* v *Jang Nath* I L R 15 All. 3 followed *Parthasaradi* v *Chinnakrishna* I L R 5 Mad 04 dissented from. PAI CHURN GHOSE v KUMUD MOHON DATTA CHAUDHURI 1 C W N 687

Same case on review I L R 25 Calc 571
2 C W N 297

47 ———— Bengal Municipal Act (Beng. Act III of 1864) s 10—*Public highways—Roads vesting in Commissioners—Sub soil of roads right to* A suit brought by the plaintiff's predecessor in title to recover certain land from a Municipality (which had been taken up as a public road and vested in the Municipality subsequently under Bengal Act III of 1864 s 10) on the ground that the plaintiffs had been ousted therefrom by reason of the Municipality stacking stones on a portion thereof having been dismissed —*Held* that the decision in such suit was not operative as *res judicata* in another suit brought by the plaintiffs for ejectment and declaration of title to such land against a purchaser of the land from the Municipality MODHU SUDAN KUNDU v PROMODA NATH ROY I. L R. 20 Calc 732

48 ———— Rent suit—*Evidence—Estoppel—Ex parte decree effect of—Rate of rent* A mere statement of an alleged rate of rent in a plaint in a rent suit in which an *ex parte* decree had been obtained is not a statement as to which it must be held that an issue within the meaning of s. 13 of the Code of Civil Procedure was raised between the parties so that the defendant is concluded upon it by such decree Neither a recital in the decree of the rate of rent alleged by the plaintiff, nor a declaration in it as to the rate of rent which the Court considers to have been proved would operate in such a case so as to make that matter a *res judicata* assuming that no such declaration were asked for in the plaint as part of the substantive relief claimed the defendant having a proper opportunity of meeting the case MODHUSUDUN SHAHA MUNDUL v BRAE
I L R 16 Calc 300

49 ———— *Rent suit for—Decree as to rent payable for former year—Rate of rent payable—Decree on admission of defendant* The plaintiff in a suit for rent which was contested having failed to prove that the rent was payable at the rate claimed by him the Court in trying the issue what is the amount of the jama after considering the whole of the evidence and the circumstances of the case held that the same holding for rent for a subsequent year and he claimed at the same rate as he had claimed in his previous suit. It was contended on behalf of the defendant that the question as to the rate at which the rent was payable was *res judicata* it not being alleged that there had been any agreement subsequent to the first suit by which the rate was altered *Held* that the question as to the rent payable for the period covered by the first suit was *res judicata* but that it did not follow that the decree in that suit operated as *res judicata* and conclusively determined the rate of the rent payable for the year in respect of which the subsequent suit was brought That depended on whether the previous decision was that the plaintiff should recover from the defendant the sum admitted by him to be due or that the sum so admitted to be due was the proper amount of rent payable for the period in question. *Held* that in this case the previous decision was to the latter effect and that the question of the rate at which the rent was payable by the defendant was *res judicata* *Punnoo Singh* v *Nirghun Singh* I L R 7 Calc 298 and *Jeo Lal Singh* v *Surfun* 11 C L R 483 referred to HURRY BEHARI BHAGAT v PARGUN AHIR
I L R 19 Calc 656

50 ———— *Rent suit for—Decree as to rent payable for former years—Evidence of rent payable* The plaintiffs sued the defendants for rent of a certain jote claiming a higher rent than the defendants admitted The High Court in second appeal gave a decree at the lesser rate admitted by the defendants Subsequently the plaintiffs again sued the defendants in regard to the same jote for arrears of rent for subsequent years at the rate claimed in the former suit The defendants contended that the rate of the rent as regards this jote was by virtue of the judgment of the High Court in the previous suit *res judicata* as between themselves and the plaintiff *Held* that where in a rent suit a Judge tries the question and gives judgment on the question what is the yearly rent and makes that the foundation of his judgment that decision is *res judicata* between the parties. The previous judgment of the High Court therefore operated as *res judicata* *Hurry Behari Bhagat* v *Pargun Ahir* I L R 19 Calc 656 followed. *Per* NORRIS J —Even if the judgment of the High Court did not operate as *res judicata* still it was some evidence of the rate of the rent of the previous year BUKSHI v NIZAMUDDI
I L R 20 Calc 505

Dictum of NORRIS J in above case followed in MADHU MUNJARI CHOWDHURANI v JHUMAR BIBI
1 C W N 120

51 ———— *Rent suit for—Decree as to amount of land—Rent payable for former years—Rate of rent payable.* The plaintiff sued the defendant for rent of certain lands The defendant contended that he was not liable for the entire rent as part of the land was in the plaintiff's

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

possession The defendant failed to prove his contention and a decree was given for the full amount claimed Subsequently the plaintiff again sued the defendant in regard to the same property for arrears of rent for subsequent years at the rate claimed in the former suit The defendant had the land measured adduced evidence and endeavoured to raise the same defence as he had in the previous suit No allegation was made to the effect that the rent had been altered in consequence of anything that had happened since the previous decision The lower Courts without considering the evidence adduced by the defendant held that the defendant could not again raise the same contention as the question had already been considered and determined in the previous suit and was *res judicata* between the parties *Held* that the previous decision did not operate as *res judicata* and that the lower Courts ought to have determined on the evidence adduced what the amount of rent in question was NIL MADHAB SIRCAR *v* BROJO NATH SINGHA **I L R 21 Calc 236**

52 ———————— *Rent decision as to amount claimed in a previous suit if res judicata in a subsequent suit—Fresh evidence and defence in a subsequent rent suit admissibility of* The previous decision in a suit for rent does not operate as *res judicata* in a subsequent suit where the amount of rent subsequently accrued due is in issue It is open to the defendant to raise fresh defence and adduce fresh evidence and the Court must determine upon the evidence adduced as to whether the rent claimed in the particular suit is or is not due *Hurry Behari Bhagat v Pargun Ahir I L R 19 Calc 656* and *Nil Madhab Sircar v Brojo Nath Singha I L R 21 Calc 236* followed JOTINDRA MOHAN TAGORE *v* SHUMBHU CHUNDER BHUTTACHARJEE **4 C W N 43**

53 ————————*Decree by ijaradar whether evidence when the superior landlord sues for rent—Ex parte decree not deciding rate of rent* A decree obtained in a previous suit for rent by an ijaradar does not operate against the tenant as *res judicata* on the question whether the relation of landlord and tenant exists in a subsequent suit for rent brought by the superior landlord The decision in that suit where the rate of rent was not in issue does not operate as *res judicata* in the subsequent suit against the tenant as regards the rate of rent *Hurry Behari Bhagat v Pargun Ahir I L R 19 Calc 656* and *Bakshi v Nilamudh I L R 20 Calc 505* followed BALARAM MONDUL *v* KARTICK CHANDRA ROY **4 C W N 161**

54. ———— Different subject matters claimed—*Malikana—Recurring liability—Judgment in first suit going to root of plaintiff's title—Final judgment—Judgment liable to appeal or under appeal—Effect of final decree in first suit pronounced subsequent to decision in second suit of Lower Appellate Court but before hearing of second appeal in second suit* For the purposes of the rule of *res judicata* it is not essential that the subject matters of the present and the former litigation should be identical Where a recurring liability is the subject of claim a previous judgment dismissing a suit between the same parties upon findings which do not go to the root of the title on which the claim rests but relate merely to a particular item or instalment cannot operate as *res judicata* But if such previous judgment negatives the title and the main obligation itself the plaintiff cannot re agitate the same question of title by claiming a subsequent item or instalment *Rajah of Pittapur v Sri Rajah Row Buchi Sitayya Garu L R 12 I A 16* referred to A judgment liable to appeal or under appeal is only a provisional and not a definite or final adjudication and cannot operate as *res judicata* during the interval preceding the appeal or the interval preceding the decision of the appeal Explanation IV of s 13 of the Civil Procedure Code commented on *Kakarlapudi Suriyanarayanarazu v Chinnamma Chellama 6 Mad 176* and *Nilmoni v Tamora I L R 6 Bom 110* referred to The rule of *res judicata* contained in s 13 of the Code applies equally to appeals and miscellaneous proceedings as to original suits Having regard to its main object so far as it relates to the re trial of an issue it refers not to the *date of the commencement of the litigation* but to the date when the Judge is called upon to decide the issue When after the commencement of the trial of an issue in another case

[illegible]

fulfilled) such judgment operates as [illegible] upon the decision original or appellate of the issue in the later litigation On the [illegible] 1885 a suit was instituted for recovery of an annual malikana allowance for the years [illegible] 1291 and 1292 Fasli. On the 5th October [illegible] the Munsif dismissed the suit On the [illegible] March 1886 the Subordinate Judge on appeal *reversed* the Munsif's decree and decreed the [illegible] On the 21st June 1886 the defendant appealed to the High Court which on the 4th July [illegible] reversed the Subordinate Judge's decree and restored that of the Munsif on the ground that the plaintiff had never received and was not entitled to malikana Meanwhile on the 5th June [illegible] the plaintiff brought another suit against the defendant for recovery of malikana for the years [illegible] 1293 Fasli which accrued after the institution of the former suit By judgments dated respectively [illegible] the 21st August and 24th November [illegible] the lower Courts decreed this suit holding that the Subordinate Judge's decree of the 10th [illegible] 1886 in the *former* suit operated as *res judicata* and was conclusive in favour of the plaintiff's [illegible] to the malikana. On the [illegible] May 1887 the defendant appealed to the High Court [illegible] the 16th May 1888 (the High Court having in the interval dismissed the *former* suit [illegible]

RES JUDICATA—*contd*

2. ESTOPPEL BY JUDGMENT—*contd*

ment of the 4th July 188") the appeal came on for hearing *Held* that the lower Courts were wrong in holding that the Subordinate Judge s decree of the 10th March 1886 in the former suit which at the date of the institution of the present suit on the 8th June 1886 was liable to appeal and at the dates of the deci ions of those Courts in August and November 1886 was the subject of a second appeal pending in the High Court could operate as r e *judicata* in favour of the plaintiff's title to malikana (i) That the High Court s judgment di missing the former suit on the 4th July 188" though pas ed after the de cisions of the lower Courts in the pre ent suit and after the institution of the second appeal in the present sui was nevertheless binding on the High Court in deciding such second appeal and being final was conclusi e as *res jud cata* against the plaintiff's title to malikana (ii) That the effect of the High Court s judgment dismissing the former suit on the 4th July 1887 was not affected by the circumstance that the second suit was brought for recovery of malikana for a different year inasmuch as that judgment went to the root of the plaintiff s title to malikana and its scope was not limited to the particular item then claimed. BALKI HAN v KISHAN LAL

I L R 11 All 148

55 ——— Fact in issue not heard and

[illegible]

The matter must have been heard and finally decided (s 13 of the Civil Procedure Code) In 188. relations of a decea ed proprietor alleging their right to the inheritance sued for a declaration that they were his next of kin The defendant set up a title as direct descendant claiming to be the son of that proprietor s daughter The first Court decided that this was his true parentage and dismissed the suit The High Court main tained the dismissal not upon the merits but on the grounds that the suit was defective for want of parti s and that a declaratory decree could not be made In 1888 the same plaintiffs having purcha ed the intere t of the parties not joined in the previous suit brought the present suit with the same object against the same defendant whom the Subordinate Judge (not the same officer that disposed of the former suit) now found not to have been the son of the said daughter A Bench of the High Court (composed of Judges other than those that heard the former appeal) having examined the record of the former suit reversed the Subordinate Judge s decision They declined however to decide whether or not the latter suit was barred on the ground of *res judicata* But intimating that they would have affirmed the judgment of the lower Court in the former suit had it on the merits come before them they preferred that judgment to the one before them and gave effect to this opinion by reversing the latter *Held* that the question of parentage had not been heard and finally decided in the suit of 1885 The appeal in that suit had put an end to any finality in the decision of the first Court and had not led to a decision on the merits There was therefore no *res judicata* but unless treated as such the judgment in the former suit had little or no bearing on the question as afterwards put in issue in this That issue had been rightly decided by the Subordinate Judge on the evidence and his judgment was accordingly maintained SHEOSAGAR SINGH v SITARAM SINGH

I L R 24 Calc 617
L R 24 I A 56
1 C W N 290

56 ——— *Prior decree be tween the same parties in the same claim—Not arriving at a final decision* In a former suit between the same parties that were now in liti gation in which the same claim upon title was made a decree dismissed the suit But the judgment in the former suit stated that it was left open to the plaintiff to sue again and that no matters affecting the rights of the parties were decided between them *Held* that the prior decree was not a final decision within the meaning of s 13 of the Code of Civil Procedure and the defence of *res judicata* was not maintained PAR SOTAM GIR v NARBADA GIR

I L R 21 All 505
L R 26 I A 175
3 C W N 517

57 ——— Possession known and acquiesced in prior to adjudication—*Siva ganga sanad of 1803—Fraud* A suit was brought in 1886 grounded on fraud attributed to the lineal ancestor of the principal defendant in ob taining in 1803 the grant of the sanad of the Sivaganga zamindari to which the plaintiff claimed title The plaintiff s case was that the de fendant s ancestor the younger of two brothers had fraudulently caused the sanad to be made out in his own name whereas it was intended to be and ought to have been a grant to the elder brother who was the plaintiff s lineal ancestor Those through whom the plaintiff claimed had not made any such charge although they had know ledge of all the facts connected with the grant of the sanad of 1803 to the younger brother and with the long possession by him and his descend ants among whom there had been litigation resulting in a decision adverse to the plaintiff s claim as to the ownership The lower Appellate Court and the High Court both found that the alleged fraud had not been proved *Held* that this suit could not be maintained to re-open the question BALA GOURI VALLABA TEVAR v PERIA SAMI UDAYAR TEVAR I L R 17 Mad 384

S C BALA GOURI VALLABHA TEVAR v ZAMINDAR OF SHIVAGANGA L R 21 I A 93

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

58 ——— Circumstances and evidence to establish existence of trust A claim made for a share of property by inheritance from a deceased relation who had been in joint possession of it with the defendant was met by the defence that the estate had been jointly held for religious and charitable purposes under a will the deceased having had no beneficial or heritable interest The defendant alleged that the original owner of the property had bequeathed the property in trust for these purposes The claimant alleged a revocation of the will and denied that there was such a trust One of the contentions upon this appeal was that the plaintiff was estopped from denying the existence of a trust by there having been a judgment of the High Court in a prior suit between the present defendant and the widow of the deceased that judgment having stated that the trust had been recognized by him who was now defendant *Held* that this was not within s 13 Civil Procedure Code the matter not having been tried and determined in that suit *Held* also that another prior judgment in a suit brought by others interested in the trust which judgment found the will to have been revoked was admissible though not conclusive evidence against him BITTO KUNWAR *v* KESHO PRASAD MISR I L R 19 All 277
L R 24 I A 10
I C W N 265

59 ——— Judgment obtained by fraud—*Failure to appear and resist order granting certificate* P died in 1889 leaving a daughter *B* P it was alleged had made a will appointing certain persons his executors The executors applied for a certificate under the Succession Certificate Act (VII of 1889) to recover a debt due to the deceased s estate from one N *B* opposed [illegible] ...cate for her [illegible] ...strict Judge [illegible] ... certificate [illegible] 1892 In the meantime one *M* obtained a decree against *B* as legal representative of *P* and in execution bought *P* s right title and interest in the debt due from N On the 12th September 1892 *M* applied for a certificate under Act VII of 1889 to recover this debt The District Judge rejected this application *M* appealed to the High Court To this appeal the executors were made parties at their own request The High Court reversed the District Judge s order and remanded the case for disposal on the merits Upon the remand the executors did not appear before the District Judge to contest *M* s application and the District Judge granted him a certificate Thereupon he applied for revocation of the certificate previously granted to the executors and the executors in their turn applied for revocation of the certificate granted to him The District Judge revoked *M* s certificate on the ground that he had fraudulently concealed from the Court the previous grant of a certificate to the executors Against this order *M* appealed to the High Court contending *inter alia* that the executors not having resisted his application for a certificate after the case had been remanded by the High Court were estopped on the principle of *res judicata* from applying for a revocation of the certificate granted to him *Held* that the executors were not stopped The executors having applied to be made parties to the appeal proceedings were bound to appear in the Court below and their failure to do so disabled them from pleading objection such as the collusive character of the decree and *B* s want of title but it did not operate as *res judicata* especially when there was reason to suspect fraud on the part of *M* The order obtained by him could not have the effect of *res judicata* unless the executors being called on to dispute it had failed to do so A party to a proceeding is never disabled from showing that a judgment or order has been obtained by the adverse party by fraud MANCHHARAM *v* KALIDAS I L R 19 Bom 821

60 ——— Decree in previous suit defining rights of a party to a subsequent suit—*Effect of such decree as against such party until set aside by proper procedure* Where there is a subsisting decree in a previous suit which as regards the subject matter of a subsequent suit would take effect under s 13 of the Code of Civil Procedure it is not open to the party whose rights are affected by such decree to question in the subsequent suit the validity of such decree though [illegible] separate [illegible] Rahim [illegible] Bom. 11 [illegible] referred to BANSI LAL *v* PAMJI LAL I L R 20 All 370

61. ——— Assignment of revenue—*Assignee of Government revenue—Interest on arrears—Act XII of 1881 (N W P Rent Act) s 93 (i)—Act XVIII of 1873 (N W P Land Revenue Act) s 14—Civil Procedure Code s 13—Act VIII of 1859 (Civil Procedure Code) s 2* *Held* by BANERJI and AIKMAN JJ that an assignee of government revenue cannot sue for interest on arrears *Bilhal Das v Harphul I L R 6 All 503* referred to Where *A* assignee of Government revenue sued *B* for arrears of revenue and interest thereon in regard to one *khata* and got a decree which included interest and in a subsequent similar suit in regard to another *khata B* again resisted *A* s claim for interest —*Held* by BANERJI J that the fact that the reasoning upon which the former judgment was based was equally applicable to the second case did not give the former judgment the force of *res judicata* in the second case *Held* by AIKMAN J that the former judgment did operate as *res judicata* *Balkishan v Kishan Lal I L R 11 All 148* and *Pahlwan Singh v Risal Singh I L R 4 All 55* referred to CHANDI PRASAD *v* MAHENDRA MAHENDRA SINGH (1900) I L R 23 All 5

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

62 ——————— *Civil Procedure Code s. 13—Assignment of the Government revenue of a village divided into khatas —Claim for interest on revenue in arrears—Decision as to one khata res judicata in respect of other khata.* The plaintiff was assignee of the Government revenue of a certain village. The village was divided into *khatas* but the title to the revenue in respect of each and every *khata* was one and the same The plaintiff sued to recover arrears of revenue due in respect of *khata* No 29 with interest On his right to receive interest being disputed it was held that a previous decision of a competent Court between the same parties but dealing with a claim for interest due on arrears of revenue payable in respect of *khata* No 47 operated as *res judicata* as to the claim with regard to *khata* No 29 *Ex parte Ador (1891) 2 Q B 574 Madhavi v Kelu I L R 15 Mad 264 Kunji Amma v Paman Menon I L R 15 Mad 494* and *Ballishan v Kishan Lal I L R 11 All 148* referred to CHANDI PRASAD *v* MAHENDRA MAHENDRA SINGH (1901)

I L R 24 All 112

63 ——— Decrees for cesses—*Evidence —Presumption—Landlord and tenant—Decrees in suit for road and Public Works cesses* Previous decrees for cesses at a certain rate obtained by a landlord against a tenant do not operate as *res judicata* in a subsequent suit for cesses claimed at a higher rate although they are admissible as evidence in the suit and may raise a presumption in favour of the tenant RICKETTS *v* RAMESWAR MALLIA (1900) I L R 28 Calc 109

64 ——— Judgment of higher Court *—Civil Procedure Code (Act XIV of 1882) s 13 —Suit by A against B in City Civil Court—Subsequent suit in High Court by B against A raising same questions—Decision first arrived at in High Court—Subsequent trial of A s suit in City Civil Court—Effect of High Court judgment as res judicata* *A* instituted a suit against *B* in the Madras City Civil Court *B* subsequently instituted a suit in the Madras High Court on its Original Side against *A* The parties in both Courts were the same and the matters in controversy between them were substantially the same The latter related to the prescriptive right of *B* to light and air in respect of certain windows situated in a wall abutting on *A* s house Issues were framed in both Courts relating to this question By consent *A* s suit in the City Civil Court was adjourned from time to time to await the final decision of the High Court This was duly arrived at in a judgment of an Appellate Court after which *A* s suit came on for hearing in the City Civil Court The question then first raised and considered was whether the decision of the High Court barred the trial of the suit it being contended on behalf of *A* that inasmuch as *A* s suit had been filed prior to *B* s the decision in *B* s suit did not operate as a bar *Held* that the suit was barred The doctrine of *res judicata* so far as it relates to prohibiting the re trial of an issue refers not to the date of the commencement of the litigation but to the time when the Judge is called upon to decide the issue *Ballishan v Kishan Lal I L R 11 All 148* approved and followed GURURAJAMMAH *v* VENKATAKRISHNAMA CHETTI (1901) I L R 24 Mad 350

65 ——— Mistake of law—*Civil Procedure Code (Act XIV of 1882) s 13* *D* and *R* were divided brothers *R* in conjunction with the senior of his two wives and to the exclusion of the junior wife adopted a son of *D* on 27th October 1879 On the same day *R* settled some *properties on his junior wife for life with remainder to his daughter by her In 1885 R* died his senior wife died shortly after and in 1886 his adopted son also died unmarried *D* in 1890 sued the surviving widow and daughter for a declaration that he as the reversionary heir of the deceased adopted son was entitled to succeed to the properties left by *R* (including those settled on the widow and daughter) after the lifetime of the widow The claim was dismissed in so far as it related to the settled property but *D* was declared to be entitled as reversioner to the other properties left by *R* after the lifetime of the widow In 1891 *D* died In 1897 the surviving sons of *D* brought the present suit in which they claimed [illegible]

r

r

suit had been obtained under a mistake of law and that it was no bar to the present suit *Held* that the matter was *res judicata* KAVERI AMMAL *v* SASTRI PAMIER (1902) I L R 26 Mad 104

66 ——— Mortgage—*Transfer of Property Act (IV of 1882) ss 60 92 and 93—Mortgage—Redemption—Decretal money not paid within the time limited by the decree—Decree not in accordance with the Transfer of Property Act—Subsequent suit for redemption not barred—Civil Procedure Code ss 13 44* The plaintiffs brought a suit for redemption of a usufructuary mortgage and obtained a decree for redemption conditioned on their paying a certain sum within a time specified in the decree This decree however instead of going on to direct that in default of payment by the due date the property should be sold directed that if payment was not made within the time fixed the judgment [illegible] be deemed to be non existent The plaintiffs did not pay the decretal amount within the time fixed but some years afterwards brought a second suit for redemption *Held* that the second suit was not under the circumstances barred, [illegible] of anything contained in the Transfer of Property Act 1882 or by s 13 or s 244 of the Code of Civil Procedure *David Hay v Razo [illegible] I L R [illegible] All 202* overruled *Sami [illegible] v Emperor*

RES JUDICATA—*contd*

2 ESTOPPEL BY JUDGMENT—*contd*

ram Achari I L R 6 Mad 119 Periandi v *Angappa I L R 7 Mad 423 Karuthasami* v *Jaganatha I L R 8 Mad 478 Ramunni* v *Brahma Dattan I L R 15 Mad 366 Rama sami* v *Sami I L R 17 Mad 96 Vallabha Valiya Rajah* v *Vedapuratti I L R 19 Mad 40 Nainappa Chetti* v *Chidambaram Chetti I L R 21 Mad 18 Chaita* v *Pururi Sookh N W P H C Rep (1867) 256 Doobee Singh* v *Joukee Ram N W P H C Rep (1868) 381 Sheikh Golam Hoosein* v *Musumat Alla Rukhee Beebee N W P H C Rep (1871) 62 Anrudh Singh* v *Sheo Prasad I L R 4 All 481 Muham mad Samiuddin Khan* v *Mannu Lal I L R 11 All 386 Dondh Bahadur Rai* v *Tek Narain Rai I L R 21 All 251 Gan Savant Bal Savant* v *Narayan Dhond Savant I L R 7 Bom 467 Hari Ravji Chiplunkar* v *Shapurji Hormasji Shet I L R 10 Bom 461 Maloji* v *Sagaji I L R 13 Bom 567 Roy Dinkur Doyal* v *Sheo Golam Singh 22 W R 172* and *Nawab Azmut Ali Khan* v *Jowahir Sing 13 Moo I A 404* referred to SITA RAM v MADHO LAL (F B 1901)

I L R 24 All 44

67 ——— Question of title raised in rent suit—*Civil Procedure Code (Act XIV of 1882) s 13* Where a question of title was de cided in a suit for rent in which the issue was as to whether the relation of landlord and tenant existed between the parties *Held* that in a sub sequent suit brought by the same plaintiff for es tablishment of his title the decision in the rent suit does not operate as *res judicata Dwarka Nath Roy* v *Ram Chand Aich I L R 26 Calc 428* followed *Radha Madhab Holdar* v *Monohur Mukerji I L R 15 Calc 756* distinguished NITYA NUNDA SARKAR v RAM NARAIN DAS (1901)

6 C W N 66

68 ——— *Findings necessary to support decree—Limitation Act (XV of 1877) s 14— Unable to entertain suit — Other causes of a like nature —Dismissal of previous suit for non joinder—Sch II Arts 142 and 144 of Act XV of 18 7—Possession under decree subsequently reversed—Act XV of 187 Sch II Art 29* An appellate judgment operates by way of estoppel as regards all findings of the lower Court which though not referred to in it are necessary to make the appellate decree possible only on such findings A plaintiff is not entitled under s 14 of the Limi tation Act to exclude the time spent in prosecuting a previous suit when such suit was dismissed for non joinder on findings arrived at after trial and not without trial because the Court was unable to entertain the suit Under Art 142 Sch II of the Limitation Act limitation runs from the date of dispo se sion and no fresh starting point is given because the party dispossessed subsequent ly obtains po s ssion under the decree and is ousted from pos ession when the decree is revers ed *Sayad Nasrudin* v *Venkatesh Prabhu I L R 5 Bom 382* followed *Degumbury Dossee* v *Rajah Anundnath Roy W R (1864) 43 Firingee Sahoo* v *Sham Manjhee 8 W P Civil Rule 313* and *Dagdu* v *Kalu I L R 22 Bom 733* referred to Sch II Art 9 does not apply when the suit is substantially for possession of property though the plaintiff avers that an instrument re lied on by the defendant is a forgery *Sundaram* v *Sithammmal I L R 16 Mad 311* and *Abdul Rahim* v *Kirparam Daji I L R 16 Bom 186* followed NARAYANAN CHETTY v KENAYAMMAL ACHI (1905) I L R 28 Mad. 338

69 ——— *Bar only when jurisdiction concurrent as regards pecuniary value as well as subject matter—Effect of augmentation of claim by subsequent interest—Transfer of Pro perty Act (IV of 1882) s 85* A judgment in a previous suit does not operate as *res judicata* in a subsequent suit in respect of the same subject matter if the value of the matter of relief in the subsequent suit is above the pecuniary limits of the jurisdiction of the Court which decided the previous suit In order to create an estoppel the jurisdiction of the two Courts must be concurrent as regards pecuniary limit as well as subject-matter *Rajah Run Bahadur Singh* v *Mussumut Lachoo Koer L R 12 I A 23* followed The augmentation of the claim in the first suit by subsequent accrual of interest will prevent the estoppel operating *Gopi Nath Chobey* v *Bhagwat Pershad I L R 10 Calc 697* distinguished *Pathuma* v *Salimamma I L R 8 Mad 83* distinguished Mortgage suits do not form an ex ception to this rule and the Legislature cannot in the absence of apt provisions be presumed to have intended to modify the rule of *res judicata* by enacting s 85 of the Transfer of Property Act *Obiter* S 209 of the Code of Civil Proce dure does not apply to mortgage decrees GIRIYA CHETTIAR v SABAPATHY MUDALIAR (1905)

I L R 29 Mad. 65

70 ——— *Res judicata—Suit* Where after a remand by a higher Court an issue was raised and accepted by the parties and the decision become final owing to the abandonment of an appeal *Quære* Whether the decision was *res judicata* in a subsequent suit not- ... on remand ... pen to ... SAMES- ... 797 ... 1065 ... s c. L R 33 I A. 156

71 ——— *Res judicata—Suit dismissed in defendant s absence on plaintiff s failure to adduce evidence—Fresh suit if barred* S 13 of the Civil Procedure Code is no bar to a fresh suit when the previous suit was dismissed in the defendant s absence on the failure of the plaintiff to adduce evidence *Radha Prosad Singh*

RES JUDICATA—*contd*

2. ESTOPPEL BY JUDGMENT—*contd*

v *Lal Sahab Rai I L R 13 All 53* referred to DOMA RAM v RAGHU NATH PANDIT (1905) **10 C W N 40**

72 ———— *Decision in previous suit that an agreement barred plaintiff's right—Such decision res judicata though agreement time barred at date of subsequent suit* A decision in a previous suit for possession of property that an agreement to sell executed by the owner of such property in favour of the defendant and a tender of performance by the defendant disentitled the plaintiff (who was found to have purchased with knowledge of the agreement and tender) to possession will operate as *res judicata* in a subsequent suit between the same parties on the cause of action The fact that at the time the subsequent suit was instituted such contract of sale had become unenforceable by the Law of Limitation will not prevent the operation of the bar when it is clear from the judgment in the previous suit that the Court did not intend that the defendant should bring a suit for specific performance of the contract ADAKKALAM CHETTIYAR v PAMALINGA CHETTIAR (1906) **I L R 29 Mad 320**

3 ADJUDICATIONS

1 ———— **Mention of cess in survey proceeding**—*Judicial determination Held* that the mention of a cess in the wajib ul urz and settlement proceeding was not equivalent to a judgment on a question raised so as to preclude adjudication on the merits RAM CHUND v ZAHOOR ALI KHAN **1 Agra 135**

See RAM CHUND v ZAHOOR ALI KHAN **1 Agra 134**

2 ———— **Entry in wajib ul urz**—*Limitation Held* that an entry in the wajib ul urz is only good for what it may be worth as evidence and cannot be held to be like a judgment or to require to be set aside by a regular suit subject to a limitation calculated from the date of the instrument BHOLA SINGH v BULRAJ SINGH **1 Agra 233**

3 ———— **Application under Administrator General's Act (XXIV of 1867) order on**—*Civil Procedure Code (Act X of 1877) s 13—Act II of 1874 s 63—Suit* An application by petition under s 63 of Act II of 1874 was a suit within the meaning of s 13 of Act X of 1877 and therefore such an application was barred by the disposal of a former application in the same matter under the same section or under s 60 of Act XXIV of 1867 which the Act of 1874 repealed this was so whether the order was one for payment of money or one dismissing the petition S 63 Act II of 1874 contemplates that the money which is the subject of the petition may be claimed by parties other than the applicant and that those parties may appear and be represented at the hearing and the words binding on all parties were intended to make the order binding upon such parties as well as on the petitioner SMITH v SECRETARY OF STATE *In the matter of* ACT II OF 1874 **I L R 3 Calc 340**

4 ———— **Adjudication in accordance with Oaths Act**—*Oaths Act (X of 1873) ss 9 and 11—Question of title* The decision of a question of title in issue between the parties to a suit in accordance with the provisions of the Oaths Act is not an adjudication which will operate as an estoppel when the same question of title is again raised in another suit between the same parties KESHAVA THARAGAN v RUDRAN NAMBUDRI **I L R 5 Mad. 259**

5 [illegible] ...om ...4c ...and ...in apportioning the compensation money which he is directed to apportion to decide the question of title between all persons claiming a share of the money *Semble* No decision under the Land Acquisition Act should be treated as *res judicata* with respect to the title to other parts of the property belonging to persons who may come before the Judge under s 39 NOBODEEP CHUNDER CHOWDHRY v BROJENDRO LALL ROY **I L R 7 Calc 406 9 C L R 117**

6 ———— **Investigation under s 331 Civil Procedure Code 1877**—*Title question of—Possession* An investigation under s 331 of the Civil Procedure Code (prior to the Amendment Act of 1879) was limited to the fact of possession and was no bar to a subsequent suit brought to try the title to the land in dispute CHINNASAMI PILLAI v KRISHNA PALLAI **I L R 3 Mad. 104**

7 ———— **Order for abatement of suit**—*Difference of procedure under Civil Procedure Codes 1859 and 1877 s 371* Certain property having been mortgaged was sold in execution of a decree against the mortgagor and the decree holder became the purchaser The mortgagee subsequently sued upon his mortgage making the purchaser a defendant but pending the suit the latter died and the suit was not revived against his representatives A decree was in 1876 obtained and in execution of that decree the property in question was purchased by the plaintiff who now sued to recover possession of the same from the representatives of the purchaser at the former execution sale *Held* that the matter was not *res judicata* by reason of the mortgage suit inasmuch as that suit having been under Act VIII of 1859 the abatement had not the effect which such an abatement under Act X of 1877 would have had *viz* being a bar to a fresh suit in the same cause of action NISTARINI DEBI v BROJO NATH MOOKHOPADHYA **10 C L R 229**

RES JUDICATA—contd

2 ESTOPPEL BY JUDGMENT—contd

ram Achari I L R 6 Mad 119 Periandi v *Angappa I L R 7 Mad 423 Karuthasami* v *Jaganatha I L R 8 Mad 478 Ramunni* v *Brahma Dattan I L R 15 Mad 366 Rama sami* v *Sami I L R 17 Mad 96 Vallabha Valiya Rajah* v *Vedapuratti I L R 19 Mad 40 Nainappa Chetti* v *Chidambaram Chetti I L R 21 Mad 18 Chaita* v *Purum Sookh N W P H C Rep (1867) 256 Doobee Singh* v *Jowkee Ram N W P H C Rep (1868) 381 Sheikh Golam Hoosein* v *Musumat Alla Rukhee Beebee N W P H C Rep (1871) 62 Anrudh Singh* v *Sheo Prasad I L R 4 All 481 Muham mad Samiuddin Khan* v *Mannu Lal I L R 11 All 386 Dondh Bahadur Rai* v *Tek Narain Rai I L R 21 All 251 Gan Savant Bal Savant* v *Narayan Dhond Savant I L R 7 Bom 467 Hari Parji Chiplunkar* v *Shapurji Hormasji Shet I L R 10 Bom 461 Maloji* v *Sagaji I L R 13 Bom 567 Roy Dinkur Doyal* v *Sheo Golam Singh 22 W R 172* and *Nawab Azimut Ali Khan* v *Jowahir Sing 13 Moo I A 401* referred to SITA RAM v MADHO LAL (F B 1901)

I L R 24 All 44

67 ———— Question of title raised in rent suit—*Civil Procedure Code (Act XIV of 1882) s 13* Where a question of title was de cided in a suit for rent in which the issue was as to whether the relation of landlord and tenant existed between the parties *Held* that in a sub sequent suit brought by the same plaintiff for es tablishment of his title the decision in the rent suit does not operate as *res judicata Duarka Nath Roy* v *Ram Chand Aich I L R 26 Calc. 428* followed *Radha Madhab Holdar* v *Monohur Mukerji I L R 15 Calc 756* distinguished NITYA NUNDA SARKAR v RAM NARAIN DAS (1901)

6 C W N 66

68 ——————— *Findings necessary to support decree—Limitation Act (XV of 1877) s 14— Unable to entertain suit — Other causes of a like nature —Dismissal of previous suit for non joinder—Sch II Arts 142 and 144 of Act XV of 1877—Possession under decree subsequently reversed—Act XV of 1877 Sch II Art 29* An appellate judgment operates by way of estoppel as regards all findings of the lower Court which though not referred to in it are necessary to make the appellate decree possible only on such findings A plaintiff is not entitled under s 14 of the Limi tation Act to exclude the time spent in prosecuting a previous suit when such suit was dismissed for non joinder on findings arrived at after trial and not without trial because the Court was unable to entertain the suit Under Art 142 Sch II of the Limitation Act limitation runs from the date of dispossession and no fresh starting point is given because the party dispossessed subsequent ly obtains possession under the decree and is ousted from possession when the decree is revers ed *Sayad Nasrudin* v *Venkatesh Prabhu I L R 5 Bom 382* followed *Degumbury Dossee* v *Rajah Anundnath Roy W R (1864) 43 Fringee Sahoo* v *Sham Manjhee S W R Civil Rule 3 3* and *Dagdu* v *Kalu I L R 22 Bom 733* referred to Sch II Art 29 does not apply when the suit is substantially for possession of property though the plaintiff avers that an instrument re lied on by the defendant is a forgery *Sundaram* v *Sithammmal I L R 16 Mad 311* and *Abdul Rahim* v *Kirparam Daji I L R 16 Bom 186* followed NARAYANAN CHETTY v KANNAMMAI ACHI (1905) **I L R 28 Mad. 338**

69 ——————— *Bar only when jurisdiction concurrent as regards pecuniary value as well as subject matter—Effect of augmentation of claim by subsequent interest—Transfer of Pro perty Act (IV of 1882) s 85* A judgment in a previous suit does not operate as *res judicata* in a subsequent suit in respect of the same subject matter if the value of the matter of relief in the subsequent suit is above the pecuniary limits of the jurisdiction of the Court which decided the previous suit In order to create an estoppel the jurisdiction of the two Courts must be concurrent as regards pecuniary limit as well as subject matter *Rajah Run Bahadur Singh* v *Mussumut Lachoo Koer L R 12 I A 23* followed The augmentation of the claim in the first suit by subsequent accrual of interest will prevent the estoppel operating *Gopi Nath Chobey* v *Bhagwat Pershad I L R 10 Calc 69* distinguished. *Pathuma* v *Salimamma I L R 8 Mad 83* distinguished Mortgage suits do not form an ex ception to this rule and the Legislature cannot in the absence of apt provisions be presumed to have intended to modify the rule of *res judicata* by enacting s 85 of the Transfer of Property Act *Obiter* S 209 of the Code of Civil Proce dure does not apply to mortgage decrees CHITTA CHETTIAR v SABAPATHY MUDALIAR (1905)

I L R 29 Mad. 65

70 ——————— *Res judicata—Suit* Where after a remand by a higher Court an issue was raised and accepted by the parties and the decision become final owing to the abandonment of an appeal *Quære* Whether the decision was *res judicata* in a subsequent suit not- [illegible] on remand [illegible] open to [illegible] v RAMES- [illegible] All 727 [illegible] N 1065 10 C [illegible] s c L R 33 I A. 156

71 ——————— *Res judicata—Suit dismissed in defendant s absence on plaintiff's failure to adduce evidence—Fresh suit if barred.* S 13 of the Civil Procedure Code is no bar to a fresh suit when the previous suit was dismissed in the defendant s absence on the failure of the plaintiff to adduce evidence *Radha Prosad Singh*

RES JUDICATA—*contd.*

2 ESTOPPEL BY JUDGMENT—*contd.*

v *Lal Sahab Rai I L R. 13 All. 53* referred to DOMA RAM v RAGHU NATH PANDIT (1905) 10 C W N 40

72 ——— — *Decision in previous suit that an agreement barred plaintiff right —Such decision res judicata though agreement at time barred at date of subsequent suit* A decision in a previous suit for possession of property that an agreement to sell executed by the owner of such property in favour of the defendant and a tender of performance by the defendant disentitled the plaintiff (who was found to have purchased with knowledge of the agreement and tender) to possession will operate as *res judicata* in a subsequent suit between the same parties on the cause of action The fact that at the time the subsequent suit was instituted such contract of sale had become unenforceable by the Law of Limitation will not prevent the operation of the bar when it is clear from the judgment in the previous suit that the Court did not intend that the defendant should bring a suit for specific performance of the contract ADAKKALAM CHETTIYAR v PAMALINGA CHETTIAR (1906)
I L R. 29 Mad. 320

3 ADJUDICATIONS

1 ——— Mention of cess in survey proceeding—*Judicial determination Held* that the mention of a cess in the wajib ul urz and settlement proceeding was not equivalent to a judgment on a question raised so as to preclude adjudication on the merits RAM CHUND v ZAHOOR ALI KHAN
1 Agra 135

See RAM CHUND v ZAHOOR ALI KHAN
1 Agra 134

2 ——— Entry in wajib ul urz—*Limitation Held* that an entry in the wajib ul urz is only good for what it may be worth as evidence and cannot be held to be like a judgment or to require to be set aside by a regular suit subject to a limitation calculated from the date of the instrument BHOLA SINGH v BULRAJ SINGH
1 Agra 233

[illegible] ninis [illegible] order [illegible] s 13 [illegible] tion by [illegible] suit within the meaning of s 13 of Act X of 1877 and therefore such an application was barred by the disposal of a former application in the same matter under the same section or under s 60 of Act XXIV of 1867 which the Act of 1874 repealed this was so whether the order was one for payment of money or one dismissing the petition S 63 Act II of 1874 contemplates that the money which is the subject of the petition may be claimed by parties other than the applicant and that those parties may appear and be represented at the hear

RES JUDICATA—*contd.*

3 ADJUDICATIONS—*contd.*

ing and it was [illegible] intended to make the [illegible] parties as well as [illegible] RETARY OF STATE [illegible] 1874 [illegible]
I L R 3 Ca[illegible]

4 ——— Adjudication [illegible] with Oaths Act—[illegible] of 1873 [illegible] question of title [illegible] a suit in accordance with [illegible] Oaths Act [illegible] as an estoppel when the [illegible] again raised in another [illegible] parties [illegible]
I L R 5 [illegible]

5 ——— Order apportioning compensation money—[illegible] Land Acquisition Act [illegible] apportioning the compensation [illegible] is directed to apportion [illegible] of title between all persons [illegible] the money [illegible] Acquisition Act should be treated [illegible] with respect to the title to other [illegible] perty belonging to persons who [illegible] Judge under s 3[illegible] NOBODEEP CHUNDER CHOWDHRY v BROJENDRO LALL [illegible]
I L R. 7 Calc 406 9 C L R. 117

6 ——— Investigation under s [illegible] Civil Procedure Code 1877—*T[illegible] of—Possession* An investigation under s [illegible] the Civil Procedure Code [illegible] ment Act of 1859 was limited to the [illegible] sion and was no bar to a subsequent suit [illegible] to try the title to the land in [illegible] PILLAI v KRISHNA PILLAI I L R. 3 Mad. 104

7 ——— Order for abatement of suit—*Difference of procedure under Civil Procedure Code 1859 and 1877 s 371* Certain property having been mortgaged was sold in execution of a decree against the mortgagor and the [illegible] holder became the purchaser The mortgagee subsequently sued upon his mortgage making the purchaser a defendant but pending the suit the latter died and the suit was not revived [illegible] his representatives A decree was in [illegible] ed and in execution of that decree the [illegible] in question was purchased by the [illegible] now sued to recover possession of the same from the representatives of the purchaser at the former execution sale *Held* that the matter was not *res judicata* by reason of the mortgage suit inasmuch as that suit having been under Act VIII of 1859 the abatement had not the effect which such an abatement under Act X of 1877 would have had viz being a bar to a fresh suit in the same cause of action NISTARINI DEBI v [illegible] NATH MOOKHOPADHYA 10 C L R. [illegible]

RES JUDICATA—contd

2 ESTOPPEL BY JUDGMENT—contd

ram Achari I L R 6 Mad 119 Periandi v *Angappa I L R 7 Mad 423 Karuthasami* v *Jaganatha I L R 8 Mad 478 Ramunni* v *Brahma Dattan I L R 15 Mad 366 Ramasami* v *Sami I L R 17 Mad 96 Vallabha Valiya Rajah* v *Vedapuratti I L R 19 Mad 40 Natnappa Chetti* v *Chidambaram Chetti I L R 21 Mad 18 Chaita* v *Pururi Sookh N W P H C Rep (1864) 256 Doobee Singh* v *Jowkee Ram N W P H C Rep (1868) 381 Sheikh Golam Hossein* v *Musumat Alla Rukhee Beebee N W P H C Rep (1871) 62 Anrudh Singh* v *Sheo Prasad I L R 4 All 481 Muhammad Samiuddin Khan* v *Mannu Lal I L R 11 All 386 Dondh Bahadur Rai* v *Tek Narain Rai I L R 21 All 251 Gan Savant Bal Savant* v *Narayan Dhond Savant I L R 7 Bom 467 Hari Ravji Chiplunkar* v *Shapurji Hormasji Shet I L R 10 Bom 461 Maloji* v *Sagaji I L R 13 Bom 567 Roy Dinkur Doyal* v *Sheo Golam Singh 22 W R 17_ and Nawab Azimut Ali Khan* v *Jowahir Sing 13 Moo I A 404* referred to SITA RAM v MADHO LAL (F B 1901)
I L R 24 All 44

67 ——— **Question of title raised in rent suit**—*Civil Procedure Code (Act XIV of 1882) s 13* Where a question of title was decided in a suit for rent in which the issue was as to whether the relation of landlord and tenant existed between the parties *Held* that in a subsequent suit brought by the same plaintiff for establishment of his title the decision in the rent suit does not operate as *res judicata* *Dwarka Nath Roy* v *Ram Chand Aich I L R 26 Calc 428* followed *Radha Madhab Holdar* v *Monohur Mukerji I L R 15 Calc 756* distinguished NITYA NUNDA SARKAR v RAM NARAIN DAS (1901)
6 C W N 66

68 ——— *Finding necessary to support decree—Limitation Act (XV of 1877) s 14— Unable to entertain suit — Other causes of a like nature —Dismissal of previous suit for non joinder—Sch II Arts 142 and 144 of Act XV of 1877—Possession under decree subsequently reversed—Act XV of 1877 Sch II Art 29* An appellate judgment operates by way of estoppel as regards all findings of the lower Court which though not referred to in it are necessary to make the appellate decree possible only on such findings A plaintiff is not entitled under s 14 of the Limi ...

of the Limitation Act limitation runs from the date of dispossession and no fresh starting point is given because the party dispossessed subsequently obtains possession under the decree and is ousted from possession when the decree is reversed *Sayad Nasrudin* v *Venkatesh Prabhu I L R 5 Bom 382* followed *Degumbury Dossee* v *Rajah Anundnath Roy W R (1864) 43 Fringee Sahoo* v *Sham Manjhee S W P Civil Rule 3 3* and *Dagdu* v *Kalu I L R 22 Bom 33* referred to Sch II Art 9 does not apply when the suit is substantially for possession of property though the plaintiff avers that an instrument relied on by the defendant is a forgery *Sundaram* v *Sithammmal I L R 16 Mad 311* and *Abdul Rahim* v *Kirparam Daji I L R 16 Bom 186* followed NARAYANAN CHETTY v KEVANAMMAL ACHI (1905)
I L R 28 Mad. 338

69 ——— *Bar only when jurisdiction concurrent as regards pecuniary value as well as subject matter—Effect of augmentation of claim by subsequent interest—Transfer of Property Act (IV of 1882) s 85* A judgment in a previous suit does not operate as *res judicata* in a subsequent suit in respect of the same subject matter if the value of the matter of relief in the subsequent suit is above the pecuniary limits of the jurisdiction of the Court which decided the previous suit In order to create an estoppel the jurisdiction of the two Courts must be concurrent as regards pecuniary limit as well as subject matter *Rajah Run Bahadur Singh* v *Mussumat Lachoo Koer L R 12 I A 23* followed The augmentation of the claim in the first suit by subsequent accrual of interest will prevent the estoppel operating *Gopi Nath Chobey* v *Bhagwat Pershad I L R 10 Calc 697* distinguished *Pathuma* v *Salimamma I L R 8 Mad 83* distinguished Mortgage suits do not form an exception to this rule and the Legislature cannot in the absence of apt provisions be presumed to have intended to modify the rule of *res judicata* by enacting s 85 of the Transfer of Property Act *Obiter* S 209 of the Code of Civil Procedure does not apply to mortgage decrees GIRIYA CHETTIAR v SABAPATHY MUDALIAR (1905)
I L R 29 Mad. 65

70 ——— *Res judicata—Suit* Where after a remand by a higher Court an issue was raised and accepted by the parties and the decision become final owing to the abandonment of an appeal *Quære* Whether the decision was *res judicata* in a subsequent suit ... of the issue on remand ... open to ...
... 28 All 727
10 C W N 1065
s c L R 33 I A 156

71 ——— *Res judicata—Suit dismissed in defendant's absence on plaintiff's failure to adduce evidence—Fresh suit if barred.* S 13 of the Civil Procedure Code is no bar to a fresh suit when the previous suit was dismissed in the defendant's absence on the failure of the plaintiff to adduce evidence *Radha Prosad Singh*

RES JUDICATA—*contd*

2. ESTOPPEL BY JUDGMENT—*concld*

v *Lal Sahab Rai I L R 13 All 53* referred to DOMA RAM v RAGHU NATH PANDIT (1906) 10 C W N 40

72 ———— *Decision in previous suit that an agreement barred plaintiff's right—Such decision res judicata though agreement time barred at date of subsequent suit* A decision in a previous suit for possession of property that an agreement to sell executed by the owner of such property in favour of the defendant and a tender of performance by the defendant disentitled the plaintiff (who was found to have purchased with knowledge of the agreement and tender) to possession will operate as *res judicata* in a subsequent suit between the same parties on the cause of action The fact that at the time the subsequent suit was instituted such contract of sale had become unenforcible by the Law of Limitation will not prevent the operation of the bar when it is clear from the judgment in the previous suit that the Court did not intend that the defendant should bring a suit for specific performance of the contract ADAKKAPAM CHETTIYAR v RAMALINGA CHETTIAR (1906)
I L R 29 Mad 320

3. ADJUDICATIONS

1 ———— Mention of cess in survey proceeding—*Judicial determination Held* that the mention of a cess in the wajib ul urz and settlement proceeding was not equivalent to a judgment on a question raised so as to preclude adjudication on the merits RAM CHUND v ZAHOOR ALI KHAN
1 Agra 135

See RAM CHUND v ZAHOOR ALI KHAN
1 Agra 134

2 ———— Entry in wajib ul urz—*Limitation Held* that an entry in the wajib ul urz is only good for what it may be worth as evidence and cannot be held to be like a judgment or to require to be set aside by a regular suit subject to a limitation calculated from the date of the instrument BHOLA SINGH v BULRAJ SINGH
1 Agra 233

3 ———— Application under Administrator General's Act (XXIV of 1867) order on—*Civil Procedure Code (Act X of 1877) s 13—Act II of 1874 s 63—Suit* An application by petition under s 63 of Act II of 1874 was a suit within the meaning of s 13 of Act X of 1877 and therefore such an application was barred by the disposal of a former application in the same matter under the same section or under s. 60 of Act XXIV of 1867 which the Act of 1874 repealed this was so whether the order was one for payment of money or one dismissing the petition S 63 Act II of 1874 contemplates that the money which is the subject of the petition may be claimed by parties other than the applicant and that those parties may appear and be represented at the hearing and the words binding on all parties were intended to make the order binding upon such parties as well as on the petitioner SMITH v SECRETARY OF STATE *In the matter of* ACT II OF 1874 I L R 3 Calc 340

4. ———— Adjudication in accordance with Oaths Act—*Oaths Act (X of 1873) ss 9 and 11—Question of title* The decision of a question of title in issue between the parties to a suit in accordance with the provisions of the Oaths Act is not an adjudication which will operate as an estoppel when the same question of title is again raised in another suit between the same parties KESHAVA THARAGAN v RUDRAN NAMBUDRI I L R 5 Mad. 259

5 ———— Order apportioning compensation money—*Question of title—Land Acquisition Act s 39* Under s 39 of the Land Acquisition Act it is the duty of the Judge in apportioning the compensation money which he is directed to apportion to decide the question of title between all persons claiming a share of the money *Semble* No decision under the Land Acquisition Act should be treated as *res judicata* with respect to the title to other parts of the property belonging to persons who may come before the Judge under s 39 NOBODEEP CHUNDER CHOWDHRY v BROJENDRO LALL ROY
I L R 7 Calc 406 9 C L R 117

6 ———— Investigation under s 331 Civil Procedure Code 1877—*Title question of—Possession* An investigation under s 331 of the Civil Procedure Code (prior to the Amendment Act of 1879) was limited to the fact of possession and was no bar to a subsequent suit brought to try the title to the land in dispute CHINNASAMI PILLAI v KRISHNA PILLAI I. L R 3 Mad. 104

7 ———— Order for abatement of suit—*Difference of procedure under Civil Procedure Code s 1859 and 18 s 3 1* Certain property having been mortgaged was sold in execution of a decree against the mortgagor and the decree holder became the purchaser The mortgagee subsequently sued upon his mortgage making the purchaser a defendant but pending the suit the latter died and the suit was not revived against his representatives A decree was in 1870 obtained and in execution of that decree the property in question was purchased by the plaintiff who now sued to recover possession of the same from the representatives of the purchaser at the former execution sale *Held* that the matter was not *res judicata* by reason of the mortgage suit inasmuch as that suit having been under Act VIII of 1859 the abatement had not the effect which such an abatement under Act X of 1877 would have had in being a bar to a fresh suit in the same cause of action NISTARINI DEBI v BROJO NATH MOOKHOPADHYA 10 C L R 229

RES JUDICATA—*contd*

3 ADJUDICATIONS—*contd*

8 ——— **Withdrawal from suit with permission to bring a fresh suit**—*Civil Procedure Code 1859 s 97* A suit is not barred as *res judicata* because in a former case between the same parties and in the same cause of action the plaintiff after the evidence had been recorded but before final judgment was passed obtained the Court's permission to withdraw the suit with reservation of leave to bring another MONA BIBEE *v* OOMED ALI **16 W R 276**

9 ——— **Dismissal of plea of set off**—*Subsequent suit for same claim* The plea of set off is one form of bringing a suit the defendant becoming in regard thereto a plaintiff and he cannot therefore be allowed to set up a claim for which a suit had been previously brought by him and dismissed ABDOOLLAH KHAN *v* SREE KANTO PERSAD HAJRAH **15 W R 252**

10 ——— *Landlord and tenant—Sale for arrears of rent—Deposit to protect under tenure—Set off—Voluntary payment* L and R the holders of a patni estate granted in 1856 a dar patni lease to S at an annual rent the lease stipulating that S should have full power of sale and gift but should not sub let without the patnidar's consent The lease contained no stipulation for the registration of any vendee or donee In 1860 S sold the dar patni lease to K the deed of sale which was duly registered providing for mutation of names in the patnidar's books No such mutation was ever effected by K who was never recognized as their tenant by L and R the rent of the dar patni being paid in the name of S In 1864 the rent due from the patnidars being in arrear the zamindar proceeded to sell the patni under Regulation VIII of 1819 Thereupon K in order to protect his undertenure deposited in the Collectorate on 17th November 1864 a sum of money on which the sale was stayed K being then in arrear in the payment of his dar patni rent claimed to set off the amount deposited in the Collectorate against the rent due to L and R This L and R refused to allow and they brought a suit in the Collector's Court against S and his sureties to recover the arrears of rent In that suit K intervened claiming the benefit of the set off to which however the High Court on 26th June 1866 on appeal held that he was not entitled the deposit being merely a voluntary payment by K On 30th October 1867 K brought a regular suit against S and L and R to recover the amount of the deposit and obtained a decree but the decision was reversed on appeal and the suit dismissed for want of jurisdiction On 6th June 1869 K filed his plaint in the proper Court *Held* that he was entitled to recover the amount deposited by him in the Collectorate and that the suit was not barred as being *res judicata* by the decision of 26th June 1866 LUCHNAPAIN MITTER *v* KHETTRO PAL SINGH ROY

13 B L R P C 146 20 W R 380

RES JUDICATA—*contd*

3 ADJUDICATIONS—*contd*

11 ——— **Set off plea of in respect of claim dismissed in former suit**—*Civil Pro-* [illegible] alleged the plaintiff had sold on his account on commission It appeared that the defendant had previously sued the plaintiff to recover the [illegible] claimed by way of set off [illegible] no sale to him but the cloth had been [illegible] to him on commission sale The suit was dismissed on the ground that there was no proof of a sale of cloth and the question whether any sum was due for cloth sold on commission sale was not gone into The cloth now alleged to have been delivered on commission sale was the same as that alleged in the former suit to have been actually sold to the plaintiff *Held* that the claim for such set-off was not barred under the provisions of s 13 of the Civil Procedure Code AMIR ZAMA *v* NATHU MAL **I L R 8 All 396**

12 ——— **Order of former Magistrate for maintenance**—*Criminal Procedure Code (Act X of 1872) s 536—Maintenance of wife—Adultery of wife subsequent to order for maintenance* A husband upon whom an order to make an [illegible] had been [illegible]jected to [illegible]and that [illegible]gistrate [illegible] entertaining this objection disallowed it on the ground that the charge of adultery against the wife was not established The husband subsequently again objected to the payment of the allowance on the same ground The Magistrate entertaining the second objection allowed it and directed the husband to discontinue paying the allowance His order was based on proof of adultery by the wife before the date of the order of the former Magistrate *Held* on the general principle of the rule of *res judicata* that the second Magistrate was wrong in law in re opening matters already *adjudicated* upon and his order directing the discontinuance of the allowance on the ground of facts antecedent to the former Magistrate's order must be held to be illegal LARAITI *v* PAY DIAL **I L R 5 All 224**

13 ——— **Application to set aside decree after refusal by Court to set it aside**—*Attachment under ex parte decree* A suit was brought against T and an *ex parte* decree obtained against him An application by T to have the decree set aside was dismissed. The defendant afterwards applied to have the attachment and all the proceedings set aside and declared null and void *Quære* Whether the former refusal to

RES JUDICATA—*contd*

3 ADJUDICATIONS—*contd*

set it aside would be a bar to prevent the setting aside by the Court LADKUVARBHAI *v* SARSANGJI PARTABSANGJI 7 Bom O C 150

14. ———— **Previous suit by next friend dismissed for default**—*Civil Procedure Code 1882 s 158 (Act VIII of 1859) s 148—Evidence of fraud of next friend—Limitation* A sued in 1885 to recover certain estates from *B* alleging claim under his adoption which took place in 1865 A suit to recover the same estates had been filed on behalf of *A* by his next friend and had been dismissed for default in 187-. In 1875 A being still a minor relinquished by deed his claim to the estates for R1- 000 but now alleged that he thought he was relinquishing it only in favour of the defendant's predecessor in title who died in 1883 having been in possession of the estates since 186 The plaintiff attained his majority in 1878 *Held* that the claim was *res judicata* the plaintiff having failed to prove fraud on the part of his next friend and that whether the cause of action arose in 1865 or 1867 it was equally barred from 1879 *Per Curiam*—The plea of *res judicata* ordinarily presupposes an adjudication on the merits but s 148 of the Code of Civil Procedure (Act VIII of 1859) contains a statutory direction that in case the plaintiff neglects to produce evidence and to prove his claim as he is bound to do the Court do proceed to decide the suit on such material as is actually before it and that the decision so pronounced shall have the force of a decree on the merits notwithstanding the default on the part of the plaintiff VENKATACHALAM *v* MAHALAKSHMAMMA I L R 10 Mad 272

15 ———— **Judgment liable to appeal**—*Finality of judgment* A judgment liable to appeal or under appeal is only a provisional and not a definitive or final adjudication and cannot operate as *res judicata* during the interval preceding the appeal or the interval preceding the decision of the appeal Expl IV of s 13 of the Civil Procedure Code commented on *Kakarlapudi Suryanarayana Rau* v *Shellamkuri Shellamma 5 Mad 176* and *Nilvaru* v *Nilvaru I L R 6 Bom 110* referred to The rule of *res judicata* contained in s 13 of the Code applies equally to appeals and miscellaneous proceedings as to original suits Having regard to its main object so far as it relates to the re trial of an issue it refers not to the date of the commencement of the litigation but to the date when the Judge is called upon to decide the issue Where after the commencement of the trial of an issue a final judgment upon the same issue in another case is pronounced by a competent Court (the identity of parties and other conditions of s 13 being fulfilled) such judgment operates as *res judicata* upon the decision original or appellate of the issue in the later litigation BALKISHAN *v* KISHAN LAL I L R 11 All 148

RES JUDICATA—*contd*

3 ADJUDICATIONS—*contd*

16 ———— **Award as to partition in prior arbitration proceedings effect of**—*Subsequent suit for partition* Disputes having arisen in a joint Hindu family the parties submitted the question of partition to arbitrators who passed an award thereon Both parties objected to the award and it was never carried into effect On a suit for partition being filed —*Held* that such an award was equivalent to a final judgment and binding on the parties in the absence of positive evidence that both parties agreed that the former state of things should be restored and that therefore the present suit for partition could not be maintained KRISHNA PANDA *v* BALARAM PANDA I L R 19 Mad 290

SUBBARAYA CHETTI *v* SADASIVA CHETTI I L R 20 Mad 490

17 ———— **Refusal to file award**—*Civil Procedure Code 1882 ss 13 and 525* The refusal of an application for the filing of an award under s 525 Civil Procedure Code merely leaves the award to have its own ordinary legal effect and it cannot be contended that an award is not to be relied on as a defence in a suit relating to the subject matter dealt with by it only because such an application has not been granted Separable claims *viz* (*a*) to share property by right of inheritance and (*b*) for the office of lambardar had been disposed of on the reference of the present parties without the intervention of a Court by an arbitrator's award between them An application under s 525 had been rejected for the reason among others that (*b*) was not a matter of civil jurisdiction *Held* however that the present suit which was grounded on (*a*) was barred by the award made MUHAMMED NEWAZ KHAN *v* ALAM KHAN I L R 18 Calc 414 L R 18 I A 73

18 ———— **Consent decree**—*Decree dismissing party from suit* In 1839 in contemplation of a marriage between *M* and *G* a deed of [illegible] vided that [illegible] of the rents [illegible] held for a [illegible] im and half by *G* that after the death of *M*'s father the rent and profits should go to *G* and *M* and upon the death of either of them to the survivor and after the death of the survivor to the use absolutely of the issue of the marriage if any The father of *M* died in 1841 and *G* on the 23rd of November in the same year *M* on the 21st December 1841 shortly after the death of her husband married *A S* and on the 8th of April 1842 gave birth to a child who was named *E* and afterwards married to *T* *M* died in 1850 By *A S* she had two children the plaintiff and a son *G S* On the 7th November 1859 *F* and her husband filed a bill of complaint in the Supreme Court Calcutta against the trustees of the settlement of 1839 and against *A S* and *G S* who was then an infant

RES JUDICATA—*contd*

3 ADJUDICATIONS—*contd*

in which she claimed to be entitled to the properties absolutely On the 21st of June 1860 a decree was made dismissing the suit against *G S* and declaring that the properties covered by the deed of settlement were personalty In the present suit it was objected that the decree of the Supreme Court could not bind *G S* as he was dismissed from the suit and because the decree was a decree by consent *Held* that the decree was binding upon *G S* and persons claiming to derive their title from him A consent decree is as binding on the parties to the proceedings in which it is made as a decree made after a contentious trial *In re South American and Mexican Co* [1895] *1 Ch 37* *The Bellcairn L R 10 P D 161* *Nilakanand* v *Padmanabha I L R 18 Mad 1* and *Gajapathi Radhika* v *Gajapathi Nilamani 13 Moo I A 497* referred to NICHOLAS v ASPHAR

I L R 24 Calc 216

19 ——————— *Estoppel* A judgment by consent raises an estoppel just in the same way as a judgment after the Court has exercised a judicial discretion in the matter LAKSHMISHANKAR DEVESHANKAR *v* VISHNURAM

I L R 24 Bom 77

20 ——————— *Evidence—Civil Procedure Code (Act XIV of 1882) s 13* A consent decree in a previous suit to which the parties in a subsequent suit are parties being a decree of a Court having jurisdiction over the subject matter of the suit and over the parties is admissible in evidence in the latter suit LALA SHIB LAL *v* LALA GOURI PRASAD

2 C W N 174

21 ——— **Division of produce**—*N W P Rent Act (XII of 1881) s 43—Landholder and tenant—Suit to recover rent in kind—Duty of officer appointed to divide produce or appraise standing crops* Where under s 43 of the North Western Provinces Rent Act 1881 an officer is appointed to divide produce or estimate or appraise a standing crop as between a landholder and his alleged tenant such officer is not empowered to come to any decision as to the liability of the tenant to pay rent if such liability is denied If therefore an officer appointed for the purposes of s 43 should take upon himself to determine any question as to the liability of the tenant to pay rent his decision will not in any subsequent suit between the parties be *res judicata* *Harnarain Singh* v *Ram Nihora Lal All Weekly Notes (1903) 40* followed JAFAR KHAN *v* GHULAM MUHAMMAD (1903)

I L R 25 All 282

22 ——— **Execution of decree**—*Limitation Act (XV of 1877) Sch II Art 179—Application in execution more than three years after previous application—Omission on part of judgment debtor to set up bar by limitation—Adjudication on application—Subsequent application in execution—Objection on ground that previous application was barred.* A decree was obtained on 16th March 1893 and a petition in execution was presented on 8th February 1894 The next petition in execution was presented on 2nd July 1897 when the judgment debtor though he had notice of it did not raise the defence of limitation An order was passed on the petition for the issue of a warrant for the arrest of the defendant and the warrant was duly issued Within three years of that petition the present application in execution was made when it was objected that as the application in 1897 had been presented more than three years from the previous application in 1894 it was barred and that in consequence the present application must also be barred. *Held* that it was not open to the judgment debtor now to raise the objection that the application of 1897 was barred He had had notice of that application and had raised no objection to it Execution had been ordered in pursuance of it which was an adjudication on the application that order was acted on and no appeal was preferred against it The question whether the application of 1897 was barred was therefore *res judicata* As the Court which had ordered the execution had jurisdiction to determine whether the decree was barred and had made an order in execution of the decree it must be considered to have determined that it was not barred *Mungul Pershad Dichit* v *Grija Kant Lahiri Choudhri L R 8 I A 123* followed LAKSHMANAN CHETTI *v* KRITTAYAN CHETTI (1901) **I L R 24 Mad 669**

23 ——— **Oath**—*Oaths Act (X of 1873)—Decree upheld in appeal on strength of oath—Final adjudication* A suit of 1898 had been affirmed on appeal on the strength of an oath taken under the Oaths Act *Held* that it was a confirmation of the original decree As between the parties a decree arrived at after the taking of an oath on a question of fact in the case is none the less a final adjudication ARMED *v* MOIDIN

I L R 24 Mad 444

(1901)

24 ——— **Redemption**—*Transfer of Property Act (IV of 1882) s 92—Decree for redemption—Omission to execute—Maintainability of subsequent suit on same mortgage—Civil Procedure Code (Act XIV of 1882) ss 13 44* Where a suit for redemption has been instituted and a decree for redemption has been passed therein but not executed a subsequent suit is not maintainable for the redemption of the same mortgage VEDAPURATTI *v* VALLABHA VALIYA RAJA (1902)

I L R 25 Mad 300

25 ——— **Summary proceeding**—*Bengal Tenancy Act (VIII of 1885) s 105 (103 A) s 106—Distinction between order under s 105 (103 A) and s 106* When a Revenue-officer disposes of an objection summarily under s 105 (103A of the amended Act) of the Bengal Tenancy

RES JUDICATA—*contd*

3 ADJUDICATIONS—*contd*

Act (VIII of 1885) without adopting the procedure laid down in the Code of Civil Procedure for the trial of suits his order will not be open to appeal or second appeal nor will it have the effect of *res judicata* *Denga Ka i v Nobin Kis ori Chowdhrani I L R 4 Calc 46* discussed and explained KURBAN ALI v JAFAR ALI (1901) I. L. R 28 Calc 471

26 ——— Incidental or collateral issues—*Res judicata in rent suits—Adjudication upon title to the land in rent suit when res judicata in a subsequent title suit* Where in a suit for rent the defendant denies the relationship of landlord and tenant and either sets up the title of a third person to the land for which rent is claimed, or pleads that she is not in occupation of the land or that the tenancy which existed has expired the only material issue to be decided in the suit is whether the relationship of landlord and tenant subsisted between the parties for the period covered by the suit and the issue if any raised as to the title to the land is an incidental or collateral issue not necessary for the decision of the suit therefore the adjudication on this latter issue cannot operate as *res judicata* in a subsequent suit between the parties for the establishment of title to the land *Srihari Banerjee v Khitish Chandra Roy Bahadur I L R 24 Calc 569 Run Bahadur v Lucho Koer I L R 11 Calc (P C) 301* and *Dwarka Nath Roy v Ram Chand Aich 3 C W N 276 see I L R 25 Calc (F B) 478* referred to But where in a rent suit the alleged tenant denies the plaintiff's title to the land and sets up his own title to the same the issue as to the title to the land becomes a substantial issue in the suit and the decision of the Court on the question of title becomes *res judicata* in a subsequent suit between the parties for establishment of title to the land *Raj Krishen Mukerjee v Radhamadhab Haldar 21 W R 349 Radhamadhab Haldar v Monohur Mukerjee I L R 15 Calc 756* and *Kasiswar Mukhopadhya v Mohendra Nath Bhandari I L R 25 Calc 136* referred to Where in a suit brought by the plaintiff against the defendant for rent in respect of an alleged *jama* of R7 the defendant pleaded that he did not hold any separate *jama* of R7 under the plaintiff but that the lands covered by the suit were included in a *jama* of R33 and odd which they held under the plaintiff [illegible]

decision that the lands were included within the defendant's *jama* of R33 odd was not necessary for the decision of the suit and consequently could not be *res judicata* in a subsequent suit brought by the plaintiff against the defendant for the declaration of his title to those lands and for *khas* possession thereof SAHADEB DHALI v RAM RUDRA HALDAR (1906) 10 C W N 820

27 ——— *Adjudication in previous suit between co-defendants in active opposition res judicata in subsequent suit between such defendants* An adjudication between co defendants in a previous suit on a point actively contested between them operates as *res judicata* in a subsequent suit between them in which they are arrayed as plaintiff and defendant *Zamorin of Calicut v Narayanan Mus ad I L R 22 Mad 323* followed *Ramanuja Ayyangar v Narayana Ayyangar I L R 18 Mad 374* distinguished KANDIYIL CHERIYA CHANDU v ZAMORIN OF CALICUT (1905) I L R 29 Mad. 515

28 ——— *Decision in previous suit binding as res judicata between the co defendants if the matter in issue in the subsequent suit actively contested at previous trial* A decision in a previous suit on a matter raised and actively contested between co defendants in such suit will operate as *res judicata* in a subsequent suit in which such co defendants are arranged as plaintiff and defendant *Kandiyil Cheriya Chandu v The Zamorin of Calicut I L R 9 Mad 515* followed The fact that the defendant in the previous suit had no right of appealing against the decision because the suit was dismissed will not affect the operation of the bar when such defendant having the right to be joined as a plaintiff chose to contest the suit as a co defendant The Full Bench decision in *Somasundara Mudali v Kulandai Velu Pillai I L R 28 Mad 457* is not in conflict with *Kandiyil Cheriya Chandu v The Zamorin of Calicut I L R 29 Mad 515* Where a decision dismissing a suit is in [illegible] defendant [illegible] Mohesh [illegible] YUSUF [illegible] Mad. 447

29 ——— Fraud—*Res judicata—Suit to set aside a decree on the ground of fraud—Sole question raised in the suit already decided in proceedings under s 108 of the Code of Civil Procedure* In a suit to set aside a decree as having been obtained against the plaintiff by fraud substantially the only ground relied upon was that the suit had been improperly instituted against the plaintiff as of full age when in fact he was a minor This had been decided against the [illegible]

Khagendra Nath Mahata v Pran Nath Roy I L R 29 Calc 395 distinguished NIADAR MAL v RAUNAK HUSAIN (1907) I. L. R. 29 All. 608

30 ——— Collector's decision—*Civil Procedure Code (Act XIV of 1882) s 13—Collector's decision under s 13 of Act III of 1895 not questionable in subsequent suit in Civil Courts* Under s. 13 of Act III of 1895 the Collector has jurisdiction to determine whether lands are the emoluments of an office or not and the parties to the proceed

RES JUDICATA—*contd*

3 ADJUDICATIONS—*contd*

ing are debarred by s. 13 of the Civil Procedure Code and the general principles of *res judicata* from re agitating the same question subsequently in a Civil Court BALIJEPALLI SESHAYYA v BALIJEPALLI SUBBAYYA (1906) I L R 30 Mad. 320

31 ———— **Decision of Court under Land Acquisition Act (I of 1894)**—*Res judicata—Apportionment of compensation—Property held under the same title* A decision of the Court with respect to the apportionment of compensation money under the Land Acquisition Act should not be treated as *res judicata* affecting other parts of the claimant s property held under the same title *Nobodeep Chunder Choudhry* v *Brojendro Lall Roy I L R 7 Calc 406* and *Mahadevi* v *Neelamani I L R 20 Mad 269* referred to *Ram Chundra Singh* v *Madho Kumari I L R 12 Calc 484* distinguished DIPGAJ DEO v KALI CHARAN SINGH (1907) I L R 34 Calc 466

32 ———— **Suit by person representing debutter estate**—*Representation in suit by person acting under the authority of shebait—Res judicata—Identity of subject—Judgment in previous suit—Admissibility—Evidence Act (I of 1872) s 13* A decision obtained in a suit instituted in his own name by a person who was in possession of and had authority to represent the debutter estate under an *arpannama* from the *shebait* and who in fact did represent the debutter estate is binding on a succeeding *shebait* on the principle of the case of *Prosunno Kumari* v *Golab Chand L R 2 I A 145* *Gora Chand* v *Makhun Lall 11 C W N 489 s c 6 C L J 404* *Venkayya* v *Suramma I L R 12 Mad 235* *Radhabai* v *Anantrai I L R 9 Bom 198* referred to For purposes of *res judicata* it is not essential that the subject matter of litigation should be identical with the subject matter of the previous suit *Raja of Pitta pur* v *Raja Rao Buchi L R 12 I A 16* *Bal Kishan* v *Kishan Lal I L R 11 All 148* *Moni Roy* v *Rajbuns e Kooer 25 W R 393* referred to The scope of the former litigation and the question raised and decided therein must be determined by reference not merely to the decree but also to the judgment and it need be to the pleadings *Kurratulain* v *Peara Sah b 9 C W N 938 s c L R 32 I A 244* referred to *Held* that the previous judgment relied on in this case did not operate as *res judicata* but was admissible in evidence if not under s 13 Evidence Act in proof of all the facts found therein at least to the extent indicated by GEIDT J in *Abinash Chandra* v *Paresh Nath 9 C W N 40* RANJIT SINHA BAHADUR v BASUNTA KUMAR GHOSE (1908) 12 C W N 739

33 ———— **Questions not necessary for determination**—*Civil Procedure Code (Act XIV of 1882) s 13* The decision in a former suit of questions not absolutely necessary for the determination of that suit cannot be regarded as *res judicata* between the same parties in a later suit POORENDRA NATH SEN v HEMANGINI DASSI (1908) 12 C W N 1003

4 JUDGMENTS ON PRELIMINARY POINTS

1 ———— **Dismissal without trial on the merits**—*Hearing and determination of cause of action* A suit on the same cause of action and between the same parties as a former suit which was summarily dismissed without being tried on its merits is not one on a cause of action which has been heard and determined by a Court of competent jurisdiction in a former suit SHOKHEE BEWA v MEHDEE MUNDUL 9 W R 297

2 ———— **Decision without trial on merits**—*Former judgment on technical defect or irregularity* A former judgment which proceeded wholly upon a technical defect or irregularity in the proceedings and not upon the merits of the case is not a bar to a subsequent suit for the same cause of action RAJ NATH ROY CHOWDHRY v BHAGBUT MOHAPUTTUR 3 W R Act X, 140

3 ———— *Case decided on technical ground* The cause of action between two parties cannot be said to be a *res judicata* if the first case was disposed of on appeal on a purely technical point even though the suit was decided on its merits in the Court of first instance MOKOOND NARAIN DEO v JOYNARAIN DEY BURNICK 15 W R 208

4 ———— **Suit dismissed as being premature**—*Suit for same subject subsequently brought* A suit dismissed as being prematurely brought is not a *res judicata* in a subsequent suit brought at the proper time ELAHEE BUKSH v SHEO NARAIN SINGH 17 W R 360

5 ———— *Previous suit dismissed as premature—Civil Procedure Code s 13—Omission to give notice under Transfer of Property Act s 132* A suit by the assignee of a mortgage bond against the mortgagor was dismissed on the ground that the plaintiff was not entitled to sue for want of notice to the defendant under s 132 of the Transfer of Property Act. The plaintiff then gave express notice of the assignment to the mortgagor and sued on the bond again *Held* that the claim was not *res judicata* and the second suit was accordingly not precluded by s 13 of the Code of Civil Procedure RAMIREDDI v SUBBAREDDI I L R 12 Mad. 500

6 ———— **Suit dismissed as not being proper remedy**—*Subsequent suit on same cause of action—Civil Procedure Code 1859 s 2 and* The first defendant mortgaged certain land to plaintiff by way of zur i peshgi lease under which the latter entered into possession. The first defendant afterwards gave a ticca of the lands to the second defendant who turned the plaintiff out of possession before the term of the zur i peshgi

RES JUDICATA—*contd*

4. JUDGMENTS ON PRELIMINARY POINTS—*contd*

lea e had expired Plaintiff then ued the first and second defendants ba ing his cau e of action on the dispos ession by the second defendant and praying for the recovery of the mortgage money by sale of the mortgaged property The suit was dismissed the Judge observing that plaintiff s proper remedy was to bring a suit for po e ion Plaintiff then brought a subsequent suit for po ses ion against the same parties and on the same cause of action. The defendants objected that the suit was barred under ss. 2 and 7 Act VIII of 1859 but the contention was over ruled. DEODHARI SINGH v LALLA SEWSARUN LAL 3 C L R 395

7 ———— **Suit struck off for default**—*Beng Reg XXII of 1814—Decision of suit—Civil Procedure Code 1859 s 148* Where a suit had been truck off the file on default under the old law Regulation XXI I of 1814 (kharij being the word u d) it was *held* that there was no deci sion such as is contemplated by s 148 of the Civil Procedure Code 1859 GUNGA RAM v KHEM NARAIN POOREE 11 W R 250

8 ———————— *Dismissal of suit for default in appearance of parties—Remanded case* When a suit has been remanded by the Appellate Court and then dismissed by the Court of fir t instance for non appearance of the parties the plaintiff is not debarred thereby from bringing another suit upon the same cau e of action again t the same defendant RAGHUNATH SINGH v RAM KUMAR MANDAL 5 B L R Ap 64 14 W R 81

9 ———————— *Dismissal of suit for default in appearance—Suit for rent—Subsequent suit for possession—Civil Procedure Code (Act X of 18) s 13* In 1870 two plots of land numbered 155 and 147 belonging to the same owner were sold in execution of a decree The purcha er of plot 155 sold it to *A* who in 1873 sued the tenant of a portion of the land for rent. In this suit *A* prayed that it might be declared that he was the owner The tenant alleged that *B* the purchaser of plot 147 was the owner of the land in respect of which rent was sought to be recovered and *B* was made a party to the suit At the hearing *A* did not appear and the suit was dismissed for default. Subsequently *A* sold plot 155 to the present plaintiff who now sued for possession. *Held* that the suit was not barred as *res judicata* GOBIND CHUNDER ADDYA v AFZUL RABBANI I L R 9 Calc 426 12 C L R 29

10 ———————— *Suit for share of*

the family property and possession of his share therein *A* subsequently did bring a suit with that object against his co parceners but allowed it to be dismissed against him for default *B* now brought a suit against *A* and his co parceners for pos e ion of *A* s share in such family property *Held* that as it was not made out that *A* in bringing his suit had acted as the agent of *B* and at *B* s request *B* s suit was not barred by the dismissal of *B* s suit KRISHNAJI LAKSHMAN RAJVADE v SITARAM MURARRAV JAKHI I L R 5 Bom. 496

11 ———————— *Civil Procedure Code 1859 ss 2 and 1 0—Hindu widow—Reversioner* *A* a Hindu widow brought a suit to recover possession of her husband s share of certain joint property After partially examining some other witne ses she cited the defendant as a witne s and on his failure to attend her suit was dismissed After the death of the widow her daughter sued the same defendant on behalf of her two minor sons as being entitled in reversion to their grandfather s share to recover the share which was the subject of the former suit the defendant was ummoned as a witness but failed to attend *Held* that the suit was not barred under s 2 Act VIII of 1859 as being *res judicata* until it was shown that the former decree had been obtained after a fair trial of the right so as to bind not only the widow but the reversioners The defendant having failed to attend and give evidence on this point the Court was justified in giving the plaintiff a decree under s 170 Act VIII of 1859 BRAMMOYE DASSEE v KRISTO MOHUN MOOKERJEE I L R 2 Calc 222

12 ——— — **Rejection of plaint for non appearance of plaintiff**—*Possessory suit in Mamlatdar s Court and in Civil Court—Bom Act III of 18 6 s 15—Specific Relief Act (I of*

failure of the plaintiff to attend with his proo s on the day appointed is a hearing and final deci on of the suit within the meaning of s 13 of the Code of Civil Procedure (Act X of 1877) and upon the rejection of the plaint the question in the suit becomes *res judicata* RAMCHANDRA v L[illegible] I L R 6 Bom. 47[illegible]

See RAMCHANDRA BALAJI PHADNI v [illegible] CHARYA NEDUNATH ACHARYA KATTI I L R 24 [illegible]

where the above de ision was d[illegible]

13 —— — ———— *D[illegible]* *for default—Difference in case [illegible] Procedure Code ss 13 10[illegible]*

RES JUDICATA—*contd*

4 JUDGMENTS ON PRELIMINARY POINTS —*contd*

a suit in terms of s 102 Civil Procedure Code is not intended to operate in favour of the defendant as *res judicata* When read with s. 103 it precludes a fresh suit in respect of the same cause of action referring irrespectively of the defence or the relief prayed entirely to the grounds or alleged media on which the plaintiff asks the Court to decide in his favour Brother s sons as nearest

restraining the widow from alienating the same estate had been dismissed under the provisions of ss 102 and 103 Civil Procedure Code (Act X of 1877) *Held* that the causes of action in the two suits were not identical and the fresh suit was not precluded by s 103 the gift having afforded the new ground of claim which also had subsequently arisen CHAND KOUR *v* PARTAB SINGH

I L R 16 Calc 98
L. R 15 I A. 156

14 ——————— *Order of Mamlatdar dismissing suit—Mamlatdar s Courts Act (Bom Act III of 1876) s 13—Limitation Act (XV of 1877) s 28 and Sch II Art 47* In 1891 the plaintiff brought this suit to eject the defendant from certain land. In 1883 the defendant s predecessor and vendor *S* had sued the plaintiff s tenant *A* in the Mamlatdar s Court alleging that *A* had disturbed his possession by putting sweepings upon the land and asking to be protected in his enjoyment He did not appear on the day fixed for hearing and his suit was dismissed under s. 13 of Bombay Act III of 1876 He did not file a suit to set aside this order of dismissal. It was contended in the present suit now brought by the plaintiff that after three year by the combined operation of art 47 and s. 28 of the Limitation Act (XV of 1877) the defendant s vendor *S* had lost his title to the land which thus became vested in the plaintiff *Held* that except as evidence of the plaintiff s title to the land the proceedings in the Mamlatdar s Court in 1883 and his decree did not affect the present suit in ejectment As such evidence they were before the lower Court *Ramchandra* v *Bhikabai I L R 6 Bom 44* referred to RAJARAM *v* GANESH HARI KARKHANIS

I L R 21 Bom 91

15 ——————— *Dismissal of first application for non appearance and want of prosecution* Where on an application being made for execution of a conditional decree the judgment debtor did not appear to oppose the decree holder s application for attachment and sale but the application was dismissed for default of prosecution —*Held* on a subsequent application for execution that as the question whether the conditional decree was capable of execution before it was made absolute was never before in issue and was not judicially treated on the occasion of the former application there was no *res judicata* on the point. RAM LAL *v* NARAIN

I L R 12 All. 539

16 ——————— **Refusal of execution where opportunity to obey the decree had not been afforded by the decree holders**—*Execution under s 260 Civil Procedure Code 1882—Effect of such refusal—Subsequent order for execution* An order of a Court dismissed a petition for execut [illegible] becaus [illegible] then [illegible] tunity [illegible] to do specific acts *Held* that another [illegible] made after such opportunity had been afforded to him was not barred as having been [illegible] of prior adjudication within s. 13 of the Civil Procedure Code KISHORE BUX MOHUNT *v* DWARKANATH ADHIKARI I L R. 21 Calc 784

L. R 21 I. A. 89

17 ——————— **Suit struck off for absence of defendant in jail on criminal charge**—*Civil Procedure Code 1859 s 9* A suit struck off by reason of the defendant being then in jail on a criminal charge cannot be set up as *res judicata* in a subsequent suit there having been no determination in favour of one party or the other nor can it be treated as a case of withdrawal under s. 97 Act VIII of 1859 LUCKHEE RAM DAS *v* JOY SUNKUR GOOHO

7 W R. [illegible]

18 ——————— **Dismissal for undervaluation.** A suit was brought in the Civil Court of a Munsif who gave judgment for the plaintiffs but his decree was reversed by the District Judge on the ground that the claim was improperly valued A second suit on the same cause of action was then brought in the Court of the Munsif who again decided for the plaintiff but his decree was reversed by the District Judge on the ground that the suit was prohibited by Bombay Regulation II of 1827 s. [illegible] The High Court on special appeal reversed that decision and remanded the suit and the District Judge then threw out the claim under s. 2 of Act VIII of 1859 on the ground that the cause of action had already been heard and determined In a second special appeal against this decision— *Held* that the plaintiffs were not precluded from presenting a fresh plaint in respect of the same cause of action and that the case came within the spirit of s. 30 of Act VIII of 1859 as there being no express power given by the Code to reject a plaint after it had been registered by reason of the claim being improperly valued the doing so ought to have only the same effect as if the plaint has been originally rejected. DULLABH JOGI *v* NARAYAN LAKHU

4 Bom. A C. 110

19 ——————— **Dismissal of suit**—*Civil Procedure Code ss 13 3 3—Decree com[illegible]*

RES JUDICATA—*contd*

4. JUDGMENTS ON PRELIMINARY POINTS —*contd*

stating that a fresh suit might be instituted as to a part of the subject matter A suit for possession of immoveable property was wholly dismissed on the ground that the plaintiff had not made out his title to the whole of the property claimed though he had proved title to a one third share of such property The decree included an order in these terms This order will not prevent the plaintiff from instituting a suit for possession of the one third interest of Musammat Lachminia in the field specified in the deed of sale upon which the suit was based No appeal was preferred from this decree Subsequently the plaintiff brought another suit upon the same title to recover possession of the one third share referred to in the order just quoted *Held* by the Full Bench that the Court in the former suit had no power to include in its decree of dismissal any such reservation or order that the fact that the decree was not appealed against did not give the order contained in it which was an absolute nullity any effect that as in the former suit the plaintiff could have obtained a decree for the one third share now claimed and the whole of the claim in that suit was dismissed the decree in that suit was a decision within s 13 of the Civil Procedure Code and the present suit was consequently barred as *res judicata* *Kudrat* v *Dinu* *I L R 9 All 155* *Ganesh Rai* v *Kalka Prasad* *I L R 5 All 595* *Salig Ram Pathak* v *Pir Bhawan Pathak* *All Weekly Notes (1885) 11* and *Muhammad Selim* v *Nabain Bibi I L R 8 All 282* explained SUKH LAL *v* BHIKHI

I L R 11 All. 187

20 ——— Dismissal of suit for want of jurisdiction—*Suit for ejectment—Subsequent suit for damages* The dismissal on the ground of want of jurisdiction by the Civil Court of a suit to eject the defendants from the fishing ground of the plaintiffs situate below low water mark does not operate as a bar to a subsequent suit by the plaintiffs to recover damages from the defendants for fixing their fishing stakes and nets too near to those of the plaintiffs BABAN MYACHA *v* NAGU SHRAVUCHA

I L R 2 Bom 19

21 ——— *Suit on a mortgage against several defendants—Dismissal of suit as against some of the defendants for want of jurisdiction—Subsequent suit on the mortgage against same defendants in another Court—Civil Procedure Code (Act XIV of 1882) ss 13 4…*

against them the Court had no jurisdiction The suit was accordingly dismissed as against them for want of jurisdiction but as against the first defendant who resided in Bombay the Court passed a decree for the plaintiff The plaintiff then brought the present suit against the defendants in the Surat Court to enforce their liability under the mortgage The defendants pleaded that the claim against them was barred by the dismissal of the former suit *Held* that the suit was not barred In the former suit there had been as against these defendants no decision on the merits and the proceedings against them were a nullity BHUKANDAS VIJBHUKANDAS *v* LALLUBHAI KASHIDAS

I L R 17 Bom 562

22 ——— *Omission to get Collector's certificate—Civil Procedure Code (Act X of 1877) s 13* The plaintiff brought in 1876 a suit against the defendant in respect of the same subject matter and founded on the same cause of action as the present suit Issues of fact arising on the merits were inquired into but a certificate of the Collector under s 6 of the Pensions Act (XXIII of 1871) which was necessary to give jurisdiction to the Court not having been obtained the claim was rejected on that ground *Held* that the Court not having legally pronounced on the merits of the former case the opinions expressed on the issues were not *res judicata* so as to bar the maintenance of the present suit PUTALI MEHETI *v* TULJA

I L R 3 Bom. 223

23 ——— Dismissal of suit for want of heirship certificate—*Civil Procedure Code 1882 ss 13 and 158* In a suit to recover principal and interest due on a bond executed by the defendants in favour of the plaintiff's father (deceased) it appeared that the plaintiff had pre… dismissed … duced no … previous … it *Putali* … referred to

PETHAPERUMAL CHETTI *v* MURUGANDI SERVAIGARAN

I L R 18 Mad. 466

24 ——— Rejection of claim to attached property as too late—*Subsequent claim* The rejection of a claim to attached property simply on the ground that it had been presented too late was held to be no legal bar to the adjudication of the claim when it was again advanced after attachment made under decree A claim of this kind may be admitted even after proclamation of sale provided it has not been designedly and unnecessarily to obstruct the ends of justice MAHOMED MUBSON *v* SUMPUTTEE SAHOON CHOWDHRAIN

10 W R 305

25 ——— Dismissal of suit as barred by limitation—*Suit against Municipal Commissioners for possession of land* Previous to the institution of the present suit one of the shareholders of a piece of land brought a suit against the Chairman of the Municipality for recovery of possession of his share The other shareholders

RES JUDICATA—*contd*

4 JUDGMENTS ON PRELIMINARY POINTS —*contd*

were made *pro formâ* defendants in the suit. This suit was dismissed as barred by the law of limitation. After the dismissal of the suit the plaintiff brought the present suit for recovery of his share of the land on the allegation that his tenant had relinquished the land within three months in consequence of his having been dispossessed by the Municipal Commissioners. *Held* that the suit was not barred by s. 2 Act VIII of 1859. PRICE *v* KHILAT CHUNDRA GHOSE
5 B L R Ap 50 13 W R 461

26 ———— *Civil Procedure Code (Act VIII of 1859) s 2—Civil Procedure Code (Act X of 1877) s 13* The plaintiff sued for a declaration of mirasi mokurari rights to certain lands and for mesne profits alleging that he had been wrongfully ejected by the predecessors in title of the defendants. A previous suit on the same cause of action had been heard and dismissed on the ground of limitation. *Held* that the present suit was not barred (as *res judicata*) under s. 2 of Act VIII of 1859 (corresponding with Act X of 1877 s 13) inasmuch as the first suit having been brought after the period allowed by law the Court in which it was instituted was not competent to hear and determine it. BRINDABUN CHUNDER SIRCAR *v* DHUNUNJOY NUSHKUR
I L R 5 Calc 246 4 C L R 443

27 ———— **Dismissal of suit for multifariousness**—*Civil Procedure Code 1859 s 2* The dismissal of a suit for multifariousness is not a hearing and determination of the suit within the meaning of s. 2 Act VIII of 1859. FATTEH SINGH *v* LACHMI KOOER
13 B L R Ap 37 21 W R 105

TRILOCHUN CHUTTOPADHYA *v* NOBO KISHORE GHUTTUCK 2 C L R 10

28 ———— **Dismissal of suit for non joinder of parties** The dismissal of a suit because it is considered that all the proper parties have not been joined in it though a decision of the suit is not a decision on the merits within the meaning of Act VIII of 1859 s 2. PURSUN GOPAL PAUL CHOWDHRY *v* POORNANUND MULLICK
21 W R 272

29 ———— **Dismissal of suit on failure of plaintiff to pay summons costs**—*Suit subsequently brought for same property* In June 1878 the plaintiffs brought a suit to establish their title to the property attached and for confirmation of possession. Pending this suit the principal defendant died and the plaintiffs applied for an order to substitute certain persons as defendants. The Court thereupon directed the issue of a summons on the defendants proposed by the plaintiffs to appear and defend the suit but the plaintiffs failing to pay the costs of the service of this summons the suit was dismissed on the 14th March 1879. On the 4th March 1880 the plaintiffs again brought a suit to establish their title to the same property and for confirmation of possession. *Held* that as the first suit had not been dismissed upon the merits the plaintiffs were entitled to maintain the second suit. BESSESSUR BHUGUT *v* MURLI SAHU
I L R 9 Calc 163 11 C L R 409

30 ———— **Dismissal for non payment of Court fees** The dismissal of a suit for non payment of Court fee is no bar to a subsequent suit in which the relief sought is substantially the same. NAGATHAL *v* PONNUSAMI
I L R 13 Mad 44

31 ———— **Dismissal for default in payment of Commissioner s fee**—*Civil Procedure Code (Act XIV of 1882) ss 13 102 158* A suit for land was dismissed in 1886 on the plaintiff s failure to comply with an order to pay a fee for the appointment of a Commissioner to value the land. No issues were framed in the suit and the order directing payment of the fee prescribed no time within which it was to be made. The plaintiff now sued the defendants again for the same land. *Held* that the claim was not *res judicata*. SHAIK SAHEB *v* MAHOMED
I L R 13 Mad 510

32 ———— **Dismissal of suit on default of plaintiff to give security for costs**—*Defendant precluded from pleading matter which is res judicata—Civil Procedure Code 1877 ss 13 381* The plaintiff sued the defendants on a promissory note. The defendants filed a written statement alleging that the note had been obtained by the plaintiff by fraud and false representation. Previously to the filing of the present suit by the plaintiff the defendants had brought a suit against the plaintiff in which they prayed that the said promissory note might be delivered up to be cancelled. Their plaint in that suit contained allegations of fraud and want of consideration identical with those contained in their written statement in the present suit. The plaintiffs in the former suit (the present defendants) having failed to give security for costs the suit was dismissed under s. 381 of the Civil Procedure Code (Act X of 1877). It was now contended that the defendants were estopped from pleading as a defence to the present suit the fraud and want of consideration which had been alleged by them as plaintiffs in the former suit which had been dismissed. *Held* that the defence might be pleaded and that the question of fraud and want of consideration was not *res judicata* within the meaning of s. 13 of the Civil Procedure Code. The previous suit had been dismissed by reason of the plaintiffs (the present defendants) failure to give security for costs and a Court cannot be said to "hear and decide" a matter which it is relieved from hearing and deciding by the plaintiff s default. Under s. 13 of the Civil Procedure Code (Act X of 1877) a defendant may be precluded from pleading as a defence matter which is *res judicata*. *Quære*

RES JUDICATA—*contd*

4. JUDGMENTS ON PRELIMINARY POINTS—*contd*

Whether a plaintiff whose suit has been dismissed under s. 381 can again litigate the subject matter of the dismissed suit. RUNGRAV LAVJI *v* SIDHI MAHOMED EBRAHIM

I. L. R. 6 Bom. 482

33. ——— Dismissal of suit in present form —*Civil Procedure Code 1877 s 13 expl. III* K the purchaser of certain immoveable property in execution of a decree sued for possession of the same The suit was dismissed in the form in which it was brought because the plaintiff had not filed with the sale certificate K subsequently brought a fresh suit. *Held* that the dismissal of the former suit in the form it was brought did not amount to permission to sue again contemplated by s 373 of the Civil Procedure Code and such dismissal must be regarded as a decision thereof in the sense of s. 13 expl. III and therefore as a bar to the fresh suit. GANESH RAI *v* KALKA PRASAD

I. L. R. 5 All. 595

34. ——— Suit dismissed "as brought —*Civil Procedure Code s 13* In a suit in which the plaintiffs claimed exclusive possession and in the alternative joint possession of certain land, evidence was taken upon the issues raised but the Court without discussing the evidence held that the alternative claims were contradictory and the plaintiffs claim therefore uncertain and accordingly ordered that the plaintiff s claim as brought be dismissed with cost The plaintiffs did not appeal from this decision but subsequently brought a suit against the same defendants claiming joint possession of the same property *Held* that the suit was barred by s. 13 of the Civil Procedure Code the Court in the former suit not having reserved to the plaintiffs the right to bring a fresh action *Ganesh* v *Kalka Prasad I L R 5 All 595 Muhammad Salim* v *Nabian Bibi I L R 3 All 282* and *Watson* v *Collector of Rajshahye 13 Moo I A 169* referred to by TYRRELL, J KUDRAT *v* DINU

I. L. R. 9 All. 155

35. ——— Dismissal of suit for misjoinder—*Civil Procedure Code s 13—Dismissal of suit—Court Fees Act s 10 cl (ii)* The purchaser of certain immoveable property in execution of a decree sued for possession of the same The suit was dismissed in its present form (*bahaisiyat maujuda*) upon two grounds first with reference to s 10 of the Court Fees Act (VII of 1870) that the suit was undervalued and the plaintiff had failed to p[illegible]
re ju[illegible]
er[illegible]
suit.[illegible]
was not under the circumstances a decision within the meaning of s 13 of the Civil Procedure Code such as could bar the second suit by way of *res judicata* *Per* MAHMOOD J —The object of s 10 and indeed of the whole of the Court Fees Act is to lay down rules for the collection of one form of taxation and the rule that statutes which impose pecuniary burdens or encroach upon or qualify the rights of the subject must be strictly construed applies with special force to such provisions of the Act as provide a penalty whatever its nature may be S 10 is simply a penal clause to enforce the collection of the Court fees and dismissal of a suit under its provisions cannot operate as *res judicata* Also *per* MAHMOOD J —The condition in s 13 of the Civil Procedure Code that the former suit must have been heard and finally decided means that a former judgment proceeding wholly on a technical defect or irregularity and not upon the merits is not a bar to a subsequent suit for the same cause of action It is not every decree or judgment which will operate as *res judicata* and every dismissal of a suit does not necessarily bar a fresh action It is necessary also to show that there was a decision finally granting or withholding the relief sought *Ramnath Roy Chowdhry* v *Bhagbut Mohaputter 3 W R Act X 140 Shokhee Bewah* v *Mehdee Mundul 9 W R 327 Dullub Jogi* v *Narayan Lakhu 4 Bom A C 110 Rungrav Raiji* v *Sidhi Mahomed Ebrahim I L R 6 Bom 482 Fatteh Singh* v *Lachmi Koer 13 B L R Ap 37 Roghoonath Mundul* v *Jugut Bundhoo Bose I L R 7 Calc 214* and *Saikappa Chetti* v *Kulandapuri Nachiyar 3 Mad 84* referred to Also *per* MAHMOOD J —The words *bahaisiyat maujuda* must be taken as amounting to a permission to the plaintiff to bring a fresh suit within the meaning of s 373 of the Civil Procedure Code and could only mean that the Judge using them in his decree had no intention to decide the case finally so as to bar the adjudication upon the merits of the rights of the parties in a future litigation between them The procedure provided by Ch. XXII of the Code is not the only manner in which a plaintiff can come into Court for the second time to ask for adjudication upon the merits of his rights which were not adjudicated upon on the former occasion owing to some technical defect which proved fatal to the former suit *Ganesh Rai* v *Kalka Prasad I L R 5 All 595* dissented from. *Watson* v *Collector of Rajshahye 13 Moo I A 60* and *Salig Ram* v *Tibhauan All Weekly Notes (1885) 151* referred to MUHAMMAD SALIM *v* NABIAN BIBI

I. L. R. 8 All 282

36. ——— Striking off case for discrepancy in statement—*Variation in plaint and deposition of plaintiff* A case struck off on the ground of discrepancy between the plaint and the plaintiff s deposition cannot operate as a *res judicata* GUNGA NARAIN DASS *v* PUNCHANUNEE DASSEE

W R 1864, 163

37. ——— Dismissal of joint claim on ground that liability is several—*Civil Procedure Code 1859 s 2* Where a suit against several defendants for a joint jumma is dismissed on the ground that the jumma is several and not

RES JUDICATA—*contd*

4. JUDGMENTS ON PRELIMINARY POINTS —*contd*

joint the plaintiff is not precluded by Act VIII of 1859 s 2 from afterwards suing each of them severally for the separate jumma TELOKDHAPEE SAHOO v BISSENDRO NARAIN SAHEE
Marsh 418 2 Hay 528

38 ———— **Dismissal of suit for balance of account no balance being proved** *A* and his brothers made consignments of indigo to *B* who sued *A* for the balance of an account due to him in respect of advances made by him to *A* and his brothers and that suit was dismissed on the ground that no balance was proved to be due *Held* that the dismissal of the former suit was not a bar to a subsequent suit by *A* to recover the proceeds of the indigo or his share of such proceeds PUNCHANUN ROY v MODOO OODUN ROY **W R 1864 245**

39 ———— **Dismissal of suit on deed of sale when found to be a mortgage only**—*Refusal of leave to bring fresh suit* The dismissal of a suit on the ground that a deed put in by the plaintiff was a mortgage and not a deed of sale does not preclude him from treating it as a mortgage in a subsequent suit notwithstanding the former suit was dismissed after refusing plaintiff permission to withdraw it and bring a fresh suit. RAMKRISTO SHAHA v NEMY CHURN CHOLHAI
W R 1864 110

40 ———— **Dismissal of suit on failure to produce evidence** Dismissal of a claim for failure on the part of the plaintiff to produce evidence to substantiate it is of the same effect as a dismissal founded upon evidence for the purpose of barring a subsequent suit as *res judicata* RAMA RAO v SURIYA RAO **I L R 1 Mad 84**

Reversed by Privy Council in ZAMINDAR OF PITTAPURAM v PROPRIETORS OF KOLANKA
I L R 2 Mad. 23 L R 5 I A 200

41 ———— *Non production of witnesses and insufficiency of proof* In a suit for removal of an alleged nuisance which was dismissed because plaintiff did not produce his witnesses and failed to prove his case it was *held* that there had been an adjudication and that another suit would not lie on the same cause of action SAHADEO PANDEY v NOKHID PANDEY
15 W R 573

MOFIZOODDEEN v AMOODDEEN **23 W R 58**

42 ———— **Dismissal of suit on failure to prove same title to different property**—*Civil Procedure Code 1859 s 2* A plaintiff's failure in a former suit to establish his claim with reference to a different property from which he was dispossessed on a different date cannot render a subsequent suit inadmissible under the provisions of s 2 Act VIII of 1859 even though the title set forth in both the suits is identical BOOA PUSSOOLEE v NAWAB NAZIM OF BENGAL
11 W R 382

RES JUDICATA—*contd*

4. JUDGMENTS ON PRELIMINARY POINTS —*contd*

43 ———— **Dismissal of suit for dissolution for want of proof of partnership**—*Suit for money due for losses in partnership business* In 1878 plaintiff sued the defendants for moneys due on 10th April 1878 on account of an alleged partnership entered into on 3rd July 1876 for the purchase and sale of salt This suit was dismissed on the ground that no partnership was proved In 1880 plaintiff sued defendants for money due on account of a partnership entered into on 17th July 1876 for the sale of salt and continued down to the end of 1878 *Held* that the plaintiff having failed to prove in the former suit that any partnership existed between him and the defendant was barred from bringing the present suit SAMIRAPPIER CHETTI v SHANMUGA CHETTI **I L R 5 Mad 47**

44 ———— **Finality of order**—*Civil Procedure Code 1882 s 244—Competency of Court* *S S* brought a suit under a mortgage bond making *R S* a subsequent incumbrancer a defendant and obtained a decree for a sale of the whole of the mortgaged premises After the decree a compromise was effected between all the parties with the exception of *R S* by the terms of which in consideration of the judgment debtors (mortgagors) undertaking to do certain acts *S S* promised to execute his decree against only a 3 annas 12 dams share of the mortgaged premises The judgment debtors (mortgagors) having failed to carry out the compromise *S S* applied for a sale of the whole of the mortgaged premises but on the petition of *R S* setting out the terms of the compromise to which he was no party the Subordinate Judge by an order of the 7th September 1885 held that under the agreement *S S* was entitled to sell only a 3 annas 12 dams share [illegible] which was accordin[illegible] [illegible] appealed [illegible] made [illegible] under of [illegible] he order of the 7th September was one which the Court was competent to make under s 244 of the Code of Civil Procedure and by reason of that order not being appealed from it became final BASUDEO NARAIN SINGH v SEOLOJY SINGH
I L R 14 Calc 640

45 ———— **Decree against mortgaged property**—*Liability of judgment-debtor to arrest under such decree—Principles of res judicata applicable to execution proceedings* A decree cannot be extended in execution beyond the real meaning of its terms. A decree obtained on a mortgage directed that the judgment-debtor should pay the sum adjudged out of the property mortgaged. After executing the decree against the mortgaged property the decree holder made an application for execution against the person of the judgment-debtor A notice was issued calling upon him to show cause why execution should not be further proceeded with. But the notice did not give him any

RES JUDICATA—*contd*

4. JUDGMENTS ON PRELIMINARY POINTS —*contd*

intimation of the application for the arrest of his person He did not appear and in his absence an order was made for his personal arrest but the order was not executed a the decree holder did not pay the process fee Subsequently a fresh application was made for execution again t the person of the judgment debtor *Held* that the question as to the per onal liability of the judgment-debtor to sati fy the decree was not c ncluded by the order made in the previous execution pro ceedings for execution to i sue again t his person The order would have operated as a *res judicata* if the judgment-debtor ha l been called upon to con test the right claimed by the decree holder to hold him personally liable under the decree and had then failed in his contention to the contrary or allowed the judgment to go by default The order was *res judicata* as to the legal po ibility of further execution in terms of the decree but not as to the special con truction which the judgment creditor sought to impose on it BUDAN v RAMCHANDRA BHUNJGAYA I. L. R 11 Bom 537

46 — Application for execution struck off in consequence of non payment of talbana—*Civil Procedure Code ss 158 and 647 —Civil Procedure Amendment Act (VI of 1892) s 4—Subsequent application for execution.* An application for execution of a decree by attachment of immoveable property having been presented by a decree holder the Co...

deposited by the day named in the order above referred to and the Court thereupon passed the following order This ca e came on for hearing to day as the decree holder has not depo ited the costs of attachment etc therefore it is ordered that the case be struck off for default *Held* that whether this second order was an order under s 158 of the Code of Civil Procedure deciding the ...

case possibly the former application might be re newed PHERU v PIRTHI LAL SINGH

I L. R 15 All. 49

47 ———— Striking off of execution proceedings *Per* EDGE *C J* TYRRELL KNOX BLAIR BURKITT and AIKMAN *JJ*—When an order is made striking an execution case off the file of pending case or dismissing it on groun ls other than a distinct finding that the d cree is incapable of execution that the decree holder s right to get the decree executed is barred by limitation or by any other rule of law or on some similar ground on which the application has clearly been dismissed on the merits whether the word dismissed or the words struck off the file or any other similar

RES JUDICATA—*contd*

4 JUDGMENTS ON PRELIMINARY POINTS —*concld*

words have been u ed in the order the decree holder is not barred by the force of any such order from pre enting and prosecuting a fresh application for the execution of his decree DHONKAL SINGH v PHAKKAR SINGH I L R 15 All 84

48 ———— Dismissal for default of application for execution of decree—*Civil Procedure Code 1882 s 1 8—Civil Procedure Code Amendment Act (VI of 1892) s 4* The dis missal of a petition for execution for default does ...

Begum v *Jaliulnissa Begam I L R 18 Bom 479* and *Delhi and London Bank* v *Orchard L R 4 I A 127* followed TIRTHASAMI v ANNAPPAYYA I L R 18 Mad 131

5 ORDERS IN EXECUTION OF DECREE

1 ———— Summary order in execution—*Subsequent suit* A summary order reject ing plaintiff s claim in an execution case to th pro perty in dispute when it had been attached by a decree holder which order was not followed by the sale of the property attached cannot in any manner ...

2 ———— Order rejecting application for execution of decree on the ground of limitation—*Civil Procedure Code 1859 s 2* ...

within s 2 Act VIII of 1859 DELHI AND LONDON BANK v ORCHARD

I. L. R 3 Calc 47 L R 4 I A 127

3 ———— Order refusing to execute decree—*Adjudication* An order refusing an ap plication to execute a decree is not an adjudication within the rule of *res judicata* HURROSOONDARY DASSEE v JUGOBUNDHOO DUTT

I. L. R 6 Calc 203 7 C L R 61

JEETOSHUR DHURN DEB v FOOSEE SINGH

1 Hay 515

4 ———— Orders as to construction of decree not appealed from—*Application for execution by defendant—Objection by plaintiff to continued execution on behalf of defendant* Al though a decree does not in terms give a certain relief yet if it is construed in orders pa sed upon it as having given that relief it is not competent to the Court on subsequent applications to treat those orders as erroneous and put another construction

RE JUDICATA—*contd*

5 ORDERS IN EXECUTION OF DECREE —*contd*

on the decree VENKATANARASIMHA NAIDU *v* PAPAMMAH I L R 19 Mad 54

5 ———— **Application for execution of maintenance decree**—*Previous application held to be barred by limitation* On an application made in 1891 for the execution of a decree passed in 1870 it appeared that the decree directed the payment of maintenance to the plaintiff annually on a specified date and the present application related to the period of three years from 1888 to 1891 There had been an application for execution in 1873 The next application was made in 1879 and it was dismissed as being barred by limitation *Held* that the question whether the application was barred by limitation was not *res judicata* KUPPU AMMAL *v* SAMINATHA AIYAR I L R 18 Mad 482

6 ———— **Order refusing to execute decree**—*Attachment without sale—Transfer of Property Act (IV of 1882) s 67* The plaintiff a judgment creditor had in the High Court obtained a decree against the defendant whereby it was

[illegible]

cation was not *res judicata.* GOURI SUNKER PANDAY *v* ABHOYSESWARI DABEE I L R 25 Calc 262

7 ———— **Order refusing to award mesne profits under decree**—*Proceedings in execution.* *Held* by the Full Bench that the law of *res judicata* does not apply in proceedings in execution of decree *Held* therefore by the referring Bench where on an application for the execution of a decree the question was raised whether the decree awarded mesne profits or not and the Court executing it determined that it did not award mesne profits that such determination was not final, but such question was open to re adjudication on a subsequent application for execution of the decree RUP KUARI *v* RAM KIRPAL SHUKUL I L R 3 All 141

RES JUDICATA—*contd*

5 ORDERS IN EXECUTION OF DECREE —*contd*

8 ———— **Refusal to execute decree**—*Re opening questions by successor to judge who decided them* On an application being made for the execution of a decree the judgment debtor made [illegible] The first of these

[illegible]

trict Judge disallowed [illegible] holding that the decree should be executed, and remanded the case for that purpose When the case came back to the Subordinate Judge the judgment debtor again raised the second and third of such objections but the Subordinate Judge refused to entertain them on the ground that they had already been determined by such District Judge [illegible] the successor [illegible]

[illegible] mined them and his predecessor s order [illegible] such application for execution of the decree was concerned was final. BALLABH SHANKER *v* NARAIN SINGH I L R 3 All 1[illegible]

9 ———— **Refusal to execute decree as being barred**—*Application for execution of decree subsequently made.* When a Court upon an application for execution has decided that the execution is barred by limitation and that order has become final in consequence of no appeal having been preferred therefrom such order will upon a subsequent application for execution of the same decree operate as a bar to execution BASEET KARIM *v* ROMESH CHUNDRA BUNDOPADHYA I L R 9 Calc 65 11 C L R 145

See MUNGUL PERSAD DICHIT *v* GRIJA KANT LAHIRI I L R 8 Calc 51 L R 8 I A 123 11 C L R 113

10 ———— *Civil Procedure Code (Act X of 1877) s 13 (Act VIII of 1859), s 2* The decision by a competent Court that an application for the execution of a decree is barred by limitation has the effect of *res judicata* and although such decision may be erroneous, yet so long as it remains unreversed in appeal it is valid and binding and the question cannot be re-opened. A decision that an application for execution is not [illegible] barred has a similar effect On the 1[illegible]th April 18[illegible] the plaintiff applied for the execution of a decree held by him against the defendant and certain houses were thereupon attached. In April 18[illegible] the attachment was raised on the intervention of a third person The plaintiff then brought a suit to establish his right to attach the houses and obtained a decree on the 28th February 1871 An appeal was made and the suit was finally decided in the plaintiff s favour in April 18[illegible]3. After the plaintiff had obtained his original decree and while the appeal was pending he applied for the sale of the houses in execution on the 30th November 187[illegible]

RES JUDICATA—*contd*

5. ORDERS IN EXECUTION OF DECREE —*contd*

and subsequently made three other applications within three years of each other the last of which was dated the 30th October 1871 The Court rejected this last application on the 25th November 1876 on the ground that the execution of the decree was barred as more than three years had elapsed between the first and second applications (*i.e.* the applications of the 15th April 1865 and 30th November 1871) The plaintiff appealed against the order but his appeal was rejected because he had failed to produce with it a copy of the order appealed against. The plaintiff took no further steps in that proceeding but made a fresh application for execution on the 10th August 1878 The Subordinate Judge rejected it on the ground that the execution was barred the matter being *res judicata* On appeal the District Judge reversed that order and allowed execution On appeal to the High Court —*Held* on the authority of *Mungul Pershad Dichit* v *Grija Kant Lahiri Chowdhry I L R 8 Calc 51* that the rule of *res judicata* applied and that the application of the 30th November 1871 was time barred and *a fortiori* every subsequent application was barred *Semble* A proceeding in execution is a proceeding which terminates in a decree as defined by s 244 of the Civil Procedure Code (Act X of 1877) and is therefore a suit within the meaning of the Code MANJUNATH BADRABHAT *v* VENKATESH GOVIND SHANBHOG

I L R 6 Bom 54

11. ———— Order construing decree—*Order as to possession and mesne profits—Subsequent suit for possession* Certain lands having been divided under a batwara between A and B who together took one portion and C who took the remainder A in 1847 mortgaged his share to B under a usufructuary mortgage In 1851 a dispute arose as to the boundaries under the batwara and ended in C surrendering 51½ bighas which B was allowed to take possession of under an ikrarnamah executed by A to secure the costs incurred by B in the dispute In 1874 A sued to recover possession of a moiety of the lands held jointly by him with B and in 1875 obtained a decree for possession and wasilat no specific mention of the 51½ bighas being made in the decree In execution of the decree wasilat in respect of a moiety of the 51½ bighas was allowed an objection by the defendant to such wasilat being charged having been overruled In 1878 B sued to recover possession of the moiety of the 51½ bighas [illegible]

12. ———— Civil Procedure Code (Act XIV of 1882) s 230—Limitation—Vatandars (Bombay) Act III of 1874 s 10—Collector's certificate A decree of a District Court dated 5th October 1863 declared the plaintiff to be a hereditary deputy vatandar of a certain deshpande vatan vested in the ancestors of the defendant as hereditary vatandars and that the plaintiff as such deputy was entitled to receive a certain sum annually out of the income of the vatan The decree did not explicitly deal with the claim to future payments then set up by the plaintiff as hereditary deputy vatandar The plaintiff received moneys from time to time under the decree until 1875 but he neglected to have himself registered as a representative vatandar under Bombay Act III of 1874 s. 56 In 1875 he made a claim for certain arrears of the allowance which he alleged to be due under the decree and he attached certain moneys out of the income of the defendant's vatan The Collector issued a certificate under s. 10 of the Vatandars Act (III of 1874) for the removal of the attachment and the attachment was accordingly removed by the Subordinate Judge The plaintiff appealed from the order of removal but the Appellate Court confirmed that order On second appeal to the [illegible]

[illegible] the attachment [illegible]

same vatan property in virtue of the said decree of 1863 but the application was rejected as *res judicata* by both the lower Courts They held that the certificate of the Collector which remained uncancelled operated as a bar On second appeal to the High Court —*Held* reversing the order of the lower Courts that the decree was one capable of execution. *Held* as regards the Collector's certificate that under s 10 of the Vatandars Act (Bombay) III of 1874 the certificate was exhausted in operating on the execution which it stopped and that the lower Court ought to have dealt with the case apart from that certificate GOPAL HANMANT DESHPANDE *v* KONDO KASHINATH

I L R 9 Bom. 328

13. ———— Withdrawal of application for execution—*Effect of such withdrawal* Orders in execution proceedings if not appealed from are binding on the parties to the suit in all [illegible]

RES JUDICATA—*contd*

5 ORDERS IN EXECUTION OF DECREE —*contd*

decided. There is therefore no *res judicata* HARI GANESH v YAMUNABAI I L R 23 Bom 35

14. ———— **Principle of res judicata as applied to execution proceedings**—*Civil Procedure Code s 373* Where a judgment debtor being entitled and having an opportunity to plead s 373 of the Code of Civil Procedure as a bar to

of *res judicata* will apply to such proceedings and the judgment debtor cannot at a subsequent stage of the same execution proceedings object that such previous application for execution ought in fact to have been *held* to be barred by the operation of s. 373 above mentioned. SHER SINGH v DAYA RAM I L R 13 All 564

See KISHAN SAHAI v ALADAD KHAN I L R 14 All 64

15 ———— **Orders disallowing objec**

and to the entire sixteen annas of the other properties and that his brother *I* had no right whatever in the same This objection was disallowed by the Court executing the decree on the ground that it had not been raised in the original suit and that as the decree had been passed in the presence of the

order disallowing the plaintiff s objection did not operate as *res judicata* under s. 13 of the Civil Procedure Code *The Delhi and London Bank* v *Orchard I L R 3 Calc 47 L R 4 I A 127* relied on. *Held* also that this order was no bar to the suit under s. 244 of the Civil Procedure Code *Kanai Lall Khan* v *Shashi Bhusun Biswas I L R 6 Calc.* ~ ~ *8 C L R 11*~ followed GOURMANI DABEE v JUGUT CHANDRA AUDHIKARI I L R 17 Calc 57

16 ———— **Order in execution proceedings that deed was valid**—*Sale of two plots of land by one sale deed—Validity of deed questioned in dispute as to one of the plots—Subsequent dispute as to second plot included in deed—Question*

plaintiff s claim The defendant did not file a suit to set aside this order The plaintiff then filed a suit to establish his title to plot A relying on his sale deed of the 30th December 1875 The defendant again disputed the sale pleading that it was a colourable and fictitious transaction *Held* that the order in the execution proceeding did not operate as *res judicata* and did not estop the defendant from contesting the validity of the sale deed in the present suit. *Per* JARDINE *J*—If the decision as to the validity of the deed had been ... from an exe-

subject to the result of a ... but this conclusiveness exists only as regards the particular property in dispute DINKAR BALLAL CHAKRADEV v HARI SHRIDHAR APTE I L R 14 Bom 206

17 ———— **Application for two reliefs**—*Civil Procedure Code (Act XIV of 1882), s 13 Expl III—Application in execution for two reliefs—Order passed granting one relief and making no reference to the other—Subsequent application for the other relief power of Court to grant* A decree awarded a plaintiff possession of land together with mesne profits Plaintiff subsequently applied in execution for delivery of the land and for the mesne profits. The Court passed an order on this application directing plaintiff to be put into possession of the land but making no reference whatever to the mesne profits. Plaintiff subsequently made another application for mesne profit when it was contended that inasmuch as the prayer for mesne profits had not been granted when the previous application was dealt with it must be taken that the application for mesne profits had been refused and that the matter was consequently *res judicata* *Held* that the application was not barred and that the law of *res judicata* as laid down in Expl. III to s. 13 of the Code of Civil Procedure had no application to the case NITTAYANDA CANTAYET v GAJAPATI VASUDEVA DEVI (1901) I L R 24 Mad. 651

RES JUDICATA—contd

5 ORDERS IN EXECUTION OF DECREE —contd

18 ———— **Limitation**—*Order in execution of decree—Limitation—Previous application for execution refused and judgment debtor's objection as to limitation disallowed—Effect of such an order in a subsequent application for execution.* On an application for execution an order for attachment having been issued the judgment debtor objected to the execution on the ground that it was barred by limitation. After several adjournments granted at the instance of the decree holder neither party having appeared at the date of hearing the Court by its order refused the application for execution and disallowed the objection of the judgment debtor On a subsequent application by the decree holder the judgment debtor again objected to the execution on the ground that inasmuch as the previous application was barred by limitation the subsequent application was also barred *Held* that the judgment debtor was not precluded from raising the objection that the previous application was barred by limitation. *Mungul Pershad Dichit v Grija Kant Lahiri I L R 8 Calc 51* distinguished BHOLANATH DASS v PRAFULLA NATH KUNDU CHOWDHRY (1900)
I. L. R 28 Calc 122 s c 5 C W N 80

19 ———— ———— Although the execution of a decree may have been actually barred by time at the date of an application made for its execution yet if an order for execution is made by a competent Court having jurisdiction to try whether such execution is barred by time or not such order although erroneous must if unreversed be treated as valid An application for execution of a decree was struck off on the 15th of January 1894 The next application for execution was not made until the 29th of May 1897 Notice of this application was served on the judgment debtors and they filed objection but on the day fixed for hearing failed to support them and they were dismissed. The application for execution was however ultimately struck off by reason of the non payment of process fees by the decree holders. *Held* that it was not open to the judgment debtors on a subsequent application for execution being made to plead limitation in respect to the application of the 29th May 1897 as a bar to the execution of the decree *Mungul Pershad Dichit v Grija Kant Lahiri Choudhry L R 8 I A 123 Behari Lal v Abdul Majid All Weekly Notes (1897) 29 Lakshmanan Chetti v Kuttayan Chetti I L R 24 Mad 669 Bholanath Dass v Prafulla Nath Kundu Chowdhry I L R 28 Calc 122* and *Dhonkal Singh v Phakkar Singh I L R 15 All 84* referred to *Tileshar Rai v Farbat I L R 15 All 198* and *Onkar Singh v Mohan Kuar All Weekly Notes (1898) 96* distinguished. SHEORAJ SINGH v KAMESHAR NATH (1902) **I. L. R 24 All. 282**

20 ———— **Order permitting withdrawal of execution upon condition**—*Civil Procedure Code s 13—Execution proceeding—Condition illegal and not bearing on any issue raised between parties—Subsequent application for execution—Right of decree holder to disregard condition* Where a decree holder having put up certain properties of the judgment debtor to sale in execution of his decree bid R600 for it but failed to deposit the earnest money and then applied to withdraw the execution and the Court being of opinion that [illegible] Court had no power to make such an order and it was not binding on the decree holder so as to preclude him from proceeding to execute the decree against the other properties of the judgment debtor The order did not operate as *res judicata* *Mungul Prosad Dichit v Grija Kant Lahiri L R 8 I A 123 I L R 8 Calc 51* distinguished. JNANADA SUNDARI CHOWDHURANI v NOKULESSWAL ROY CHOWDHURY (1906) **11 C W N 236**

6 CAUSES OF ACTION

1 ———— **Nature of cause of action**—*Obligation to disclose title* A plaintiff's cause of [illegible]

2 ———— **Identity of bases of claim**—*Dismissal of claim on failure to produce evidence* Where the relief sought for in respect of certain property in a suit is different from the relief sought for in respect of the same property in a prior suit [illegible]

s c on appeal to Privy Council ZAMINDAR OF PATTAPURAM v PROPRIETORS OF KOLANKA
I L R 2 Mad. 23 L R 5 I A. 200

3 ———— **Difference in rights on which claim is made**—*Omission to assert every title* Act VIII of 1859 s 2 does not require a plaintiff at once to assert all his titles to property or to be thereafter estopped from advancing them The maxim *nemo debet bis vexari pro una et eâdem causâ* cannot apply where the right on which the second suit is brought is not the same as that asserted in the former suit SADAYA PILLAI v CHINNI
I. L R 2 Mad 352

4 ———— **Omission to decide part of case**—*Suit as to part of case raised in former suit* A plaintiff is bound to raise every title on which he can succeed and to obtain a decision upon every

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

part of his case and if it is found that any part of the ca e which he made has been neglected by the Court which tried the suit he is not at liberty to bring a fresh suit in respect of such part SREE KRISTO BISWAS *v* JOY KRISTO BISWAS

24 W R 304

5 ———— **Obligation to assert every title**—*Reservation of right* A litigant is bound to disclose all his titles at once He cannot be allowed to keep back one and then years after to bring a fresh suit on the ground that he had still a right in reserve BROJO LALL ROY *v* KHETTUR NATH MITTER 12 W R 55

DUDSAR BIBEE *v* SHAKIR BURKUNDAZ

15 W R 168

6 ———————— *Civil Procedure Code s 13 Expl II—Idem corpus alia causâ petendi* In 1876 *A* sued *K* and others to recover certain lands alleging that he was the karnavan of their tarwad and that the lands were granted to them for maintenance under n oral agreement which had been broken by *K* having mortgaged some of the lands This suit was dismis ed In 188 *A* sued the same defendants to recover the same lands on the ...

... barred by s 13 of the Code of Civil Procedure 1877 *Per* MUTTUSAMI AYYAR *J*—*Expl II to s 13 of the* Code of Civil Procedure 1877 refers to the title liti gated in the former suit as distinguished from the relief claimed Where several independent grounds of action are available a party is not bound to unite them all in one suit though he is bound to bring before the Court all grounds of attack avail ible to him with reference to the title which is made the ground of action ALLUNNI *v* KUNJUSHA

I L R 7 Mad 264

7 ———————— *Civil Procedure Code 1882—Suit for land based on plaintiff s title—Previous suit as les or—Omission to make title a ground of attacl in previous suit—No denial of plaintiff s title as landlord—Maintainability of suit* In a previous suit brought in 1890 plaintiff had sued for the recovery of certain land which he ...

... same land together with arrears of rent basing ...

sue upon his title as that should have been made a ground of attack in the former suit On appeal to the High Court —*Held* that inasmuch as plaintiff s title as landlord was recognised in the suit of 1890 the defendants could not have acquired a prescriptive title as against him in 1898 when the present suit was filed and that plaintiff was there fore entitled to recover the land upon his titl independently of any letting by him to the defend ants That the claim for arrears of rent under the old written agreement was *res judicata* by reason of the former suit but that plaintiff s omission to sue on the trength of his general title in the former suit was no bar to the present suit ina much as his title as landlord had never been disputed *Zamorin of Calicut v Narayanan Mussad I L R 22 Mad 323* referred to KUTTI ALI *v* CHIN DAN I L R 23 Mad 629

8 ———— **Dismissal of suit for pro prietary right to land**—*Subsequent suit for pos session of portion of same land as planter of th trees on it* The dismissal of a suit in whi h the plaintiff had claimed a proprietary title in certain land held not to bar a subsequent suit in which he prayed for a declaration that as planter of the trees and constructor of a tank in a garden formin a portion of the land he was entitled to retain posses sion of the garden and tank GOSHAIN JUGOO-POOREE *v* BISHEN DYAL CHUND 2 Agra 32

9 ———— **Dismissal of suit on demi e as continuation of prior demise**—*Subs quent uit on prior demise* In 1883 plaintiff sued to r cover certain land from the defendant on a demise of 1856 which he alleged was a renewal of a prior demise of 1835 The suit was dismi sed on the ground that the demise of 1856 was not proved Plaintiff then sued to recover the same land on the demise of 1835 and on title *Held* that the decree in the former suit was no bar to this suit KAY DUNNI *v* KATIAMMA I L R 9 Mad 251

10 ———————— *Suit for land based on plaintiff's title—Prior suit all ging that defendants held on lease from plaintiff* In a pre vious suit in which plaintiff had been a party it had been attempted to as ert plaintiff s titl to a piece ...

belonging to his devasom and sued to recover it on the strength of his title I o also set up the alleged lease once more *Held* that thou h the ...

relation of landlord and tenant were shown to have existed prior to the specif c lease sued upon it was for the tenant to prove that such relation had ceased to exist In the al sence of such proof the relatio would be presumed to continue and the tena t ...

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

possession in that case could not be adverse ZAMORIN OF CALICUT v NARAYANAN MUSSAD
I L R 22 Mad 323

11. — — **Suit for same property on different cause of action**—*Civil Procedure Code 1859 s 2* The plaintiff sued to recover cer

might recover in a fresh suit treating the defendant

of action from the former was not barred and that the question at issue between the parties was not *res judicata* BISTO SHANKAR PATIL v RAMCHANDRARAV RAGHUNATH JAHAGIRDAR
8 Bom A C 80

12. ———— *Civil Procedure Code 1859 s 2—Decision as to nature of document* In 1864 the original plaintiff *L* as heir of *F* brought a suit against *J* (the guardian of *F*) *A* *B* and *C* to recover a piece of land The suit was rejected as it was proved that (though the plaintiff was the heir of *F*) *F's* guardian had mortgaged the land for necessary purposes to *C* the two defendants *A* and *B* being merely tenants of *C* The plaintiff then sued *C* for redemption of the mortgaged premises *Held* that the second suit was not barred under s 2 of the Code of Civil Procedure *Held* also that the fact of the document

BHULA v RAMA 9 Bom 65

13 ———— **Suit by sons to set aside alienation by widow as guardian**—*Former suit by widow against purchaser* Where the mother and guardian of minor sons had once sued a certain party in order to set aside certain kobalas by which she had conveyed away to him the property of her late husband on the ground that her action may have been injurious to the interests of her sons and the said suit had been thrown out by the Judges and the sons subsequently brought another suit with substantially the same object in view but making the mother a co defendant with the original defendant —*Held* that the

which however there was no evidence whatever GUNGA RAM SADHOOKHAN v PANCH COWREE PORAMANIK 25 W R 366

14 ———— **Decision as to genuineness of document**—*Civil Procedure Code 1859 s 2—Co defendants* A former judgment in which a certain document has been held to be genuine

respects KALLY PERSAD SEIN CHOWDHRY v MOHESH CHUNDER BHUTTACHARJEE 1 Hay 430

15 ———— *Sanction for forgery in respect of document in another suit* A former decision in a civil suit in which the issue was the genuineness or otherwise of a kabuliat and the

OOMANATH ROY CHOWDHRY v RAGHOONATH MITTER Marsh 43 W R F B 10
1 Hay 75

16 ———— *Subsequent suit in which same question arose* Where a Court in a

Court —*Held* that that decision was no bar to a subsequent suit for recovery of the mortgage debts as to that share and that the question of the genuineness or otherwise of the mortgage by defendants to plaintiffs was open to be decided on the merits BUSTEE RAM v NEWAZ SINGH
2 Agra 62

17 ———— **Decision as to validity of document**—*Matter in issue—Defence not relied on* A suit was brought by *A* to recover property in which on appeal to the Privy Council two questions arose viz whether the property was to pass as divided or undivided property and whether such property was conveyed away to *A's* father by a deed of testamentary disposition The lower Court had decided only the latter point and the Privy Council remanded the case for determination of the former point On a second appeal to the Privy Council that Committee were about to enter upon the question as to the validity of the testamentary paper when *A* gave up the point that the paper was in any sense testamentary in its character and disclaimed having any title under it as a testamentary devise and the Privy Council therefore did not decide that question *Held* that a subsequent suit by *A* in

was in issue in the former suit and what was in issue must be taken to have been decided by the judgment RAGHOONADHA PERIA OODYA TAVER v KATTAMA NAUCHEAR 10 W R P C 1

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

s c VIJAYA RAGHANADHA BODHA GOOROO SAWMY PERIYA OODYA TAVER v KATAMA NATCHIAR (RAJAH OF SHIVAGUNGA) 11 Moo I A. 50

Affirming s c In High Court UDAIYA TEVAR v KATAMA NACHIYAR 2 Mad. 131

18 ———————— *Deed of sale or mortgage—Parties—Question decided in former suit* *R* obtained on the 7th January 1862 a decree declaring a deed of sale in his favour dated the 7th January 1854 to be a genuine authentic and valid instrument The question whether the sale was changed into a conditional sale or mortgage by an agreement entered into by him with the vendors on the same day that the deed of sale was executed could not be raised by any of the parties to that suit or their representatives in a suit brought by *R* to obtain proprietary possession of the subject of the sale in virtue of the deed and the decree DHUNDI v RAM LAL 7 N W 149

19 ———————— *Suit for possession under deed of gift—Subsequent suit by heir of donor to set aside deed of gift as invalid* *G* executed a deed of gift of his whole property in favour of *J* *J* sued for possession and obtained a decree On the death of *G* his heir sued to set aside the deed of gift alleging that notwithstanding the decree *J* did not obtain possession till after the death of *G* and that the deed of gift was under the Imamea law invalid *Held* that this might have been a good defence on the part of *G* to the suit brought against him by *J* but that after the decision of that suit it was not open to *G* to dispute the title of *J* nor was it now open for his heir to do so FURZUND ALI v JAFFEE BEBEE 5 N W 118

20 ———————— *Deed of gift—Civil Procedure Code 1859 s 2—Matter not determined in former suit—Suit on different cause of action* *M* brought a suit to obtain her share of the entire property of *A* her deceased father It was pleaded with respect to a certain portion of the property that *A* had made it over by parol gift to his minor son The case came before the High Court on special appeal when it was contended on behalf of *M* the appellant that the gift was not proved and that some portion of the property was mu h a (undivided) and the gift in regard to it invalid The High Court refused to allow the last plea which had not been taken in the Court of first instance to be taken in appeal the point raised being one of fact and as the gift had been established by evidence dismissed the appeal *F* the [illegible]

[illegible] *Held* that his suit was not barred by s 2 of Act VIII of 1859 IMAMAN v FAZUL KARIM 7 N W 251

21. ———————— *Suit to compel execution of release from document—Suit to declare document executed for nominal purpose* On 23rd March 1878 plaintiff executed to defendant a document purporting to be a deed of gift. In 1886 plaintiff sued to cancel the document alleging the defendant on 11th May 1881 had agreed to execute release but had not done so that suit was dismissed for non payment of duty due under the Court Fees Act The plaintiff now sued in 1887 for a declaration that the document was executed for nominal purposes and was not intended to take effect. *Held* that since the cause of action in the suits of 1886 and 1887 were not the same the claim in the latter suit was not *res judicata* NAGATHAL v PONNUSAMI I L R 13 Mad. 44

22 ———————— *Suit for same object on different cause of action—Decision in former suit* Plaintiff claiming as grandson of one *S M* the only undivided brother of *S* sought to recover half of the village sold by *S* to first defendant s father in 1885 the village having been (as alleged) family property and sold without the consent of plaintiff s father who succeeded his father *S M* and not for family purposes In a former suit (No 3 of 1855) brought by the plaintiff's father against *S* and *R* the father of the present first defendant and the present second defendant the paternal nephew of the first defendant for possession of the whole of the family property belonging to him and *S* as co parceners and to rescind the sale to *R* the plaint stated amongst other things that *S* was imbecile and that the sale-deed was obtained by taking a fraudulent advantage of his imbecility and that it was invalid as being made without plaintiff s consent The Court decided that *S* was both physically and mentally qualified to manage and legally competent to deal with the estate supposing it to be undivided to the extent of his own share and dismissed the suit. In 1862 the plaintiff again sued the present defendant for the whole of the village on the same ground [illegible] that [illegible]

[illegible] the present cause of action [illegible] of the property [illegible]

[illegible] Mad. 390

23 ———————— Former suit on same cause [illegible]

[illegible] by the second wife and that the (respondent) unlawfully enjoyed the estate wh[illegible]

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

plaintiff as the eldest son had a legal claim thereto In defence it was pleaded that the claim was *res judicata* by the decree in a suit which was brought by plaintiff to obtain declaration of his status as the son of his father s pattabastri or royal wife in which suit the plaintiff s father was first defendant and defendant s mother was second defendant and wherein they both denied that plaintiff was son of the pattabastri and affirmed that second defendant was first defendant s first wife and that her sons were preferential heirs to the zamindari Among the points recorded was for plaintiff to prove his status and right as alleged and that issue was set down for defendants to rebut The Judge disbelieved that plaintiff was the son of his father s first wife and added Plaintiff further pleads that he is the eldest son a position not denied but one which cannot confer on him the status he now claims The Judge decided that plaintiff had failed to prove that his mother was the pattabastri and that he was heir to the exclusion of second de

depend on another circumstance —namely the mother being the pattabastri and the Court therefore held the argument to be an inadmissible on *Held* on appeal that the present suit was barred by *res judicata* a different *cause* to the former not having been adduced To the judgment in *Chinnaya Mudali v Venkata Pillai 3 Mad 3* after the words in page 334 in favour of the

NAIK v DEVATTAMUTHUMADEVA NAIK 1 Mad 100

24 ——— Suit for enhancement of rent—*Subsequent suit for admitted rent* A suit for enhanced rent after notice having been dismissed on appeal plaintiff sued to recover rent for the same year at the rate admitted by the defendant in the former suit *Held* that the cause of action in the subsequent suit was not the same as in the former and that the law of *res judicata* did not apply in bar KHEDAROONISSA BEEBEE v BOODHEE BEEBEE

13 W R 317

25 ——— Suit for rent against same tenant as in former suit—*Decision in former suit* *A* and *B* were co sharers in a certain talukh to the extent of 7 annas and 4 annas respectively *B* died in 1868 and in 18 2 *A* who sued to collect the

suit by *A s* widow against the same tenant for the rent due for the 11 annas share —*Held* that the decision in the former suit did not debar her from showing that she was entitled to the rent due on account of *B s* 4 annas share SHAMADANISSA BEEBEE v FERASUTOOLLAH SIRDAR

2 C L R 23

26 ——— Claim as heir to property as joint and undivided—*Subsequent claim as reversioner on death of widow* *A* a brother s son in 1847 claimed on the ground that he had title as heir to the moiety of the estate prior to the other brother s widow on the plea that it was joint and undivided and that suit was dismissed In a subsequent suit accepting the decision of 1847 and regarding the widow s title to be prior to his and as holding a life interest in the whole estate before him *A* claimed as heir next in reversion after the widow regarding her property as separate with a view to a declaration of his right as such heir to have a certain alienation by the widow (alleged by him to be illegal under Hindu law) set aside *Held* that the two cases and causes of action were essentially different SUNKUR DYAL SINGH *v* PURMESSUR DIAL SINGH

6 W R 44

27 ——— Dismissal of former suit to set aside assignments—*Subsequent suit for possession by reversioner* *C* the reversioner expectant in the life interest of a Hindu widow instituted a suit in her life time to set aside sales of the estate It had first been sold in execution of a decree against the widow and purchased by *A* and then for arrears of revenue due by *A* and had been purchased by *B* but this suit was dismissed under Act I of 1845 s 24 on the ground that more than a year had elapsed since the sale for arrears of revenue After the death of the widow the reversioner sued *B* for recovery for possession of the lands *Held* that the plaintiff was not barred by the dismissal of the suit instituted in the life time of the widow the object of that suit being to set aside the assignment of the widow s interest and not for the assertion of the plaintiff s right to the reversion DOORGA CHURN v KASSY CHUNDER MOITREE Marsh 539 2 Hay 646

28 ——— Suit to set aside alienation by widow—*Subsequent suit to recover property as reversioner* A widow (a life tenant of an ancestral estate) having executed an ikrar transferring a share to *N* her granddaughter afterwards sued to set it aside on the ground that *N* had not conformed to its terms While the suit was in the appeal stage the widow died and her reversioner applied to be made and was admitted as her kaem

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

stage to disclose his title and claim as reversioner as he was not competent then to introduce any pleas arising out of a new state of facts not existing when the suit was instituted DEORANEL KOOWAR *v* INDURJEET KOOWAR 12 W R 234

29 ———— Dismissal of suit to establish plaintiff's adoption—*Civil Procedure Code s 13—Representation of estate by Hindu widow—Decree in favour of widow—Admission by widow subsequent to decree* In 1877 *S* claiming to be the adopted son of *M* sued *A* the widow of *M* to recover his estate *A* denied the adoption *S* failing to adduce any evidence the suit was dismissed under s 158 of the Code of Civil Procedure 1877 ... between *A* and *S* ... f *M* ... by a reversioner of *M* to recover the estate of *M* *Held* that *S* was estopped by the decree in the former suit from setting up his claim as adopted son against the plaintiff and that the subsequent agreement between *A* and *S* did not affect plaintiff's right ARUNACHALA *v* PANCHANADAM I L R 8 Mad 348

30 ———— Second suit for restitution of conjugal rights—*Decree not executed—Sub e* ... ed a decree against his wife for restitution of conjugal rights in 1885 which was never executed In 1887 however she returned to his house and stayed with him for two months She afterwards deserted him again Thereupon the plaintiff filed a ... rights *Held* ... he Code ... second withdrawal from cohabitation constitutes a fresh cause of action KESHAVAL AL GIRDHARLAL *v* BAI PARVATI I L R 18 Bom 327

31 ———— Suit on bond—*Failure to prove execution—Subsequent suit for same money on account* A previous suit against the same defendant on a bond having been dismissed on the ground that plaintiff had failed to prove the execution of the bond defendant sued to recover the identical sum as a balance due on a khatta account *Held* that the second suit was not brought on a cause of action previously tried and determined between the parties and was cognizable by the Court of Small Causes AGHORE NATH GHOSSAL *v* POOR CHAND MUNDUL 13 W R 97

33 ———— Deed inadmissible as being unregistered—*Subsequent suit on* ... bond ... party This suit was dismissed on the ground ... the deed of sale not being registered could not be ... *Held* that the second suit was not barred by the provisions of s 13 of Act X of 1877 ISHRI DAT *v* HAR NARAIN LAL I L R 3 All 334

34 ———— Dismissal of suit f... promised on the ... April ... and also to plaintiff R25 at the end of April 1875 and also to give to the plaintiff in April 1875 a certain quantity of grain by way of interest *Held* on a suit on the document (KERNAN J dissenting) that the suit was not barred by the dismissal of a suit in 1877 in which the plaintiff sued the defendants for a proportionate amount due by them under the document (A) alleging a verbal promise by the defendants in November 1876 to pay such proportionate amount MUTTU CHETTI *v* MUTTU CHETTI I L R 4 Mad 396

35 ———— Suit for sum due on mortgage—*Decisions in former suit for interest—Civil Procedure Code 1877 s 13—Sale of mortgaged property in execution of decree* Certain immoveable property was mortgaged to *R* and then sold to *N* It was then brought to sale in execution of a decree against *N* and was purchased by *P* The balance of the sale proceeds after satisfaction of the decree was paid to *N* Under the terms of the mortgage to *R* interest on the principal amount was payable annually and its payment was charged on the property as well as the payment of the principal amount The mortgagors having failed to pay the interest annually *R* in 1875 sued them and *N* and *P* to recover the interest due It was decided in that suit that *N* was primarily and personally liable for the interest then due on the mortgage as he had received the sale proceeds of the property and that the property was only liable in case he failed to satisfy the claim *N* subsequently paid into Court the sale proceeds he had received and *P* was paid the same In 1878 *P* again sued same persons for interest and again *N* was declared primarily liable personally liable on the ground that he had not at once made over the sale proceeds to *R* In ... *R* sued the same persons to recover the principal amount and interest due on the mortgage by the sale of the mortgaged property *Held* that whatever might have been the rights and relations of the parties so long as any portion of the sale proceeds remained with *N* their position towards him assumed an entirely different character when once he had discharged himself of these moneys and with the change in the situation the ratio decidendi of the suits of 1875 and 1878 no longer existed and therefore the decisions in those suits did not preclude *R* from bringing a suit to recover the principal and

RES JUDICATA—contd

6 CAUSES OF ACTION—contd

interest due on his mortgage from the mortgaged property PATAN RAI v HANUMANDAS
I L R 5 All 118

36 ———— **Mortgage deed passing possession of certain parcels of land and hypothecating others**—*Remedy of mortgagee—Previous decrees for rent obtained against mortgagors* The obligee under an instrument dated 1878 by which certain land was usufructuarily mortgaged

sued to recover the principal and interest due under that instrument *Held* that he was not precluded from obtaining a decree by reason of his previous suits and was entitled to a decree for the amount due and in default of payment for the sale of the mortgaged premises NANU v RAMAN
I L R 16 Mad 335

37 ———— **Suit for personal decree against some members of tarwad**—*Subsequent suit against tarwad for mortgage-debt* A suit seeking to enforce liability for a mortgage debt on a

I L R 14 Mad 284

38 ———— **Suit declaring right to redemption**—*Subsequent suit by representative for redemption* Where *D* sued for redemption and obtained a conditional decree and subsequently the plaintiff sued *D* to establish his right to the mortgaged property and obtained a decree —*Held* that a suit by the plaintiff for redemption was not barred by s 2 Act VIII of 1859 BHOOP SINGH v NURSINGH PAL
3 Agra 144

39 ———— **Dismissal of suit for ejectment**—*Subsequent suit for redemption* Failure

40 ———— **Suit for redemption**—*Issue as to sale of equity of redemption—Subsequent suit under a different title for same object* In 1870 the plaintiff sued to redeem a mortgage of

the equity of redemption from *A B* brought a second suit to redeem the lands in the defendants possession. *Held* that the question whether the equity of redemption of the lands in suit had been sold to *A B* was *res judicata* and could not be reopened by the defendants on the ground that the plaintiffs were litigating under a different title in the

RES JUDICATA—contd

6 CAUSES OF ACTION—contd

former suit ALI MOIDIAN RAVUTHAN v ELAYA CHANDATHIL KOMBIA ACHEN
I L R 5 Mad 239

41 ———— *Foreclosure in the Central Provinces* By a bond dated 10th Feb

acknowledges the plaintiff s claim it is ordered that a decree be given to the plaintiffs for principal and interest and costs against the defendant and the mortgaged property In proceedings in the Civil Court taken under this decree the mortgagees asked for possession of the village and obtained on 17th July 1862 an order in pursuance of which they were put in possession an appeal by *G* being rejected *G* took various steps to recover possession of the mortgaged property or a declaration of his proprietary interest therein but failed in his endea

the suit was not barred by the order of the Civil Court of 17th July 1862 nor had the orders of the revenue officers of 8th December 1864 and 27th July 1865 effected such a transfer of any right which *G* might have had to the appellants as to render the sale to the respondents invalid GOKULDAS v KRIPARAM 13 B L R P C 205

42 ———— *Limitation—Declaratory mortgage decree for redemption not executed for 15 years* In 1866 *S* obtained a decree authorising him to recover certain property on payment of a certain sum to the mortgagee but not declaring that *S* would be foreclosed if he did not exercise his right of redemption *Held* that *S* was not debarred from bringing a suit to redeem the same property in 1881 SAMI ACHARI v SOMASUNDRAM ACHARI
I L R 6 Mad. 119

43 ———— *Decree for redemption—Second suit to redeem—Civil Procedure Code ss 13 244* A decree obtained by a mortgagor which declared that the mortgagee should deliver up possession on payment of the sum due to him not having been executed for years a purchaser of the equity of redemption sued

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

the mortgagee to redeem *Held* that this suit was not barred by the former decree and that the plaintiff was entitled to redeem *Sami* v *Somasundram I L R 6 Mad 119* approved *Gan Savant Pal Savant* v *Narayan Dhond Savant I L R 7 Bom 467* dissented from KARUTHASAMI v JAGANATHA I L R 8 Mad 478

44 ———— *Conditional decree—Failure of mortgagor to pay in accordance with decree—Subsequent suit for redemption—Civil Procedure Code s 13—Foreclosure—Transfer of Property Act (IV of 1882) s 93* In a suit for redemption of a usufructuary mortgage a decree for redemption was passed conditional upon the plaintiff paying the defendants within a time specified a sum which was found still due to the latter and the decree provided that if such sum were not paid within the time specified the suit should stand dismissed The plaintiff failed to pay and the suit accordingly stood dismissed. Subsequently he again sued for redemption alleging that the mortgage debt had now been satisfied from the usufruct *Held* having regard to the distinction between simple and usufructuary mortgage that the decree in the former suit only decided that in order to redeem and get possession of the property the mortgagor must pay the sum then found to be due by him to the mortgagee and did not operate as *res judicata* so as to bar a second suit for redemption when after further enjoyment of the profits by the mortgagee the mortgagor could say that the debt had now become satisfied from the usufruct. Having regard to s 93 of the Transfer of Property Act (IV of 1882) in a suit brought by a usufructuary mortgagor for possession on the ground that the mortgage debt has been satisfied from the usufruct and in which the plaintiff is ordered to pay something because the debt has not been satisfied as alleged [illegible] for non [illegible] him fro[illegible] The dec[illegible] *Bebee 2 N W 6*[illegible] treated as not binding since the passing of the Transfer of Property Act *Chaila* v *Purun Sookh 2 Agra 256* and *Anrudh Singh* v *Sheo Parsad I L R 5 All 481* referred to MUHAMMAD SAMI UD DIN KHAN v MANNU LAL I. L. R. 11 All 386

45 ———— *Second redemption suit—Kanom nature of—Transfer of Property Act ss 58 67 9 93* The jenmi of land in Malabar sued in 1886 to redeem a kanom of 1849 to which it was subject and obtained a decree which merely directed the surrender of the land to the plaintiff on payment of the kanom amount and the value of improvements within three months of the date of the decree This decree remained unexecuted the money not being paid. The jenmi now brought another suit to redeem the same kanom *Held* that the present suit was not barred by the former decree The nature of a kanom discussed RAMUNNI v BRAHMA DATTAN I L. R. 15 Mad. 366

46 ———— *Decree for redemption—Mortgagors failure to pay amount due within period fixed—Subsequent suit for redemption—Transfer of Property Act (IV of 1882) ss [illegible] and 93* A decree under s [illegible] of the Transfer of Property Act becomes a final decree on the expiry of the time limited thereby although no order is passed under s 93 accordingly no subsequent suit for redemption can be maintained PERIANDI v SAMI I L R 17 Mad [illegible]

47 ———— *Transfer of Property Act (IV of 1882) ss 9[illegible] and 9[illegible]—Decree money not paid within the time limited—Second suit for redemption—Civil Procedure Code [illegible]—Right of suit—Decree barred by limitation* [illegible] that a mortgagor whether under a simple or a usufructuary mortgage who has obtained a decree for redemption and allows such decree to become [illegible] reason of his not paying in the decretal amount within the time limited for payment by the [illegible] cannot subsequently bring a second suit for [illegible] [illegible] *lunlar* v *Shapurji Hormasji Shet I L R* [illegible] *Bom 461* referred to *Muhammad Sami-ud-din Khan* v *Mannu Lal I L R 11 All 38*[illegible] *Achari* v *Somasundram Achari I L R 6 Mad 119* *Periandi* v *Angappa I L R* [illegible] and *Ramunni* v *Brahma Dattan I L R 15 Mad 366* dissented from HAY v RAZI UD DIN I. L. R 19 All [illegible]

48 ———— *F[illegible] by mortgagor treated as suit for redemption—Civil Procedure Code* [illegible] *sequent suit for redemption—Civil Procedure Code ss 1*[illegible] *13* A zamindar mortgaged his estate [illegible] four successive instruments to the same creditor [illegible] was subsequently placed in possession. On the [illegible] of the mortgagor his son claiming to have [illegible] [illegible] zamindar applied to the Court [illegible] decree and a like application was put in [illegible] sent plaintiff to whom seven-eighths of the [illegible] redemption had been assigned. Both of these applications were rejected in the High Court as [illegible] by limitation and the applicants applied [illegible] to appeal to the Privy Council [illegible] the High Court. Meanwhile the plaintiff [illegible] the present suit to redeem the mortgage [illegible] zamindar *Held* (i) that the suit was [illegible] under Civil Procedure Code [illegible] pendency of the application [illegible] the Privy Council (ii) that as there was no decree for foreclosure passed in the previous suit [illegible] had been treated as a suit for redemption the present suit was not precluded by the decree [illegible]

RES JUDICATA—*contd*

6. CAUSES OF ACTION—*contd*

(iii) that the findings in the previous suit as to the amount of the debt and the extent to which it bound the estate were *res judicata* NAINAPPA CHETTI v CHIDAMBARAM CHETTI I L R 21 Mad 18

49 ———— *Usufructuary mortgage—Non payment at the proper time of the whole mortgage money—Dismissal of suit—Second suit for redemption accompanied by payment in full—Transfer of Property Act (IV of 1882) ss 92 60* Held that a decree in a suit for redemption of a usufructuary mortgage not being a conditional decree for redemption under 92 of the Transfer of Property Act 1882 but imply dismissing the suit on the ground that the mortgagor had not prior to it institution paid or tendered the whole of the mortgage money at a time authorized by the deed did not have the effect of foreclosure or of *res judicata* so as to bar a second suit for redemption the deed expressly authorizing redemption on payment of the mortgage money in a particular month in any future year after due date and the plaintiff having tendered the whole in that

Karuthasami v Jaganatha I L R 8 Mad 478 Nainappa Chetti v Chidambaram Chetti I L R 21 Mad 18 Roy Dinkur Dyal v Sheo Golam 22 W R 172 Muhammad Sami ud din Khan v Mannu Lal I L R 11 All 386 and *Golam Hossein v Alla Rukhee Beebee 3 B L R 6O* referred to *Hay v Pa ruddin I L R 19 All 202* distinguished. DONDH BAHADUR PAI v TEK NARAIN PAI I L R 21 All. 251

50 ———— *Omission to direct foreclosure—Neglect to redeem—Second suit to redeem—Hindu family—Suit by manager in his own name—Representative character—Practice—Parties—Civil Procedure Code (Act XIV of 1882) s 50* In 1866 B a member of an undivided Hindu

the former decree did not direct foreclosure the relation of mortgagor and mortgagee continued between the parties and that the plaintiff s suit was not barred by the former decree The defendant appealed. *Held* (PINHEY J *dissentiente*) reversing the decree of the lower Court that the plaintiff s

ment of foreclosure and debars the mortgagor from afterwards bringing a second suit to redeem the same property GAN SAVANT BAL SAVANT v NARAYAN DHOND SAVANT I L R 7 Bom 467

51 ———— **Dismissal of former suit for rent of portion of estate**—*Suit to establish proprietary right to whole estate* The dismissal of suit for the declaration of plaintiff s right to

52 ———— **Dismissal of suit for rent**—*Subsequent suit for possession* A suit for rent in which the sole defendant denied the plaintiff s title alleging that *B* and *A* were his landlord hav

Held that the suit was barred under s 13 of the Civil Procedure Code 1882 GOPAL DASS v GOPI NATH SIRCAR 12 C L R 38

53 ———— *Civil Procedure Code (Act XIV of 1882) s 13—Suit for rent—Suit for establishment of title* A decision in a suit for rent brought by a plaintiff against a person who is alleged to have been his tenant in respect of certain land does not operate as *res judicata* in a subsequent suit brought by the same plaintiff for establishment of his title to the land not only against the alleged tenant but also against the person whose title as landlord the tenant defendant had set up in the rent suit *Gopal Dass v Gopi Nath Sircar 12 C L R 38* dissented from DWARKANATH ROY v RAM CHAND AICH I L R 26 Calc 428 3 C W N 266

54 ———— **Suit for enhancement of rent**—*Suit for rent of succeeding years* A decree passed in a suit as to the propriety of enhancement of rent in a preceding year is no bar to a suit for enhancing the rent in a subsequent year nor does it preclude a comparison of the rents paid by actual cultivators for the year in respect of which the second enhancement was made GUNGA PERSHAD v BULDEO SINGH 3 Agra 310

55 ———— *Civil Procedure Code s 2—Declaratory decree* Where in a suit for enhancement of rent the plaintiff failed to prove notice of enhancement but the Court enquired into and gave a declaratory decree as to his right to enhance such decree is decisive of the right in a subsequent suit for enhancement of the rent of the same tenure founded on a valid notice NUFFERCHUNDER PAUL CHOWDRY v POULSON 12 B L R P C 53 19 W R 175

RAKHAL DOSS BOSE v GOLAM SURWAR 2 W R Act X 69

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

56 ——————— *Former suit in which right to enhance was declared* The plaintiff sued to enhance the rent of the defendant s holding In a former suit between the parties which the de fendant had brought to determine the plaintiff s right to enhance it was *held* that the plaintiff was not entitled to enhance *Held* that the decision in the former case was rightly admitted as conclusive evidence in the present case as to the plaintiff s right to enhance MANICK SINGH *v* PIRTHEE SINGH
5 N W 163

SREEDHESSURY CHOWDRY *v* MUDDUN KOOWAR JHA 1 W R 128

57 ——————— *Declaration of right in suit for enhancement* Where a Munsif in a suit for enhancement of rent found that the tenure was not protected from enhancement but granted a decree for rent at the old rate because the grounds on which enhancement was claimed had not been established —*Held* that as the Munsif was competent to make a declaration between the parties his finding that the tenure was liable to en hancement although not forming a portion of the first decree was binding in a second suit for en hancement of rent ENAETOOLLAH *v* AMEER BUKSH *alias* MOHEEOOLLAH 25 W R 225

58 ——————— Suit for khas possession. The plaintiffs as talukhdars brought a suit against their tenant *M* for recovery of rent at enhanced

the two cottahs as lakhiraj The result of that suit was that the rent was assessed on the land admitted by *M* to be in his possession excluding the two cottahs The plaintiffs then brought a suit against *H* for a declaration that these two cottahs were their mal lands and obtained a decree simply declar ing their mal rights over the land in dispute In a suit brought by the plaintiffs against *H* after serv ing him with notice to quit for recovery of the khas possession of the two cottahs with mesne profits and praying that he might be ordered to remove a mud house erected by him on the land the defence was that as the plaintiffs had already claimed khas possession and obtained a decree simply declaring their right to receive rent the suit was barred and that as *H* had been twenty years in possession and

tled to a decree for khas possession ESHAN CHUNDER GHOSE *v* HURRISH CHUNDER BANERJEE
10 B L R Ap 5 18 W R 19

59 ——————— Suit for declaratory decree —*Civil Procedure Code 1877 s 13—Dismissal of suit for declaratory decree and to have deed set aside —Subsequent suit for possession with respect to same property and to set aside same deed* In De

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

cember 1878 *H* a Hindu widow in possession by way of maintenance of a certain estate of which *R* owned one third and *P B* and *S* one third jointly made a gift thereof to *N* *H* died in January 1879 In February 1879 *R* and *P B* and *S* joined in suing *N* for a declaration of their proprietary right to two-thirds of the estate and to have the deed of gift set

had omitted to sue for possession although they were not in possession and were able to sue for it. In November 1879 *R* and *P B* and *S* again joined

judgment of PEARSON *J* and affirming that of OLDFIELD *J*) that the decision in the former suit was no bar to the determination in the second suit of the question as to the validity of the deed of gift RAM SEWAK SING *v* NAKCHED SINGH
I L R 4 All 281

60 ——————— *Suit for declaration of title—Subsequent suit to recover arrears—Deshpande vatan—Suit by one sharer against other* Where a person having previously obtained

affect it DULABH VAHUNJI *v* BANSIDHAR
I L R 9 Bom 111

61 ——————— *Suit for mesne after former suit declaring right to them* Where

red by Act VIII of 1869 ... SINGH *v* RAJCOOMAR BABOO DEO NUNDUN SINGH
24 W R 63

62 ——————— *Civil Procedure Code 1877 s 13—Instalment bond—Hypothecation—Declaratory decree* In 1864 the obligors of an instalment bond in which certain immoveable property was hypothecated as collateral security for the payment of the instalments brought a suit upon such bond against *Z* and *A* (the obligors) and the property hypothecated in the bond defendants, claiming to recover instalments which were due and unpaid and a declaration of his right to recover instalments which were not due as they fell due He obtained a decree in such suit for the amount claimed against the two defendants. It was also provided in such decree that until the satisfaction of the entire amount of the bond the plaintiff can realize the amount of each instalment by

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

executing the decree The obligee applied in execution of such decree to recover by the sale of such property which had passed into the hands of third parties after the passing of such decree instalments which had become due after the passing of such decree and had not been paid Such execution having been refused on the ground that such decree was a money-decree the obligee brought a second suit upon such bond to recover such instalments by the enforcement of the lien therein created on such property *Held* that although the enforcement of such lien was claimed in the former suit yet inasmuch as it was very questionable whether the Court was competent to grant the second relief claimed in that suit viz a declaration of right to recover instalments which were not due in execution of a decree for instalments which were due and the claim in the second suit was not the same as that in the former suit the plaintiff asking for instalments said to be actually due and not for a declaratory decree for instalments not due the second suit was not barred by s 13 of Act X of 1877 UMRAO LAL v BEHARI SINGH I L R 3 All 297

63 — —— Suit for partition—*Right of widow—Subsequent suit to get rid of partition* Where a widow was treated as an equal sharer in her husband s estate with her sons and in conjunction with one son applied for partition as a sharer and objections taken to the partition were overruled and no appeal made to the Civil Court — *Held* that a suit to declare the widow only entitled to maintenance was not maintainable ODDIA v BHOPAL 3 Agra 137

64 ———— *Civil Procedure Code 1859 ss 2 and 3—Admission—Revision of judgment* Plaintiffs having purchased the rights of a widow in certain properties sued the defendants for partition of the share purchased defendants

was merely an admission in plaintiffs favour gave no new cause of action and that if the Courts failed to decide all the matters in dispute which they had before them in the former suit their judgment could not be revised in a new suit such revision being contrary to the provisions of s 3 Act VIII of 1859 GHASEE KHAN v KULLOO 1 Agra 152

65 ———— *Bom Act V of 1864* In 1871 the plaintiff sued to establish his sole right to a portion of a field on the ground that it had been allotted to him by partition The defendant also claimed it as his share obtained by partition. The Court rejected the plaintiff s claim holding that no partition had taken place and that the field was the joint property of five co parceners including the plaintiff and defendant. In 1878 the

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

I L R 5 Bom 21

66 ———— *Former suit for declaration of right to partition Civil Procedure Code (Act VIII of 1859) s 2* A Hindu of the Southern Maratha Country having two sons undivided from him died in 1871 leaving a will dis

the claim failed because they were situate beyond the jurisdiction of the Court In a suit by the elder son against his brother after the father s death for a share of the property on the ground that it was ancestral estate —*Held* that this suit was not barred under Act VIII of 1859 s. 2 the proceedings of 1861

67 ———— *Effect of unexecuted decree for partition in subsequent suit for partition of same property—Mortgage of share—Purchase by a stranger of portion of the lands included in the decree—Suit by him for partition.* *A* and *B* were the joint owners in equal shares of certain property In 1869 *B* mortgaged his share to *A* under a mortgage-deed drawn up in the English form. Later on in 1869 *A* brought a suit against *B* for partition and in 1870 obtained a decree appointing a commissioner of partition and directing the partition No return was made to this commission and no actual partition was come to In 1873 *A* obtained a decree for an account and for payment or in default for sale of the property In

sale to *C* *B* s right to redeem had ceased to exist

68 ———— *Suit for declaration of right to partition—Decree not executed—Subsequent suit for same purpose* Where a decree declaring a right to partition has not been

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

given effect to by the parties proceeding to partition in accordance with it and the decree has become by lapse of time or otherwise unenforcible it is competent to the parties or any of them if they still continue to be interested in the joint property to bring a fresh suit for a declaration of their right for partition. Such a suit will not be barred by reason of the former decree for partition though that decree may operate as *res judicata* in respect of any claim or defence which was or might have been raised in the suit in which it was passed NAZRAT ULLAH *v* MUJIB ULLAH I L R 13 All 309

69 ———— *Decree in former suit for partition—Partial and general partition—Account* In a previous suit between the plaintiff and the defendant the plaintiff alleged that there had been a partition of the family property into two parcels and under a deed of partition drawn up at the time claimed one of these parcels. The deed being held invalid the suit was rejected with liberty to the plaintiff to sue for a general partition. In the second suit the plaintiff prayed for a general partition as a member of an undivided Hindu family *Held* that the second suit was not *res judicata* for although the plaintiff might in the first suit have made an alternative case and prayed for a general partition in case he failed to establish the previous partition which he alleged yet it could not be said that he ought to have done so *Held* also that in the case of joint enjoyment by the members of the whole family or enjoyment by different members of different portions of the family property the Court will not except under special circumstances order an account to be taken of past transactions but will make division of the property actually existing at the date of partition *Lakshman Dada Naik v Ramchandra Dada Naik I L R 5 Bom 48* followed KONERRAV *v* GURRAV I L R 5 Bom 589

70 ———— *First suit based on the general right of a co parcener to claim partition of the joint estate—Refusal of Judge in first suit to allow plaint to be amended so as to include claim to partition based on an award—Second suit based on an award—Code of Civil Procedure (Act XIV of 1882) s 13 expls I II* In 1874 the plaintiffs father filed a suit against the defendants for partition of joint family property The subject matter of the suit was referred to arbitration out of Court The arbitrators made an award to the effect that partition should be postponed till the family debts were paid of The award was accepted by all the sharers and so the plaintiffs father withdrew his suit In 1880 the debts were paid off Thereupon the plaintiffs father demanded partition but was refused. He therefore filed a partition suit in 1883 against the defendants. In his plaint he made no mention of the award of 1874 but relied on his right as a co parcener to enforce partition After the settlement of issues he applied for amendment of the plaint so as to include his claim on the award The Court refused the amendment on the ground that it would materially alter

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

[illegible]

suit was not barred by the plea of *res judicata* THAKORE BECHARJI RANAJI *v* THAKORE PRIJIT VAKTAJI I L R 14 Bom 31

71. ———— Suit for mesne profits—*Former suit for possession* The plaintiff sued to recover possession of land and for wasilat from the period at which he alleged he was dispossessed and he obtained a decree for possession of the lands and for wasilat from the date of the plaint He afterwards sued the defendant for wasilat from the date of the alleged dispossession to the date of the plaint *Held* that wasilat having been claimed in [illegible] for that period and there havin[illegible] ...d ...nd ...ence ...859

or by mistake the case was within Act VIII of 1859 [illegible] of the Court

[illegible]

MARSH [illegible]

72 ———— Where a plaint prayed for possession and wasilat and a decree was given for possession without mention of the wasilat and on application for review it was urged, though not in the written grounds of application that the question of wasilat ought to have been disposed of, but no decision was given as to it either by the High Court or by the Court of first instance to which application was afterwards made —*Held* that the fact that a prayer for wasilat was contained in the plaint in the suit in which only a decree for possession was given was not a *bar to a subsequent* suit for mesne profits within s 2 Act VIII of 1859 GAURI BAIJNATHPRASAD *v* BUDHU SINGH 2 B L R S N 18

s c BYJNATH PERSHAD *v* BADHOO SINGH 10 W R 466

73 ———— *Former suit alleging tenancy—Suit for mesne profits* D sued R alleging his tenancy and for an arrear of rent but R denied his tenancy and D's title to the land and was successful in that defence D then *sued in* the Civil Court to recover possession with wasilat which he estimated at the rate of the rent *previously* claimed and obtained a decree for possession without wasilat *Held* that the second suit was *not* for the same thing as the first under a *different* name and that plaintiff was entitled to wasilat as well as possession DATARAM *v* RAM KRISTO 9 W R 594

74 ———— Suit for ejectment—*Former suit deciding as to relinquishment of the land Held* that a former suit which decided the question of

RES JUDICATA—*contd*

6. CAUSES OF ACTION—*contd*

relinquishment of the land by defendant a raiyat did not bar a sub-equent suit which was brought on the allegation that the land being ir land the de fendant the occupant had no right of occupancy and should consequently be ejected. NAIPAL SINGH v RAM NARAIN 2 Agra 93

75 ——————— *Suit to recover possession dismissal of—Subsequent suit to enhance rent* In a suit to recover khas possession of land of which the plaintiff alleged he had been fraudulently dispossessed by the defendant the defendant claimed to be entitled to the possession of the land under a deed of gift at a fixed rent. The Judge found upon the facts that the deed of gift was invalid that the land was mal and that the defendant was entitled to retain the possession and thereupon dismissed the suit *Held* that the plaintiff was not precluded by the decision in that suit from afterwards maintaining a suit against the defendant to enhance the rent NEELMONEY SINGH DEO v SHOBHAN BEBEE Marsh 600

76 ——— Suit for same land on different title—*Failure in former suit* Plaintiff after failing in a former suit to establish her right to certain land as belonging to her patni talukh, was not allowed to fall back on a different title and bring a separate suit claiming the same land as belonging to her mirasi the cause of action in both cases being really the same AUNUNGO MOHUN DEB v UNNODA DOSSEE 17 W R 351

77 ——— Suit for possession—*Dismissal of former suit for possession as heir* A suit for possession as the heir of *S* is not barred by s. 2, Act VIII of 1859 because plaintiff s former claim to the same property as the heir of *S s* father was dismissed GOOROO DUTT v SOOROO 16 W R 264

78 ——————— *Suit on title derived by gift—Subsequent suit as heir Held* (MITTER J *dubitante*) that suit claiming property on a title by inheritance was barred by ss 2 and 7 Code of Civil Procedure 1859 where plaintiff s claim on a title derived by gift had already been adjudicated upon. DUDSAR BIBEE v SHAKIR BUR KUNDAZ 15 W R 168

79 ——————— *Suit for ejectment based on alleged lease—Subsequent suit to eject tenant as trespasser founded on ownership* The present plaintiffs in 1896 sued the present defendants to eject the latter from a certain piece of land alleging that the defendants held it under certain leases dated July 1864 The genuineness of the [illegible]

proved. In 1874 the plaintiffs brought the present suit to eject the defendants In this suit the plaintiffs sued simply as owners and alleged that the defendants were in occupation as tenants paying rent to the plaintiffs and that they (the defendants) had refused to give up possession *Held* (MELVILL, J *dissentiente*) that the plaintiffs were not barred by the judgment in the former suit The fact of both the suits being against the defendants as tenants of the plaintiffs did not imply that the suits were on the same cause of action The term tenancy may be applied to a great many different relations between the occupier and the owner of property agreeing perhaps only in the single circumstance of a holding by the one of the property of the other The test in each case is not whether a tenancy has in both suits been sued on but whether the particular contract or relation put forward in the first case was the same specific contract sued on in the second A cause of action reduced to the concrete form in a contest between individuals implied a specific right and a specific infringement of the right and a judgment that one such specific right had not been made out was not a trial and determination of a cause of [illegible] The speci[illegible] two [illegible]ved [illegible] v DAYABHAI KALABHAI I L R 8 Bom 174

80 ——— Suit for accretion—*Civil Procedure Code 1859 s 2—Different cause of action* A suit for a declaration of the plaintiff s right to a chur which they claimed as an accretion to mouzah L, was *held* to be barred under Act VIII of 1859 s 2 by a judgment in a former suit in which they had claimed the same land as an accretion to mouzah R, because whether by accretion to the one estate or to the other the question in both suits was that of title by accretion A complainant is [illegible] v KRISTO CHUNDER SANDYAL CHOWDHRY 22 W R 464

81 ——— Decision as to quantity of land held—*Former suit for kabuliat* In a previous suit the plaintiff sought to obtain a kabuliat from the defendant in respect of land held by him alleging the quantity to be 8 bighas and 17 cottahs It was therein determined that the defendant held only 7 bighas and no more In the present suit brought to eject the defendant from 1 bigha 17 cottahs of land —*Held* that it was not maintainable as it was for the determination of a question decided in the former suit GOPAL CHANDRA ROY v NABIN CHANDRA BHANDARI 3 B L R Ap 34

82 ——— Decision as to quantity of land held—*Suit for rent—Suit for measurement —Civil Procedure Code (Act X of 1877) s 13* In a suit by raiyats against their zamindar praying for measurement of certain land and for a declaration of the amount of yearly rental it appeared that in a previous suit for rent by the zamindar against

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

the raiyats the raiyats had alleged that the amount of rent and the extent of land had been overstated by the zamindar but the Court decided that the raiyats were bound by a jummabundi signed by them and refused to try whether the extent had been overstated *Held* that the present suit was not barred as *res judicata* ROGHOONATH MUNDUL *v* JUGGUT BUNDHOO BOSE
I L R 7 Calc 214 8 C L R 393

83 ———— **Decision as to boundaries of land**—*Civil Procedure Code (Act X of 1877) s 13* The plaintiff sued to recover certain lands claiming them as a portion of A and alleging that A was portion of a mouzah which had been leased to him in patni by the zamindar The suit was dismissed on the ground that though A was known as a part of the plaintiff s mouzah yet it had been included in a patni lease of an adjoining mouzah which the zamindars had granted to the defendants previously to the date of the plaintiff's lease The plaintiff brought a second suit claiming another portion of A on the same title *Held* that the claim was barred as *res judicata* *Mohidin* v *Muhammad Abrahim 1 Mad 245* *Nundkishore Singh* v *Huree Pershad Mundul 13 W R 64* *Prannath Sandyal* v *Ramcoomar Sandyal 2 C L P 33* and *Gobind Chunder Koondoo* v *Taruk Chunder Bose I L R 3 Calc 145* followed SUNDHYA MALA *v* DABI CHURN DUTT **I L R 6 Calc 715**

S C SUNDHYAMULA *v* DEVI CHURN DUTT
9 C L R 216

84 ———— *Failure of suit for possession* Where a party failing to obtain judgment for the possession of land claimed by her in her first suit as taufir brought a fresh suit claiming the land as property belonging to her talukh according to the true boundary line —*Held* affirming the decision of the High Court that the suit was barred by s 2 of Act VIII of 1859 WOOMATARA DEBIA *v* UNNOPOORNA DASSEE
11 B L R P C 158 18 W R 163

S C in High Court UMATARA DEBIA *v* KRISHNA KAMINI DASI **2 B L R A C 102**

S C WOOMATARA DABEE *v* UNNOPOORNA DOSSEE
10 W R 426

SHIB SHUNKUR NEOGY *v* HURO SOONDUREE GOOPTA **13 W R 209**

85 ———— **Suit for possession and to set aside sale in execution of decree**—*Subsequent suit on the ground that sale was ab initio void* When a plaintiff sues for possession and determination of right to a certain property and set aside an execution sale of a portion of the property on the ground of irregularity and his suit is dismissed on the merits a subsequent suit for possession of the property sold on the ground that the sale was void *ab initio* is barred as *res judicata* *Wooma Tara Debia* v *Unnopoorna Dassee 11 B L R 158* and *Periya Odaya Taver* v *Katama Natchiar 11 Moo I A 50* cited and followed. PROOT *v* MOHAMED ABOO SYED **3 C L R 253**

86 ———— *Sales under different decrees—Reversal on appeal of decree setting aside sale—Civil Procedure Code 1859 s 2* In execution of a decree the right title and interest of *A* in a certain property were sold and purchased by *B* In execution of another decree the right title and interest of *A* and *C* in the same property were sold and purchased by *D* In a suit by *A* the sale to *B* was set aside but on appeal the decision of the Court of first instance was, upon consent of the parties set aside and the sale allowed to stand good *D* sued for possession of the share of *A* and *C* in the property purchased by him and obtained a decree for possession of the share of *C* only *D* now sued to set aside the sale to *B* and for possession of the share of *A* *Held* that the suit was not barred by s 2 Act VIII of 1859 CHANNA LAL SAHU *v* MANU LAL
5 B L R 220 13 W R 343

87 ———— **Subsequent suit on different grounds for same property**—*Civil Procedure Code 1859 s 2—Act XXIII of 1861 s 11* On the 30th June 1855 *S* a Lingayat priest died possessed of moveable and immoveable property The right of succession to it being disputed, the District Judge placed it under the management of the nazir under Bombay Regulation VIII of 1827 s 9 In 1869 *B* representing himself as the disciple ... [illegible] to the whole ... [illegible] sion of it The suit was compromised ... [illegible] ment upon which the Court passed a decree on the 23rd March 1870 dividing the property of *S* in certain shares between *B* and the defendant When *B* and the defendant applied for possession of the property in execution of this decree the nazir who had it in his charge resisted them. The execution proceedings dropped in consequence of the death of *B* The plaintiff thereupon (as a disciple of *B* ... [illegible]) ... the nazir separ... [illegible] *S* The ... that he ... In that ... compromise ... decree made between *B* and the defendant ... The defendant passed on it in suit No 962 of 1869 The defendant succeeded in his suit and obtained possession of the whole property The plaintiff then sued as the disciple of *B* to recover from the defendant the portion of the property of *S* which fell to the share of *B* according to the compromise on which the decree in suit No 962 of 1869 was made *Held* by West *J* that the suit was barred first because the plaintiff had been judicially pronounced not to be the disciple of *B* in his suit against the nazir to which the defendant was a party as the true successor or prima facie successor represented by the nazir in that suit It was not open to those who had as

RES JUDICATA—contd

6 CAUSES OF ACTION—*contd*

heirs sued the official representative of an estate and failed to sue the owner when ascertained a second time on the same right Secondly because the plaintiff in his suit against the nazir was bound to bring forward every ground on which he could claim the property and if the compromise effected by *B* was such a ground that compromise and the decree founded on it ought to have been brought forward to sustain the claim as it would have shut out a ground of defence consisting of the defendant s superior right As the plaintiff omitted to do so the more recent decree which pronounced him not entitled to any part of the property of S superseded the earlier one which ineffectually awarded *B* a moiety of that property as against that person not in possession and while that decree was unreversed another decree could not be made awarding to the same plaintiff one half of the same property in the same right as against the defendant whom the nazir represented in the earlier suit *Held* by PINHEY J that the property claimed in [illegible]

execution proceedings on that decree The present suit therefore was barred alike by s 2 of Act VIII of 1859 and s 11 of Act XXIII of 1861 and the fact that execution of the decree in suit No 96? of 1869 was time barred did not confer on *B* or any legal heir of his a new right to sue for the estate of *S* or any part of it SHIVALINGAYA *v* NAGALINGAYA I L R 4 Bom 247

88 ——— Suit for same property on different cause of action—*Civil Procedure Code 1859 s ?* In 1866 the plaintiff the zamindar [illegible]

was decided that the villages had formed a mokasa jaghir from a date prior to that of the permanent settlement and that as they did not constitute a portion of the assets of the zamindari at the date of the settlement there was no right of resumption Pending those suits an order was issued by Government which plaintiff construed as a transfer to him of the Government right in the villages and he founded the present suit upon the lapse of the mokasa to Government and the order transferring the right to him —*Held* that the present suit was not *res judicata* RAMA CHANDRA SURYA ARICHANDRANA DEO *v* DARVADA RAMANNA CHANDIRI 3 Mad 207

89 ——— Suit for same property on same cause of action—*Suit for possession—Civil Procedure Code 1859 ss 223 224* Where a suit was preferred for the purpose of recovering possession of defendants lands for possession of which plaintiff had already obtained a decree against the same defendants and others the suit was *held* to be barred as the cause of action was *not different* from that which had been previously determined Instead of asking for delivery of possession under s 224 plaintiff s proper course would *have been a* resort to the provisions of s 223 of the Civil Procedure Code RAM SURN MUHTON *v* JINONAUTH BHUGOUT 10 W R 396

90 ——— Suit for confirmation of sale—*Subsequent suit for certificate of sale* The purchaser at the sale of a talukh sold under a judgment upon a decree sued to reverse the order of a Judge annulling the sale and in that suit he craved confirmation of the sale that he might be put into possession of the talukh and for a decree for mesne profits This suit being dismissed on the merits he instituted another suit in which he craved a bynamah or certificate of sale *Held* that the second suit was brought for the same causes and subject matter as the first and that the plaintiff was therefore precluded by the dismissal of the first suit from obtaining it LAMB *v* DEWAN PUDDUM LOCHUN Marsh 96 W R F B 28 1 Hay 168

91 ——— Suit for right to share in ancestral property—*Cause of action different—Judgment in former suit* A suit to establish the plaintiff s right to a share of ancestral property part of which was in his sole possession cannot operate as a *res judicata* in a subsequent suit to recover possession of a part of the ancestral property which [illegible]

HURONATH ROI 7 W R 423

92 ——— Causes of action identical—*Title—Test for determination as to res judicata* The plaintiff purchased certain lands [illegible]

plaintiff brought a suit in the form of a partition suit praying for demarcation of the lands bought by the defendant M and himself It was treated as substantially an ejectment suit and rejected on the same grounds as the first suit namely his admission as above stated In appeal to the High Court it was urged by the plaintiff that since the date of his admission in the first suit some of his [illegible]

though the cause of action was in existence when the second suit was brought in 1869 yet that it had

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

not been adjudicated upon and that in appeal he had been prevented from arguing it *Held* that the plaintiff was stopped The causes of action in the second and third suit were identical Having striven to establish his title by one means and failed the plaintiff could not establish the same title by *other means which were equally at his command* when the previous suit was instituted and which were so connected with the grounds on which he in [illegible]

[illegible] previous suit rather than its form If the cause of action is based on a right identical in both suits or on the same group of facts infringing that right the second suit is barred HASAM IBRAHIM *v* MANCHARAM KALLIANDAS I L R 3 Bom 137

93 ———— **Suit for share of joint property under an agreement**—*Subsequent suit as heir* A Hindu of the Sudra caste died in 1850 [illegible]

[illegible]

owing to domestic quarrels they lived separately and the plaintiff was allowed by *M* a portion of the family property under an agreement in writing They were however joint and undivided in estate [illegible]

[illegible] agreement In 1870 the plaintiff brought a second suit as heir of his father and brother and claimed the whole of the ancestral property Both the lower Courts rejected his claim as barred by the previous suit *Held* in special appeal by MELVILL and NANABHAI HARIDAS *JJ* that the claim was not barred inasmuch as the former suit was brought on the agreement while the latter was instituted to establish plaintiff s general rights as heir of his father and brother SADU *v* BAIZA I L R 4 Bom 37

94 ———— *Suit on a family arrangement—Second suit for the same subject matter as co sharers—Causes of action* The defendant s great grandfather was uncle of one *B H* who was the great-grandfather of the plaintiffs and they (*i e* the defendant s great grandfather and his nephew *B H*) were entitled in equal half shares to a certain vatan property The defendant and his brothers now represented the former and were entitled to his half share and the plaintiff represented the latter and were entitled to his half share The plaintiff father *B P* lived with the defendant and the defendant s brothers *M* and *K* as members of an undivided family up to the year 1845 in which year the plaintiff father *B R* being then absent from the village the defendant s brothers *M* and *K* executed a deed of partition whereby they divided the ancestral property into two equal shares one half of which the plaintiff father was to receive the other half going to the defendant and his brothers The deed among other recitals contained a clause to the effect that the plaintiffs father being then absent from the village the defendant s brothers would manage his share during his absence and on his return hand the same over to him on his paying the expenses incurred by them in such management In 187[illegible] the plaintiffs undivided brother brought a suit against the defendant and others on an agreement alleged to have been executed between him (plaintiffs brother) and the defendant and his brothers by which the said brothers had bound themselves to return one third share to him (the plaintiffs brother) This suit was dismissed against the defendant as he had not been a party to that agreement and plaintiff brother was [illegible] estate The defendant (*inter alia*) contended that the suit was barred as *res judicata* by the former suit that neither the plaintiffs nor their fathers had enjoyed the property during the previous 150 years and that the claim was barred by limitation Both the lower Courts allowed the plaintiffs claim *The defendant preferred a second* appeal to the High Court *Held* confirming the decree of the lower Court that the former suit having been brought on an alleged agreement did not bar the present suit which was based on the plaintiffs hereditary right to sue as members of the family NILO RAMCHANDRA *v* GOBIND BALLAL I L R 10 Bom 24

95 ———— **Suit under will**—*Subsequent suit in right of heirship—Former suit on different grounds* N sued M and K claiming proprietary possession under the Mahomedan law of a share in certain property by right of heirship to he de[illegible] [illegible] sued the s[illegible] [illegible] which was reversed on the [illegible] invalid. *Held* (in accordance with the opinion of the Full Bench) that the second suit was not barred by s 2 Act VIII of 1859 NOUSHA BEGUM *v* UMRAO BEGUM 7 N W 60

96 ———— **Suit for possession as heiress**—*Subsequent suit on ground of family custom* In a suit governed by the Mitakshara in which *A* a Hindu widow was the plaintiff and *B* was one of the defendants the plaintiff sued for possession of certain land and obtained a decree for possession of certain land to which she claimed to be entitled as mother and heiress of her deceased son *B* subsequently brought a suit against *A* alleging that he and [illegible] had become entitled thereto on the death of A's son under a kulachar or family custom which excluded female heirs and gave him a pre[illegible]

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

right among male heirs and thereby sought to recover from her possession of the same lands and alternatively to obtain a declaration that he was as such heir if then living entitled to possession of them on her death and that a deed executed by her alienating a portion of them was valid only for her life time *Held* that the decision in the former suit that A was entitled to the lands as mother and [illegible]

former suit from setting up the family custom with the object of showing that on A s death he would be entitled to succeed her if living and was by reason of such heirship entitled to obtain a declaratory decree as to the deed of alienation DOORGA PERSAD SINGH v DOORGA KONWARI

I L R 4 Calc 190 3 C L R 31
[illegible] L R 5 I A 149

97 ———— Suit for property in right of inheritance—*Ground of claim disposed of in former suit—Civil Procedure Code 1859 s* In a suit to recover in virtue of a right of inheritance a share of a deceased father s estate from which plaintiff had been ousted in 1858 —*Held* that as the plaintiff had brought a suit in 1853 in which she claimed the same properties as belonging to her father s estate and had accepted and acted upon the decree then passed which excluded the property in question from her claim her present suit was barred by s 2 Act VIII of 1859 and further that [illegible]

98 ———— Compromise of suit—*Civil Procedure Code 1859 s 2—Suit on same cause of action as former suit* A suit between two brothers *A* and *B* respecting ancestral property was compromised and the particulars of the compromise [illegible]

in which she had become interested as widow and which was comprised in the former razinama and of this second razinama they subsequently put in an amended copy *Held* that a claim arising out of such agreement could not within the meaning of Act VIII of 1859 s 2 be considered to have been a cause of action heard and determined in the former suit LAKSHMI AMMAL v TIKARAM TOVAJI 1 Mad 240

99 — — — Suit for property as joint —*Former suit for same property as separate—Civil Procedure Code 1859 s 2* The plaintiffs in the present suit claimed as the heirs of *J* certain property from *M* the daughter of *R* alleging that such property was the joint and undivided property of *R* and *J* to which on *R* s death *J* had [illegible]

100 ———— Suit for property as heirs —*Failure to put forward all grounds—Civil Procedure Code (Act VIII of 1859) s 2—Former suit to recover* [illegible] property [illegible] plaintiff [illegible]

101 ———— Suit for specific sum of money—*Act VIII of 1859 s 2* In a suit for a specific sum of money it was *held* in accordance with the Full Bench decision in *Dinobundhoo Chowdhry* v *Kristomonee Dossee I L R 2 Calc 152* that the plaintiff was bound to put forward every right under which he claims BHEEKA LALL v BHUGGOO LALL I L R 3 Calc 23

102 ———— Subsequent suit for same cause of action but larger amount—*Civil Procedure Code 1877 s 13* The decision of a District Judge deciding that the plaintiff in not entitled to sue in a suit for road cess where the amount claimed is less than R100 and therefore no second appeal lies to the High Court is a bar to a second suit in which the amount claimed is above R100 DAVID v GRISH CHANDER GUHA

I L R 9 Calc 183 11 C L R 305

103 ———— Suit for account—*Subsequent suit for balance due—Principal and agent* In the mofussil if a principal in a suit against his agent prays merely that the defendant be ordered to render accounts to the plaintiff a second suit brought by him for the recovery of the money found due by the defendant on examining the accounts will not be barred as *res judicata* GOBIND MOHUN CHUCKERBUTTY v SHERIFF

I L R 7 Calc 169 8 C L R 357

104 ———— Suit to recover property from zur i peshgidars—*Subsequent suit alleging discharge of mortgage—Civil Procedure Code 1859—*

RES JUDICATA—*contd.*

6 CAUSES OF ACTION—*contd*

6 1—Different cause of action The plaintiffs had brought a former suit to recover possession of certain property which had been mortgaged to the defendants under a zur i peshgi lease and obtained a decree for possession on their depositing the sum which the Court found to be due on the mortgage The plaintiffs delayed applying for execution till four years after when they alleged that the money had been paid off by the usufruct of the land Their application having been refused they brought the present suit for possession alleging that the debt had been discharged by the usufruct *Held* that the present cause of action within the meaning of Act VIII of 1859 s 2 was a fresh cause of action as compared with the former one which was for an adjudication of the state of the accounts between the parties up to a certain date whereas the latter had reference to the accounts since that date ROY DINKUR DOYAL *v* SHEO GOLAM SINGH

22 W R 172

105 ———— **Suit to set aside attachment dismissal of**—*Subsequent suit to recover property* The plaintiff sued to raise an attachment placed upon a certain house but failed in the lower Court and the decision of the lower Court was confirmed upon appeal The house was then sold The plaintiff sued the purchaser to recover possession of it *Held* that he was not estopped from suing by the decision in the former suit refusing to raise the attachment and that such decision could not be given in evidence in the latter suit MORO BALKRISHNA MULE *v* SHEK SAHEB VALAD BADRUDDIN KAMBLE 5 Bom A C 199

106 ———— **Suit to establish title**—*Former suit to raise attachment* K sued to establish his title to a house purchased by him from D D s guardians during minority alleging that the greater part of the purchase money was employed in paying of a mortgage claim upon the house that after he had obtained possession under his deed one D S the holder of a decree against D D s guardians attached the house and that he brought the suit to raise the attachment in which having failed he paid into Court the amount of D S s claim *Held* that K was not estopped from bringing this suit against D D by the decree in his former suit to raise the attachment, which declared that the deed of sale now relied upon was fraudulent and void as against D S DAGDU BIN DAUD TELI PARDESHI *v* SHEK SAHEB VALAD BADRUDDIN KAMBLE

2 Bom 369 2nd Ed 348

107 ———— **Suit to set aside order releasing from attachment properties as to which a formeer suit has been dismissed** —*Civil Procedure Code (Act VIII of 1859) ss 2 and 7—Relinquishment—Mortgage made during infructuous attachment—Subsequent attachment and sale* R on the 30th December 1870 obtained an *ex parte* decree against D in execution of which he attached properties X and Y on the 4th January 1871 D applied for a re hearing which was granted and on the 30th December 1871 a decree was again passed against D in execution of which the same properties were attached on the 9th of August 1872 and purchased as the execution sale on the 1[illegible] August 1874 by R On the 14th February 18[illegible] D had executed a solehnama and mort[illegible] in favour [illegible]

mortgage of the same properties in favour of [illegible]

[illegible]

ment and in a suit by plaintiff to set [illegible] order they failed as to properties X and Y on the ground that those properties were not included in the mortgage of March 1872 In a subsequent suit brought by the plaintiffs against R and D to set aside the order of the 4th March 18[illegible] and to have X and Y declared liable to be sold under the decree of the 28th February 1871 —*Held* that the [illegible] 2 of Act VIII of 1859 [illegible] was it barred [illegible] that the pur[illegible] to the mort[illegible] [illegible] NATH KUNDU *v* LAND MORTGAGE BANK OF INDIA

I L R 6 Calc 559 8 C L R 10[illegible]

108 ———— **Attachment, application to remove**—*Removal of attachment unknown to applicant—Failure of application—Second attachment—Second application to remove—New cause of action* The plaintiff mortgagee in possession of certain property applied for the removal of an attachment placed on it by the defendant in execution [illegible] In default [illegible]

already been removed Subsequent[illegible] the property [illegible] The defendant placed a second attachment on the property to remove which the plaintiff again applied The defendant contended that the plaintiff's application was barred by the proceedings on the first attachment *Held* that the decision on the plaintiff's first application having no object existing on which to operate the attachment having then been re[illegible]

RES JUDICATA—contd

6 CAUSES OF ACTION—contd

moved it could not properly be regarded as *res judicata* at all since no one was seriously interested

no such submission the plaintiff having done all that was incumbent on him to get the summary inquiry and orders replaced by a formal trial and judgment and that there was nothing therefore in these proceedings di entitling the defendant to oppose the second attachment *Held* also that the second attachment after the first had been removed was a new and distinct act giving rise to a new cause of action or complaint to the plaintiff on which in any case he was entitled to a fresh inquiry and decision KASHINATH MORSHETH v RAMCHANDRA GOPINATH I. L. R 7 Bom. 408

109 ———— Suit for declaration of title—*Subsequent suit for possession—Application to remove attachment* B sold to J a turuf of which 3½ kanees were subsequently attached on a decree obtained by M After objecting unsuccessfully to the attachment J brought a suit against the auction purchaser joining B as a defendant to have it declared that the 3½ kanees belonged to himself but failed on the ground that he was holding it benami for B Subsequently the auction

of the two suits and J s former suit for all that he

judgment did not create an adjudication of the cause in the latter suit and if evidence it was not conclusive evidence or binding on the Judge RAM CHUNDER CHOWDHRY v KASHEE MOHUN 21 W R 57

110 ———— Suit for declaration of liability to sale in execution—*Joint property liability of to sale in execution of decree against one member of a family—Hindu law—Joint family—Civil Procedure Code 1882 ss 2 8 280 and 283—Limitation—Right of suit* In execution of a decree for rent against a lessee who was one of the members of a joint Hindu family governed by the Mitakshara law property other than the tenure was attached by the decree holder Objection was raised under 278

defendant pleaded *inter alia* that the suit was barred by *res judicata* and that the suits decreed having been for rents of the years 1884 to 1887 the present suit brought in 1891 against the additional parties was barred by limitation *Held* (per PRINSEP and GHOSE JJ) that the suit would lie and neither the plea of limitation nor the bar of *res judicata* was applicable to it *Held* (per PRINSEP J)—Ss 278 to 283 of the Civil Procedure Code contemplate the liability of the property to sale because of its being the property of the judgment debtor or because it is liable to the decree passed against him as sued in a representative capacity they do not contemplate a suit to establish the liability of third persons *Nuthoo Lall Chowdhry v Shoukee Lall 10 B L R 200 18 W R 458* and *Nobin Chandra Roy v Magantara Dassya I L R 10 Calc 9 3* referred to *Sitanath Koer v Land Mortgage Bank of India I L R 9 Calc 888* dissented from *Held* (per GHOSE J) that having in view the principle which underlies the cases of *Bissessur Lall Shahoo v Luchmessur Singh L R 6 I A 233 5 C L R 477* and *Jeo Lal Singh v Gunga Pershad I L R 10 Calc 996* as also the cases of *Sitanath Koer v Land Mortgage Bank of India I L R 9 Calc 888* and *Nobin Chandra Roy v Magantara Dassya I L R 10 Calc 924* the present suit was maintainable the suit being regarded as one for declaration that the decree was obtained against the lessee in his representative capacity
liable to s
Lee Lal
dro Coom
R 3 Calc 353 distinguished RADHA PERSHAD SINGH v RAMKHELAWAN SINGH I L R 23 Calc 302

111 ———— Continuing contract—*Suit for damages* A on the 1st of February 1868 entered into a contract with B to supply him with straw for twelve months the supplies to be sent as ordered daily On the 12th of March B brought an action in the Small Cause Court against A for damages sustained by the plaintiff by reason of A s having failed to supply straw as agreed upon The Judge decided the questions in issue (namely of the factum of the contract and the authority of the person who executed it in A s behalf) in favour of B and gave him a decree On the 21st of April a second suit was brought by B against A on the same contract The claim was for damages sustained by the plaintiff by reason of A s having failed to supply straw as agreed from the 20th of February to the 17th April That suit was dismissed the

new trial a decree was made in favour of B for so

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

much of the damages claimed as had been sustained subsequently to the date of the decree of the 25th March In an action brought by *B* on the same contract for damages sustained between the 17th April and the 16th of June by reason of *A* having failed to supply straw according to the terms of the same contract *A* denied that there had been any such contract and further pleaded that the matter of the contract if there had been one had already been adjudicated upon On a reference from the Small Cause Court —*Held* that the finding of the Judge upon the contract in the action brought on the 12th of March was conclusive between the parties and that *A's* plea of *res adjudicata* was not well founded COOK *v* JADUB CHUNDRA NANDI **2 B L R O C 48**

112 ———— **Suit on joint contract**—*Civil Procedure Code s 2—Suit on joint bond* *D* and *B* executed a bond by which they mortgaged certain lands as security for a loan taken by them from the plaintiffs A suit was brought and a decree was obtained by the plaintiffs against *D* and *B* under which they recovered a portion of the amount due on the bond The plaintiffs now sued *S* and others on the ground that they were joint proprietors of the land mortgaged that the loan was taken by *D* and *B* as managers for the use of all the parties interested and for carrying on their joint business and trade and that therefore they were all jointly liable *Held* that the suit could not be maintained *Ramnath Roy Chowdhry v Chunder Sekhur Mohapattur 4 W R 50* dissented from NUTHOO LALL CHOWDHRY *v* SHOUKEE LALL **10 B L R 200 18 W R 458**

113 ———— *Civil Procedure Code 1882 ss 13 and 43—Joint owners—Suit against one sharer—Decree against property—Claim by other co sharer allowed—Suit against both sharers* Through ignorance of the position of affairs one only of two persons joint owners in a property was sued for a debt for which the property had been pledged by the person sued and a decree was obtained and execution issued against the property and in such execution proceedings the other sharer put in a claim and obtained an order releasing her share of the property from attachment A second suit was then brought by the judgment creditor against both sharers for the purpose of making the share of the co sharers who had not been previously sued available to satisfy the defendant and praying that the order releasing the property from attachment might be set aside *Held* that such a suit would lie and would not be barred as *res judicata* NOBIN CHUNDRA ROY *v* MAGANTARA DASSYA **I L R 10 Calc 924**

114. ———— *Suit for arrears of rent—Joint and joint and several liability* In the year 1877 *A* who was the owner of a fractional share of a zamindari which was let in patni and of a 4 annas share in the patni sued his co sharers in the patni for his share of the arrears of rent for the years 1873 to 1875 after deducting the rent of his 4 annas share Before the hearing of [illegible]

co sharers in the patni had sold their remaining shares to *C* *A* applied to make *C* a party to the suit and subsequently for leave to withdraw the suit Both these applications were refused and a decree for the arrears of rent was made *A* alleged that he did not wish to enforce the decree in the [illegible]

by him *Held* that the [illegible] defendants whose share he had purchased [illegible] bled that which exists between persons who have made themselves jointly and severally liable to perform a particular contract and that as a decree obtained against one of the joint and several promisors without satisfaction is no bar to a suit against another the present suit was not barred by the decree obtained in the suit of 1877 *Nuthoo Lall Chowdhry v Shoukee Lall 10 B L R 200* and *Hemendro Coomar Mullick v Rajendro Lall Moonshee I L R 3 Calc 353* distinguished DHUNPUT SINGH *v* SHAM SOONDER MITTER **I L R 5 Calc 291 4 C L R 501**

See DHARAM SINGH *v* ANGAN LALL **I L R 21 All 301**

115 ———— *Judgment against one co sharer effect of on interest of other co sharers—Code of Civil Procedure (Act X of 1877) s 13 expln (5)—Repeal effect of* Expln 5 to s 13 of the Code of Civil Procedure would not make a judgment obtained in a suit against one co sharer binding on another co sharer no party to such suit in respect of the rights enjoyed in common by such co sharers in their common property Nor could such explanation be applied to a case instituted or the judgment delivered in such case during the time when the old Code of Civil Procedure was in force HAZIR CAZI *v* SONI-MONEE DASSEE **I L R 6 Calc. 31 6 C L R 513**

116 ———— **Suit on mortgage**—*Right of mortgagee to exercise another remedy after obtaining decree for sale.* A mortgagee can resort to all his remedies on the mortgage at the same time and is not estopped in an action on the covenant to pay the mortgage money by the fact of his having obtained a decree for sale MAKINNON *v* CHUNDER DEY **1 Ind. Jur N S 310**

117 ———— *Civil Procedure Code 1859 s 2—Suit to set aside sale under mortgage decree—Subsequent suit to declare property liable to sale* Certain property having been sold in execution of a money-decree against the representative of a mortgagor a suit was instituted and a decree obtained setting aside the sale as being

RES JUDICATA—*contd.*

6 CAUSES OF ACTION—*contd*

having been heard and determined by a Court of competent jurisdiction the suit was barred by s 2 Act VIII of 1859 NUFUR CHUNDER PAUL CHOWDHRY v LUCKHEE MONEE DABEE 9 W R 300

118 ——————— *Taking money decree on mortgage—Registration Act XX of 1866 s 53—Suit on mortgage bond* A proceeding under s 53 of Act XX of 1866 was a suit of a civil nature within the meaning of s 1 Act VIII of 1859 independently of any peculiarities in the special procedure to be adopted Therefore where a creditor had resorted to the summary procedure provided by s 53 and had recovered a portion of

MAHOMED v RAJCOOMAR DOSS HARAN CHUNDER GHOSE v DINOBUNDHOO BOSE 14 B L R F B 408 23 W R 187

MOTHOORA MOHUN ROY CHOWDHRY v PEAREE MOHUN SHAHA 23 W R 344

But *See* UTSHUB NARAYAN CHOWDHRY v CHITTRA PAKA GUPTA 8 B L R Ap 92

s c OOTSHUB NARAIN CHOWDHRY v CHITTRA RECKA GOOPTA 17 W R 154

where it was *held* that a regular suit will lie for

the hands of a third person

119 ——————— *Civil Procedure Code 1859 s 2—Suit on mortgage bond—Registration Act 1866 s 53* A having a simple mortgage bond which was specially registered obtained a summary decree under the provisions of the Registration Act and attached the lands under mortgage to him Prior to A s decree these lands had been attached by other creditors and subse

120 ——————— *Civil Procedure Code 1859 s 2—Suit to enforce lien on bond after suit in which money decree has been obtained* B sued on a bond to recover its amount and to enforce a mortgage lien He obtained only a money decree on the 26th of August 1871 D who also held a decree against the same debtor caused a portion of the property which had been included in the plaintiffs mortgage to be brought to sale B instituted a second suit on the 21st of January 1873 to enforce the lien *Held* in accordance with the opinion of TURNER OLDFIELD and BRODHURST JJ (STUART C J and PEARSON J dissenting) that the suit was unmaintainable BHAO SINGH v HET RAM 7 N W 17

121 ——————— Suit to enforce lien on mortgaged property—*First and second mortgagee.* In 1870 M granted a certain person a lease of a certain zamindari share for a term of years at an annual rent L as the lessee s surety hypothecating a mouzah called A as security for the payment of such rent. In 1871 L gave B a bond for the payment of certain moneys hypothecating mouzah A as security for their payment In 1872 and again in 1873 M obtained a decree in the Revenue Court against his lessee and L his surety for arrears of rent In execution of the decree of 1872 M caused L s rights and interests in mouzah A to be put up for sale and purchased them himself In 1874 B sued L and M to enforce his lien on mouzah A M defended this suit on the ground that he was the holder of a prior lien on the property The Court gave B a decree in 1875 holding that he was entitled to an order for the sale of the property but that it would be competent to M to sue to enforce his lien and that when he did so the purchaser under B s decree would have the option of discharging the first incumbrance The property was accordingly put up for sale in execution of B s decree and was purchased by B himself In 1876 M sued L and B to enforce his lien on the property claiming to recover by the sale thereof the amount of the arrears of rent awarded by the decrees of 1872 and 1873 together with the costs awarded him in the Revenue Court and interest *Held* affirming the judgment of STUART C J that the decree of 1875 did not preclude M from claiming

satisfaction of the costs of the decree go *pro tanto* to the satisfaction of the sums secured by the first incumbrance but M by selling in execution the

provide for the payment of such costs that he could enforce his lien for the recovery of interest as that bond did provide for the payment of interest and that the moneys realized by the sale of the equity of redemption of the property in the execution of the Revenue Court s decree of 1872 must be

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

applied in the first place in sat faction of the costs of the suit in which that decree was made and then in satisfaction of the arrears sued for in that suit or the balance of that arrear and of the arrear sued for in the second suit with interest at the rate agreed upon in the surety bond from the date of the accrual of those arrears until realization BABULAL *v* ISHRI PRASAD NARAIN SINGH

I L R 2 All 582

122.———— Suit for possession—*Agreement not to appeal—Suit for possession in terms of agreement* A having sued B for pos ession of a piece of land and obtained a decree for possession of portion only entered into an agreement by the terms of which he was to take a greater part of the land than he was entitled to under the decree upon the condition that he (A) should not prefer an appeal and that in the event of his doing so the whole land claimed in the suit should become the property of B In contravention of this agreement A appealed and obtained a decree for possession of the entire piece of land whereupon B instituted a suit claiming to have po e sion of the same in terms of the agreement *Held* that the agreement was valid although its effect was practically to render the former suit inoperative and further that the previous suit between the parties was no bar to B's suit a new cause of action having arisen upon the breach of the agreement JATI RAM TALUKHDAR *v* DASS RAM KOLITA

3 C L R 574

123 ———— Damages—*Civil Procedure Code (Act XIV of 1882) ss 13 43* In September 1886 the plaintiff sued in a Munsif s Court certain defendants for possession of one bigha of land and for damages for the cutting and carrying of certain paddy from such land on the 23rd December 1885 This suit was dismissed on the ground that no dis possession had taken place the plaintiff being referred to a Small Cause Court for his damages No appeal was made against this decision In March 1887 the plaintiff sued these defendants in the Munsif s Court for possession of 5 bighas 6 cottahs of land and for mesne profits and obtained [illegible]

the same defendants in a Small Cause Court for damages for the paddy cut and carried on the 23rd December 1885 *Held* that such suit was not barred by either s 13 or s. 43 of the Civil Procedure Code MAHABEER SINGH *v* RAMBHAJJAN SHA

I L R 16 Calc 545

124 ———— Suit on judgment in a Native territory—*Civil Procedure Code s 12—Jhansi and Morar Act (XVII of 1886) s 8—Decree made in British India—Cession of territory to British Government pending suit* Prior to the cession of the town of Jhansi to the British Government plaintiff had instituted a suit in the Subah s Court in the Gwalior State on a judgment of the British Court in Jhansi district After the cession the suit was made over for trial to the Court of the Assistant Commissioner of the Jhansi district. The [illegible] by [illegible] ed [illegible] mer [illegible] XVII of 1886 shows that it was intended that suits pending in the Courts of the Gwalior State prior to the cession of the town of Jhansi to the British G[illegible] in the Courts of the [illegible] Court of British India was a good and maintainable action in the Court where it was instituted, and is to be deemed to be a properly instituted suit to which in other respects the law of the Court of British India may now be applied. *King v Hoare* 13 *M & W* 504 14 *L J Ex* 29 referred to as illustrating the distinction between an original cause of action founded upon a judgment recovered on the original cau e of action SALONI *v* HAR LAL

I. L. R. 10 All. 517

125 ———— Continuing guarantee—*Civil Procedure Code (Act XIV of 1882) s 13—Suit for arrears of maintenance—Former suit for arrears for a different period—Surety—Continuing guarantee—Pleadings by surety denying liability in a suit do not operate as notice of revocation of suretyship—Contract Act (IX of 1872) s 130* By a settlement executed in 1896 the first defendant agreed *inter alia* to pay maintenance to the plaintiff (his wife) at the rate of R91 *per annum*. The second defendant signed the deed as surety In 1898 the plaintiff sued both defendants to enforce her rights under the settlement and (*inter alia*) for arrears of maintenance for ten months and sixteen days from the 10th November 1897 The defendants pleaded that the deed was void for want of consideration The first Court found that the settlement was not void and passed a decree against both the defendant but as to the payment of arrears of maintenance the decree was against the first defendant only The second defendant appealed against the decree so far as it was against him contending that the settlement was not in any way binding on him The plaintiff filed cross-objections to the decree contending that the second defendant ought to have been held liable for the arrears of maintenance At the hearing of the appeal however the plaintiff withdrew her cross-objections and the decree of the first Court was confirmed with costs In 1901 the plaintiff filed this suit against both defendants to recover arrears of maintenance for two years and nine month commencing from the 27th September 1898 The second defendant pleaded that inasmuch as he had not been held liable for maintenance in the former suit the plaintiff's claim was *res judicata*. The lower Courts passed a decree for the plaintiff

RES JUDICATA—*contd*

6 CAUSES OF ACTION—*contd*

holding that her claim was not *res judicata* On appeal to the High Court —*Held* confirming the decree of the lower Courts that the plaintiff s claim against the second defendant in this suit was not *res judicata* The only point that was *res judicata* against her by the former suit was her right to the arrears therein claimed but that did not bar her right to sue the second defendant as surety in respect of the subsequent arrears claimed in the present suit It was contended for the second defendant that the pleadings in the former suit operated as notice under 130 of the Contract Act (IX of 1872) and put an end to his contract of guarantee *Held* that the denial by the second defendant of his liability in the pleadings in that suit was made for the purposes of pleading and could not have any other effect than was given to it in the suit itself It could not operate as notice under s 130 of the Contract Act BHIKABHAI PATANCHAND v BAI BHURI (1903) I L R 27 Bom. 418

126 ———— Joinder of causes of action—*Civil Procedure Code (Act XIV of 1882) s 13—Competency of Court to try subsequent suit—Pecuniary jurisdiction—Suit of Small Cause Court nature—Issue decided in a previous suit not subject to second appeal* In order to make a matter *res judicata* ...
be open
Ghose v
5 1 foll
visions of s 13 of the Code of Civil Procedure by joining several causes of action against the same defendant in the subsequent suit and instituting it in a Court of superior jurisdiction BHUGWAN BUTTI CHOWDHRANI v FORBES (1900)
I L R 28 Calc 78 s c 5 C W N 483

127 ———— Security for costs—*Civil Procedure Code (Act XIV of 1882) s 381—Order that plaintiff should give security for costs—Failure to comply with order—Dismissal of suit—Subsequently fresh suit brought on same cause of action —Dismissal of first suit no bar—First suit to recover property direct from defendants—Second suit to recover same property from same defendants but alleging it to have been settled in trust for them and making trustees of settlements party defendants* The plaintiff and one Naranji Virji were (it was alleged) cousins and the only members of a joint Hindu family The plaintiff left Bombay and went to Cutch to avoid the plague and in 1900 during his absence Naranji died and his widows took possession of his estate The plaintiff returned to Bombay and as surviving member of the joint ...

under ... of the Civil Procedure Code (XIV ...
... curity for
dismissed
his suit
Having

RES JUDICATA—*concld*

6. CAUSES OF ACTION—*concld*

learned for the first time during the course of that suit that in his absence from Bombay the deceased Naranji Virji had executed two deeds of settlement by one of which he purported to settle some of the family property in charity and by the other to settle another portion on his widows the plaintiff subsequently brought this suit to recover the joint family property from the widows He made the trustees of the two deeds of settlement defendants to the suit and prayed for a declaration that Naranji had no right to settle any of the property and that the deeds should be cancelled The first and second defendants (the widows) contended that the former suit was for the same relief and that it having been dismissed under s 381 of the Civil Procedure Code (XIV of 1882) this suit was not maintainable *Held* that the dismissal of a suit under s 381 of the Civil Procedure Code does not bar a fresh suit for the same cause of action *Per Curiam*—If I had been of opinion that a fresh suit on the same subject matter could not be brought I should have held that in respect of all matters included in the deed of settlement it was not a suit on the same subject matter HARIRAM MOHANJI v LALBAI (1902)
I L R 26 Bom. 637

7 MATTERS IN ISSUE

1 ———— Reasons for decision—*Estoppel by former judgment—Final decision of same question* A party to a suit is not estopped merely by the reasons which a Judge may give for his decision In order to make out that a decision in a former suit is an estoppel it must be established that the same identical question has been formerly raised and finally decided NUGENDUR NARAIN v RUGHOONATH NARAIN DEY
W R 1864 20

2 ———— Collateral mat...

15 W R. 527

HURO DASS DOSTEDAR v HURO PRIA
21 W R 30

RAMASAMI PADEIYATCHI v VIRASAMI PADEIYATCHI 3 Mad 272

3 ———— Opinions not material to decision—*Civil Procedure Code 1877 s 13—Judgment—Decree.* In order to see whether a question is *res judicata* within the meaning of 13 of the Code of Civil Procedure the former decree and the questions decided thereby must alone be considered The words in s 13 of the Code of Civil Procedure has been heard and finally decided

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

the Court of first instance *Niamut Khan* v *Phadu Buldia I L R 6 Calc 319* and *Lachman Singh* v *Mohan I L R 2 All 497* dissented from DEVARAKONDA NARASAMMA v DEVARAKONDA KANAYA

I L R 4 Mad 134

4 ———— **Decree not in conformity with judgment**—*Civil Procedure Code 1882 s 13—Omission to make reservation in decree though in judgment* It is by the decree and not by the judgment that a question of *res judicata* must be decided In 1881 *A* sued *K* and others claiming a declaration of his title to certain land and an injunction against interference with his possession *K* claimed part of the land by purchase from *M* The Munsif decreed for *A* and this decree was confirmed [illegible] gment [illegible] as not [illegible] fresh [illegible] to recover the land which he claimed by purchase from *M* *A* pleaded that the claim was *res judicata* by virtue of the decree in the former suit The District Munsif and on appeal the District Judge held that the claim was not *res judicata* and decreed for *K* *Held* on appeal to the High Court that as no reservation was made in the decree of *K s* right to [illegible] *cata* was good [illegible] n opportunity [illegible] District Court [illegible] brought into conformity with the judgment This having been done the decree of the lower Courts was confirmed AVALA v KUPPU

I L R 8 Mad 77

5 ———— **Finding in judgment not embodied in decree**—*Suit for enhancement of rent—Civil Procedure Code (Act X of 1877) s 13* *N* brought a suit against *P* for enhancement of rent. *P s* defence was first that no notice of enhancement had been given secondly that the rent was not enhanceable as he and his predecessors in title had held it at a fixed rent from the date of the permanent settlement The suit was dismissed on [illegible] duced by *P* The decree merely ordered that the suit should be dismissed the portion of the judg [illegible] of rent of the same tenure —*Held* that on the rule laid down by the Privy Council in *Soorjeemonee Dayee* v *Suddanund Mohapatt r 12 B L R 304* and *Krishna Behari Roy* v *Bunwari Lall Roy I L R 1 Calc 144* *P* was precluded by the decision in the former suit from denying that the rent of the tenure was enhanceable althou h the [illegible]

BULDIA I L R 6 Calc 319

s c NIAMUT KHAN v BHADU BULDIA 7 C L R 907

But *see* PUN BAHADUR SINGH v LUCHO KOER I L R 11 Calc 301 L R 12 I A 93

6 ———— *Objections by respondent to decree—Civil Procedure Code 1882 ss 13, 540 561 584* In a suit to obtain possession of certain property and to set aside a deed called a deed of endowment (wakfnama) on the ground that the defendant had fraudulently obtained its execution the defendant pleaded (i) that the deed [illegible] in tance held that the deed was valid but that the defendant was entitled to remain in possession of the property till her dower debt was satisfied and the Court pa sed a decree which merely dismissed the [illegible] embodying the finding as to the [illegible] being unnecessary for disposal of the claim [illegible] ed the defendant s objections The defendant appealed to the High Court *Held* by the Full Bench (OLDFIELD and MAHMOOD JJ dissenting) that if a decree is upon the face of it entirely in favour of a party to a suit such decree being the thing which by law is made appealable and nothing else that party has no right of appeal therefrom If in the judgment of which such decree is the formal expression findings have been recorded upon some issues against that party and he desires to have formal effect given to them by the decree so as to allow of his filing objections thereto under s 561 of the Civil Procedure Code or of appealing therefrom under s 540 he must take steps under s 206 to have the decree properly brou ht into conformity with the judgment so that there may be matter on the face of it to show that something has been decided against him but if he fails to take this course the decree though in general terms will stand good as finally deciding the issues raised by the pleadings upon which the ultimate determination of the cause and the decree itself re ted The findings in a judgment upon matters which subsequently turn out to be immaterial to the grounds upon which a suit is finally disposed of as to the

RES JUDICATA—contd

7 MATTERS IN ISSUE—contd

plaintiff s right to any portion of the relief sought by him as declared by the decree amount to no more than *obiter dicta* and do not con titute a final deci sion of the kind contemplated by s. 13 of the Civil Procedure Code *Held* also that in the present ca e the Judge was ri ht in holding that the ques tion as to the validity or otherwise of the deed of endowment wa wholly immaterial The judg ment of STRAIGHT J in *Lachman Singh v Mohon I L R 2 All 49* approved and followed *Per* OLDFIELD J (*contra*) that the decree to agree with the judgment and fulfil the requirements of s. 206 of the Civil Procedure Code hould contain the material points for determination arising out of the claim and material for the decision thereon that

review of judgment and that in the present case the defeat in the decree would afford a good ground of appeal. *Per* MAHMOOD J that inasmuch as the provisions of s 13 of the Civil Procedure Code relate as well to the trial of is ues as to the trial of suits, and in the present ca e the validity or other wise of the deed was a matter directly and sub stantially in issue between the parties and was adjudicated upon the finding of the first Court upon that issue was not a mere *obiter dictum* but he would be binding upon the defendant as *res judicata* not withstanding the fact that the suit against her was dismissed on the ground that she held possession of the property in lieu of dower that whatever has the force of *res judicata* is necessarily appealable that the word from as used in s. 540 or s 584 and the expre ion objection to the decree in s. 561 refer not only to matters existing upon the face of the decree but also to those which should have existed but do not exist there and that the defendant in the present case was aggrieved or injure l by the omi sion in the decree of the first Court and was therefore entitled to file objections to it and for the same reason to appeal to the High

that she ought to have sought her remedy under

Singh v Narayan Das I L R 1 All 480 Mohon Lall v Ram Dayal I L R 2 All 843 Nиamat Khan v Phadu Bulha I I R 6 Calc 319 and *Pan Kooer v Phaguani Kooer 6 W R 19* referred to JAMAITUNNISSA v LUTFUNNISSA

I L R 7 All. 606

7 ———— Incidental finding—*Appeal from favourable decree* The plaintiff sued for a declaration that certain lands were hi and for pos ession of them Defendant No 1 claimed the ownership of the lands defendant No 2 claimed to be mortgagee in pos es ion The decree simply dis mis ed the suit but the lower Court found as a fact that the owner hip of the lands was in the plaintiff although the plaintiff was not entitled to pos ession of them by reason of the mortgage to defendant No 2 Defendant No 1 now appealed on the ground that although the decree it elf was entirely in her favour she would be prejudiced in any future proceedings if the finding of fact as to the ownership of the lands were left unchallenged *Held* that the appeal would not lie for the decree is what mu t be looked to see what was conclusively decided and there was nothing in the decree actually pa sed which the plaintiff could afterwards u e as *res judicata* in his favour and an appeal is not admis ible on any point not having the authority of *res judicata* An adjudication is only conclusive evidence of the facts established therein or properly tending thereto hence from a simple judgment against him a party cannot deduce anything in his favour as *res judicata* for nothing in his favour can have been essential element of an adverse decree ANUSUYABAI v SAKHARAM PANDURANG

I L R 7 Bom 464

8 ———— Collateral issue—*Dismissal for want of notice* Where a suit for arrears of rent at enhanced rates for a certain year was dismissed for want of notice but the Court also found that the pattah set up by defendant was not genuine —*Held* that the decision was not bar to a subsequent suit by the same plaintiff for arrears of rent at enhanced rates for a subsequent year A matter which is directly adjudicated upon by a Court of competent jurisdiction can be treated as *res judicata* but not matters determined for collateral or incidental pur poses only JARDINE SKINNER & Co v DWARKA NATH CHUCKERBUTTY

14 W R 412

9 ———————— *Finding in for mer suit* A finding in one suit to which *A* was a party is no bar against *A* in another suit unless it is

W R 18

NANAH *alias* NARAIN RAO v JUMNA BAEE

2 Agra 192

SALAHMUNISSA KHATOON v MOHESH CHUNDER ROY

16 W R 85

10 ———————— *Issue material to rights of parties* Any i ue which is material to the rights of parties in the matter of the suit be tween them whether actually contested or not shall not afterwards be rai ed in a subsequent suit be tween the same parties DEOKEE NUNDUN ROY v KALEE PERSHAD

8 W R 366

RAMSOOKH v TARA SINGH

3 Agra 40

11. ———————— When a Court of competent jurisdiction in deciding upon a parti cular subject matter thinks it necessary to go into collateral facts for the purpo es of its deci ion its

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

opinion on those facts is not conclusively binding in a subsequent suit which relates to a different subject matter MADHOO RAM DEY *v* BOYDO NATH DOSS 9 W R 592

12 ———— *Civil Procedure Code 1859 s 2—Matter incidentally in issue* The cause of action in a suit cannot be said to have been heard and determined in a former judgment unless it was put in issue and directly determined Any finding or observations merely bearing on such issue or any opinion incidentally expressed cannot be considered a finding upon the issue so as to make that judgment a determination of the cause of action within the meaning of Act VIII of 1859 s 2 SHIB NATH CHATTERJEE *v* NUBO KISHEN CHATTERJEE 21 W R 189

13 ———— *Civil Procedure Code 1859 s 2—Trial and determination of issues unnecessary for disposal of suit* A Court of competent jurisdiction having tried and determined an issue arising in a suit on which the suit might have been disposed of proceeded to try and determine another issue which also arose out of the pleadings but the determination of which in that suit was not required for its disposal *Held* that such Court was not bound under the circumstances to refrain from trying and determining such last mentioned issue and that the trial and determination of it could not be treated as a nullity and the issue could not again be tried and determined in another suit MAN SINGH *v* NARAYAN DAS I L R 1 All 480

14 ———— *Issue not affirmed and denied—Requisites for res judicata* In order to constitute the bar of *res judicata* it is not sufficient merely that an issue on the same point should have been raised in the former suit although that issue may have been incidentally decided but it must appear that the matter referred to was alleged by one party and either denied or admitted expressly or impliedly by the other SHAMA CHURN CHATTERJEE *v* PROSONO COOMAR SANTIKAREE 5 C L R 251

15 ———— Suit to set aside will—*Question as to validity of will—Suit for possession—Cause of action* *C* a Hindu subject to the Mitakshara law adopted *S* and afterwards *B* and made a will whereby after providing for his widow the family worship etc he made a division of his real and personal property between his two adopted sons [illegible]

by *C* and declared to have forfeited his right to anything under the will. In 1859 *S* brought a suit against *C* *B* and certain persons who claimed [illegible]

devises of real estate contained in the will inasmuch as the whole estate consisting of property inherited by *C* and property acquired by him from the income of such inherited property was ancestral The only issue [illegible]

ancestral and therefore *C* had no power to dispose of it without his consent The High Court in 1863 varied the decree of the first Court and held that the will must be set aside so far as it affected the right of *S* in the ancestral property but that the ancestral property only included that inherited and not that acquired by *C* with the income of the inherited property In a suit brought by *S* after the death of *B* and *C* against *B*'s widow and the parties to the former suit or their representatives to obtain possession of the whole estate of *C* on the ground that both the inherited property and the property acquired from the income thereof were ancestral *Held* (reversing the decision of the High [illegible]

jurisdiction and indeed was bound to decide whether or not the will was operative as to all or to any and what portion of the property and that its decision on that point was binding on the parties. According to the general law relating to *res judicata*, where a question has been necessarily decided in effect [illegible] between parties [illegible] on as [illegible] other [illegible] it the [illegible] of [illegible] d in [illegible] form of the action SOORJOMONEE DAYEE *v* SUDDANUND MOHAPATTER 12 B L R P C 304 20 W R 377 L R I A Sup Vol 212

reversing the decision of the High Court in SUDDANUND MOHAPATTUR *v* SOORJOMONEE DEBEE 8 W R 455

and on review 11 W R 436

16 ———— Suit for mesne profits—*Suit by C for mesne profits of land as devisee under will of A—Will held valid and C's claim allowed—Application by C as legal representative of A for execution of decree obtained by A—Question of validity of will again raised* *A* obtained a decree against *B* for possession of certain land and then died Thereupon *C* applied for execution of the decree as *A*'s legal representative relying upon a will made by *A* in his favour At the same time *C* filed a suit to recover R 140 as mesne profits of the land. The execution proceedings were stayed till after the disposal of the suit for mesne profits In the

RES JUDICATA—contd

7 MATTERS IN ISSUE—contd.

suit B contended that the will in question was not executed by A and that A was not of sound disposing mind at the time of the alleged execution of the will The Subordinate Judge found on both these points against B and passed a decree for mesne profits This decree was upheld on appeal by the District Judge After the decision of this suit the Subordinate Judge took up C's application for execution of the original decree obtained by A This application was resisted by B on the same grounds on which he had defended the suit for mesne profit He impeached the validity of the will on the grounds of non-execution by and unsoundness of mind of the testator The Subordinate Judge held that the matter was *res judicata* he therefore overruled this objection and ordered execution to issue The District Judge held that as the suit for mesne profits was in the nature of a Small Cause Court suit in which there was no second appeal the decision passed in that suit did not operate as *res judicata* in the present execution proceedings He therefore reversed the Subordinate Judge's order and remanded the case for a fresh decision *Held* reversing the remand order that the question whether C was entitled to execute the decree as A's representative fell within the last clause of s 244 of the Code of Civil Procedure *viz* determined in a separate suit The Subordinate Judge who had raised an issue as to the validity of the will relied upon by C in the suit for mesne profits was entitled to act upon his determination of that issue in the execution proceedings BHAVANISHANKAR v NARANSHANKAR

I L R 23 Bom 536

17 ———— Suit to set aside adoption —*Decree in former suit* In a suit brought to set aside the adoption of the first defendant to declare plaintiff's title to certain lands and for possession the first defendant pleaded that the question of his adoption was *res judicata* in a former suit In that suit between the present plaintiff's on as plaintiff and his father (the present plaintiff) as the first defendant and the present [illegible]

2 *Mad 131* distinguished GOPALAYYAN v RAGHUPATI AYYAN *alias* AIYAVAYYAN 3 Mad 217

18 ———— *Failure to prove adoption* A claimed certain property as the adopted son of B and it was decided in that suit that A had failed to prove that he was the adopted son of B *Held* that this decision was no legal bar to A's proving in another suit that he was the adopted son of B in which A sought to obtain a different property upon a different cause of action though the parties to the suit were the same KRIPARAM v BHAGWAN DASS

1 B I R A C 68 10 W R 100

RES JUDICATA—contd

7 MATTERS IN ISSUE—contd

19 ———— *Suit to set aside adoption* B as adopted son and heir of G instituted a suit to set aside certain patni leases under which certain persons claimed to hold land which had belonged to G The defence was that B was not the legally adopted son of G and an issue on this point having been settled K who claimed to be the reversionary heir of G was made a defendant under s 73 of Act VIII of 1859 and it was eventually decided in that suit that B was the duly adopted son of G *Held* that a subsequent suit by K against B to set aside the adoption could not on the principles laid down in the case of *Soorjemonee Dayee v Suddanund Mohapatter 12 B L R 304* be maintained *Kriparam v Bhagawan Das 1 B L R A C 68* overruled KRISHNA BEHARI ROY v BUNWARI LALL ROY

I L R 1 Calc 144 25 W R 1

S C KRISHNA BEHARI ROY v BROJESWARI CHOWDHARANEE L R 2 I A 283

affirming the decision of the High Court in KRISTO BEHAREE ROY v BUNWAREE LALL ROY

19 W R 62

Followed in RUN BAHADUR SINGH v LUCHO KOER I L R 11 Calc 301 L R 12 I A 23

20 ———— *Civil Procedure Code s 2—Cause of action* A a Hindu of Gya died leaving a sister B and C the son of a deceased sister On A's death B took possession of the property left by A In a suit by C against B for recovery of possession thereof as heir to his maternal uncle the Court of first instance held that B should retain possession of the property during her lifetime without power of waste and that on her death C should be entitled to the possession thereof. This was reserved by the High Court on appeal who held that the decree should have been simply a decree of dismissal of the plaintiff's suit B died leaving an adopted son D C sued D for recovery of possession of the property the subject matter of the former suit on the ground that D was not the adopted son of B and that C who came within the class of bandhus was entitled to succeed to the property left by A and B there being no nearer heir in existence *Held* that s 2 Act VIII of 1859 did not bar the suit MOHUN LAL BHAYA GYAL v LUCHMAN LAL

5 B L R 663 14 W R 73

21 ———— *Civil Procedure Code 1882 s 13—Estoppel—Privity in estate* A competent Court having decided upon an issue [illegible]

judicata having been brought by the son of the [illegible]

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

alleged in the first suit would have obliged the father of the pre ent plaintiff to share with the adopted son his ancestral estate That adoption having been negatived the son in this suit ought to be estopped from making title on the ground that the adoption had placed the person from whom he claimed to inherit in the relation of father s brother to him VENKATA MAHIPATI GANGADHARA RAMA RAU *v* BUCHI SITAYYA PITTAPUR RAJA *v* BUCHI SITAYYA I L R 8 Mad. 219

S C RAJAH OF PITTAPUR *v* BUCHI SITAYYA GARU L R 12 I A 16

22 ———— Issue in former suit—*Former decree in favour of plaintiff but issue as to adoption found against him—No appeal open to plaintiff against that finding—Subsequent suit to recover property on strength of adoption* One *S* died in September 1878 leaving a widow *B* The year before his death his only son (Bala) a child eight years old had left his home and was never heard of again A few days before his death *S* adopted the plaintiff (his nephew) and executed a deed of adoption which stated that he had no hope that his son Bala was alive and that he had there fore adopted the plaintiff The deed further declared the plaintiff to be the owner of all *S's* property with all the rights of a natural son but provided that in the event of the lost son returning he should have half In 1892 the plaintiff as *S s* adopted son brought this suit to recover some of *S s* property which was in the hands of the defendants who claimed it as *S s* heirs They (*inter alia*) impeached the plaintiff s adoption The plaintiff had

[illegible]

sued for on the strength of the above stated deed of adoption and a decree was passed for the plaintiff *Held* that the issue as to adoption in that suit was not *res judicata* in the present suit In the former suit the plaintiff recovered upon the deed He could not have appealed from the decree which was in his favour not could he under the Civil Procedure Code (Act XIV of 1882) appeal from the finding upon the adoption issue which was against him Upon that issue there had not been a final decision RANGO BALAJI *v* MUDIYEPPA I L R 23 Bom. 296

23 ———— Pending suits—*Civil Procedure Code ss 1° and 13—Malikana—Different reliefs claimed* For the purpo e of the rule of *res judicata* it is not es ential that the subject matters of the pr ent and the former litigations should be identical Where a recurring liability is the sul ject of claim a previous judgment di missing a suit l etween the same parties upon findings which do not go to the root of the title on which the claim rest l ut relate merely to a particular item or instalment cannot operate as *res judicata* But if such previous judgment negatives the title and main obligation itself the plaintiff cannot re agitate the same question of the title by claiming a subsequent item or instalment *Rajah of Pittapur v Buchi Sitlya Garu L R 12 I A 16* referred to The pendency of litigation regarding rent malikana or other demand for one year does not under s. 1° of the Civil Procedure Code bar a suit between the same parties in which the same demand is made for a subsequent year inasmuch as the reliefs claimed in the two cases are different Ss 1° and 13 of the Code compared On the 17th August 1885 a suit

[illegible]

ant appealed to the High Court which on the [illegible]

[illegible]

operated as *res judicata* and was conclusive [illegible] of the plaintiff s title to the malikana On the [illegible] May 1887 the defendants appealed to the High Court [illegible]

[illegible]

suit by either of the lower Courts was not ba[illegible] by s 12 of the Civil Procedure Code by reason of the fact that at the time of such trial in August and November 1886 the previous litigation between the parties was pending in second appeal before the High Court BALKISHAN *v* KISHAN LAL I L R. 11 All 148

24 ———— *Civil Procedure Code 1882 ss 1° 48 244—Proceeding in execution* A suit according to s 48 of the Code of [illegible] with a plaint a[illegible]

[illegible]

strictness only a proceeding in a su[illegible] That a proceeding under s 244 is not a suit within [illegible] Civil Procedure [illegible] VENKATA [illegible] 2 Mad. 2[illegible]

25 ———— Issue as to rate of rent—*Possession—Suit for kabuliat—Decision as to [illegible] of occupancy* A suit for a kabuliat in which the rate of rent is the subject matter and the question

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

of the right of occupancy is not the main point is not an estoppel to a suit for repossession under cl 6 s 23 Act X of 1859 KHODA BUKSH v AKOOL GAZEE 9 W R 595

26 ——— Issue as to amount of rent —*Suit for rent—Civil Procedure Code 1859 s* *Held* with reference to Act VIII of 1859 s 2 that where the cause of action is the same in substance in both suits and where the former suit was so constituted that the parties to the present suit were in direct contest with each other and had full opportunity of asserting their rights the decision in the former suit is *res judicata e g* decrees passed in suits for patni rent in which the jumma payable is put in issue are decisive as to the amount of such jumma RAKHAL DOSS SINGH v HEERA MOTEE DOSSEE 22 W R 282

27 ——— Issue as to title—*Subsequent suit for declaration of right* In a former suit *A G* (appellant) sought to establish his right in execution of his decree against *R R* to have a talukh sold as belonging to *R R* *D S* a defendant in that suit pleaded that the whole talukh had been conveyed to him absolutely by his father *R R* under a hibbanamah An issue was raised and tried whether the talukh belonged to *D S* or not and it was expressly decided that it did not and that the zamindari was liable to be attached and sold in execution of *A G s* decree as belonging to *R R* *Held* that it

[illegible]

KISHANUND DOSS *alias* KEBUL RAM DOSS 17 W R 350

28 ——— *Civil Procedure Code s 13 expls I and II and s 44* *L* was the owner of a 4 anna share in a village On the 1st March 1880 his childless widow *R* and his nephew *B* who had separated from his two brothers and lived for some years with both *L* and *R* sold to *S* one third of the 4 anna share The brothers of *B* sued the vendors and the vendee to enforce a right of pre emption alleging that they as well as *B* had

[illegible]

R had succeeded to it and was in possession of it and thus the plaintiffs had not established a title to or acquired possession of any part of the share the plaintiffs were not in a position to assert a preferential claim to purchase the property in dispute The plaintiffs also pleaded that the question of the right and title asserted by them as the actual heirs of *L*

[illegible]

and not for any remedy in respect of their right to possession by inheritance of the entire 4 anna estate Subsequently to this decision the same plaintiffs alleging equal rights with *B* as reversionary heirs of *L* sued the same defendants for a declaration of the incompetence of *R* the widow to alienate the property and that the sale deed might be declared as against them null and of no effect The cause of action was stated to be the execution on the 1st March 1880 of the deed of sale *Held* that the plea of *res judicata* failed. The matter now substantially in issue between the parties viz the presumptive title of the plaintiffs to possession of the property had not been heard and finally decided in the sense of s 13 of the Civil Procedure Code Such title was not alleged and denied by the parties in that suit within expl I s 13 It was not matter which might and ought to have been made the ground of attack in the former suit within expl II The law does not require a plaintiff at once to assert all his titles to property or to be thereafter estopped from advancing them A plaintiff may with the leave of the Court (s 44 Civil Procedure Code) join causes of action but he is nowhere compelled to do so The cause of action in the second suit although the date of its accrual was the same was separate and distinct from the cause of action asserted in the previous suit SHEO RATAN SINGH v SHEOSAHAI MISR I L R 6 All 358

29 ——— Issue as to account—*Suit for money due on bond—Act X of 1877 s 13* *M* sued *R* in the Court of the Munsif for a bond alleging that he had satisfied the bond debt and for a certain sum which he alleged had been paid by him to *R* in excess of the bond debt On the 24th

[illegible]

to the Subordinate Judge who on the 10th September 1876 finding that R5?0 2 2 of the bond debt were still due affirmed the Munsif s decree *M*

[illegible]

Munsif in the former suit to be due by him to *P* *Held* on the question whether the finding of the

[illegible]

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

the account could not be again taken *Held* also that the observations of the Division Bench in the former suit were mere *obiter dicta* which did not bind the Courts disposing of the fresh suit MOHAN LALL v RAM DIAL I L R 2 All 843

30 ——— **Issue as to satisfaction of money bonds**—*Subsequent suit on bonds—Civil Procedure Code 1882 s 45—Matter directly and substantially in issue—Meaning of suit in Civil Procedure Code 1882 s 13* S sued K for four

cided in that suit that not one of the bonds had been satisfied *Held* by PETHERAM *C J* and OLDFIELD BRODHURST and DUTHOIT *JJ* that the only issue in the former suit which had to be decided being whether the bonds on which that suit was brought had been satisfied or not the second suit was under s 13 of the Civil Procedure Code *res judicata* only in respect of those bonds and not in respect of the other two bonds The Court which tried the former suit had not jurisdiction to try the subsequent suit *Per* MAHMOOD *J*—This being so if the word suit in s 13 were taken literally it might with some plausibility be contended that there was no *res judicata* in respect of any of the bonds The word suit however must be understood to mean such a matter as might have formed the subject of a separate suit independently of the special provisions of the Civil Procedure Code such as s 45 which enables this plaintiff to unite several causes of action in one and the same suit Adopting this interpretation it was clear that the two bonds which were the subject of the former suit could not be allowed to form the subject of litigation again As to the other two bonds which were not the subject matter of the former suit they did not in the former suit constitute a matter directly and substantially in issue within the meaning of s 13 and even it they were directly and substantially in issue the decision in the former suit would not support the plea of *res judicata* because the Court which tried that suit was not a Court of jurisdiction competent to try the subsequent suit in which the plea was raised SHEORAJ RAI v KASHI NATH I L R 7 All 247

31 ——— **Issue as to validity of mortgage**—*Suit for possession—Civil Procedure Code 1877 s 13 expls I and II* H the proprietor of a one third share of a certain undivided estate made a gift of such share to P He subsequently in February 1875 gave a mortgage of such share in his capacity as P's guardian to N and S the two other co sharers of such estate In March 1878 P having attained his age of majority brought a suit

The lower Appellate Court observing that such land was the property of the three co sharers, that the mortgage of P's right to N and S did not affect those rights as such and that N and S were not justified in using such land as if they were the exclusive proprietors thereof gave P a decree for possession of one third share of such land N and S appealed to the High Court on the ground that P should not have been awarded possession as they were in possession of such land as mortgagees

possession of ... under the mortgage made by H above referred to and of such land as such. P did not take any objection to this finding and it was adopted by the High Court and embodied in its final decree In October 1879 P sued N for possession of his share in such estate claiming under the gift from H and alleging that the mortgage of such share by H to N

judicata under expls I and II 13 of Act X ... NIRMAN SINGH v PHULMAN SINGH I L R 4 All 65

32 ——— **Issue as to interest on instalment bond**—*Civil Procedure Code 1877 s 13—Subject matter of suit* The obligee of a bond payable by instalments sued the obligor for four instalments claiming with reference to the terms of such bond interest on such instalments *from the date of such bond.* The obligor contended in that suit that on the proper construction of the bond the interest on such instalments should be *calculated from the dates of default* The obligee obtained the decree for interest as claimed. The obligee subsequently again sued the obligor for instalments again claiming interest on such instalments from the date of such bond The obligor contended again in the *second* suit that interest should only be calculated from the dates of default *Held* that the question as to the date from which interest due on the defaulting instalments was exigible under the terms of such bond was *res judicata* It is the matter in issue not the subject matter of the suit that forms the essential test of *res judicata* in s 13 of Act X of 1877 PAHILWAN SINGH v PISAL SINGH I L R 4 All 63

33 ——— **Issue as to right to property**—*Civil Procedure Code s 13 expl I—Issue previously determined* N sued W for a moiety of a brick kiln claiming by right of inheritance and alleging in respect of the other moiety ... that it was his own property W in her defence to the suit denied that N had any right in the kiln, and that a moiety of the kiln belonged to him. An issue was framed on the point whether a moiety of the kiln belonged to W which the Court of first instance decided in N's favour N eventually obtained a decree for a moiety of the kiln which

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

he claimed by right of inheritance H appealed contending *inter alia* that it was not proved that a moiety of the kiln belonged to N The appeal was decreed and the decree of the Court of first instance in N's favour was set aside H subsequently sued N for the value of bricks which he had wrongfully taken from the kiln N set up as a defence to the suit that a moiety of the kiln belonged to him *Held* that the issue whether a moiety of the kiln belonged to N was *res judicata* under s 13 expl. I of the Civil Procedure Code WILAITI BEGUM *v* NUR KHAN I L R 5 All. 514

34. ———— Issue as to possession—*Suit for recovery of produce of land—Civil Procedure Code 1877 s 13—Matter in issue in former suit* Pending the final hearing in appeal of a suit for confirmation of possession of certain land, and for the recovery of the produce of such land alleged to have been carried away by the defendant the plaintiff brought a suit again asking for confirmation of possession but also for the recovery of the produce which had arisen since the institution of the other suit *Held* that the second suit so far as it sought for the recovery of the produce was not barred by the previous suit BISSESSUR SINGH *v* GUNPUT SINGH 8 C L R 113

35 ———— Issue of law erroneously decided—*Decree prohibiting erection of temple—Rights of rival religious sects—Right to open temple for worship* The erroneous decision by a competent tribunal of a question of law directly or substantially in issue between the parties to a suit does not prevent a Court from deciding the same question arising between the same parties in a subsequent suit according to law In a suit in 1850 between the Tenkalais and Vadakalais rival religious sects represented by the plaintiffs and defendants respectively the Vadakalais having endeavoured to open a temple for public worship in a certain public street were by the decree of the Sudder Court prohibited from erecting a temple or instituting public worship on the spot of ground objected to by the Tenkalais and which lay within range of the Tenkalais temple *i e* within the usual range of the processions conducted in connection with the temple worship In 1879 the Vadakalais opened a temple for public worship on another site their private property in the same street. *Held* that the decree of the Sudder Court in the former suit was no bar to the action of the Vadakalais. PARTHASARADI *v* CHINNAKRISHNA I L R 5 Mad. 304

Dissented from in RAI CHURN GHOSE *v* KUMUD MOHUN DUTTA CHAUDHARI 1 C W N 687

Same case in review I L R 25 Calc 571
2 C W N 297

36 ———— Point of law decided in previous suit between same parties A point of law though decided in a suit between the same parties can never be *res judicata* CHAMANLAL *v* BAPUBHAI I L R 22 Bom 669

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

37 ———— Issue as to validity of grant—*Issue not decided in former suit* In a suit to recover with mesne profits and other incidents a jeravati village alleged by the plaintiff to form part of the zamindari and to be wrongfully held by defendant by virtue of the execution of a decree of the late Commissioner of the Northern Circars passed in 1844 the defendant pleaded that he held on a permanent lease subject to a fixed quit rent that he and his ancestors had held on that tenure since and previously to the permanent settlement and that the quit rent had been received from him

res judicata because the question of the existence and validity of the alleged grant on which the defendant relied was not determined in the former decree VAIRICHARLA SURYA NARAYANA *v* NADIMINTI BHAGAVAT PATANJALI SHASTRI 3 Mad. 120

38 ———— Issue as to proprietorship of land—*Civil Procedure Code 1877 s 13—Suit to recover land under rental agreement—Subsequent suit for ejectment* In 1874 P sued P to recover certain lands held by him under a rental agreement dated 1873 S was made a defendant on the ground that he held one plot as under tenant to P S claimed to hold under N As to this plot the issue

I L R 5 Mad 9

39 ———— Issue as to tenancy—*Civil Procedure Code 1882 s 13—Question decided by*

then sued in the Revenue Court to compel the tenants to accept a pottah for Fasli 1291 (1881 82), and the tenants again put forward the same plea. *Held* that the question whether the tenants were entitled to hold permanently at a lighter rate without exchange of pottah and muchalka was not *res judicata* by virtue of the decree in the former suit MUTTUKUMARAPPA PEDDI *v* ARUMUGA PILLAI I. L. R. 7 Mad. 14?

RES JUDICATA—contd

7 MATTERS IN ISSUE—contd

40 ——— **Issue as to transferability of tenure**—*Estoppel—Civil Procedure Code 1877 s 13* Plaintiff having brought a suit to recover . . . defendants of . . . as transferee . . . and (ii) that he had purchased the crops it was objected that the transfer to the plaintiff was invalid It being found that the crops in question had been purchased by the plaintiff as alleged by him he obtained a decree for damages for their removal The plaintiff now brought a second suit as transferee of the jote to recover possession of it from the defendants who again pleaded that the transfer was invalid *Held* reversing the decision of FIELD J that the defendants were not estopped under s 13 expl II of the Civil Procedure Code from setting up that defence inasmuch as the question of the transferability of the jote was immaterial in the first suit and had not in fact been determined and the question of estoppel was not raised by the parties themselves CHURN MANJEE v ISHAN CHUNDER DHUR 9 C L R 474

41 ——— **Issue as to right of pre emption**—*Civil Procedure Code 1882 ss 562 588 (28)—Second appeal—Civil Procedure Code ss 565 566—Determination of case by High Court* In a suit for pre emption based on the . . .

remanded the case under s 562 of the Civil Procedure Code for a decision on the remaining question of fact *ie* the amount of the consideration for the sale On appeal from the order of remand the High Court on the 3rd January 1884 observed . . .

must so far be set aside and that he should proceed under s 565 or s 566 as might be applicable The Judge on receipt of this order replaced the case on his file remitted an issue to the Court of first instance under s 566 as to the amount of consideration and accepting the first Court s finding upon that issue decreed the plaintiff s claim In second appeal by the defendants the High Court was of opinion that the Judge had disposed of the case upon a condition of things which the plaintiffs had never asserted inasmuch as he had treated the right of pre emption which was in issue as one arising from custom and not as alleged by the plaintiffs as arising from a contract between the ancestors of the parties All the evidence necessary to the determination of the case was on the record *Held* by the Full Bench that the defendants were not prevented by the operation of the High Court s order of the 3rd January 1884 from disputing the right of pre-emption inasmuch as that order was a decision of a merely interlocutory character passed in the same suit and the questions of fact involved therein were decided only so far as was necessary for the purpose of passing the order and it could not be regarded as determining the main question in the suit which was still open, and must be decided in the final decree in the suit *Per* STRAIGHT J that the jurisdiction of the High Court in appeal under s 588 of the Code from the Judge s order of remand was like the jurisdiction of the Judge in passing the order limited by the terms of s 562 and hence the remark made in the High Court s order dealing with the plaintiff s right of pre-emption could only be regarded as an *obiter dictum* and not as determining any question as to the pre-emptive right DEOKISHEN v BANSI I L R 8 All 172

42 ——— **Question of title**—*Question collaterally in issue* A suit to have a declaration of right and to set aside a thakbust proceeding in respect to certain lands is not barred by s . . .

RAJKUMAR CHACKERBUTTY 1 B L R A C 1 10 W R 29

43 ——— *Incidental decision of title—Suit afterwards for possession* *A* alleging himself the owner of a certain garden brought a suit for damages against *B* and *C* for forcibly carrying off fruit grown in such garden In this suit the question whether *A* was exclusively in possession of the garden was incidentally raised and decided against *A* Thereupon *A* who . . . brought . . . with . . . med as . . . that . . . judicata . . . sustainable

. . . R. 549

44 ——— *Civil Procedure Code 1877 s 13—Former suit on different cause of action for same land* In 1878 plaintiff sued to . . . on the ground . . . oral lease . . . Issues were . . . the letting . . . tion of the . . . oral lease . . . to recover . . . title was not . . . of s. 13 of . . . applied . . . the reference . . . to the matters directly . . . *Bheela Lall v Bhugjoo Lall* I L R 3 Calc . . .

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

Dinobundhoo Chowdhry v Kristomonee Dossee I L R . *Calc* 15? dissented from THYILA KANDI UMMATHA v THYILA KANDI CHERIA KUNHAMED

I L R 4 Mad 308

45 ———————— *Civil Procedure Code* 1859 s ?—*Collateral decision on title* K died leaving a widow M as his heir M also died leaving a will in favour of B who accordingly applied for letters of administration with the will annexed This application was refused by the District Judge who granted a certificate under Act XXVII of 1860 to one G Upon this B sought his

not her heir In a suit by C against B for the rents of the property accruing since the widow s death where G contended that the decision of the Subordinate Judge operated as a bar to the questioning of his title —*Held* that the principle of *res judicata* did not apply GOOROO CHURN SIRCAR v BRIJA NATH DHUR 24 W R 111

46 ———————— *Issue incidentally raised—Suit for possession* In 1852 T acquired a plot of land X under a Government grant In 1851 N claiming to be the owner of the adjoining plot Y granted a lease of it to R but in 1853 another lease of the same plot was granted by an agent of N to G In 1859 G sued T to recover possession of lot X as being part of plot Y and obtained a decree against which T appealed to the Privy Council Pending the appeal R sued G for possession of plot Y and obtained a decree against G Meanwhile R having failed to pay rent plot Y was put up for sale and purchased by the present respondent In 187? the respondent who was

cluded from enforcing his rights The Privy Council held that the plaintiff G had not proved that plot Y included plot X but they stated that they did not adjudicate upon any question of title between the respondents on that appeal or N or any other person s interest in plot Y The present respondent

47 ———————— *Order of remand—Decision of question of title—Suit for possession*

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

ants the zamindar assessed the jote lands at a certain rent Subsequently this rent fell into arrear and under a decree the jote lands were in 1836 sold in satisfaction of the arrears to J who was put in possession in 1839 Another suit which was pending between the tenants and their mortgagee in which a question arose whether the jote lands were included in the mortgage was decided in favour of the mortgagee in 1841 J the then jote tenant was no party to that suit and continued in possession of his jote lands Disputes arose and by order of the Sudder Court in 1845 the jote lands were directed to be put in possession of the mortgagee In 1856 a suit was brought by J s representative to set aside that order and to recover possession of the jote lands The Privy Council held that

48 ———————— *Suit for possession dismissed on ground of want of title in vendor—Suit for recovery of purchase money in which title set up as a defence* On 8th February 1889 the defendant sold to the plaintiff under a registered conveyance containing no express covenant for title land of which he was not in possession and the purchase money was paid The plaintiff

litigation *Held* that the defendant was not entitled to give evidence of his alleged title and that the plaintiff was entitled to the relief sought by him KRISHNAN NAMBIAR v KANNAN

I L R 21 Mad 8

49 ———————— *Civil Procedure Code* 188? s 13—*Suit for right to malikana and for registration of names—Decision in previous suit—Court of competent jurisdiction* Previous to 18.5 dearah X accreted to mouzah Y and some time before 1860 the maliks of Y executed two conveyances in favour of A and B respectively In 1860 A sued B in the Munsif s Court for possession of a share in X which B claimed under his conveyance In that suit A succeeded on the ground that B s conveyance did not cover the share claimed by him in X but merely covered ... mouzah itself whereas by his conveyance A had acquired the right to the share in X ... claimed In 1866 the Collector ... B s right to malikana payable ... in X which had been the subject ... or to register his name ... thereof, but

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

acknowledge *A*'s right thereto relying on the decision of the Civil Court in the suit between *A* and *B* Subsequently *B*'s representatives *C* and *D* in 1876 sought to ...

Court *C* and *D* thereupon instituted the present suit against *E* in the Court of the Subordinate Judge for a declaration of their right to the malikana and for a reversal of the order refusing to allow their names to be registered in respect thereof *Held* that the suit was barred as *res judicata* on the ground that the right to malikana was substantially the same question as the proprietary right to the share in the dearah and that that issue had been tried and decided in the suit in 1860 in favour of *A* who must be taken to be *E* In a suit for malikana the issue between the parties substantially raises the question of the proprietary right to the estate in respect of which the malikana is claimed and when the question of the proprietary right has been decided in a previous suit between the same parties a subsequent suit for malikana will be barred as *res judicata* GOPI NATH CHOBEY *v* BHUGWAT PERSHAD I L R 10 Calc 697

50 ———— *Finality of decision—Suit for possession—Civil Procedure Code (Act X of 1877) s 13* In a suit to recover possession of certain land where it appeared that there had been a previous suit between the same parties with respect to the same land in which the then plaintiffs sought to have their possession confirmed and that in that suit the lower Courts had decided the case both on the question of title and of possession but on special appeal the High Court had dealt only with the question of possession and in ...

between the parties and had not been heard and finally decided by a Court of competent jurisdiction in a former suit within the meaning of s 13 of Act X of 1877 GUNGABISHEN BHUGUT *v* ROGHOONATH OJAH

I L R 7 Calc 381 8 C L R 34

51 ———— *Landlord and tenant—Suit for ejectment—Issue previously heard and determined—Estoppel—Civil Procedure Code 1882 s 13* In a suit by a landlord against his tenant for ejectment the defences were (1) no notice to quit had been served and (2) the tenant was a permanent one The suit was dismissed on the first ground the Court holding at the same time that the tenure was not a permanent one In a subsequent suit for ejectment from the same holding brought by the same plaintiff against the same defendant the defences were (i) the tenure was permanent and (ii) the plaintiff was estopped by the conduct of his predecessor in title from asserting as against the defendant that the tenure was not a permanent one The lower Appellate Court found the question of estoppel in favour of the defendant and dismissed the suit On appeal to the High Court —*Held* that the decision was right and must be affirmed *Semble* That where a former suit ...

putting forward the same defence on the merits in a subsequent suit by the same plaintiff against the same defendant *Semble* That the case of *Niamut Khan v Phadu Buldia I L R 6 Calc 319* has been impliedly overruled by the case of *Run Bahadoor Singh v Lucho Koer L R 12 I A 23 I L R 11 Calc 301* NUNDO LALL BHUTTACHARJEE *v* BIDHOO MOOKHY DEBEE

I L R 13 Calc 17

52 ———— *Suit for ejectment—Plea of right of occupancy—Issue not finally decided* A as ticcadar brought a suit to eject B from certain lands which he claimed as majhes land or land which is ordinarily cultivated by the landlord himself or by the ticcadar B pleaded his right of occupancy The Court found that the land was majhes land but dismissed the suit on the ground that *A* had failed to prove notice to quit Afterwards *A* brought a suit against *B* for ejectment from the same land *B* again pleaded his right of occupancy *Held* that *B* was not precluded from raising the same plea inasmuch as the finding in the previous suit upon the issue whether *B* was an occupancy tenant was not conclusive against him nor could that issue be said to have have been finally decided in that suit within the meaning of s 13 of the Civil Procedure Code *Run Bahadur Singh v Lucho Koer I L R 11 Calc 301* and *Nundo Lall Bhuttacharjee v Bidhoo Mookhy Debee I L R 13 Calc 17* relied on THAKUR MAHADEO *v* THAKUR MAHADEO SINGH I L R 18 Calc 647

53 ———— *Civil Procedure Code Act X of 1877 s 13—Matters directly and substantially in issue in a suit* Where a decree awarding to one of the parties money deposited in treasury by a third party as the compensation for land taken by the latter for railway purposes was based upon the right to the land the question of title having been directly and substantially in issue between the parties —*Held* that the contest of title was conclusive between them under s 13 of Act X 1877 In a suit brought by a ghatwal to resume as determinable at will an under tenure granted by one of his ancestors of land part of the ghatwali mehal it was alleged for the defence that the under tenure was permanent A prior judgment upon conflicting claims made by the ghatwal and the under tenure holders to receive the above mentioned compensation money which had been paid in respect of lands in part comprised in the under tenure determined that the ghatwal was entitled to the money being founded on the under tenure holders

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

having been in possession of it by the mere sufferance of the ghatwal who could put an end to it at any time *Held* that the question whether the latter had a permanent tenure having been directly and substantially in issue in the former suit could not be contested in another RAM CHUNDER SINGH v MADHO KUMARI

I L R 12 Calc 484 L R 12 I A 188

54 ——— ——— *Question incidentally decided—Boundary dispute* Where in a suit for some land a Judge had considered it necessary to find out the boundary between two villages and had given a decision in favour of one of the parties who in a second suit of the same kind but with reference to some other land brought in the former decision to show that the land in dispute in the second suit must be his if the finding as to the village boundary in the former suit was correct — *Held* that the finding as to the village boundary in the former suit was conclusive only as to the land in dispute in the former case but did not make the former decision conclusive as to the boundary line itself MONI ROY v RAJBUNSEE KOOER

25 W R 393

55 ——— **Defence not raised in previous suit**—*Civil Procedure Code (Act X of 1877) s 13 expl (ii)—Estoppel* Expl (ii) of s. 13 of Act X of 1877 was meant to apply to a case where the defendant has a defence which, if he had so pleased he might and ought to have brought forward but as he did not bring it forward the suit

favour in a former suit which was in fact not so decided and which it was not necessary for the purposes of the suit to decide at all GHURSOBHIT AHIR v RAMDUT SINGH

I L R 5 Calc 923 6 C L R 537

56 ——— *Party raising only one defence having others—Civil Procedure Code 1859 s 2*

D bia v Unnopoorna Dassee 11 B L R 158

and the plaintiff then sued claiming a right of pre emption in respect of the property a claim which he

I L R 1 All 75

JADU LAL v RAM GHOLAM I L R 1 All 316

57 ——— *Civil Procedure Code 1859 s 2 and 1877 s 13—Omission to raise defence—Subsequent suit* In a suit for rent and for ejectment the defendant pleaded that his tenure was transferable and istemrari and consequently protected by the rent law In a former suit for arrears of previous years in which the defendant pleaded that his tenure was istemrari the plaintiff obtained a decree for ejectment on non payment of rent within fifteen days In that case the defendant saved his tenure by payment within the time stated *Held* that inasmuch as the defendant might in the former suit in which the nature of the tenure was put in issue have urged that his tenure was both transferable and istemrari he could not in the present suit be allowed to alter his defence and rely upon the tenure being transferable *Woomatara Debia v Unnopoorna Dassee 11 B L R 158* cited and followed DINOMOYI DABIA CHOWDHRAIN v ANUNGO MOYI

4 C L R 599

58 ——— *Civil Procedure Code 1859 s 2* If the plaintiff s cause of action might and ought properly to have been made a

admitted to be in his possession. *Held* that such a suit could not be maintained as the claim on which it was founded must be deemed a *res judicata* in A suit in 1866 MAKTUM VALAD MOHIDIN v IMAM VALAD MOHIDIN 10 Bom. 293

59 ——— *Suit to enforce rights not raised* Where a party claiming certain land by right of pre empt on failed to set up her

60 ——— *Former suit deciding right of lien for dower* Where a widow who had taken possession of her husband s property

(*Contra*) JANEE KHANUM v AMATOOL FATIMA KHANUM 8 W R 51

RES JUDICATA—contd

7 MATTERS IN ISSUE—contd

81 ———————— *Code of Civil Procedure s 13—Omission to bring forward in a prior suit what then would have been a defence—Accounts between mortgagor and mortgagee* A mortgage between parties who had accounts together comprised lands which also were leased by the mortgagors to the mortgagees who in 1878 obtained a

w re to be set off against the mortgage debt and they also stated their intention to sue separately for the rents due No deduction was made in the decree upon the mortgage on account of these rents for which moreover afterwards the mortgagors did obtain a decree But the mortgagees executed their decree upon the mortgage notwithstanding objections (which were disallowed in 1882) and having obtained leave to bid at the judicial sale purchased the property In the present suit brought by the mortgagors to have the judicial sale set aside and to have the mortgage debt extinguished by having set off against it the rents which had already accrued or might afterwards accrue and for possession of the lands on the expiry of the lease —*Held* that although an equity had been raised in favour of the mortgagors that an account would have been taken and that the rents payable should have been credited against the sums due by them yet this equity could not be enforced in this suit The proper occasion for enforcing it would have been in defence of the suit upon the mortgage the present claim was within the meaning of 13 of the Code of Civil Procedure and the plaintiffs were now barred from insisting on it *exceptione res judicata* MAHABIR PERSHAD SINGH v MACNAGHTEN I L R 16 Calc 682 L R 16 I A 107

82 ———————— *Civil Procedure Code (Act XIV of 1882) s 13 expl II—Suit for dower debt after previous suit for partition amongst heirs—Omission to bring forward defence in former suit* Two of the daughters of a deceased Mahomedan sued the remaining heirs for partition of the inheritance and a decree for partition was made which was confirmed on appeal by the High Court Pending the appeal to the High Court two other daughters of the deceased who had been parties defendants in the suit for partition brought a suit by which they claimed a large share in the estate of the deceased as part of the dower debt due to their mother In this suit they impleaded as defendants all the surviving descendants of their deceased father *Held* that the claim for dower should have been made a ground of defence in the former suit by the plaintiffs who had been defendants in the suit for partition and that as no such defence had been set up in that suit, the claim in respect of the dower debt fell within the purview of expl. II to s 13 of the Code of Civil Procedure and the suit was barred not only as against the plaintiffs to the former suit but as against the other defendants to that suit Dost MUHAMMAD KHAN v SAID BEGUM I L R 20 All 81

83 ———————— *Civil Procedure Code (Act XIV of 1882) s 13 expl II—Matter which might and ought to have been made ground of defence in a former suit—Mortgage—Prior and subsequent mortgagees* *Held* that the holder of three prior mortgages over the same property who in answer to suits brought by the holders of other mortgages over that property of dates subsequent to his had pleaded his rights under one only of the mortgages held by him was barred by reason of expl II to s 13 of the Code of Civil Procedure from afterwards bringing a suit for sale upon one of the remaining mortgages which he might and ought to have pleaded as an answer *pro tanto* to the suits of the other mortgagees *Mahabir Prasad Singh v Macnaghten I L R 16 Calc 682 L R 16 I A 107, Kameswar Parshad v Raj Kumari Ruttan Kuar I L R 20 Calc 79 L R 19 I A 234, Kailash Mondul v Baroda Sundari Dasi I L R 24 Calc 711 Sheosagar Singh v Sita Ram Sahu I L R 24 Calc 616* and *Mata Din Kasodhan v Kazim Husain I L R 13 All 432* referred to SRI GOPAL v PIRTHI SINGH I L R 20 All 110

84 ———————— *Civil Procedure Code (Act X of 1877) s 13—Ancestral property—Partition—Omission to insist on property being brought into hotchpot—Property out of the jurisdiction* The three ... oth r M the ... nbers of o e ... roperty con... S the two sisting of the villages ... former being situated in the Poona Zillah and the latter in the Satara Zillah In 1866 the three defendants (each in a separate suit) sued M in the Poona Courts for partition of the villages of B and ... the village of S ... subject to ... mself ... llages of B ... ative ... intiff the ... nts in th ... Satara Courts for partition of the village of S contending that he was not concluded from so doing by the former proceedings in the Poona Courts *Held* that the plaintiff s claim was *res judicata* and that his suit was concluded under the provisions of the Civil Procedure Code (Act X of 1877) s 13 expl I and II A member of an undivided family suing his co parceners for partition of family property is bound to bring into hotchpot any undivided property in his own possession in order that the

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

may be a complete and final partition and cannot claim to withhold any such property on the ground that it is situated without another jurisdiction That being so the plaintiff s grandfather *M* having neglected in the previous suit to make the exception of the village of S a ground of defence the judgment which followed involved that decision of every claim of title upon the cause of action and must be taken between the parties as amounting to a positive adjudication of all such claims including the claim to the village of S HARI NARAYAN BRAHME *v* GANPATRAY DAJI

I. L. R 7 Bom 272

65 ———— *Civil Procedure Code 18*[illegible] *s 13* S and *B* jointly sued *A* for the redemption of a mortgage of an 8 anna share of a village *B* suing as the purchaser from the mortgagor of a moiety of such share *A* did not in defence of such suit assert a right of pre emption in

[illegible]

his vendor to enforce his right of pre emption in respect of such moiety *Held* that it was incumbent upon *A* in the former suit to have asserted in defence his right of pre emption in respect of such moiety inasmuch as if that right had been established it must so far as *B* was concerned have proved fatal to his title to redeem and that as he had not done so the suit to enforce his right of pre emption was barred by the provisions of s 13 of Act X of 1877 expl II NARAIN DAT *v* BHAIRO BUKHSHPAL I L R 3 All. 189

66 ———— *Civil Procedure Code 1877 s 1*[illegible] *B* who held a decree for money against *I* caused certain property to be at

[illegible]

claimed such property under such will The lower Courts only decided in that suit that such property belonged to *M* and not to *I* and it was therefore not liable to be sold in execution of *B s* decree against the latter They did not consider the question whether *M s* sons were entitled to such property under their mother s will In second appeal in that suit *B* contended that *I* as heir to *M*

[illegible]

brought a fourth share of such property to sale in execution of his decree and purchased it himself Thereupon *M s* sons sued him for such share claiming it under their mother s will *Held* that their mother s will was a matter which should have been made a ground of defence by *M s* sons in the course of the trial of the second appeal in the former suit between them and *B* and that not having been so made it was *res judicata* in the sense of s 13 expl II Act X of 1877 SULTAN AHMAD *v* MAULA BAKH H I. L. R. 4 All. 21

67 ———— Relinquishment of part of claim—*Civil Procedure Code 188*[illegible] *ss 13 and 43 —Dekkhan Agriculturists Relief Act XVII of 18*[illegible]*9—Mortgagor—Mortgagee—Suit for account merely—Subsequent suit for possession* Where there has been a suit between an agriculturist mortgagor and his mortgagee for an account merely a subsequent suit for possession on payment of the money declared to be due is barred under either s 13 or s 43 of the Code of Civil Procedure BHAU BALAJI *v* HARI NILKANTHARV

I L R 7 Bom 377

68 ———— *Civil Procedure Code 18*[illegible] *ss 13 and 43—Right of karnavan to recover tarwad property in possession of anandravan* A karnavan of a Malabar tarwad having the right at any time to demand restoration of the property of the tarwad in the hands of the anandravan is not debarred by s 13 or s 43 of the Code of Civil Procedure from bringing a second suit to recover lands in the wrongful possession of an anandravan either by the fact that in a former suit between the same parties the karnavan only laid claim to some of the lands sued for or by the fact that the former suit was dismissed upon the joint petition of the parties alleging a compromise and a surrender of the lands which as a fact were not surrendered but wrongfully retained by the anandravan URAMKUMARATH KANNAN NAYAR *v* URAMKUMARATH TENJU NAYAR I. L. R 5 Mad. 1

69 ———— Question not decided—*Hindu widow power of to bind reversioners—Chur land—Junglebur tenure* *R* a Hindu widow granted a junglebur tenure to certain tenants in

[illegible]

daughters the last of whom died on the 31st December 1880 On her death the grandsons succeeded to the estate On *R s* death *J* and *P* got possession of all estate papers and amongst them a dowl granted by the tenants in return for the amulnama In 186[illegible] proceedings were taken by the tenants to obtain kabulyats on the footing of those documents which proceedings came to an end in 1868 In 1873 *J* and *P* instituted suits against the tenants alleging the amulnama and

[illegible]

aware of the claim made by the tenants that they

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

held a permanent tenur and the suits were dismissed on the ground that it was too late for *J* and *P* after the lapse of twelve years from *R s* death to raise the question In 1884 *D* a receiver instituted a suit in the names of the grandsons to eject the tenants on amongst other grounds that the grandsons (reversioners) were not bound by *R s* acts and that the jungleburi tenure was not binding on them that the tenants were middlemen and had no right of occupancy that at all events the plaintiffs were entitled to rent on the area of land then held by the defendants as there had been large accretions to the amount covered by the amulnama and dowl The defendant amongst other things pleaded *res judicata* and that *R* had the power to grant the jungleburi tenure so as to bind the reversioners *Held* that the suit was not barred by *res judicata* as in the suits brought by *J* and *P* the question of whether *R s* acts bound the reversioners was never decided DROBOMOYI GUPTA *v* DAVIS

I L R 14 Calc 323

70 ———— **Specific performance**—*Decree in favour of plaintiff—Rectification of decree on application of defendant—Motion to set aside decree dismissed—Subsequent application to rectify decree* The plaintiff sued in 1877 for specific performance of an agreement dated 27th September 1871 by which certain landed properties were to be divided as specified in the agreement between them and the defendant The case came on for hearing on the 13th September 1878 The defendant did not appear and a decree *ex parte* was made which declared that the plaintiffs were entitled to have the agreement of the 27th September 1871 specifically performed and referred the suit to the Commissioner for the preparation of conveyances etc The decree was sealed on the 9th October 1878 No further steps were taken by any of the parties for six years and in September 1884 the matter was first brought before the Commissioner He then directed the defendants to lodge with him all the title deeds of the properties which by the agreement were to go to the plaintiff a their share The defendants thereupon applied that the plaintiffs should be directed to lodge the title deeds of the properties which by th agreement were to go to them but the Commissioner refused to make this order being of opinion that he was not authorized to do so under the decree which contained no direction to him in respect thereof The defendants on the 10th November 1884 gave notice to the plaintiffs that they would apply to the Court—(i) to set aside or vary its order of the 13th September 1878 so far as it related to the lodging of title-deeds etc (ii) to appoint a receiver of certain properties mentioned in the agreement (iii) to order the plaintiffs to deliver up to the defendants the properties which belonged to their share under the agreement (iv) to order certain accounts to be taken This motion was not brought on until the 10th September 188[illegible] [illegible]

of 1882) The plaintiffs having still kept possession of certain of the properties which by the agreement were to go to the defendants notice was given by the defendants to the plaintiffs on the [illegible] April 1887 that they would apply to the Court for an order that the plaintiffs should perform th[illegible] [illegible] 27th September 18[illegible] [illegible]

the defendants asked that the decree [illegible] rectified by directing that the agreement should be specifically performed by the plaintiffs and defendants respectively The defendants contended that the application was barred by lapse of time and that the question was *res judicata* by the order of the 10th September 1885 *Held* also that the motion was not *res judicata* by reason of the previous order of the 10th September 18[illegible] Although the notice of motion then served by the defendants on the plaintiffs included matters [illegible] defendants [illegible] [illegible]

the Civil Procedure Code (Act [illegible]) [illegible] Having decided that point against them [illegible] not really consider the other points at all and did not adjudicate upon them and therefore the present application in respect of the e matters was not *res judicata* KARIM MAHOMED JAMAL *v* RAJOOMA

I L R 12 Bom 1[illegible]

71 ———— **Suit for specific performance of a contract of sale and to execute a sale deed**—*Civil Procedure Code 1882 [illegible] expl 2—Sale deed subsequently executed by the [illegible] Procedure Code [illegible]* [illegible]

crop or damages for the same [illegible] that the plaintiff had paid the purchase money but had not got possession and ordered [illegible] to execute a deed of sale On failure of the defendant to do so the Court executed a deed of sale in plaintiff s favour under s [illegible] of the Civil Procedure Code (Act XIV of 18[illegible]) The plaintiff thereupon brought the present suit to recover possession on the strength of this deed of sale Defendant pleaded that the Civil Procedure was barred under s 13 of the Civil Procedure Code *Held* that the suit was not barred by s 13

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

which were open to him in support of the claim made by his plaint which in the first suit was confined to obtaining a regular deed of sale NATHU PANDU v BUDHU BHIKA

I L R 18 Bom 537

72 ——— Substantial matters in issue decided in a former suit—*Civil Procedure Code*

of his acquired estate to maintain the worship of a family deity appointing his three brothers and his eldest widow to be shebait and providing that the family of us five brothers shall be supported from the prosad offerings to the deity One or other of the brother then for some years managed the estate as shebaits and the survivor of them was succeeded by his son one of the defendants in the present suit which was brought by the testator s only daughter as heiress to his estate claiming that the Court should determine those provisions which were valid and lawful and those which were invalid and illegal She claimed possession and an account and also to be the shebait In a previous suit the present shebait had obtained a decree to which the daughter now plaintiff was a party defendant affirming the validity of the will and the rights of the members of the family to be maintained under it *Held* that the question of the validity of

claim to be shebait KAMINI DEVI v ASUTOSH MUKERJI ASUTOSH MUKERJI v KAMINI DEBI

I L R 16 Calc 103
L R 15 I A 159

73 ——— Estoppel by judgment—

seen what has been directly and substantially in issue in the suit and whether that has been heard and finally decided for which purpose the judgment must be looked at The decree is usually insufficient for showing this as according to the Code it only states the relief granted if any or other disposal of the suit without the ground of decision and without affording information as to what may have been in issue and decided The suit was to establish a right to land and for possession against two defendants who alleged their rights retrospectively The claimant had previously obtained a decree against one of the defendants and in that decree the land now claimed had been excepted *Held* that the matter now in issue not having been directly and substantially in issue in the prior suit the present suit was not barred under s 13 Act XIV of 1882 Civil Procedure Code KALI KRISHNA TAGORE v SECRETARY OF STATE FOR INDIA

I L R 16 Calc 173
L R 15 I A 186

74 ——— Reference to previous judgment to explain decree—*Title of nearest reversioner* In a prior suit a decree of the High Court awarded to the plaintiff the substantial relief claimed by him as reversionary heir entitled to inherit after the mother of the last male owner then deceased she holding her limited estate in the property and the decree declared that certain alienations made by her were invalid against the reversionary heir In the present suit the same plaintiff as

having been raised in the prior suit had been finally determined in the affirmative and this was sufficient proof of his title in the present suit LAKSHMI KANTAIYAMMI v INDANTI RAJAGOPAL RAU

I L R 21 Mad. 344
L R 25 I A 102
2 C W N 337

75 ——— Suit for redemption—*Decree for redemption without proviso for foreclosure of payment within a fixed time—Subsequent suit by mortgagee for sale—Civil Procedure Code (Act XIV of 188) s 13 expl II* A decree for redemption which does not provide for payment of the mortgage debt within a fixed time or for foreclosure in case of default operates of itself as a foreclosure decree if not executed within three years after such a decree is passed it is not open to the mortgagee to file a suit to recover the mortgage money by sale of the mortgaged property his right of sale being barred under s 13 expl II of the Code of Civil Procedure On 19th November 1883 *A* obtained a decree for redemption on payment of a certain sum of money to *B* (the mortgagee) The decree contained no direction as to foreclosure or as to the time within which the payment was to be made On 26th November 1884 *B* the mortgagee sued to recover the mortgage debt by sale of the property mortgaged On 8th April 1885 *A* paid into Court the sum directed to be paid by the redemption decree *B* refused to accept the payment and insisted upon his right of

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

sale *Held* that the mortgagee having neglected to obtain a provision for sale in the redemption suit as he might and ought to have done if he wished to preserve the right of sale that right must be held under expl II of s 13 of the Code of Civil Procedure to have been a matter directly and substantially in issue in the former suit and to have been in effect negatived by the judgment MALOJI *v* SAGAJI I L R 13 Bom 567

76 ———— **Rival suits for pre emption**—*Each pre emptor made defendant in the other s suit—Suits tried together but decided by separate decrees—Decree allowing pre emption in one case only on condition of default by other pre emptors—Finality of decree in superior pre emptor s suit—Appeal by inferior pre emptor in his own suit—Appellate Court power of to alter decree so as to affect superior pre emptor s right* In two rival suits for pre emption each pre emptor was made a defendant in the other s suit The suits were tried together upon the same evidence and were disposed of by a single judgment but by separate decrees In one of the suits the pre emptor obtained a decree in the terms of s 214 of the Civil Procedure Code In the other the pre emptor obtained a decree subject to the condition that in the event of the first pre emptor failing to execute his decree the second pre emptor should be entitled to execute it The decree in the first suit was not appealed and became final The second pre emptor appealed from the decree in his own suit upon the grounds that the amount ordered to be paid was excessive and that the first pre emptor had lost his right and the decree in the second suit should not have been made subject to the condition above stated *Held* that the appellant if he desired to get rid of the decision regarding the first pre emptor s preferential right should have appealed against the first pre emptor s decree but that that decree having become final the question between the two pre emptors could not be re opened on appeal from the second pre emptor s decree CHAJJU *v* SHEO SAHAI I L R 10 All. 123

77 ———— **Issue as to proprietorship of lands**—*Suit as to title to waste lands—Subsequent suit as to right to cultivated lands* In a suit by *A* the inamdar against *B* the khot of a certain village it was decided that *A* was the proprietor of the forest or waste lands attached to the village *Held* that this decision did not operate as *res judicata* between *A* and *B* so as to estop *B* in a subsequent suit for setting up a proprietary title as against *A* to the cultivated lands in the village MORO ABAJI *v* NARAYAN DHONDBHAT PITRE I L R 11 Bom 325

78 ———— **Suit in respect of different portion of joint family property**—*Material issue in former suit* In 1876 the plaintiffs alleging a partition of the family estate in 1864 sued their uncle (father of the present defendants) to recover their share of the rent of a certain piece of land which had formed part of the family estate The plaintiffs relied in that suit upon a memorandum or agreement of partition executed in 1864 The defendant in that suit however contended that the family was still joint and that the plaintiff could not claim a share of any particular piece of land but must sue for partition of the whole property At the hearing of that suit an issue was raised as to whether partition had taken place The Court found in the affirmative and awarded the plaintiff s claim In the present suit the plaintiffs sued the defendants (the sons of the defendants in the former suit) to recover possession of certain property which they alleged formed [illegible] that there had been any partition of the family property *Held* that the question of partition was *res judicata* and could not be raised again by the defendants The question had been directly and [illegible] No doubt [illegible] defendants now contended that their [illegible] The [illegible] tion and that the family estate was joint [illegible] decree in that suit depended on that issue and where the decree depends on an issue the finding on that issue is binding as *res judicata* The status of the family having been thus tried and determined in the former suit was binding on the parties in subsequent suits ANANTA BALACHARYA *v* DAMODHAR MAT[illegible] I L R 13 Bom [illegible] UND

79 ———— **Suit by a woman for a share of property alleging herself to be A s widow**—*Prayer for declaration of her marriage to A—Denial of her marriage to A by defendant—Arbitration—Award of a certain sum in satisfaction of plaintiff s claim—Decree on award—No declaration as to her marriage—Subsequent suit by her as widow—Release—Civil Procedure Code (XIV of 1882) s 13* The plaintiff *F* in this suit alleged that both she and the defendant *A* had been the wives of one *H* a Cutchi Memon Mahomedan who died intestate in 1878 leaving them his widows and other members of his family him surviving The plaintiff had a daughter named *M* Both plaintiff and defendant had since *H* s death filed separate suits in which they respectively claimed parts of his estate In 1879 the defendant had filed a [illegible] the executors of her father [illegible]

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

deceased husband *H* In that suit she alleged that she had been lawfully married to *H* and ever since cohabited with him and that her child *M* was his legitimate daughter and she prayed *inter alia* for declaration that she was the lawful wife and that *M* was the lawful daughter of *H* In the written statement filed by *A* in that suit she alleged that *F* was not the lawful wife of *H* but only his kept mistress and she denied that *F* was entitled to a share in his property On the 3rd May 188 an order of reference was made by which both the above suit ts No 616 of 18 9 and No 2.7 of 1882 and all matters in difference therein were by consent of all parties thereto referred to arbitration The arbitrators were the respective attorneys of the parties Awards were duly made and on the 1 t October 1883 decrees were passed in both suits in accordance with the said awards By the decree and award in suit No 227 of 1882 *F* was to be paid by *A* a sum of R55 000 in full satisfaction of all the claims of *F* and her daughter *M* upon the estate of *H* the rest of the estate being declared the sole property of *A* The material part of the decree was as follows This Court doth by consent pass judgment according of the said award and doth order that the said *A* do pay for the said *F* to her attorneys Messrs Tyabji and Dhyabhai within

soever and whatsoever and doth declare that upon the payment of the said sum of R55 000 by the said *A* to the said *F* as aforesaid all claims whatsoever of the said *F* and *M* or either of them upon the estate of the said *H* in the hands of any

reason of such second marriage forfeited all rights and interests to and in the property of her first husband *H* and also to the ornaments which she had recovered in the last mentioned suit and she claimed that the said property and ornaments now belonged to her (*F*) as sole surviving widow of the said *H* She prayed for a declaration that *A* had by her second marriage forfeited her right to the said property and ornaments and that she (the plaintiff) was now entitled thereto that the defendant might be ordered to deliver etc etc The defendant *A* filed a written statement in which (*inter alia*) she

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

and) submitted that the said award and decree were a bar to the present suit It was contended for the defendant (i) that the plaintiff had in the former suit prayed for a declaration that she had been the lawful wife of *H* that the decree in that suit contained no such declaration and that her prayer must therefore be taken to have been refused under s 13 of the Civil Procedure Code (Act XIV of 1882) and that she was consequently not now entitled to sue as his widow—her claim to be his widow being *res judicata* (ii) that the decree in suit No 227 of 1882 expressly declared that the R55 000 awarded to the plaintiff by that decree was in full settlement of all her claim

plaintiff as widow of *H* was not *res judicata* The question of the plaintiff s marriage with *H* had not been controverted before the arbitrators and finally decided in a manner sufficient to establish *res judicata*

relief and which by implication is rather granted than refused It only applies where the Court is silent on an independent head of relief claimed and duly controverted But *held* that the award and

dismissed FATMABAI *v* AISHABAI

I. L. R 12 Bom 454

Held on appeal affirming the decision of SCOTT

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

status of plaintiff as widow of *H* was not *res judicata* The plaint in suit No 227 of 1882 no doubt asked for a declaration that she was the widow of *H* and no such declaration had been made But

Expl III of s 13 was not intended to apply to such a case *Held* (reversing the decision of SCOTT J) that the declaration in the former decree that the R55 000 were paid to the plaintiff in full settlement of all her claims upon the estate did not bar the present suit The words of the award and decree were to be read with reference to the character in which the parties were litigating as widows of the deceased *H* claiming to succeed to his property on his death Such general language was to be controlled by the circumstances of the case Upon the proper construction of the award there was no such

I L R 15 Bom. 242

80 ———— Claim in part included in former suit which was dismissed—*Civil Procedure Code ss 13 42 43 and 212—Reference to pleadings and judgment to explain decree—Omission of portion of claim in former suit—Mesne profits—Oudh Rent Act (XIX of 1868) s 111* That a claim has been included in a previous suit without its having been directly and substantially put in issue and decided does not upon the dismissal

but actual possession was not obtained from the defendant who owned villages on the opposite side of the river The decree holder in 1877 included a claim for part of the same land in a suit for an accretion to another of his riparian villages Khasapur and the latter suit was wholly dismissed. To get possession of the land decreed in 1873 he then

in it the land which he had made part of his claim in the dismissed suit of 1877 *Held* on the question whether the dismissal of the suit of 1877 precluded a further suit for that part of the land which had been included in it that it did not and that s. 13 of the Civil Procedure Code was inapplicable The *pleadings and judgment in the suit of 1877* were referred to showing that what belonged to Sipah had not been in issue and that nothing respecting it had been heard or decided *Held* also as to the rest of the land claimed in this suit that there was no bar on account of its omission from the suit of

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

1877 As to mesne profits it would have been open to the High Court to direct an enquiry under s. [illegible] of the Civil Procedure Code JAGATJIT SINGH v. SARABJIT SINGH I L R 19 Calc 15[illegible]
L R 18 I A 165

81 ———— Suit for land identical with land given in previous decree—*Proof of identity where decree did not specify boundaries—Long possession* The proprietary possession of

ment with the latter in consequence of a [illegible] which however had not decreed the land to the defendants as they alleged it to have done. In pursuance of that decree which was made in 1865 the land had been according to the evidence taken by the defendants in whose possession it was in 1868 from which date till 1883 when the present suit was brought that land had been treated, also by the Government authorities and by the defendants as belonging to the latter Had the question been one of limitation the possession of the defendants for a period of twelve years would not have been sufficient to exclude this claim by the plaintiff the Government to recover whatever could have been shown to be its property The question however was not one of limitation and the fact of the possession having been retained for so long a period was used by the defendants not to make a title but to define or identify the land which the decree of 1865 had awarded to them. Although the specification of the boundaries (which had been mentioned merely by reference to the plaint which mentioned adjoining villages) had been ineffectual the acts of the parties had been such as to fix the meaning of the terms used and it was established by the evidence that the land now claimed was identical with that which had been made over under the decree of 1865 to which it related. SECRETARY OF STATE FOR INDIA v. DURBIJOY SINGH I. L. R. 19 Cal. 513
L. R. 19 I. A. 69

82 ———— Transfer of interest—*Civil Procedure Code s 13—Appointment of a creditor as agent to collect rents and appropriate part towards the debt* In a suit to redeem a kanom on certain land the jenm of a devasom in Malabar it appeared that the plaintiff held a melkanom in respect of the same land executed to him (subsequently to the date of the kanom sought to be redeemed), by defendant 3 the samudayam of the devasom. Defendant 3 represented one *C* in whose favour the uralers had in 1741 executed a document appointing him samudayam and stating that they had received from him a kanom of 18,000 fanams on the devasom properties and providing that he should appropriate part of the rents towards the loan. It appeared that in a suit to eject tenants the uralers had sued as co plaintiffs with the samudayam in subsequent suits however two of the uralers had sued other tenants for rent and the samudayam for an account both of these suits

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

were dismissed on second appeal and in the judgments of the High Court the samudayam was described as a mortgagee in possession. *Held* (i) on its appearing that no opinion was expressed in the former suits as to the construction of the document of 1741 that the former decisions had not the force of *res judicata* (ii) in view of the conduct of the parties and on the terms of the document of 1741 that the samudayam was not thereby constituted a mortgagee in possession and that the melkanom set up by the plaintiff was invalid KRISHNAN *v* VELOO I L R 14 Mad. 301

83 ———— Creditor of a devasom placed in possession as samudayam—*Civil Procedure Code s 13* In a suit brought by the uralers of a devasom in Malabar to recover certain land in the possession of the defendant it appeared that the defendant held under an instrument dated 1741 whereby his predecessor in title was appointed samudayam and was authorized to appropriate part of the rents of the devasom properties to the interest on a loan made by him to the uralers Two of these uralers had brought a previous suit against the defendant for an account of the rents received by him and for an injunction that suit was dismissed on second appeal when the High Court described the defendant as a mortgagee in

reason of the judgment in the previous suit RAMAN *v* SHATHANATHAN I L R 14 Mad 312

84 ———— Matter which should have been ground of attack in former suit—*Civil Procedure Code ss 13 43* The widow daughter

deceased in her favour the brother sued the widow for a declaration that the will was a forgery but the Court held that it was genuine He now sued the widow and daughter on the above instrument to recover his agreed share of the moveable property of the deceased The widow set up the will which the plaintiff averred was invalid according to the custom governing the family *Held* that the plaintiff was not precluded by the decree in the former suit from impugning the validity of the will THANDAVAN *v* VALLIAMMA I L R 15 Mad. 336

85 ———— Question as to whether decree is binding—*Decree amended after execution to conform with judgment—Decision in suit to set aside sale under amended decree* In a suit for money against the karnavan and two anandravans of a Malabar tarwad the judgment directed a decree for the plaintiffs as prayed but the decree ordered payment by one anandravan only Property of the tarwad was attached and sold. The decree was then amended and brought into conformity with the judgment Other members of the

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

tarwad sought to have the sale set aside but it was found that the judgment debt had been contracted for proper tarwad purposes and that suit was dismissed Application was now made for the attachment of other property of the tarwad in further execution of the amended decree *Held* that the

86 — Usufructuary mortgage—*Suit by mortgagee for possession—Decree for possession—Subsequent suit by mortgagor for redemption* In 1864 the lands in dispute were mortgaged

suit *Held* that the suit was not so barred the relative rights of mortgagor and mortgagee not having been adjudicated upon in the former suit NARSINHA MANOHAR *v* BHAGVANTRAV I L R 14 Bom 327

87 ———— Suit by purchaser against mortgagee for possession—*Issue raised by mortgagor impeaching bona fides of sale—Decree for plaintiff without recording finding on issue—Subsequent suit for redemption by mortgagor against mortgagees impeaching sale as fraudulent and void* In 1874 the plaintiff mortgaged certain property to *R D* and *R L* In 1877 the mortgagees sold it by auction to one K who in the following year sued the mortgagor for possession The defendants in

the issue *Held* that the present suit was barred by

finding of the issue in the affirmative RAMKRISNA JAGANNATH *v* VITHAL RAMJI I. L. R. 15 Bom 89

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

88 ———— **Cross appeals heard separately**—*Civil Procedure Code s 13* The plaintiff and defendant in a suit each appealed separately and defendant s appeal first came on for hearing and an issue as to whether the plaintiff or the defendant had title to the land in dispute was decided on the facts by the Appellate Court adversely to the defendant Subsequently the plaintiff s appeal involving the same issue came on for hearing before the same Court *Held* that although s 13 of the Civil Procedure Code did not apply still the principle of *res judicata* applied and the finding on the former appeal barred the trial of the same issue in the latter *Ram Kirpal* v *Rup Kuari I L R 6 All 269 L R 11 I A 37* referred to PAM LAL v CHHEB NATH **I L R 12 All. 578**

89 ———— **Finding in judgment in conflict with terms of decree**—*Civil Procedure Code s 13—Immaterial issue in suit* The decree in a suit gave the plaintiff an unrestricted right to the property claimed by him but in the judgment on which that decree was based it was stated the finding apparently not being a finding on any material issue in the suit that the defendants were entitled to certain rights in respect of the property decreed to the plaintiff No application was made to bring the decree into conformity with the judgment and the decree as it stood was affirmed on appeal *Held* that the defendants as plaintiffs in a sub equent suit between the same parties relating to the same property could not plead the finding in their favour in the judgment as con tituting *res judicata* in the face of the clear wording of the decree INDARJIT PRASAD v RICHHA RAI **I L R 15 All. 3**

90 ———— *Decree not in accordance with judgment—Civil Procedure Code 188? ss 13 244—Transfer of Property Act (IV of 1882) ss 88 89—Interpretation of decree* Where a mortgagee in suing upon hi mortgage included

[illegible]

91 ———— **Contentions not raised by way of defence in former suit**—*Civil Procedure Code ss 13 43* In a suit to recover possession of the impartible zamindari of Sivaganga it appeared that the istimrar zamindar died in 1829 and that after an interval of wrongful possession by his brother and his descendants his daughter established her title to succeed him and was placed in possession in 1864 She died in 1877 leaving the present plaintiff her son and three daughters h r surviving A suit was then brought by the father

[illegible]

possession of the zamindari and retained it u [illegible] his death in 1883 when he was succeed d by the present defendant The plaintiff now sued as above claiming that the right to the zamindari had devolved on him and not on the defenda[illegible] on the death of the plaintiff in the former su[illegible] *Held* (i) that the defendant s father had not succeeded to a qualified heritage nor to a mere right of mangement of joint family property in which the plaintiff had a right of survivorship but tha[illegible] he had succeeded to the estate as full owner and had therefore become a fresh stock of descent (ii) that accordingly nearness or remoteness of relationship to the istimrar zamindar was im[illegible] material and the defendant s right of succession was not affected by the fact that the whole cla[illegible] of the istimrar zamindar s daughters sons had not been exhausted *Held* also that the plaintiff was not precluded from raising the contentions to which the above rulings relate by reason of their not having been raised by way of defence to the suit brought against him by the defendant s father MUTTUVADUGANATHA TEVAR v PERIASAMI **I L R 16 Mad. 11**

92 ———— **Execution proceedings**—*Civil Procedure Code ss 13 2[illegible]—Matter which ought to have been rais d as a ground of defence* [illegible] a decree against Y and Y [illegible]

[illegible] d a decree [illegible]) was d[illegible] mentioned [illegible] tter of the [illegible] e that the [illegible] ally by X [illegible] isequen[illegible] [illegible] hich they

contended that the [illegible] was the property of X and w[illegible] paid into Court was the property of X and w[illegible] liable to satisfy their claim The above al[illegible] was substantiated and *Z s* claim on the money in Court was disallowed on appeal *Held* (i) that *A* and *B* were not precluded from assertin the claim to the money in Court by reason of the above allegation not having been made by way of defence to the suit of *Z* (ii) that *A* and *B* were entitled to enforce any claim which *X* m[illegible] enforce for the purpose of satisfying their decree and accordingly that *Z s* claim on the money in Court was rightly disallowed ARCHAYYA v BANGARAYYA **I L R 16 Mad. 117**

93 ———— **Question substantially in issue in former suit**—*Civil Procedure Code (Act XIV of 1882) s 13 expl [illegible]—Reversioner* A widow purported to charge land which she held for her widow s estate with payment of a debt.

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

and afterwards surrendered her estate to the next heir or reversioner on condition that he should pay all her debts and a suit was brought by the creditor after the death of the widow against the reversioner to recover the debt This suit had been preceded by another one brought by the creditor against both the widow then alive and the reversioner the cause of action against the latter being that in his hands was the property chargeable That suit was dismissed as against him but decreed against the widow In the present suit payment was claimed from him of a balance of the deceased widow's debt on the ground that he had agreed on taking the surrender of the estate from her to become responsible for her debts *Held* that this might and ought to have been made ground of attack in the former suit within the expl 2 of s. 13 of the Civil Procedure Code and must accordingly be deemed to have been directly and substantially in issue in the former suit and therefore that this suit was barred The Acts of 1877 and 1882 did not alter the previous state of the law KAMESWAR PERSHAD *v* RAJKUMARI RUTTAN KOER I L R. 20 Calc 79 L R 19 I A. 234

94. ———— Matter which might have been a ground of defence in a former suit—*Civil Procedure Code 1882 s 13 expl 2* A

given in favour of the plaintiff Subsequently the plaintiff sold a portion of the property so decreed to them and the *quondam* defendant brought a suit for pre emption *Held* that the suit must fail inasmuch as the plaintiff's claim was one which he might have made when defendant in the former suit as an alternative to his defence of title *Moottoo Vijaya etc* v *Katama Natchiar 11 Moo I A 50* *Kameswar Pershad* v *Raj Kumari Ruttan Koer I L R 20 Calc 79 L R 19 I A 234* and *Baldeo Sahai* v *Bateshar Singh I L R 1 All 75* referred to PULANDAR SINGH *v* JWALA SINGH I L R 20 All 516

95 ———— Unnecessary issue—*Finding on an unnecessary issue inserted in decree—Civil Procedure Code 1882 s 13* The plaintiff

the house The defendant again intervened, alleging that the house was his and the attachment was removed Thereupon the plaintiff filed this suit to establish his right to sell in execution The defendant again pleaded that he was owner of the house by reason of the sales set up by him in the former suit It was argued that these sales had been proved to be collusive and fraudulent in an issue raised in that suit and that the defence in the present suit was therefore *res judicata* *Held* that the defence was not *res judicata* The former suit had been decided on the finding that the property in question not was J s The finding in that suit on the issue as to the sales to the defendant was not necessary for the determination of the suit Where an issue is not necessary for the decision of the suit in which it is raised the decree couched in general terms does not cover the finding on that issue nor can the insertion of such finding in the decree give it the force of *res judicata* The Civil Procedure Code does not contemplate findings on issues being inserted in it (see ss 2 and 6 and sch IV) and there is no section in the Code which makes it necessary to appeal from the decree because such finding has been inserted in it GHELA ICHHARAM *v* SANKALCHAND JETHA I L R 18 Bom. 597

96 ———————— *Finding in judgment not embodied in decree and not essential to the making of the decree as framed—Civil Procedure Code 1882 s 13* A finding in a judgment to operate as *res judicata* the Court being a Court of jurisdiction competent to try the subsequent suit must be material and necessary to support the precise and particular ground or grounds on which the decree or some operative part of it was made otherwise the finding must be considered either as superseded by the decree or as entirely immaterial

been a material and necessary finding of fact material and necessary in the sense that the fact must have been found as it was found in the judgment and could not have been found otherwise for

would have rendered the other of such two findings

RES JUDICATA—contd

7 MATTERS IN ISSUE—contd

under s 146 of Act XIV of 1882 on which at that stage of the suit the right decision of the case appears to depend does not of itself make the matter to which such issues relate "directly and substantially in issue" within the meaning of s 13 although when the finding upon any one or more of the issues is sufficient for the decision of the suit it may be desirable that the Court should state in its judgment its finding or decision upon each separate issue which it had framed The following cases were referred to *Krishna Behari Roy* v *Brojeswari Choudranee* L R 2 I A 283 I L R 1 Calc 144 *Soorjomonee Dayee* v *Suddanand Mohapatter* 12 B L R 304 L R I A Sup Vol 212 *Run Bahadoor Singh* v *Lachoo Koer* I L R 11 Calc 301 L R 12 I A 23 *Radha Madhub Holdar* v *Manohar Mukerji* I L R 15 Calc 756 L R 15 I A 97 *Enaetoollah* v *Ameer Baksh* 25 W R 225 *Niamut Khan* v *Phadu Buldia* I L R 6 Calc 319 *Jamait un nissa* v *Lutf un nissa* I L R 7 All 606 *Man Singh* v *Narayan Das* I L R 1 All 480 *Lachman Singh* v *Mohan* I L R 2 All 497 *Ram Gholam* v *Sheotahal* I L R 1 All 266 *Anusuyabai* v *Sakharam Pandurang* I L R 7 Bom 264 *Devarakonda Narasamma* v *Devakonda Kanaya* I L R 4 Mad 134 *Ghela Ichharam* v *Sankalchand Jetha* I L R 18 Bom 597 *Tarakant Banerjee* v *Puddomoney Dassee* 10 Moo I A 476 and *Robinson* v *Dalip Singh* L R 11 Ch D 798 SHIB CHARAN LAL v RAGHU NATH

I L R 17 All 174

97 ———— Dismissal of suit for want of notice and also upon the merits—*Civil Procedure Code (1882)* s 13 *expl* 2—*Bengal Municipal Act (Beng Act III of 1884)* s 363 In a suit brought by one A against C for damages for not removing certain offensive matter from his land the questions raised were whether there was notice and whether the defendant was bound to remove the filth from the plaintiff s property The Court having found that there was no notice which [illegible]

the offensive matters from the plaintiff s land dismissed the suit [illegible] same parties [illegible] as in the previous [illegible] was barred as *res judicata* *Held* that inasmuch as the matter directly and substantially in issue in the subsequent suit was directly and substantially in issue in the previous suit and as it was finally heard and decided between the same parties notwithstanding the fact that the previous suit failed by reason of the decision of the Court upon some other matter as well the subsequent suit was barred as *res judicata* *Shib Charan Lal* v *Raghu Nath* I L R 17 All 174 distinguished PEARY MOHUN MUKERJEE v AMBICA CHURN BANDOPADHYA

I L R 24 Calc 900

98 ———— Different subject-matter of suits—*Code of Civil Procedure* 1882 s 13 *expl* 2—*Suit for declaration of baradari right*—*Subsequent suit for assertion of khadim right* S 13 expl 2 of the Code of Civil Procedure applies only to cases in which the plaintiff having on a former occasion sued for certain relief on the strength of one title afterwards claims the same relief on the ground of another title of which he might have availed himself in the former suit. It does not [illegible]

offerings at a certain Mahomedan place of worship alleging that the defendants had dispossessed them on the 27th September 1881 but they did not assert any claim as khadims. The suit was decreed but the decree was reversed on appeal. On the [illegible] March 1892 the plaintiffs instituted a suit for a [illegible]

inheritance and partly by purchase a custom of transferability by sale having been long recognised *Held* that the relief claimed in the second suit was not *res judicata* the subject matters of the two suits being distinct *Denobundhoo Chowdhury* v *Kristomonee Dossee* I L R 2 Calc 152 *Wooma* [illegible] v *Unnapoorna Dassee* 11 B L R 158 *Ram* [illegible] *Pershad* v *Rajkumari Ruttan Koer* I L R [illegible] Calc 79 L R 19 I A 234 *Doorga Pershad Singh* v *Doorga Konwari* I L R 4 Calc [illegible] L R 5 I A 149 *Vijaya Raghunatha* [illegible] v *Katama Natchiar* 11 Moo I A 50 *Soorjomonee Dayee* v *Suddanund Mohapatter* 12 B L R 304 L R I A Sup Vol 212 and *Krishna Behari Roy* v *Bunwari Lal Roy* I L R 1 Calc 144 L R 2 I A 283 distinguished SAIYID ABU TORAB ABDUL WAHEB v RAHAMAN BUKSH

I L R 24 Calc 83

99 ———— Suit for rent—*Code of Civil Procedure 1882* s 13—*Landlord and tenant*—*Question of title incidentally raised in a previous suit*—*Subsequent suit for declaration of title to land purchased* A suit was brought by A against B and others for rent and the matter directly and substantially in issue was as to what the share was for which A was entitled to rent The plaintiff obtained a decree for the whole rent. In a subsequent suit by B and others against A for declaration of title to land purchased by them in execution of their mortgage decree the defence was that the former decree for rent operated as *res judicata* *Held* that as the issue in the rent suit was for what share the plaintiff was entitled to rent and not as to what share of the property was the plaintiff entitled as owner the question of title could be said to have been in issue in that suit only incidentally and not directly and it could not have been entertained in the form in which it was [illegible]

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

raised therefore the subsequent suit was not barred as *res jud cata* *Run Bahadur Singh* v *Lucho Koer* *I L R 11 Calc 301* *L R 12 I A 23* followed *Padhamadhub Holdar* v *Monohur Mukerji* *I L R 15 Calc. 756* *L R 15 I A 9* distinguished *Nanack Chand* v *Teluldye Koer* *I L R 5 Calc 265* and *Durgopal Lal* v *Bolakee* *I L R 5 Calc 269* referred to SRIHARI BANERJEE *v* KHITISH CHANDRA RAI I L R 24 Calc 569
1 C W N 509

100 ———— *Code of Civil Procedure 1882 s 13 expl 2—Whether the question that the plaintiff was a mere benamidar could be raised in a subsequent suit for rent it not having been raised in a suit previously brought by the same plaintiff against the same defendant* In a previous suit brought by the plaintiff for rent the defendant denied the relationship of landlord and tenant but he did not plead that the plaintiff was a mere benamidar The plaintiff obtained a decree In a subsequent suit by the same plaintiff against the same defendant for rent for subsequent years the defendant *inter alia* contended that the plaintiff was a mere benamidar The plaintiff objected that the previous decree was a bar to defendant s contention. *Held* that even if the matter in issue might and ought to have been made [illegible]

I L R 24 Calc 711
1 C W N 565

101. ———— Matter which might have been made ground of attack in a former suit—*Civil Procedure Code 1882 s 13 expl 2* Where a plaintiff sued for possession of immoveable property as owner having no title as owner but a possible title as mortgagee it was *held* that he could not in a subsequent suit between the same parties for possession of the same property claim as mortgagee inasmuch as his title as mortgagee might have formed an alternative ground of attack in the former suit *Amolak Ram* v *Champa Lal All Weekly Notes (1891) 132* *Mathura Prasad* v *Sambhar Singh All Weekly Notes (1892) 224* *Hasan Ali* v *Siraj Husain I L R 16 All 259* *Atchayya* v *Bangarayya I L R 16 Mad 117* and *Kameswar Pershad* v *Rajkumari Rattan Koer I L R 20 Calc 79* *L R 19 I A 234* referred to IMAM KHAN *v* AYUB KHAN I L R 19 All 517

102 ———— Suit for money—*Civil Procedure Code 1882 s 13—Application by defendant for an account of dealings with plaintiff—Defendant s right to bring a separate suit for an account* In a suit for money the defendant admitted that there had been money dealings between him and plaintiff but averred that the taking of an account would show that the plaintiff was indebted to him. The Court dismissed the plaintiff s suit but declined to take an account against the plaintiff *Held* that the defendant was not entitled to have an account taken in the suit and that Civil Procedure Code 12 would not have precluded him from suing for an account during the pendency of the plaintiff s suit RAMALINGA CHETTI *v* RAGHUNATHA RAU I L R 20 Mad 418

103 ———— Suit for rent—*Code of Civil Procedure (Act XIV of 1882) s 13—Landlord lakhiraj directly subsequent* brought by the predecessor in title of the plaintiff against the defendants for rent one of the questions raised was whether the land in respect of which rent was claimed was mal or lakhiraj and that question was decided in favour of the defendants In a subsequent suit by the plaintiff against the same defendants for khas possession of certain land the defence was that the land in dispute was their lakhiraj land and that the judgment in the previous suit operated as *res judicata* *Held* that though the previous suit was one for rent yet the issue upon the question whether the land was mal or lakhiraj was raised directly in that suit and therefore the subsequent suit was barred as *res judicata* *Radhamadhub Holdar* v *Monohur Mukerji* *I L R 15 Calc 756* *L R 15 I A 97* followed *Srihari Banerjee* v *Khitish Chandra Rai* *I L R 24 Calc 569* distinguished KASISWAR MUKHOPADHYA *v* MOHENDRA NATH BHANDARI I L R 25 Calc 136

104 ———— Sanction to compromise a suit against a minor—*Civil Procedure Code (Act XIV of 1882) s 13—Suit to set aside a consent decree for want of sanction—Previous suit to set aside decree on the ground of fraud on guardian ad litem* A suit instituted in 1879 against a minor was compromised by the plaintiff and the guardian *ad* [illegible]

I L R 21 Mad 91

105 ———— Right to a temple office and its endowments—*Issue as to adverse possession—Civil Procedure Code (Act XIV of 1882) s 13 expl 2* Certain offices in a temple and the endowment attached thereto were held jointly by the members of two branches of a family represented

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

respectively by the plaintiff and the defendant Long previously to 1872 the defendant s branch go into sole possession and in that year a family settle ment was arrived at by which it was arranged that the offices should be held in rotation and the lands in equal shares and in accordance with this settle ment a certain village forming part of the endow ment was delivered to the plaintiff s branch of the family In 1889 the defendant brought a suit to recover a moiety of that village and an issue was raised whether he enjoyed the offices and the landed property in his independent right or as a servant for wages His suit was dismissed on the ground that the offices and emoluments were indivisible and went by *right to* the older branch of the family The plaintiff now sued in 1895 to establish his right to the entire offices and to recover possession of the *other village* *Held that it was open to the defend* ant to as ert in this suit a title by adverse posses sion as that had been made a ground of attack though not the basis of his claim in the former suit *ALAGIRISAMI NAICKAR v SUNDARESWARA AYYAR*

I L R 21 Mad. 278

106 Suits by different partners for specific sums of money on adjustment of accounts—*Partnership—Accounts adjust d by Ameen appointed in previous suits—Civil Proce dure Code s 13 expl* 2 *and 3 and s 43—Contract Act s 265* After dissolution of a certain partner ship *two separate suits were brought in 1889 by* different partners for specific sums of money due to them and in the alternative for such other amount

[illegible]

Act (ii) that separate suits for the same matter were not maintainable (iii) that the suits would not lie in the Munsif s Court and (iv) that accounts having been already adjusted there was no cause of [illegible]

partners and the plaintiffs in those suits obtained decrees on the basis of the Ameen s adjustment of account The present suits were brought in 1891 by certain other partners who were defendants in the suits of 1889 on the allegation that the part nership account had been already adjusted by the Ameen appointed in the suits of 1889 and that the debts and dues of all parties had been determined by the Court The plaintiffs prayed for recovery of the [illegible]

and BANERJEE JJ (RAMPINI J dissenting)—That neither s 13 nor s 43 of the Civil Procedure Code was a bar to the present suits the issue now in suit not having been determined in the former suits

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

Held by RAMPINI J —That there was ground for contending that under expls 2 and 3 to s 13 of the Civil Procedure Code the present suits were barred DHANI RAM SHAHA v BHAGIRATH SHAHA

I L R 22 Calc. 69[illegible]

107 ———— Ground of defence not raised in previous suit—*Civil Procedure Code 1882 s 43—Relief not asked for in previous suit—Circumstances giving right to such relief not known at date of previous suit—Constructive notice of possession* The plaintiff who were the junior members of a Malabar codom of which defendant's Nos 3 to 5 were the senior members sued to recover with mesne profits possession of certain property offering to pay the amount of a kanom advanced by defendant No 1 It appeared that the land had been the subject of a kanom demise in 1865 and that defendant No 3 the then karnavan had obtained in 1878 a decree for its redemption the right to execute which he assigned to a stranger who executed it and took possession of the property taking from the karnavan a new kanom deed Subse[illegible] 4 and 5 obtained a decree [illegible] of both the [illegible] t this decree [illegible] s in another [illegible] 1 who [illegible] deposited the kanom amount and took possession on the [illegible] March 1884 The plaintiffs who had meanwhile taken abortive proceedings to defeat the first defendant s title instituted a suit in Au[illegible] 1884 praying for a decree that the sale to him be set aside without praying for possession It was [illegible] that time were not [illegible] posse[illegible] [illegible] ef nce to th[illegible] [illegible] at the plaint[illegible] [illegible] notice of th[illegible] [illegible] n of the fact [illegible] not act[illegible] [illegible] applica[illegible] [illegible] barred [illegible] That

by the Civil Procedure Code s 4[illegible] [illegible] notice of apart from the question of the plaintiffs notice of the first defendant s possession since he had [illegible] pleaded possession in the suit of 1884 he could not fall back upon the fact that his posse[illegible] dated from March 1884 as a ground of defence to the present action SANKARAN v PARVATHI

I L R 19 Mad 14[illegible]

108 ———— Incidents of tenancy [illegible] Application to determine—*Civil Procedure Code [illegible] s 13—Bengal Tenancy Act (Act VIII of 1885) s 158—Dispute as to tenancy—Landlord and tenant* The object of s 158 of the Bengal Tenancy Act is merely to provide a summary procedure for settling disputes between landlord and tenant in regard to the particulars referred to in cls (a) (c) and (d) of the section [illegible] does authorize the Court to determine the [illegible] description of the tenant this was not intended [illegible]

RES JUDICATA—contd

7 MATTERS IN ISSUE—contd

and does not authorize the Court to decide conclusively disputes as to the right to possession of the land An issue therefore regarding a dispute as to the existence of the relation of landlord and tenant between the parties in a proceeding under s 108 can only be decided collaterally and does not arise between the parties in such a manner as to make the decision upon it *res judicata* between them in a subsequent suit ... Bhupendra Narayan Dutt 15 Calc 6? ... v Bhupendro referred to

PEARY MOHUN MUKERJI v ALI SHEIKH I L R 20 Calc 249

109 ——— **Decision as to genuineness of deed.** In a suit to establish the plaintiff s right to a standing crop on the basis of his title to the land it was *held* that where the plaintiff s title depended upon the genuineness of a kobala in respect of the land a *finding with regard to such genuineness is* finding as *res judicata* in a subsequent suit between the same parties with regard to the title to the same land although no issue was distinctly raised in the former suit on the question of genuineness *Soorja monee Dayee* v *Suddanand Mohapatter 12 B L R 304 L R I A Sup Vol 1* referred to DAKHYANI DEBEA v DOLEGOBIND CHOWDHRY I L R 21 Calc 430

110 ——— **Illegal cess**—*Code of Civil Procedure (Act XIV of 1882) s 13 Expln II—Illegal cess not objected to in former suit for rent—Bengal Tenancy Act 1885 s 74* Where in a suit for rent the rent claimed expressly includes an item which is objected to as an illegal cess the mere fact that in a previous rent suit between the same parties regarding the same tenure the defendant did not raise the same plea although he could have done so would not in the absence of a judicial determination of the point in the previous suit ...

726 referred to WOOMESH CHANDRA MAITRA v BARADA DAS MAITRA (1900) I L R 28 Calc 17

111. ——— **Matter for ground of attack** —*Civil Procedure Code (Act XIV of 1882) s 13 Expl II—Matter which might and ought to have been made ground of attack in former suit* On a sale of land by plaintiff to defendant part of the purchase money was paid and a mortgage was given by the defendant in plaintiff s favour for the balance of the purchase money which balanced amounted to R100 Plaintiff sued on his mortgage but that suit was dismissed by reason of its being unregistered Plaintiff now brought the present suit for the amount framing his claim as for the ...

RES JUDICATA—contd

7 MATTERS IN ISSUE—contd

... purchase money and he ought to ...

AKIYI KUNHI v AYISSA BI (1903) I L R 26 Mad 645

112 ——— **Matter not in issue as between defendants**—*Civil Procedure Code (Act XIV of 1882) s 13—Previous suit in which same matter was in issue between plaintiff and the respective defendants but not as between the defendants themselves—Suit by one of the then defendants to establish his priority over one of the other defendants—Maintainability* In a former suit the question whether each of the defendants had mortgages upon certain property was a matter which was in issue between the plaintiff and the respective defendants therein but not as between the defendants themselves no question of priority being gone into and the rights of the parties not being dealt with further than by making a decree for sale subject to certain incumbrances of which that of the fifth defendant therein was one The fifth defendant in that suit now sued as plaintiff in the ...

had been obtained in execution of which the property had been sold and that mortgage was held by one of his co-defendants in the previous suit *Held* that the claim was not *res judicata* MAHAMMAD KUNI ROWTHAN v VISVANATHAIYAR (1902) I L R 26 Mad. 337

113 ——— **Mesne profits**—*Civil Procedure Code (Act XIV of 1882) s 13 Explns II and III—Redemption suit—Decree in such suit making no order as to mesne profits—Subsequent suit by plaintiff for surplus mesne profits accrued due prior to former suit* In a redemption suit brought in 1894 the plaintiff prayed for possession of the ... and for payment of such sum ...

which (*inter alia*) he claimed to recover mesne profits which had accrued due prior to the former suit *Held* that the claim was *res judicata* and was barred KACHU v LAKSHMANSING (1900) I L R 25 Bom 115

114. ——— *Mortgage—Decree for redemption—Payment of the amount of decree of lower Court and recovery of possession by mortgagors—Subsequent enhancement in appeal of amount ordered to be paid by decree—Subsequent*

RES JUDICATA—contd

7 MATTERS IN ISSUE—*contd*

suit by the mortgagee to recover profits of the mortgaged property for period between recovery of possession by mortgagor and payment of amount of appellate decree—Civil Procedure Code (Act XIV of 1882) s 13 Expl II On the 25th September 1893 a decree in a redemption suit directed the plaintiffs (mortgagors) to pay to the defendant (mortgagee) R8 200 and costs within six months from its date and to redeem the mortgaged property The plaintiffs paid R8 200 and costs on 4th December 1893 i e within the six months and obtained possession in March 1894 In the meanwhile the defendant preferred an appeal and the judgment in appeal dated the 2nd September 1895 varied the

representatives and heirs of the mortgagee brought the present suit against the representatives of the mortgagors to recover the profits of the mortgaged property for the period intervening between the date at which they obtained possession (March 1894) and the date at which they paid the full amount ordered by the appellate decree (March 1896) The first Court allowed the claim but on appeal by the defendants the Judge varied the decree by reducing the amount awarded On second appeal —*Held* that the matter was *res judicata* and the suit was barred the question raised being one arising directly out of the mortgage transaction which was the subject matter of the litigation in the former suit VINAYAK SHIVRAO DIGHE v DATTATRAYA GOPAL (1902)

I L R 26 Bom 661

115 ———— Omission to set up mortgage bond—*Civil Procedure Code s 13 Expl II —Omission to set up mortgage bond as a defence in former suit—Subsequent suit on mortgage bond —Civil Procedure Code s 43—Relinquishment of part of cause of action* Where to a suit by a mortgagee on a mortgage bond of certain property a prior mortgagee of the same property is made a party and omits to set up his prior charge and claim to have it redeemed a suit subsequently brought by him for that purpose is barred by Expl II to s 13 of the Civil Procedure Code In the same way if

visions of s 43 of the Civil Procedure Code as separate causes of action or must he bring one suit on all his mortgages? GOPAL v PIRTHI SINGH (1902) I L R 24 All. 429

s c L R 29 I A 118 6 C W N 889

116 ———— Relief not claimed in former suit—*Civil Procedure Code (Act XIV of 1882) s 13 Expl II* A sued B as his agent and trustee in possession of certain land complaining that B had been dealing with the lands as if he (B) were the owner and had mortgaged them to C C was made a defendant in the suit B pleaded that he was the owner of the land and not merely agent of A C also pleaded that B was owner and he produced the mortgage deed and stated that if he were paid his debt he would not dispute A's claim The term in C's mortgage-deed was one year at the end of which if the debt were not paid C was to be at liberty to enforce his charge A prayed merely for possession and no issue was raised or relief asked in respect of C's mortgage The Court held that B was agent not owner and gave A a decree for possession Subsequently on the expiration of the year allowed in the mortgage deed C sued A and B to enforce his mortgage alleging that even [illegible]

ba[illegible]
C
R[illegible] I L R [illegible] 889

117 ———— 'Subjects in dispute' —*Civil Procedure Code (Act XIV of 1882) ss 13 (Expl II) 42 43* The pharse the subjects in dispute in s 42 of the Code of Civil Procedure signifies the jural relation between the parties to the suit for the determination of which the suit is brought The object of the section is to require the plaintiff to bring forward his whole case as to the matter of litigation on the question of right involved in the suit and not to require him to unite all the causes of action which he may have against the defendant in respect of the *corpus* or object of the suit Though the subject of *res judicata* is dealt with more comprehensively in the present Code than in the former Code yet ss. 42 and 43 are not exhaustive of the law of *res judicata* That law has been the same under both the old and the new Codes and it is substantially the same as the English law The decision of the Privy Council in *Kameswar Pershad v Rajkumari Ruttan I L R 20 Calc 79* explained. Neither of the decisions of the Privy Council in *Woomatara Debia v Unnopoorna Dassee 11 B L R 158* and *Kameswar Pershad v Rajkumari* [illegible] *I L R 20 Calc 79* supports the proposition that a plaintiff who seeks to redeem a specific mortgage or to eject on a specific lease and fails in such because the mortgage or lease is not proved, is thereby precluded from seeking to redeem the same [illegible] from another [illegible] title [illegible] the [illegible] two suits [illegible] transaction is sought to be established [illegible]

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

by different means. In a previou suit the present plaintiff claiming as the legal representative of a deceased *mortgagor sued substantially* the same defendants to redeem a u ufructuary mortgage alleged to have been executed in 1836 over about 50 caunies of land The defendants denied the genuineness of the mortgage and pleaded that 14 *out of the 50 caunies* had been u ufructuarily

t

l

s

n

tion as legal representative which was challenged not being decided) In 1897 plaintiff brought the pre ent suit to redeem the 14 *caunies on the footing* of the mortgage of 1833 which had been pleaded by the defendants in the previous uit *Held* that the suit was not barred by s 43 or s 13 *Expl. II of the* Code of Civil Procedure *Arunachalam Chetty* v *Meyyappa Chetty I L R 1 Mad 91* and *Ranga sowmi Pillai* v *Krishna Pillai I L R 22 Mad 259* discussed *Guddappa* v *Tirkappa I L R 25 Bom 189* dissented from. PAMASWAMI AYYAR v VYTHINATHA AYYAR (1903)

I. L. R 26 Mad 760

118 ——— — Suit for rent—*Civil Procedure Code (Act XIV of 1882) s 13—Khoti Settlement Act (Bom Act I of 1880) s 33—Suit to recover thal (rent in kind) for 1898 99—Previous suit to recover thal for 1897 98* The plaintiff a *khot* sued to recover *thal* (rent in kind) from the defendants for the year 1898 99

... (No 118 of 1898) had been brought by the plaintiff against the defendants to recover *thal* for the year 1897 98 In it the plaintiff

ment but their application was refused The only issue raised in the case was whether the *abhavani* (estimated produce) was proved The Judge held it proved and decreed the claim It was contend

... of the Khoti Settlement Act (Bom Act I of 1880) The mere fact that in the former suit *thal* or the produce of betel nut may have been wrongly awarded

... in the previous suit. The plaintiff in his plaint in that suit did not allege what was the rate according to practice or that according to practice the defendants were liable to pay *thal* in respect of betel nuts He merely specified betel nuts as one of the items *in respect of* which *thal* was payable to him for the year 1897 98 and the rate at which it was payable that year The question of defendants liability in respect of betel nuts not only for the year 1897 98 but for all years according to practice was not alleged and was therefore not directly and substantially in issue in the previous suit. All that the former suit decided was that *thal* was payable in respect of betel nuts for the year 1897 98 as alleged and claimed in the plaint and not according to practice *Held* also on the merits that having regard to the Collector s *botkhat* (statement) the plaintiff was not entitled to recover rent in respect of betel nuts The rule of English law that where the allegation on the record is uncertain there is no *res judicata* is also the rule embodied in Expl I to s 13 of the Civil Procedure Code (Act XIV of 1882) VISHNU VASUDEV JUVEKAR v RAMLING BHIKLING GURAV (1901)

I L R 26 Bom 25

119 ——— Matter directly and substantially in issue —*Civil Procedure Code (Act XIV of 1882) s 13 Expl II* In a previous suit brought by the defendant s husband against the plaintiff for a declaration of his title to a moiety of a garden purcha ed from the ancestors of the plaintiff and for partition the suit was not defended and an *ex parte* decree was passed In a subsequent suit by the plaintiff to have his title to the said garden declared to have the sale to the defendant s husband set aside as having been made without legal necessity and to recover possession the defence was that the suit as regards the moiety of the land was barred by the operation of s 13 of the Civil Procedure Code *Held* that the question of the validity of the sale to the defendant s husband ought to have been raised by way of defence to the previous uit and it must therefore by virtue of Expl II to s 13 of the Civil Procedure Code be treated as having been directly and substantially in is ue in that suit and was consequently *res judicata* *Sundar* v *Parbuti I L R 12 All 51 L R 16 I A 186* distinguished *Mahabir Pershad Singh* v *Macnaghten I L R 16 Calc 682 L R 16 I A 107* and *Kameswar Persad* v *Rajkumari Ruttan Koer I L R 20 Calc 79 L R 19 I A 234* referred to SHYAMA CHARAN BANERJI v MRINMAYI DEBI (1904)

I. L. R 31 Calc 79

120 ——————— *Matters in issue —Issue of law erroneously decided—Causes of action* In a previous suit for rent against a permanent tenure holder in a permanently settled area *Held* following a ruling of the High Court that the plaintiff could recover interest on the ...

o

T

b

in

... by a Full Bench. In a subsequent suit between the same parties on the same

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

kabuliat for rent for a subsequent period *Held* that the case must be decided upon the law as it stood when judgment was pronounced and that the plaintiff could recover the larger sum for interest the decision in the previous suit would not be *res judicata* The subsequent suit having been brought on a fresh cause of action no question as to the construction of the *kabuliat* had arisen and the law since the decision of the former suit had been determined by judicial decision to be otherwise than what it was formerly regarded to be A point of law may constitute *res judicata* *Parthasaradi Ayyangar* v *Chinna Krisna Ayyangar I L R 5 Mad 304* *Chamanlal* v *Bapubhai I L R 22 Bom 669* *Venku* v *Mahalinga I L R 11 Mad 393* *Rai Churn Ghose* v *Kumud Mohon Dutt Chaudhuri 1 C W N 687* and *Bishnu Pria Choudhurani* v *Bhaba Sundari Debya I L R 28 Calc 318* referred to *Gouri Koer* v *Audh Koer I L R 10 Calc 1087* and *Phundo* v *Jangi Nath I L R 15 All 327* distinguished ALIMUNNISSA CHOWDHURANI *v* SHAMA CHARAN ROY (1905)

I L R 32 Calc 749

121 ——— *Civil Procedure Code s 13—Res judicata—Erroneous decision in a former suit—Bengal Tenancy Act (VIII of 1885) ss 67 74 179—Mukarari lease—Abwab—Illegal cesses—Stipulation to pay* Where the plaintiff in a suit for recovery of rent claimed certain cesses which the defendant had stipulated to pay in his *kabuliat* and which the defendant said he was not liable to pay inasmuch as in a previous suit for recovery of rent of a previous period it had been *held that the same was not recoverable according* to law —*Held*, that the present claim was barred by the rule of *res judicata* PADMANAND SINGH *v* PADHA SINGH (1905) **9 C W N 469**

122 ——— *Civil Procedure Code (Act XIV of 1882) s 13—Joint trial—Matter directly and substantially in issue — Former suit —Suits disposed of in one judgment—Title* M and J two Mahomedan co widow brought two separate suits for recovery of their dowers from the estate of their deceased husband A question was raised in these suits, whether two houses belonged to the estate of the husband By consent of parties the Subordinate Judge tried both the suits together and disposed of them in one judgment it being found that the two houses belong to M as her separate property But two separate decrees were drawn

erroneous but no appeal was preferred in M s suit At the hearing of this appeal a question was raised on behalf of M the respondent that the judgment in M s suit not having been appealed against operated as *res judicata* The District Judge overruled this plea and allowed the appeal of J On second appeal to the High Court —*Held* (RAMPINI, J dissenting) that there was no bar of *res judicata* to the hearing of the appeal preferred by J [illegible] *Majid* v *Jew Narain Mahto I L R 16 Calc* [illegible] referred to MAHAMNISSA BIBI *v* JOYNAB B[illegible] (1906) **I L R 33 Calc 1101**

s c 10 C W N [illegible]

123 ——— *Civil Procedure Code (Act XIV of 1882) s 1[illegible]—Consent decree—Fraud—Defence—Limitation.* On the 4th J[illegible] 1893 the defendant signed an acknowledgment (Ruzu) for R11 534 15 0 in favour of the shop of Bakhatram Nanuram represented in the suit by the plaintiff On the 19th June 1894 the defendant paid R400 cash and a hundi for R[illegible] and for the balance R10 534 15 0 he passed an instalment bond payable at yearly instalments of R1 000 with interest at 6 per cent on overdue instalment The hundi for R600 was dishonoured in 1895 and the firm sued the defendant for its amount plus R45 interest in Suit No 240 of 1895 The defendant pleaded want of consideration for the hundi and further said that the acknowledgment had been passed in ignorance of the true state of accounts and because the facts had been [illegible]

become due under the instalment [illegible] Suit No 105 of 1897 and was for R[illegible] 000 and [illegible] est The defendant admitted the claim [illegible] decreed accordingly by consent In 189[illegible] the defendant instituted Suit No 41[illegible] of 189[illegible] against the Bakhatram firm for cancellation of the [illegible] ment bond alleging that it was obtained by misrepresentation and fraud and was void in [illegible] having been passed in respect of wagering transactions and that nothing was due under it. The [illegible] decision in the case was passed by the High Court who without giving any decision on the merits dismissed the suit as time barred Pending the above proceeding the plaintiff filed this suit in 1902 against the defendant on the instalment bond to recover the 3rd 4th and 5th instalments amounting in all to R3 000 and interest The defendant pleaded *inter alia* that the instalment bond and prior Ruzu were obtained from him by fraud and misrepresentation and that the debt due was [illegible] arising from wagering contracts [illegible] law No findings were recorded on these points the Subordinate Judge held that the defendant was precluded by the decrees in suits Nos 249 of 1[illegible] and 105 of 1897 from raising any of these contentions. The claim was decreed with costs On appeal the District Judge also came to the conclusion that the bar of *res judicata* operated against the defendant but held that the claim as to the 3rd and 4th instalments was barred by limitation. Both the parties preferred appeals to the High Court

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*contd*

Held by ASTON J—(i) that unless it be established that the pleas which the defendant had raised in the present suit and had not been allowed to prove if proved in the Hundi Suit No 249 of 1895 have reduced the amount actually due by him in June 1893 to less than R600 plus the R400 paid in cash the decision in the hundi suit could no operate as *res judicata* in re pect of the said plea for the matter which might and ought to be made a ground of defence in the hundi uit must be a ground of defence to the claim actually made in the said former suit (ii) that the plea that the consideration for the instalment bond partly failed becau e of the reasons set up in the pleas afore aid would have been irrelevant in the later suit No 195 of 1897 for the first two in talments of R1 000 due under that bond unless by setting up these pleas and proving them the claim in that later suit for R2 000 the amount of the fir t two instalment would have been reduced. *Held* by SCOTT J—(i) that before

ment alone The defendant was therefore not

sufficient issue for the disposal of the case on the hundi and in that suit the defendant s liability under the hundi was the only matter in issue In suit No 105 of 1897 there was no hearing and dis po al of any matter in issue and the provisions of s 13 had therefore no application Regard must be had to the reason and scope of the consent decree A defendant is entitled to resist a claim made against him by pleading fraud and he is entitled to urge that plea though he may have him elf brought an un ucce sful suit to set aside the transaction and is not under certain circumstances like those in hand precluded from urging that plea by lapse of time *Pangnath* v *Govind I L R 28 Bom 639* followed *Mahomed* v *Ezekiel 7 Bom L P 772* not followed. MINALAL SHADIRAM v KHARSETJI (1906)

I L R. 30 Bom. 395

124 ———— **Application for review to have compromise-decree set aside**—*Res judicata—Civil Procedure Code (Act XIV of 1882) s 13—Suit instituted before Munsif—Compromise decree on appeal before District Judge—Decision, if bars fresh suit before Subordinate Judge—Ground for setting aside compromise-decree not raised in review—Fresh suit on such ground if lies—Procedure for setting aside decree—Rule issued by the High Court—Discharge—Effect* Plaintiffs had instituted three suits against the defendants in the Court of the Munsif Pending appeals preferred before the District Judge against the decrees of the Munsif a compromise was filed and decrees made thereon

obtained rules from the High Court against this order but they were discharged Plaintiffs now instituted a fresh suit in the Court of the Subordinate Judge praying that the compromise and the decree made thereon be set aside on the ground that the pleader had no authority to compromise and that the terms of the comprom e went outside the subject matter of the suit *Held* that in order to have the comprom e decree set aside it was open to the plaintiffs to proceed either by way of suit or by an application for review the latter being the more regular mode of procedure *Ashutosh Chandra* v *Tara Prosanna Roy I L R 10 Calc 61* followed That the effect of the discharge of the rules issued by the High Court was to leave the order of the District Judge undisturbed. That the question regarding the pleader s authority to com prom e was directly and substantially in issue in the proceeding for review and was heard and final y decided by the Court of the District Judge which was a Court of jurisdiction competent to try the pre ent suit The suit in consequence is barred by the rules of *res judicata* *Koylash Chandra De* v *Tarack Nath Mandal I L R 25 Calc 571* *Bhagwanbuttee Choudhurain* v *A H Forbes I L R 28 Calc 78* relied on An independent uit would not lie merely because a ground is alleged for setting aside the decree which was not taken in the application for review The plaintiffs having elected to proceed by way of review ought to have raised upon their application all the grounds upon which they relied for setting aside the decree RAM GOPAL MAZUMDAR v PRASUNNA KUMAR SANIAL (1905) 10 C W N 529

125 ———— **Property not included in the former suit**—*Civil Procedure Code (Act XIV of 1882) s 13 Explanation II—Right as heir decided in the former suit with respect to other property—The decision does not bar the second suit* A

decided that *A* was the heir of *S* and the suit was dismissed *A* then brought another suit against K to establish his right as *S* s heir to property not included in the plaint in the first suit The lower Appellate Court negatived the claim upon the ground that as *A* failed to make the om ion by K to include the property in dispute in the previous suit for partition a ground of defence *A* s right to the property was in the second suit barred under Explanation II to s. 13 of the Code of Civil Procedure (Act XIV of 1882) On appeal to the [High

RES JUDICATA—*contd*

7 MATTERS IN ISSUE—*concld*

Court *held* that *A s* right to maintain the suit was not barred by *res judicata* Explanation II to s 13 of the Civil Procedure Code (Act XIV of 1882) must be read in conjunction with and as part and parcel of the leading provisions of the section itself According to those provisions several conditions are necessary to constitute a matter *res judicata* Two of those conditions are (i) that the matter must have been in the former suit directly and substantially in issue and (ii) that it must have been heard and finally decided in that suit The explanation does no more than lay down that if a matter which might and ought to have been made a ground of defence in the former suit is not made such a ground it shall be dealt with as falling within the first of the abovementioned conditions. That is the omission shall have the same effect given to it as it would have had if it had been made a ground of defence But to constitute *res judicata* a second condition is necessary—it must have been finally decided and if the former suit went off on a preliminary ground not calling for adjudication on other grounds of defences whether raised or not those grounds remain undecided. The same effect must be given to a matter which might and ought to have been but has not been made a ground of defence in the former suit as must be given to it if it had been made a ground of defence in the former suit ABDULLAKHAN v KHANMIA (1908) **I L R 32 Bom 315**

126 ———— **Previous rent suit**—*Civil Procedure Code (Act XIV of 1882) s 13 Expl II—Rent suit for—Decree ex parte* The limitation that for Explanation II of s 13 of the Code of Civil Procedure to have any application the subject matters of the two suits must be the same is not to be found in s 13 itself *Pajendra Nath Ghose* v *Tarangini Dasi 1 C L J 248* explained The words the matter directly and substantially at issue has been directly and substantially in issue in a former suit cannot and do not lay down that both the issues and the subject matters of the two suits must be the same before Explanation II can be applied. *Sarkum Abu Torab Abdul Waheb* v *Rahaman Buksh I L R 24 Calc. 83 Kailash Mondul* v *Baroda Sundari Dasi I L R 24 Calc 711 Woomesh Chundra Moitra* v *Baroda Das Moitra I L R 28 Calc 17* and *Surjiram Marwari* v *Barhamdeo Persad 1 C L J 337* referred to [illegible]

in the previous suit *Sri Gopal* v *Pirthi Singh I L R 20 All 110* followed JAMADAR SINGH v SERAZUDDIN AHAMAD CHAUDHURI (1908) **I L R 35 Calc 979 s c 12 C W N 862**

8 PARTIES

(a) SAME PARTIES OR THEIR REPRESENTATIVES

1. ———— **Judgment not inter partes**—*Questions of fact* A judgment *inter partes* be

RES JUDICATA—*contd.*

8 PARTIES—*contd.*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

[illegible]

NATH JOSHI v DHARMA **2 Bom 385 2nd Ed 385**

2 ———— **Judgment inter partes**—*Point decided in former suit* In a [illegible] suit in which *A* was plaintiff and *B C* and *D* were defendants —*Held* that a verdict on the point in issue in an ejectment suit in which *C* and *D* were plaintiffs and *A* was defendant was a bar to the suit MOHIDDIN v MUHAMMAD IBRAHIM **1 Mad 443**

NUND KISHORE SINGH v HUREE PERSAD MUNDUL **13 W R 64**

3 ———— *Suit to recover purchase money of the decree of ejectment from pur*[illegible]

a suit against *A* to recover the purchase money the decision in the ejectment suit—to which *A* was no party—was not a *res judicata* *Ram Prosad Chuckerbutty* v *Ram Narain Singh I L R* [illegible] *Calc 5*[illegible] and *Ritto Kunwar* v *Kedo Parshad I L R 19 All 277* referred to GOOL KHAN v TETAR GOALA **4 C W N 63**

4 ———— *Judgment in rem—Decree obtained by fraud—Civil Procedure Code 1877 s 13—Evidence Act s 44* Where a decree in a suit has been honestly obtained without fraud it cannot be subsequently disputed by the parties thereto or their privies or by persons who were represented by such parties. Strangers to the suit (i e persons neither privies to nor represented by the parties thereto) are not bound by such a decree if it be a decree *inter partes* but if it be a decree *in rem* and passed by a competent Court, they are bound by it and cannot controvert it. Where a decree has been obtained by means of the fraud of one party against the other it is binding on parties and privies and on persons represented by the parties so long as it remains in force but it may be impeached for fraud and may be set aside if the fraud is proved In the case of judgments in rem the same rule holds good with regard to persons who are strangers to the suit. Where a decree has been obtained by the fraud and collusion of both the parties to the suit it is binding upon the parties [illegible]

[illegible]

subsequent proceeding whether as [illegible] defendant treat the previous judgment as obtained by fraud and collusion as a mere nullity provided the fraud and collusion be clearly established. The same rule applies with regard to strangers where

RES JUDICATA—*contd*

8 PARTIES—*contd*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

previous judgment is a judgment *in rem* S 13 the Civil Procedure Code (Act X of 1877) is not ve as to the effect of *res judicata* It does deal with the case of judgments *in rem* nor with that of parties repre ented by though not claiming r the parties to a former suit *Quære* As to the proper construction of s 44 of the Evidence Act AHMEDBHOY HUBIBHOY *v* VULLEEBHOY CASSUM BHOY I L R 6 Bom 703

5 ——— Decree against Hindu widow—*Fraud—Reversioner* Upon the death of *P* a Hindu who was separate from hi brother *S* his widow *G* became life tenant of his estate and his daughter *B* became entitled to succeed after *G s* death. In 188- a suit was brought by S and *G* against I to recover the value of a branch of a mangoe tree wrongfully taken by the defendant and for maintenance of possession over the grove in which the tree was situate The suit was dismissed, and it was decided that *P* was not the owner of the grove nor was *G* the owner In 1885 *B* brought a suit against *G S V* and *A* to whom V had sold some of the trees claiming a declaration of her right and pos ession of the grove upon the allegation that the proceedings of 1882 were carried on in collu ion between *S* and *G* on the one hand and I on the other for the purpose of improperly preventing her from a serting her rights *Held* that if the suit of

plaintiff and estop her again litigating questions which were then decided. *Held* also that if the plaintiff s specific allegation of fraud and collusion in the proceedings of 1882 were establi hed, and

I 1 539 *Adi Deo Narain Singh* v *Dukharan Singh I L R 5 All 532* and *Sant Kumar* v *Deo Saran I L R 8 All 365* referred to SACHIT *v* BUDHUA KUAR I L R 8 All 429

6 ——— *Reversioners—Effect on successors in estate to widow of decree against her—Bona fides* The rule whereby decrees obtained again t a Hindu widow succeeding to her husband s e tate as heir are binding by way of *res judicata* against all who in the order of succession came after her and in that sense may be dealt with

RES JUDICATA—*contd.*

8 PARTIES—*contd*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

not been fairly obtained *Anund Koer* v *Court of Wards I L R 6 Calc 764* *Nand Kumar* v *Radha Kuari I L R 1 All 282* and *Katama Natchiar s Case 9 Moo I A 539* referred to Also that *M s* withdrawal of her suit was not a bar to the suit of the plaintiff SANT KUMARI *v* DEO SARAN I L R 8 All 365

7 ——— *Reversioner* On her husband s death a Hindu widow obtained possession of his estate as his heir and in a suit against her for possession thereof by certain persons claiming to succeed to the estate as rightful heirs a decree was obtained by them *Held* that such

8 ——— Decree in suit by Hindu widow—*Reversioners suit by—Alienation by life tenant—Adverse posses ion* A daughter succeeded to a share of her father s estate and transferred it in full property by a formal instrument or ikrar nama dated March 1849 to her granddaughter expres ly naming her and treating her as her heiress —the transfer being in the nature of a re lease reserving maintenance and other advantages to the donor Upon the application of the grand daughter before the Collector for the mutation of names according to the terms of the ikrarnama the reversioners (collateral heirs of the father) affected to contest the unauthorized nature of the aliena tion but dropped their opposition In 1857 the

(October 1858) on appeal to the Zillah Judge Pending the appeal the plaintiff died (February 1858) and reversioners applied to be and were admitted as her h irs to conduct the appeal The

posses ion of the property by right of inheritance from the alienor s father He was one of the rever ioners who had been admitted to conduct the appeal in the former suit upon the death of the alienor *Held* (on spe ial appeal and review) that there had been no adverse posses ion the instrument enured as a transfer of the donor s lif time only the judgment in the former suit brought to set it a ide did not bind or affect the reversioners who in that suit merely represented the interest of their prede cessors the life tenant RAJ KUNWAR *v* INDURJIT KUNWAR 5 B L R 585 13 W R 52

RES JUDICATA—*contd*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

9 ——————— *Suit against remote reversioner—Subsequent suit for possession by reversioner* A Hindu widow and her son the then presumptive heir to property claimed by the widow obtained a decree against a more remote reversionary heir The son predeceased his mother and the person against whom the decree had been obtained became the next reversionary heir *Held* in a suit for possession by him that the decree in the previous suit did not operate as a *res judicata* RAM CHUNDER PODDAR v HARI DAS SEN

I L R 9 Calc 463

10 ——————— **Reversioners entitled to succeed successively on death of Hindu widow**—*Suit by some of such reversioners to set aside alienations made by widow in possession—Similar suit afterwards brought by others* Where there are several reversioners successively entitled to succeed to property for the time being in the possession of a Hindu female a decree in a suit by some of such reversioners seeking to set aside alienations made by the female in possession will not constitute [illegible]

and *Isri Dut Koer v Hansbutti Koerain L R 10 I A 150* referred to CHHIDDU SINGH v DURGA DEI

I L R 22 All 382

11 ——————— **Decree against member of joint family**—*Civil Procedure Code 1859 s 2—Former suit by one of several parties who afterwards sue through a receiver* A previous decision against one member of a family suing to recover his own share of certain property is no bar under s 2 Act VIII of 1859 to a suit by the receiver in the name of the whole family to recover the whole property JUGGUNNATH PERSHAD DUTT v HOGG

12 W R 117

12 ——————— **Decree in suit by manager of joint family**—*Manager of joint family as representative of other members—Subsequent suit by another member on same cause of action* A Hindu family is regarded as a corporation whose interests are necessarily centred in the manager the presumption being that the manager is acting for the family unless the contrary is shown Before the introduction of the Civil Procedure Code this was so equally with regard to litigation as to other transactions and it was not then obligatory or even customary for a Hindu manager to set forth that he sued in a representative character (as now required by the Code s 50) or to add the co owners as parties to the suit (as required by English law) A suit therefore brought in 1856 by the manager of a joint Hindu family consisting of himself and the plaintiff and no fraud or collusion being alleged bound the plaintiff though then a minor

RES JUDICATA—*contd.*

8 PAPTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

and he could not afterwards bring a second suit on the same cause of action. GAN SAVANT BAL SAVANT v NARAYAN DHOND SAVANT

I L R 7 Bom [illegible]

13 ——————— **Decree against manager of joint family**—*Civil Procedure Code* [illegible]

[illegible]

cedure Code is not limited to the case of a [illegible] under s 30 The members of a tarwad claim [illegible] a [illegible] ex [illegible] v [illegible]

I L R 2 Mad [illegible]

14 ——————— *Karnavan of Malabar tarwad decree against* A decree against a person who happens to be the karnavan of a Malabar tarwad is not necessarily binding on the tarwad in the absence of fraud ELAYACHANDIYATH KOMBI ACHEN v KEVATUMKORA LAK [illegible]

I L R 6 Mad [illegible]

15 ——————— *Decree against karnavan of Malabar tarwad—Necessary parties to suits against property of Malabar family—Malabar Law—Nambudri family Status of—Civil Procedure Code 1877 s 13 expl 5 s 30* The plaintiff a member of a Malabar Nambudri family sued for certain land claiming it as the property of his family the Vadasheri illam He had been dispossessed by the defendants under a decree declaring their title to the land against the plaintiff's elder brother who claimed it on behalf of the Vadasheri illam *Held* that the plaintiff was not estopped by the former decree from recovering the land *Per* INNES *J*—The question whether a decree obtained against the karnavan of a Malabar tarwad or of a Nambudri illam in Malabar is binding on the family is purely one of procedure The dictum in *Varanakot Narayanan Namburi v Varanakot Narayanan Namburi I L R* [illegible] that in the absence of fraud or collusion a decree against the karnavan as such is binding on the anandravans of the trawad is not warranted by any provision of the Code of Civil Procedure Every member of the tarwad is entitled to be made a party or to have notice under s 30 of the Code of Civil Procedure in any suit the object of which is to affect the tarwad property Expl 5 s 13 of the Code of Civil Procedure does not refer to bonâ fide claims and bonâ fide defences but to bonâ fide claims [illegible] not make a decree binding on a person [illegible] to it where the actual defendant was [illegible] interested with such person in the subject [illegible] of the suit and defended the suit [illegible] I L R [illegible] *Ha[illegible] Ga[illegible] v Sonamonee Da[illegible]*

RES JUDICATA—*contd.*

8 PARTIES—*contd.*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd.*

[illegible] KUNHATHUMMALATH VA[illegible] NAMBI [illegible] v. NARAYANAN NAMBUDRI

I. L. R. 6 Mad. 121

16 — — — — *E[illegible] of decree [illegible]* [illegible]. In [illegible] B [illegible] a piece [illegible] land and obtained a decree [illegible] in the [illegible] and appeal [illegible] C and D the representatives of B [illegible] the land [illegible] was [illegible] P [illegible] It was found that C and D [illegible] P had lived together as members of an undivided Hindu family at the time of the [illegible] he (D) was the manager of the [illegible] C and D [illegible] the [illegible] C and D [illegible] any [illegible] at the time of the [illegible] and there [illegible] any reason [illegible] to have been made a [illegible] and P was [illegible] proved. *Held* that the plaintiff's [illegible] was barred by the [illegible] s. [illegible] of Act VIII of 1859. *Jon[illegible] D[illegible] Fa[illegible] v. Fa[illegible] I. L. R. [illegible] and [illegible] v. Jayram Pan[illegible] I. L. R. 5 Bom. [illegible] referred to. NARAYAN G[illegible] HABBU v. PANDURANG GANU

I. L. R. 5 Bom. 685

17 — — — — *Civil Procedure Code, s. 13 [illegible]—Joint Hindu family—Suit against two members—Second suit against third member.* The plaintiff sued the father and brother of the defendant for trespass to a wall. He [illegible] to the wall was denied by the [illegible] and a decree. On [illegible] the decree he was resisted by the defendant [illegible] who claimed the wall as his ancestral property, and alleged that he was no party to the suit in which the decree had been obtained against his father and brother. His claim was [illegible] as a [illegible] s. 331 of the Code of Civil Procedure. The plaintiff contended that the defendant was [illegible] by the decree [illegible] against the father and brother. *Held* that a Hindu son in a joint family becomes entitled by reason of his birth and in his own right to a right which he can enforce against his father; he does not claim under his father within the meaning of s. 13 of the Civil Procedure Code. *Held* also that the [illegible] in the former suit did not claim any right in common for themselves and others within the meaning of expl. V of s. 13 of the Code of Civil Procedure. The case of *[illegible] Gop[illegible] v. Pand[illegible]rang Gan[illegible] I. L. R. 5 Bom. [illegible]* distinguished. RAM NARAIN v. BISHESHAR PRASAD

I. L. R. 10 All. 411

18 — — — — *Sale in execution of decree—Mitakshara law—Alienation, voluntary and involuntary, by the members of a family governed by the Mitakshara law.* A, a Hindu governed by the Mitakshara law, after the attachment of a property part of his ancestral estate to which he and his minor son B were jointly entitled as members of a joint Hindu family, conveyed by a deed of gift the whole of his interest in the ancestral property including the property under attachment to B. Five days after the execution of the deed of gift the property was sold in execution of the decree of the attaching creditor C and was purchased by C at such sale. Ten days after the sale A instituted proceedings under s. 2[illegible] of Act VIII of 1859 to set aside the sale on the ground of irregularity. These proceedings were afterwards continued in the name of A but virtually on behalf of the minor B under the control and direction of the Collector who had taken charge of his estate and appointed a manager under Act XL of 1858. These proceedings terminated in 1874 by the application to set aside the sale being dismissed, and the sale was therefore confirmed, and C took possession of the property. In 1[illegible] a suit was instituted on behalf of D by the manager appointed by the Collector against C and A to recover possession of the property on the grounds—(i) that when it was sold it was no the property of A the judgment-debtor and (ii) that the property of a joint Hindu family could not be sold or alienated by or taken in execution of a decree against a single member of that family. *Held* that the fact that the plaintiff through his guardian, had actively intervened in the proceedings under s. 2[illegible] of Act VIII of 1859 was no bar to the institution of the present suit on his behalf. COLLECTOR OF MONGHYR v. HURDAI NARAIN SHAHAI

I. L. R. 5 Calc 425

[illegible] PUDDO PERKASH MISSER v. HURDAI NARAIN SAHU

5 C. L. R. 112

19 — — — — Decree against member of joint family as representing minor son—*Alienation made without consent of co-sharers—Civil Procedure Code, 1877, s. 13—Same parties.* G sold an estate nominally to the minor son of K, but in reality to K. H brought a suit in his minor son's name against N the mortgagee of such estate to redeem the same. N set up as [illegible] such [illegible] that such sale was invalid and [illegible] such estate was a share of certain [illegible] property of which he was a co-sharer [illegible] made without his consent. It was [illegible] in that suit that such estate was a sh[illegible] undivided property and not the separat[illegible] of G and that such sale was invalid, ha[illegible] made without the consent of N a co-[illegible] undivided property. G subsequently [illegible] such estate and, having done so, sold it a [illegible] time to K. N thereupon sued K to set aside [illegible] sale on the same ground as that on which [illegible] defended the former suit. *Held* that the [illegible] such suit whether such estate was a share of [illegible] ded property or the separate property of G [illegible] *judicata* inasmuch as K though not in na[illegible]

RES JUDICATA—*contd*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

in fact was a party to the former suit in which such issue was raised and finally decided. KHUB CHAND *v* NARAIN SINGH I L R 3 All 812

20 ———— **Dismissal of former suit to have property declared joint**—*Subsequent suit for partition* Where a plaintiff s claim to have a property declared ijmali had been dismissed in a former suit his suit for a partition of the same property was *held* to be barred against a defendant who had been a party to that suit as well as against defendants who were not in possession. BESHARUTOOLLAH *v* AJOO 14 W R 195

21 ———— **Suit against defendants as principals**—*Civil Procedure Code 1859 s 2—Subsequent suit against them as agents* A previous suit in which the plaintiff elected to sue the defendants as principals bars a second suit on the same contract in which the defendants are charged as responsible agents under a trade usage DEVRAV KRISHNA *v* HALAMBHAI I L R 1 Bom 87

22 ———— **Suit not between same parties** *Held* on the fact that the suit not barred by s. 2 Act VIII of 1859 not being between the same parties UMES CHANDRA ROY *v* NABIN CHANDRA MAZUMDAR 5 B L R 327 note

s c WOOMESH CHUNDER ROY *v* NOBIN CHUNDER MOZOOMDAR 10 W R 457

ABDOOL GUFFOOR KHAN CHOWDHRY *v* GOLAM TUFF 16 W R 298

23 ———— *Decision as to validity of will* S died in 1865 leaving two sons N and G M took possession of the property of S under a will alleged by her to have been executed by S In 1867 G brought his suit as one of the heirs of S to set aside the will and made his brother N a co-defendant The Principal Sudder Ameen dismissed the suit finding on the evidence that the will was genuine In 1869 N brought this suit for his share as heir of S against M The first Court found that the will was a forgery and gave the plaintiff a decree On appeal, the Judge held that N s claim was barred by the decision in the former suit brought by his brother and reversed the decision of the first Court. *Held* on special appeal, that it was not barred by the finding of the Court in G s suit as N was no party to that suit and he could not in any manner have availed himself of a decree in that suit to enforce a claim to his share NABIN CHANDRA MAZUMDAR *v* MUKTA SUNDARI DEBI 7 C L R Ap 38 15 W R 309

24 ———— *Former suits on ikrar by several parties* Five brothers *A B C D and E* executed an ikrar by which talukh N and others were to remain in their possession and under the management of *A* On refusal to give his brothers their shares of the profit they sued separately and obtained decrees against him for the amount due to them. In a suit by *A* s son against *B* for the sums which his father was compelled under the ikrar to pay his other brothers, on the allegation that *B* alone was in possession of talukh N and appropriated the rents wrongfully — *Held that the suit was not barred by the former suits under the ikrar except so far as B s share in talukh N was concerned.* KHETTRO NATH DEY *v* GOSSAIN DOSS DEY 7 W R 188

25 ———— **Decree declaring impartibility**—*Subsequent suit for partition.* The plaintiffs mirasidars of a village held on pungavaly tenure sued their co mirasidars the owners of the remaining shares and others, occupants of land in the village for a partition of the common lands of the village and an allotment to the plaintiffs of specific parts thereof proportionate to the shares which they represented. In a former suit to which all the present mirasidars were parties, either actually or as privies to those through whom they claim it was decided that no right existed in any individual shareholder of the village to have allowed to him a distinct portion of the common lands in proportion to his share or shares. *Held* that the former decree declaring the impartibility of the common land of the village was conclusive in the present suit between the present shareholders upon the same question of right SITARAMAIYAR *v* ALAGIRY IYER 4 Mad. 285

26 ———— **Decree in suit to establish right**—*Subsequent suit for possession—Civil Procedure Code 1859 s 2—Suit between same parties* The plaintiff sued to recover possession of certain houses and grounds as belonging to his zamindari, setting forth that the premises in question had been occupied by his paternal grandmother on whose death the defendants had taken wrongful possession. The defendants claimed to be legally entitled to the premises in question and contended that the plaintiff s suit was barred under s. 2 Act VIII of 1859 by reason that the plaintiff had already during his grandmother s lifetime brought a suit against her and the defendant s father as a co-defendant to establish his right to the same premises, which suit had been dismissed. The defendants also pleaded limitation It appeared that in the former suit the relief sought by the plaintiff was substantially to [illegible]

[illegible]

that as regards the property now claimed although it was mentioned in the plaint no charge had been made that she had assigned it or intended to assign it to her co-defendant nor any allegation to show that the co-defendant had any interest in it. *Held* reversing the decisions of the lower Court that under the circumstances the decision in the former suit was not a decision in a suit between the same parties, or parties under whom they claimed, and that the cause of action in the present suit was not

RES JUDICATA—*contd*

8 PARTIES—*contd*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

determined in the former suit *Held* also that the defendant s plea of limitation could not be determined without a finding as to whether the plaintiff s grandmother who died within the period of limitation had held the premises with the plaintiff s *leave or as a trespasser* ZAMINDAR OF PITTAPURAM v PROPRIETORS OF KOLANKA

I L R 2 Mad 23
L R 5 I A 200

s.c RAMA RAO v SURIYA RAO 3 C L R 265

Reversing the decision of the High Court in RAMA RAO v SURIYA RAO I L R 1 Mad. 84

27 ———— Decree in suit by first mortgagee for sale of mortgaged property —*Second mortgagee not made a party—Subsequent suit by second mortgagee on mortgage—Civil Procedure Code 1882 s 13—Meaning of between parties under whom they or any of them claim* Upon the death of *G* a Mahomedan his estate was divisible into eight shares two of which devolved upon his son *A* one upon each of his five daughters and one upon his widow *B* The name of *B* only was recorded in the revenue registers in respect of the zamindari property left by *G* In 1876 *A* and *B* gave to X a deed of simple mortgage of 24 biswas out of a 5 biswas share of a village included in the said property In 1878 *A* and *B* gave to S a deed of simple mortgage of the 5 biswas which were described in the deed as the widow s own property In 1882 X obtained a decree upon his mortgage for the sale of the mortgaged property and it was put up for sale and purchased by X himself in January 1884 In February and November 1884 the daughters of *G* obtained *ex parte* decrees against *A* and *B* in suits brought by them to recover their shares by inheritance in the 5 biswas In 1885 S brought a suit upon his mortgage of 1878 claiming the amount due thereon and the sale of the whole 5 biswas To this suit he made defendants *A* and *B* *G s* daughters and X alleging that the decrees of February and November 1884 were fraudulently and collusively obtained and as to the auction sale of January 1884 that the 24 biswas were sold subject to his mortgage he not having been made a party to the suit brought by X upon the deed of 1876 and therefore not being bound by any of the proceedings taken therein or consequent thereto

from *A* and *B* claimed under a title derived from them. *Held* that there being no evidence to show that the decrees of February and November 1884 were fraudulently and collusively obtained the Court of first instance was right in exempting the shares of the daughters from the lien sought to be enforced by the plaintiff and that inasmuch as the deed of 1876 was prior in date to the plaintiff s deed of 1878 and there was no allegation of fraud or collusion in regard to it the decree and sale in enforcement of the former deed would defeat the rights of the plaintiff under the latter *Khub Chand* v *Kalian Das I L R 1 All 240* and *Ali Hasan* v *Dhirja I L R 4 All 518* referred to Per MAHMOOD J The decrees of February and November 1884 did not operate as *res judicata* against the plaintiff inasmuch as a mortgagee cannot be bound by a decision relating to the mortgage property in a suit instituted after his mortgage and to which he was not a party After a mortgage has been duly created the mortgagor in whom the equity of redemption is vested no longer possesses any such estate as would entitle him to represent the rights and interests of the mortgagee in a subsequent litigation so as to render the result of such litigation binding upon and conclusive against such mortgagee The plaintiff in the present suit could not be treated as a party claiming under his mortgagors within the meaning of s 13 of the Civil Procedure Code and that section must be interpreted as if after the words under whom they or any of them claim the words by a title arising subsequently to the commencement of the former suit had been inserted. *Duma Sahu* v *Jeonarain Lall 3 B L R A C 407 12 W R 362* and *Bonomalee Nag* v *Koylash Chander Dey I L R 4 Calc 692* referred to *Outram* v *Morewood 3 East 346* *Boykuntnath Chatterjee* v *Ameeroonissa Khatoon 2 W R 191* *Katama Natchiar* v *Moottoo Vijaya Raganadha 9 Moo I A 539* and *Ram Coomar Sein* v *Prosunno Coomar Sein W R 1864 375* distinguished The principles of the rule *res judicata* as part of the law of civil procedure properly so called and those of the rule of estoppel as part of the law of evidence explained and distinguished. SITA RAM v AMIR BEGAM

I L R 8 All 324

28 ———— Illegitimacy question of —*Execution of decree—Act XXIII of 1861 s 11* The questions which under s 11 Act XXIII of 1861 may be determined by a Court executing a decree must be between parties to the suit in which the decree was passed and must relate to the execution of the decree A person who was not on the record when the decree was made does not constitute himself a party to the suit by applying for execution and a question as to his legitimacy is consequently not one which the Court executing the decree is competent to entertain. A declaration by a Court in execution proceedings that a person not a party to the suit applying for execution is legitimate since it is made without jurisdiction cannot under s. 2 Act VIII of 1859 be pleaded as a bar to a regular suit in which it is sought to establish the illegitimacy of the applicant ABIDUNNISSA KHATUN v AMIRUNNISSA KHATUN

I L R 2 Calc 327
L R 4 I A 66

RES JUDICATA—*contd*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

in fact was a party to the former suit in which such issue was raised and finally decided KHUB CHAND v NARAIN SINGH I L R 3 All 812

20 ———— **Dismissal of former suit to have property declared joint**—*Subsequent suit for partition* Where a plaintiff s claim to have a property declared ijmali had been dismissed in a former suit his suit for a partition of the same property was *held* to be barred against a defendant who had been a party to that suit as well as against defendants who were not in possession BESHARUTOOLLAH v AJOO 14 W R 195

21 ———— **Suit against defendants as principals**—*Civil Procedure Code 1859 s 2—Subsequent suit against them as agents* A previous suit in which the plaintiff elected to sue the defendants as principals bars a second suit on the same contract in which the defendants are charged as responsible agents under a trade usage DEVRAY KRISHNA v HALAMBHAI I L R 1 Bom 87

22 ———— **Suit not between same parties** *Held* on the facts that the suit not barred by s 2 Act VIII of 1859 not being between the same parties UMES CHANDRA ROY v NABIN CHANDRA MAZUMDAR 5 B L R 327 note

s c WOOMESH CHUNDER ROY v NOBIN CHUNDER MOZOOMDAR 10 W R 457

ABDOOL GUFFOOR KHAN CHOWDHRY v GOLAM NUJUF 16 W R 298

23 ———— *Decision as to validity of will* S died in 1865 leaving two sons N and G M took possession of the property of S under a will alleged by her to have been executed by S In 1867 G brought his suit as one of the heirs of S to set aside the will and made his brother N a co defendant The Principal Sudder Ameen dismissed the suit finding on the evidence that the will was genuine In 1869 N brought this suit for his share as heir of S against M The first Court found that the will was a forgery and gave the plaintiff a decree On appeal the Judge held that N s claim was barred by the decision in the former suit brought by his brother [illegible]

[illegible]

of a decree in that suit to enforce a claim to his share NABIN CHANDRA MAZUMDAR v MUKTA SUNDARI DEBI 7 C L R Ap 38 15 W R 309

24 ———— *Former suits on ikrar between several parties* Five brothers A B C D and E executed an ikrar by which talukh N and others were to remain in their possession and under the management of A On refusal to give his brothers their shares of the profits they sued separately and obtained decrees against him for the amount due to them In a suit by A s son against B for the sums which his father was compelled under the ikrar to pay his other brothers, on the allegation that B alone was in possession of talukh N and appropriated the rents wrongfully —*Held* that the suit was not barred by the former suits under the ikrar except so far as B s share in talukh N was concerned KHETTRO NATH DEY v GOSSAIN DOSS DEY 7 W R 188

25 ———— **Decree declaring impartibility**—*Subsequent suit for partition* The plaintiff s mirasidars of a village held on puncavaly tenure sued [illegible] remaining [illegible] the village [illegible] the village [illegible] specific parts thereof proportionate to the shares which they represented. In a former suit to which all the present mirasidars were parties, either actually or as privies to those through whom they claim it was decided that no right existed in any individual shareholder of the village to have allowed to him a distinct portion of the common lands in proportion to his share or shares. *Held* that the former decree declaring the impartibility of the common land of the village was conclusive in the present suit between the present shareholders upon the same question of right SITARAMAIYAR v ALAGIRY IYER 4 Mad. 285

26 ———— **Decree in suit to establish right**—*Subsequent suit for possession—Civil Procedure Code 1859 s 2—Suit between same parties* The plaintiff sued to recover possession of certain houses and grounds as belonging to his zamindari setting forth that the premises in question had been occupied by his paternal grandmother on whose death the defendants had taken wrongful possession. The defendants claimed to be legally entitled to the premises in question and contended that the plaintiff s suit was barred under s. 2 Act VIII of 1859 by reason that the plaintiff had already [illegible] a suit against [illegible]

[illegible]

restrain his grandmother from acts of waste [illegible] ating property which had belonged to her deceased husband by assigning it to her co defendant but that as regards the property now claimed although it was mentioned in the plaint no charge had been made that she had assigned it or intended to assign it to her co-defendant nor any allegation to show [illegible] *Held* [illegible] that [illegible] former suit was not a decision in a suit between the same parties, or parties under whom they claimed and that the cause of action in the present suit was not

RES JUDICATA—*contd*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

determined in the former suit Held also that the defendant s plea of limitation could not be determined without a finding as to whether the plaintiff s grandmother who died within the period of limitation had held the premises with the plaintiff s leave or as a trespasser ZAMINDAR OF PITTAPURAM v PROPRIETORS OF KOLANKA

I L R 2 Mad 23
L R 5 I A 200

s c RAMA RAO v SURIYA RAO 3 C L R 265

Reversing the decision of the High Court in RAMA RAO v SURIYA RAO I L R 1 Mad. 84

27 ———— Decree in suit by first mortgagee for sale of mortgaged property —Second mortgagee not made a party—Subsequent suit by second mortgagee on mortgage—Civil Procedure Code 18[illegible] s 13—Meaning of between parties under whom they or any of them claim Upon the death of G a Mahomedan his estate was divisible into eight shares two of which devolved upon his son A one upon each of his five daughters and one upon his widow B The name of B only was [illegible]

[illegible]

of simple mortgage of the 5 biswas which were described in the deed as the widow s own property In 1882 X obtained a decree upon his mortgage for the sale of the mortgaged property and it was put up for sale and purchased by X himself in January 1884 In February and November 1884 the daughters of G obtained ex parte decrees against A and B in suits brought by them to recover their shares by inheritance in the 5 biswas In 188[illegible] S [illegible]

[illegible] and collusively obtained and as to the auction sale of January 1884 that the 2½ biswas were sold subjec[illegible] party [illegible] 1876 procee[illegible]

[illegible]

from A and B claimed under a title derived from [illegible]

deed of 1878 and there was no allegation of fraud or collusion in regard to it the decree and sale in enforcement of the former deed would defeat the rights of the plaintiff under the latter *Khub Chand* v *Kalian Das I L R 1 All 240* and *Ali Hasan* v *Dhirja I L R 4 All 518* referred to Per MAHMOOD J The decrees of February and November 1884 did not operate as *res judicata* [illegible]

been duly created the mortgagor in whom the equity of redemption is vested no longer possesses any such estate as would entitle him to represent the rights and interests of the mortgagee in a subsequent litigation so as to render the result of such litigation binding upon and conclusive against such mortgagee The plaintiff in the present suit could not be treated as a party claiming under his mortgagors within the meaning of s 13 of the Civil Procedure Code and that section must be interpreted as if after the words under whom they or any of them claim the words by a title arising subsequently to the commencement of the former suit had been inserted *Duma Sahu* v *Jeonara* [illegible] *Lall 3 B L R A C 407 12 W R 3[illegible]* and *Bonomalee Nag* v *Koylash Chander Dey I L R [illegible] Calc 692* referred to *Outram* v *Mor*[illegible] *3 East 346 Boykuntnath Chatterjee* v *Ameer*[illegible] *nissa Khatoon 2 W R 191 Katama Natchiar* v *Moottoo Vijaya Raganadha 9 Moo I A [illegible]* and *Ram Coomar Sein* v *Prosunno Coomar* [illegible] *W R 1864 3[illegible]5* distinguished The [illegible] the rule *res judicata* as part of the law of [illegible] cedure properly so called and those of the [illegible] estoppel as part of the law of evi[illegible] and distinguished SITA RAM v AMIR BE[illegible]

I L R 8 A[illegible]

28 ———— Illegitimacy [illegible] —*Execution of decree—Act XVIII of 18[illegible]* The questions which under s [illegible] 1861 may be determined by a C[illegible]

[illegible]

[illegible] stitute himself a party to th[illegible] execution and a question as t[illegible] consequently not on[illegible] the decree is competent to [illegible] by a Court in execution [illegible] not a party to the suit [illegible] legitimate since it [illegible] cannot under s [illegible] as a bar to a regular [illegible] to establish the illegitimacy [illegible] [illegible]UNNISSA KHATUN v [illegible]

I L R 2 Ca[illegible]
L R 4[illegible]

RES JUDICATA—contd.

5. PARTIES—contd.

(a) SAME PARTIES OR THEIR REPRESENTATIVES—contd.

29 ———— Parties in right of ... alleging ... against A ... who ... all ... of A ... as ... deceased ... sole ... A ... B ... K ... that H ... and C ... claimed ... lawful ... by ... and that ... respectively of ... H ... lawfully married to ... that B was the son of H not by ... but by ... It was ... in that suit that H had been lawfully married to ... that B was the lawful son of ... by H and that A was not the adopted son of ... In ... B ... A ... possession of C's ... claiming as C's ... A set up as a defence that H was not ... wife ... was B's son. Held that inasmuch as although in the former suit A and B stood ... in the same array they were in fact opposed to each other B being on the side ... A being ... the defendant such suit was one between the ... parties as the second and the matter of B's legitimacy having been raised and finally decided in the former suit by a competent Court was res judicata and could not be again raised in the second suit. BHADAI KHAN v. AMIN ULLA KHAN

I. L. R. 4 All. 92

30 ———— Party as representative—Civil Procedure Code 1877 ss. 13 211. In 1872 A brought a suit on a mortgage against the mortgagor a Hindu widow who died pending the suit. A then applied that the suit should be revived against B as the representative of the defendant. It was held that B was such representative but the Judge refused to go into the question made B a party and gave A a decree for the sale of the mortgaged property. B subsequently brought a suit to have it declared inter alia that the mortgage and decree only covered the widow's life interest. Held that the suit was not barred either as res judicata or under the provisions of s. 211 of the Code of Civil Procedure. KAMAL ... KHAN v. BASHI ... BISWAS

I. L. R. 6 Calc. 777 8 C. L. R. 117

31 ———— ———— Mortgage—Purchase of mortgaged property ... in execution of decree ... to revive suit. A mortgagee brought a suit on his mortgage against his mortgagor and against A a person who had purchased the right title and interest of the mortgagor in execution of a money decree obtained against him subsequently to the mortgage. Pending the mortgagee's suit and before decree ... dismissed but the suit was ... against his representatives. The ... was passed in favour of the ... in execution ... sold a portion

A ... mortgaged property to B. In a suit brought by B against the representatives of A for the property purchased and for general relief—Held, that the decree in the mortgage-suit was not binding on the representatives of A nor under the provisions of Act VIII of 1859 did the failure to revive such mortgage-suit prevent B from bringing the second suit against A's representatives. BYKUNTHNATH BUNDOPADHYA v. BROJONATH MOOKHOPADHYA

I. L. R. 8 Calc. 357

32 ———— ———— Suit for ejectment—Lessor and Lessee. An ejectment suit by B's tenant against the defendant having been dismissed, a second ejectment suit was subsequently after P's death, brought in respect of the same land against the defendant by the successor in title of B. Held that inasmuch as a lessor cannot be considered as claiming under his own lessee the principle of res judicata did not apply. PAMEROMO CHUCKERBUTTY v. BUNSI KURMOKAR 11 C. L. R. 122

33 ———— Former decree declaring status of occupiers of holding—Suit not between same parties. An attempt having formerly on the cessation of the services rendered by some palki bearers been made to oust them from certain chakran lands which they had held for many years and which they had claimed to hold rent free for the future and it having been held on that occasion that though theirs was not a rent-free tenure or an uninterrupted tenure from the time of the decennial settlement yet they had clearly acquired a right of occupancy—Held on a suit being brought by the zamindar against the same bearers for recovery of rent that although the former suit had not been brought by the zamindar personally but by the persons to whom he had attempted to transfer the lands yet the decision in that suit clearly established as between the zamindar and the palki bearers a relation of landlord and tenant which empowered him to recover arrears of rent from them. SUROOP SIRDAR v. BEER CHUNDER MANIKHYA

25 W. R. 370

34 ———— Suits between representatives—Document found conclusive. Where A ... for money alleged to be due under certain ... had ... included in the settlement the demands no longer existed as causes of action—Held that A's representatives were not estopped from disputing the document ... against ... Pat ... conclusive ... SAHIB v. PINGALA SUNKARA RAU 1 Mad. 312

35 ———— ———— Purchaser from party to suit—Civil Procedure Code 1882, s. 13—Vendor and purchaser—Purchase pendente lite. Certain

RES JUDICATA—*contd*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

persons claiming by right of inheritance to *C* sued *B* *A* *K* and others for possession of certain immoveable property and on appeal to the High Court in August 1876 their claim was decreed in full In the course of the litigation which ended in that decree *Z* purchased certain immoveable property from *B* *A* and *K* *Z* was subsequently dispossessed of such property in execution of the decree of August 1876 He thereupon sued the holders of that decree for possession of the same alleging that his vendors had inherited it from *D* that the figures of the total of *C*'s property given in the plaint in the former suit were erroneous that the property now in suit was not affected by that decree and that he had been improperly dispossessed of it It appeared that there was in fact a mistake in the total of the extent of *C*'s property as stated in the plaint in the former suit *Held* that the plaintiff having purchased *pendente lite* was

36 ———— Suit by son not claiming through his father—*Gift to Hindu widow—Separate property* *C* a Hindu subject to the

to *R* by After for the

possession of *C*'s real estate on the ground that it was ancestral property This suit was dismissed it being held by the Sudder Court that *C*'s real estate was separate property to which his widow would be entitled to succeed by inheritance The Sudder

the heir of his uncle *C* to set aside this gift to the agent as illegal *Held* that the decision in the former suit did not make the question as to the interest *R* took under the gift from her husband *res judicata* inasmuch as *N* did not claim through his father when suing as heir to his uncle RUDI NARAIN SINGH *v* PUP KUAR

I L R 1 All 734

37 ———— Representation of the estate of a Hindu talukhdar by his widow in a suit for the succession—*Act I of 1869—Act XXIV of 1870* *s 5* Issues substantially the same as those raised in the present suit relating to the succession to a talukhdari estate had been decided in a former suit in which an order of Her Majesty in Council declared who had the right to succeed *Held* that a claimant whose interest was such

as would vest in him only upon the death of the widow of the last talukhdar was bound by the order so made on the ground that he was privy to the former suit the whole estate for the purpose of representing it being vested in the widow who was a party to that suit *Katama Nachiar v Raja of Shivaganga 9 Moo I A 539* referred to and followed That order declared that a will made by the last talukhdar whereby a power to appoint a successor in the talukhdari had been given to the

full age (having been nominally a party) become estopped from setting up the above he was at all events bound by the order on the ground that the widow holding an estate at least as large as that of the Hindu widow in her husband's property was the

Talukhdars Relief Act) but had not been made a party to the suit this omission did not under s 2 affect the validity of the decree between the parties PERTABNARAIN SINGH *v* TRILOKINATH SINGH

I L R 11 Calc 186 L R 11 I A 197

38 ———— Benami proceedings—*Decision in former suit* In execution of a decree of the

arrears of rent of the same patni subsequently brought by *A* against *G* *P* and *B* (the wife of *P*)

LAS CHUNDER PAL CHOWDRY

B L R Sup Vol 759
2 Ind Jur N S 327 8 W R 428

39 ———— *Suit for confirmation of possession and declaration of title* *A* brought a suit for a debt against *B* obtained a decree and attached certain land in execution *C* intervened claiming the property as his but on the 28th March 1868 his claim was disallowed on the ground that in two suits previously brought against *C* and others for possession of the same property on

RES JUDICATA—*contd*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

the 30th December 1863 by *X* and *Y* whose interest had pending the suit been purchased by *B* it had been decreed that the land belonged to *B* The decrees in these suits were dated 13th and 19th January 1864 they were in favour of *B* and ran in his name alone *C* had purchased a moiety of the property at an auction sale on the 7th March 1859 *X* and *Y* claimed under a pre existing mortgage over the same property the equity of redemption under which had been foreclosed *C* now brought a suit against *A* and *B* for confirmation of his possession and a declaration of his title to the property He alleged that *B* was his servant and had purchased the interest of *X* and *Y* in the property benami for him that he (*C*) had made the purchase with his own money in the name of *B* that the suits originally brought by *X* and *Y* had really been compromised that while the decrees of the 13th and 19th January 1864 were nominally in favour of *B* they were really in his (*C's*) favour and that the suit brought by *X* and *Y* had been allowed to proceed in *B's* name in order that *C's* title might be strengthened by a decree in his favour *B* being only nominally the decree holder *C* also stated that since his purchase on 7th March 1859 he had always been in possession and he dated his cause of action from the 23th March 1868 when his claim to the property which had been attached by *A* in his suit against *B* was disallowed The Subordinate Judge gave a decree in favour of the plaintiff *C* *B* alone appealed to the High Court *Held* that *C* not having been disturbed in his possession and seeking a declaration of his title only and no relief should have stated clearly and precisely what that title was that as against *A* who had not appealed the decision of the Subordinate Judge was final that as between *B* and *C* the matter was *res adjudicata* that *C* could not go behind the decrees of the 13th and 19th January 1864 which had been passed in favour of *B* and show that the purchase by *B* and subsequent decrees were really benami for *C* and in his favour BHAWABAL SINGH *v* RAJENDRA PRATAP SAHOY

5 B L R 321 13 W R 157

40 ——————— *Civil Procedure Code s 13—Suit by benamidar* In a suit to recover a parcel of land the plaintiff s case was that it had [illegible]

instituted with the plaintiff s knowledge *Held* that the plaintiff was bound by the decree in the former suit and could not recover on his secret title SHANGARA *v* KRISHNAN I L R 15 Mad 267

41 ——— Suit for share of estate of Mahomedan—*Lien for dower* A Mahomedan died leaving among others a widow and a sister entitled to shares in his estate The widow got possession of the whole The sister died and after her death her husband on behalf of himself and grandson sued the widow to obtain the shares to which the deceased sister was entitled and obtained a decree for payment of the same after satisfaction of [illegible]

ment as her heir The grandson now sued the widow s brother to recover his own and his grandfather s share alleging that the lien for dower had been satisfied *Held* the suit was not barred by Act VIII of 1859 s 2 MAHOMED AMEENOODEEN KHAN *v* MOZUFFER HOSSEIN KHAN

5 B L R 570 14 W R P C 5

42 ——————— Auction purchaser—*Representative* A purchaser at an execution sale is not as such the representative of the judgment debtor within the meaning of s. 115 of the Evidence Act A Hindu governed by the Mitakshara School of Law died on the 12th May 1867 leaving him surviving a widow *B* and a brother *P* who was admittedly the next reversioner In July [illegible]

vanced and mortgage executed at the institution of [illegible]

estate after his death *B* died in 1878. On the [illegible] August 1880 *M* instituted a suit against *D* upon his mortgage and in that suit he made *S* a party defendant as being the purchaser of the mortgagor s interest in one of the mouzahs included in his mortgage On the 20th June 1882 *M* obtain[illegible]

of the seven mouzahs at a sale in [illegible] certain decrees against *P* On the 29th February 1884 *L's* claim was allowed and on the 11th [illegible]

a fact that the adoption of *D* was invalid that the advance by *M* to *B* was justified by legal necessity and that *L* was the benamidar of *S* It also ap

RES JUDICATA—*contd.*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

peared that *M* had himself become the purchaser of one of the mortgaged mouzahs. The lower Court gave *M* a decree declaring him to be entitled to recover the full amount of the mortgage money from the five mouzahs in the hands of *S* *L* and *S* appealed and *M* filed a cross-appeal alleging the adoption to be valid and binding on *S* It was contended that *S* as the representative of *P* was estopped from denying the validity of *D's* adoption and that having been a party to *M's* first suit the question as to the liability of the mouzahs to satisfy the mortgage lien was *res judicata* as against him *Held* that as *S* was merely a party to *M's* original suit as purchaser of one mouzah and as he subsequently to the institution of that suit acquired *R's* interest in the five mouzahs and as *P* was not a party to that suit nor was his interest represented in any way the decree was in no way binding against *P* and therefore *S* was not barred by *res judicata* from setting up the interest of *R* in the five mouzahs so acquired by him LALA PARBHU LAL *v.* MYLNE I L R 14 Calc 401

43 ——— Suit by a judgment-creditor to establish his judgment debtor's right to property so as to make it subject to attachment in execution of his decree—*Dismissal of such suit—Judgment debtor not represented by judgment creditor in such suit—Subsequent suit by judgment debtor to recover the same property* A judgment creditor of the plaintiff

ment was removed The judgment creditor brought

dismissed the judgment creditor's suit The plaintiff now brought the present suit against the defendant to recover possession of the house The defendant contended (*inter alia*) that the dismissal of the former suit brought by the plaintiff's judgment

absence of any evidence to show that the judgment creditor in point of fact represented the plaintiff so as to constitute him a party to the suit SHIVAPA *v.* DOD NAGAYA I L R 11 Bom 114

44 ——— Party to proceedings in execution—*Civil Procedure Code 1882 ss 213 283—Order in execution—Estoppel.* A claim in

RES JUDICATA—*contd*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

Held that the plaintiff's claim

45 ——— Suit against de facto manager or trustee by de jure trustees—*Dismissal of such suit as barred by limitation—Subsequent suit against same defendant with sanction of Advocate General—Civil Procedure Code (Act XIV of 1882) s 539* In 1887 certain persons alleging that they had been appointed trustees of a temple and its property by its founder Purshotam brought a suit to evict Purshotam's son from the premises alleging that he had been their gumasta that they had dismissed him and that he refused to give up the property The High Court dismissed that suit on the ground that it was barred by limitation In 1892 the plaintiffs brought the present suit with the consent of the Advocate General under s 539 of the

father Purshotam but that latterly he had claimed

the that in the

plaintiffs in the present suit were also barred *Held* that the present suit was not barred. The plaintiffs in the former suit had no general warrant such as is conferred on plaintiffs suing under s. 539 of the Civil Procedure Code to represent the public the objects of the charity They based their title to

charity losing their right by limitation to oust the *de facto* trustee does not confer on the latter immunity from suit on the part of the Advocate General

RES JUDICATA—*contd*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

or the temple LAKSHMANDAS RAGHUNATHDAS v. JUGALKISHORE I L R 22 Bom 216

46 ——— **Suit brought by one of several trustees after dismissal of suit brought by the others**—*Civil Procedure Code s 13 expl I* Where the uruma right over a certain devasam was vested in five trustees representing different illams and a suit was brought by one of the trustees to recover certain property alleged to have been illegally alienated by three other trustees to a stranger and dismissed —*Held* that the decree in such suit was a bar to a second suit brought for the same purpose by the fifth trustee who had not been a party to the former suit on the ground that he must be deemed to claim under the plaintiffs in the former suit within the meaning of s. 13 expl V of the Code of Civil Procedure MADHAVAN v. KESHAVAN I L R 11 Mad 191

47 ——— **Representation of minor by manager of estate**—*Madras Boundary Act 1860 s 25—Mad Reg V of 1840—Decision of boundary officer effect of if not contested by suit* A survey officer in 1875 held an enquiry under the Boundary Act 1860 and demarcated certain land out of a zamindari At that time the zamindar was a minor under the Court of Wards and he was represented at the enquiry by the manager of his estate appointed under s. 8 of Regulation V of 1804 In a suit brought by the zamindar to recover the land it was contended that the decision of the survey officer was not binding on the zamindar because he was not properly represented by his guardian at the enquiry *Held* that the decision of the survey officer was binding on the zemindar and that the matter in dispute was *res judicata* no appeal by way of suit as provided by the Boundary Act 1860 s. 25 having been brought KAMARAJU v. SECRETARY OF STATE FOR INDIA I L R 11 Mad 309

48 ——— **Decree in suit by a karnam effect of as regards his successor**—*Civil Procedure Code s 13* The karnam in a certain mitta sued to recover certain land as part of the mira property attached to his office It appeared that the plaintiff s father and predecessor in office had sued by virtue of his office to recover the same land and that his suit had been dismissed *Held* that the plaintiff s claim was *res judicata* VENKAYYA v. SURAMMA I L R 12 Mad. 235

49 **Suits not between same parties**—*Suit for declaration of right to office dismissal of* Certain land was attached and sold in execution of a decree against the dharmakarta of a devasthanom One claiming to be the lawful successor in office of the judgment-debtor now sued the purchaser for a declaration that the sale was invalid *Held* that the suit should not be dismissed on proof that the plaintiff had failed to obtain a declaration of his right to the dharmakartaship against another claimant to the office in a suit to which the present defendant was not a party RAMALINGAM v. THIRUGNANA SAMMANDHA I L R. 12 Mad. 312

50 ——— *Civil Procedure Code s 13* One N brought a suit against a lambardar for her share in the profits of a certain mehal

[illegible]

commenced by the lambardar against *B* and one *K* for possession of other property alleged to have belonged to *M* in her lifetime and in this suit it was ultimately found but subsequently to the above mentioned assignment in favour of *N* that *K* and not *B* was the heir to *M* *Held* that the suit commenced on the 3rd of June 1887 did not operate as *res judicata* in respect of the present plaintiff N s claim under her assignment from *B* *Foster v Earl of Derby 1 Ad & E 790* referred to NIAZ ULLAH KHAN v NAZIR BEGAM I L R 15 All. 108

51 ——— **Party for purpose of discovery only**—*Civil Procedure Code 1882 ss 13 43—Joint wrong doer —Judgment against one of several—Contract Act s 43* Prior to and in the year 1865 the defendant s brother *B* carried on an extensive business in Bombay and China The defendant and another brother *A* carried on a separate business under the name of A H In December 1866 *B* became insolvent and his property vested in the official assignee The present suit was brought in 1887 against the defendant by the official assignee to recover certain property which he alleged belonged to the insolvent and

[illegible]

fraudulently concealed his property from his creditors and in September 1866 he himself went to Damar beyond British jurisdiction In 1881 the plaintiff having obtained information that some of the insolvent s property was in the possession of his brother *A* filed a suit (473 of 1881) against *A* to recover it That suit was referred to arbitration and the plaintiff obtained a decree for Rs 60,000 The plaintiff now alleged that shortly before the hearing of that suit and subsequently he had obtained information which led him to believe that the defendant had obtained some of the insolvent s property for which he was accountable The defendant had been made a party to the former suit (473 of 1881) for the purpose of discovery only and it was in the course of such discovery being given that some of the above information had been obtained The plaint then set forth in detail the

RES JUDICATA—*contd*

8 PARTIES—*contd*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

various items of claim in respect of which the plaintiff ought to make the defendant liable The defendant pleaded that the said claims had been in i ue in the former suit (473 of 1881) and were adjudicated upon and that this suit was therefore barred by s 13 of the Civil Procedure Code that the plaintiff was barred by s 43 of the Civil Procedure Code the plaintiff having omitted to include these claims in the former suit to which defendant was a party that the decree in the former suit (473 of 1881) was (*inter alia*) in respect of the matters alleged in this suit and that as according to the

cedure Code The defendant was made a party to the former suit for certain limited purposes only No relief was asked from him no decree was made against him He was merely a nominal defendant He was not a party to the former suit in such a way as to bring the present suit within the section *Held* also that the rule of *King* v *Hoare 13 M & W 494* applies in India viz that a judgment recovered against any one of several joint debtors merges the remedy for the joint debt and is a bar to an action against a co debtor upon the joint liability and similarly in a matter of *tort feasance* a judgment against one of several wrong doers is a bar to an action on the same matter against the others Such of the wrongs therefore alleged in the present suit as were of a joint character and were adjudicated

in respect of the latter The Court of appeal confirmed the decree of the Court of first instance RAHMUBHOY HUBIBBHOY *v* TURNER

I L R. 14 Bom. 408

52 ———— *Civil Procedure Code (Act XIV of 1882) ss 13 43—Account* In a suit brought by the official assignee it was held that the defendant having been made a party but only for the purpose of discovery to a prior suit brought by the plaintiff according to an order in that suit in which however there was no decree against him as a party and no order as to his costs —*Held* that this irregular proceeding had not rendered him a party to that suit so as to make ap

L. R 20 I A. 1

53 ———— **Estoppel**—*Civil Procedure Code 1882 s 13—Privity between execution creditor and purchaser at sale in execution of decree* Where all the conditions prescribed by s 13 of the Code of Civil Procedure as necessary to bar the trial in a subsequent suit of an issue adjudicated upon in a previous suit exist the fact that in the first suit the defendant was an execution creditor and in the second he is a purchaser at an execution sale makes no difference as to the second suit being *res judicata* A privity exists between an execution creditor and a purchaser at a Court sale the latter

chaser at the execution sale as his representative or as one claiming under him *Sarat Chunder Dey* v *Gopal Chunder Laha I L R 20 Calc 296 L R 19 I A 203* followed KRISHNABHUPATI DEVU *v* VIKRAMA DEVU

I. L. R. 18 Mad 13

54. ———— **Decree holders in case of claim to attached property**—*Civil Procedure Code 1882 ss 278 and 283—Effect of order under s 278* An order in favour of one of several decree holders on an objection under s 278 of the Code of

55 ———— **Allegation of different titles**—*Civil Procedure Code (Act XIV of 1882) s 13 Expl II—Different suits for the same land alleging different titles* The plaintiffs sued to recover certain land alleging that on the death of the widow of the former owner they became entitled as reversioners They had previously sued the defendant for the same land claiming as the surviving members of the joint family to which the former owner belonged That suit had been dismissed *Held* that the present suit was barred by the provisions of s 13 of the Civil Procedure Code 1882 GUDDAPPA *v* TIRKAPPA (1900)

I L R 25 Bom 189

56 ———— **Parties all claiming under one party in former suit**—*Decision in former suit—Parties in subsequent suit all claiming under one party only in former suit—Deed construction of—What passes under deed in absence of*

to a hostile claim by persons asserting a title under the defendant *zamindar* in the former t those claiming under the plaintiff *zami* t suit *Held* on the true construction of

RES JUDICATA—*contd*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*contd*

mortgage and of sale and a certificate of sale of shares in a *zamindari* where the documents contained no words of exception or reservation that they conveyed all the interests of the mortgagor vendor and judgment debtor respectively in the *zamindari* Their interests in the houses on the land and in the profit rents derived from them passed in the absence of any words showing an intention to retain or exclude them ASGHAR REZA KHAN v MAHOMED MEHDI HOSSEIN KHAN (1903)
I L R 30 Calc 556
s c L R 30 I A 71
7 C W N 482

57 ——— Shebaits—*Civil Procedure Code (Act XIV of 1882) s 13—Hindu idol or deity—Shebait* The decision in a suit brought by one *shebait* is binding on a succeeding *shebait* TULSIDAS MAHANTA v BIJOY KISHORE SHOME (1901)
6 C W N 178

58 ——— Suit for redemption—*Res judicata* To support a plea of *res judicata* it must appear from inspection of the record that the person whose interest it is sought to bind was in some way a party to the suit A mortgagor of an undivided share may redeem the entirety if the mortgagee does not object and may be compelled to do so if required by the mortgagee Therefore the fact that a suit for redemption of the entire property instituted by such a person was dismissed cannot affect the right of a co sharer who was not a party to that suit In a suit for redemption it was ordered that the mortgagor should recover possession on depositing the mortgage money in the Government Treasury The money was deposited but before it could be made over to the mortgagee the Sepoy Mutiny broke out and the Treasury was looted —*Held* that the decree having become incapable of execution owing to *vis major* a fresh suit for redemption was required to give effect to the rights of the parties and do justice between them and such a suit was not barred under s 244 of the Civil Procedure Code CHAUDHURI AHMED BAKSH v SETH RAGHUBER DYAL (1905)
10 C W N 115

59 ——— Erroneous decision upon a point of law—*Res judicata* An erroneous decision upon a point of law may yet as between the parties to it but no further be a sufficient *res judicata* to preclude them from re agitating it WAMAN v HARI (1906) I L R 31 Bom 128

60 ——— Purchaser at a sale for arrears of revenue—*Res judicata—Representative in interest—Persons claiming under paramount title* The purchaser of an entire estate at a sale for arrears of revenue does not claim title through the defaulting proprietor but claims under a paramount title and a decree against the latter cannot constitute *res judicata* as against him

RES JUDICATA—*contd*

8 PARTIES—*contd*

(a) SAME PARTIES OR THEIR REPRESENTATIVES—*concld*

Moonshee Buzlool Rahman v *Pran Dhun Dutt* 8 *W R* 222 and *Radha Gobind Koer* v *Rakhal Das Mukherji I L R 12 Calc* 82 followed *Boylunto nath Cha*[illegible] *191* anc[illegible] *Mitter* [illegible] BOSE v [illegible]

(b) INTERVENORS

61 ——— Intervenor added in former suit—*Suit against other parties* A suit to recover possession of land on the ground of purchase from the admitted owners is not barred by Act VIII of 1859 s 2 simply because plaintiff s claim as against the same defendant was dismissed in a former suit in which he (defendant) appeared as an intervenor TUKHEA v DEO NARAIN SINGH
24 W R 248

62 ——— *Reservation of intervenor s rights—Civil Procedure Code 1859 s 2* In a former suit against a party and his ven[illegible] ant[illegible] of[illegible] *judicata* in a subsequent suit by a purchaser from the intervenor against the said vendee the reservation being a mere *obiter dictum* BUKSH ALI v NITTYANUND DOSS
5 W R 227

63 ——— *Suit for rent—Enjoyment of and receipt of rent proof of* Plaintiff sued for rent of land alleged to be a 3 annas 15 gundahs share held by him on a defined right Defendant admitted the claim An intervenor ap[illegible]

[illegible] *5th August 1863* did not apply and that [illegible] did not clearly adjudicate against the plaintiff s right the principle laid down in the case of *Tarinee* v *Bamundoss Moakhef 1 W R 331* had no bearing Accordingly the intervenor was bound to show actual and *bonâ fide* receipt of rent as required by s 77 Act X of 1859 GUGUN CHUNDER CHUCKERBUTTY v AJMUL ALI
11 W R 91

64 ——— *Civil Procedure Code 1859 s 2—Suit for rent* A sued B and C in the Civil Court to recover possession of certain lands of which he alleged that they had dispossessed him under a decree obtained by them in a suit in [illegible] sued B in the Civil Court [illegible] ed for rent, in [illegible] arty and had [illegible] A *Held* that [illegible] proved his title to the land [illegible] A s suit must fail on the ground that it involved a material issue of fact which had already been deter

RES JUDICATA—*contd*

8. PARTIES—*contd*

(*b*) INTERVENORS—*contd*

mined by a Court of concurrent jurisdiction in the former suit, which was between the same parties and which issue disposed of the present suit CHOWDHARI NILKANTH PRASAD SINGH *v* DIG NARAYAN SINGH

1 B L R A C 30 10 W R 75

65 ———— *Judgment in suit for rent* In a suit by plaintiff for arrears of rent against one set of tenants defendant intervened claiming a moiety of the whole estate His claim was dismissed in lower Courts and the case came up on special appeal. Meanwhile plaintiff brought suits against another set of tenants on the same estate in which defendant again intervened on the same ground as before *Held* that the decision in the former set of cases unless and until set aside in

dispute PRAN NATH SANDYAL *v* RAM COOMAR SANDYAL

2 C L R 33

66 ———— *Civil Procedure Code 1859 s 2—Suit for rent* The plaintiffs

tially in issue in two suits the precise form in which either suit was brought or the fact that the plaintiff in the one case was the defendant in the other becomes immaterial. GOBIND CHUNDER KOONDOO *v* TARUCK CHUNDER BOSE

I L R 3 Calc 145 1 C L R 35

67 ———— *Rights under partition under Beng Reg XIX of 1806—Suit for arrears of rent* *A* sued *B* to establish his rights of possession to certain lands allotted him under a batwara made in accordance with the provisions of Regulation XIX of 1806 In a previous suit by *B* instituted after the batwara against a tenant for arrears of rent due for a portion of the lands now in dispute *A* intervened and was made a defendant on the sole g
to the rent
following th
Koondoo v
145 that *A s* present suit was barred by the judgment in the former suit BEMOLASOONDURY CHOWDHRAIN *v* PUNCHANUN CHOWDHRY

I L R 3 Calc 705

68 ———— *Rights as between original defendant and intervenors—Suit for possession* Where a plaintiff claimed certain property and two persons intervened and were allowed to put in their claim to a portion of it which claim at the hearing the intervenors however refrained from pressing and the suit was decided in favour of the plaintiff the original defendant alone appealing (unsuccessfully) against the decree —*Held* that it was not open to the intervenors to institute any fresh proceedings to obtain the property against the original defendant the decree in the suit in which they intervened being conclusive as between them and such defendant *Sivagnana Tevar* v *Periasami I L R 1 Mad 312* distinguished. SHEO CHURN SINGH *v* FAKERA DOOBAY

I L R 6 Calc 91 7 C L R 69

The principle of this case was *held* applicable in UMBICA CHURN BHUTTACHARJEE *v* PROSONNO COOMAR SEN

9 C L R 365

69 ———— *Want of jurisdiction as to valuation of suit—Subsequent suit between the same parties—Competent Court—Rent suits* A judgment of a Court not competent to try the case in which the judgment is pleaded as *res judicata* must nevertheless be held to be the judg

LUCHO KOER

I L R 6 Calc 406 7 C L R 251

Reversed on this point by the Privy Council in PUN BAHADUR SINGH *v* LUCHO KOER

I L R 11 Calc 301
L R 12 I A 27

See PURBHOO TEWAREE *v* RAMJEEAWUN PATTUCK

1 N W 65 Ed 1873, 119

70 ———— *Rent suit—Civil Procedure Code (Act X of 1877) s 13* *A* sued *B* for rent in the Court of the Deputy Collector of Tipperah under the provisions of Act X of 1859 *C* inter
claim
to the
agains
Held
did no
and w

RES JUDICATA—*contd*

8 PARTIES—*contd*

(*b*) INTERVENORS—*concld*

Kalikumar Roy B L R Sup Vol 364 followed MAHOMED AFSURUDDIN *v* BEER CHUNDER MANIKYA
I L R 8 Calc 470 10 C L R 416

71. ———————— *Suit for possession—Co defendants—Civil Procedure Code (Act X of 1877) s 13* A leased lands to B who sued C for possession of a certain mouzah alleging it to be a portion of the lands leased A was made a defendant and supported the case of the plaintiff who obtained a decree C appealed making A and B respondents when the decree was reversed and the suit dismissed on the ground that the mouzah [illegible]

title to the mouzah was *res judicata* between A and C and that the suit would not lie *Gobind Chunder Koondoo v Taruck Chunder Bose I L R 3 Calc 145* followed BISSORUP GOSSAMY *v* GORACHAND GOSSAMY **I L R 9 Calc 120**

72 ———————— *Rent suit—Dismissal for default—Questions of title—Issues—Code of Civil Procedure 1882 s 13* In a suit for arrears of rent and possession of certain property a person intervened and was made defendant on his alleging that he was entitled to an 8 annas share of the property in question and that the plaintiffs were not entitled to any portion thereof Issues were fixed on the questions of title but the plaintiffs failed to adduce evidence and their suit was dismissed They afterwards brought a suit for possession of the same property on the same title against the intervenor in the former suit *Held* that the second suit was barred as *res judicata* KARTICK CHANDRA PAL *v* SRIDHAR MANDAL
I L R 12 Calc 563

(*c*) PARTY ERRONEOUSLY IN DECREE

73 ———— **Party ordered to be struck out of suit**—*Civil Procedure Code 1859 s 2—Mistake in decree* S 2 Act VIII of 1859 was *held* not to apply to a case where the present plaint [illegible]

defendant to show how that happened and that the former suit was decided in her presence KALEE COOMAR DUTT ROY *v* PRAN KISHOREE CHOWDHRAIN **18 W R 29**

(*d*) PRO FORMÂ DEFENDANTS

74. ———— **Parties made defendants by way of caution**—*Effect of former decree* A decree made in favour of a plaintiff in a suit is binding upon the defendants collectively and severally notwithstanding any of them was made a defendant only *ihhteatun i e* by way of precaution. DEOKEE NUNDUN ROY *v* KALEE PERSHAD
8 W R 366

75 ———— **Nominal party**—*Suit against surety of defaulting tenant* A landlord sued his tenants and his tenants surety in the Collectors Court for arrears of rent the surety being merely treated as a nominal party and the decree being given against the tenants He afterwards sued the surety in the Civil Court on the bond given by him and in the lower Court obtained a decree not only for the arrears of rent but also for the costs in the Act X suit *Held* on special appeal that the suit was as regards the arrears of rent not barred by s 2 Act VIII of 1859 but that the costs in the Collector s Court could not be recovered PAMTANU ACHARJI *v* KOMAL LOCHAN ROY
3 B L R Ap 37

S C RAM TANOO ACHARJEE *v* RADHA GOBIND
11 W R 407

76 ———— **Party added as landlord in a suit between tenants**—*Subsequent suit for possession by landlord—Civil Procedure Code (Act XIV of 1882) s 13* A brought a suit against B claiming certain property as tenant of C who was also made a defendant in the suit this suit was on the merits decided in favour of B C then brought a suit against B for possession of the same property *Held* that such suit was not barred by s 13 of the Civil Procedure Code BROJO BEHARI MITTER *v* KEDAR NATH MOZUMDAR **I L R 12 Calc 580**

(*e*) CO DEFENDANTS

77 ———— **Decision in former suit effect of as between co-defendants** A decision in a former suit cannot operate as an estoppel as between co defendants in that suit or parties claiming under them MODHOO MOKEE DABEE *v* GUNGA GOBIND MUNDLE **W R 1864, 299**

RAM CHAND SOMARDAR *v* KALA CHAND CHUCKERBUTTY **1 W R 287**

MADHOO PERSHAD *v* LALLJEE SHAHOO **9 W R 557**

KHELUT CHUNDER GHOSE *v* KISHEN GOBIND DEB **16 W R 128**

NUBIN CHUNDER DOSS *v* NIM CHAND DOSS **17 W R 191**

RAMESSUR GHOSE *v* AZEEM JOARDAR **17 W R 373**

AIN ALI *v* JUGOUT CHUNDER ROY CHOWDHRY **25 W R 416**

OBHOY CHURN NUNDEE *v* BHOOBON MOJOOMDAR **12 W R 524**

KALLY PERSAD SEIN CHOWDHRY *v* MOHESH CHUNDER BHUTTACHARJEE **1 Hay 430**

RES JUDICATA—*contd*

8 PARTIES—*contd*

(*e*) CO DEFENDANTS—*contd*

78 ——— ——— — *Finding on unnecessary issue between co defendant* A finding between co-defendants unnecessary for the determination of the suit or the rights of the parties involved in the suit is not *res judicata* BAPU *v* BHABANI I L R 22 Bom 245

79 ——— *Decision when binding between co defendant* Where an adjudication between the defendants is necessary to give the appropriate relief to the plaintiff the adjudication will be *res judicata* between the defendants as well as between the plaintiff and defendants But for this effect to arise there must be a conflict of interest between the defendants and a judgment defining the real rights and obligations of the defendants *inter se* Without necessity a judgment will not be *res jud cata* amongst defendants nor will it be *res judicata* amongst them by mere inference from the fact that they have been collectively defeated in resisting a claim to a share made against them as a group RAMCHANDRA NARAYAN *v* NARAYAN MAHADEV I L R 11 Bom 216

80 ——— A suit which was brought by A against *B* and *C* and dismissed cannot be pleaded as *res judicata* in a subsequent suit brought by *B* against *C* HURO MONEE DEBIA *v* TUMEEZOODEEN CHOWDHRY 7 W R 181

81. ——— *Civil Procedure Code s 13* Two-thirds of a village were sold by *T P* and *B* *B* was the widow of *S* her name

[illegible]

wh ther the family was joint or divided had not in the former suit been determined among the defendants *inter se* but simply as against the plaintiff and could only be *res judicata* against him or parties claiming under the same title and the decree in that suit was therefore not binding against *K* in the hands of the present plaintiffs who were not the assignees of the plaintiff in the former suit but of persons who were arrayed in it as defendants along with *B* *K*s mother and on the same side *Shadal Khan* v *Amin ullah Khan I L R 4 All 92* referred to by STRAIGHT J and distinguished by TYRRELL J *Narain Kuar* v *Durjan Kuar I L R 2 All 738* referred to by STRAIGHT J BHAGWANT SINGH *v* TEJ KUAR I L R 8 All 91

82 ——— *Suit for pre emption* *M* sued *K* and *J* to enforce a right of pre emption in respect of property which he alleged *K* had sold to *J* *K* denied that she had sold such property to *J* *J* set up as a defence that *M* had

[illegible]

the suit and not between the defendant vendor and the defendant vendee, who were not litigating and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the same JUMNA SINGH *v* KAMARUNNISA I L R 3 All 152

83 ——— *Civil Procedure Code s 13—Issue decided in former suit in which parties were rival defendants claiming under different titles* *B* sued *L N* and *P V* to recover certain property claimed under a nuncupative will of his father *N* *P V* denied the will and alleged that the property was ancestral and had vested in him by survivorship *L N* set up title to the property under a will in writing executed by *N* and denied the title both of *B* and of *P V* The question whether *P V* was divided or not from *N* was tried

[illegible]

was *res judicata* under s 13 of the Code of Civil Procedure by reason of the decision in the former suit although in that suit *P V* and *L N* were both defendants VENKAYYA *v* NARASAMMA I L R 11 Mad 204

84. ——— *Civil Procedure Code s 13 expl V—Suit for possession of a share in the property of a Mahomedan family* In a suit in 1882 between the members of a family following the Mahomedan law of inheritance in which the plaintiffs sued as sharers for the recovery of their share in certain property one of the defendants pleaded that a paramba part of the property in dispute was not subject to division but this plea was unsuccessful and a decree was passed for the plaintiffs The present suit was brought by a mortgagee from one of the defendants in the

RES JUDICATA—contd

8 PARTIES—contd

(e) Co defendants—contd

former suit (against whom it had been decided *ex parte*) to recover his share of the above mentioned paramba the subject matter of his mortgage the mortgagor was joined as defendant among others including the defendant who had raised the plea above stated This plea was repeated by the same person *Held* that the claim that the paramba was not subject to division was *res judicata* by virtue of the Civil Procedure Code s 13 expl V CHANDU v KUNHAMED
I L R 14 Mad. 324

As to the effect of a partition decree as constituting *res judicata* between co defendants *see* DOST MUHAMMAD KHAN v SAID BEGUM
I L R 20 All 81

85 ———— *Civil Procedure Code s 13 expl V—Suit for possession of land* The plaintiff a junior member of a Malabar tarwad alleged that her karnavan had assigned to her his kuikanom right over certain land, and that she had obtained a fresh demise from the jenmi and placed a tenant in possession The tenant was dispossessed by the present karnavan and in 1886

claim of the plaintiff was *res judicata* so far as it related to the land in question in the former suit but not as to the rest MADHAVI v KELU
I L R 15 Mad. 264

86 ———— *Plea raised in former suit* A Mapilla alleging that certain family property had been enjoyed by herself and the defendants (who were her relations on the mother s side) in common till one year before suit when she was excluded from possession now sued to recover the share to which she claimed to be entitled

one of his sons had obtained a decree for his share of it in a suit to which among others the plaintiff and the father of the present contesting defendants were parties as defendants and that a plea then raised by the latter to the effect that the property had been acquired by him was overruled The present claim was sought to be resisted on the same ground which was the subject of the second issue and it was held by the lower Courts that the

ex parte as far as she was concerned. *Held* on second appeal without finding on the question of *res judicata* that in the absence of evidence no

RES JUDICATA—contd

8 PARTIES—contd

(e) Co defendants—contd

finding on the second issue should be called for ABDUL KADER v AISHAMMA I L R 16 Mad. 61

87 ———— *Plaintiff and defendants co defendants in former suit decreed against them ex parte* In a suit to recover the plaintiff s share of lands appertaining to an agraharam the defendants pleaded that the lands in question were their own and were not subject to partition. It appeared that in a previous suit brought by a third party against the present plaintiff and defendants and others to recover his share of the agraharam lands it was held that the lands now in question formed part of the lands of the agraharam and they were divided in execution of the decree in that suit Against the present plaintiff that suit was decreed *ex parte* *Held* that the defendants were precluded under the Civil Procedure Code s 13 from raising the above plea LATCHANNA v SARAVAYYA I L R 18 Mad. 164

88 ———— *Party through whom plaintiff claimed and defendant co-defendants in former suit* In a suit for land the plaintiff claimed under a conveyance executed to him by defendant No 1 The property had previously belonged to the father since deceased of the first defendant s wife and her sister defendant No 2 Shortly after the father s death a suit for maintenance was brought by his sister in law against his widow and two daughters in which the then

panied by possession and was invalid and she asserted title in herself under the will of her mother under which title she had been in possession for ten years *Held* that the second defendant was *not* precluded by the proceedings in the former suit in which defendant No 2 and the wife of defendant No 1 had been co defendants from raising the plea above referred to RAMANUJA AYYANGAR v NARAYANA AYYANGAR I L R 18 Mad. 374

89 ———— *Parties to subsequent suit arrayed on the same side as co-defendants in previous suit—Necessary adjudication between co defendants—Civil Procedure Code 1882*

judicata amongst the defendants Ram Chandra Narayan v Narayan Mahadev I L R 11 Bom. 216 followed Cottingham v Earl of Shrewsbury 3

RES JUDICATA—*contd*

8 PARTIES—*contd*

(e) CO DEFENDANTS—*contd*

Hare 6° referred to AHMAD ALI v NAJABAT KHAN I L R. 18 All. 65

90 ——————— *Proceedings in former case not between same parties—Admissibility in evidence of finding in former case* S granted to *G* and *A* a patni of a certain share in a zamindari and thereupon *P* brought a suit again t

brought by *G* against *S* and *A* the lower Appellate Court found that *G S* and *A* had conspired in

Calc being the finding in a case in which *G S* and *A* were all co defendants and a third party the plaintiff and the case was remanded for the determination of the question whether *G S* and *A* were wrong doers and were as such held liable for the costs of the former suit COBIND CHUNDER NUNDY v SRIGOBIND CHOWDHRY I L R 24 Calc 330 1 C W N 179

91 ——————— *Under what circumstances a decision may be res judicata as between defendants* Where an adjudication between defendants is necessary to give the appropriate relief to the plaintiff the adjudication will be *res judicata* between the defendants as well as between the plaintiff and defendant But for this effect to arise there must be a conflict of interest between the defendants and a judgment defining the real rights and obligations of the defendants *inter se* Without necessity a judgment will not be *res judicata* amongst defendants nor will it be *res judicata*

R 11 Bom 216 Ahmad Ali v *Najabat Khan I L R 18 All 65* and *Madhavi* v *Kelu I L R 15 Mad 264* followed *Bishnath Singh* v *Bisheshar Singh All Weekly Notes (1891) 34* referred to CHAJJU v UMRAO SINGH I L R 22 All 386

92 ——————— *Decision in previous suit in which parties were co defendants when binding—Such decision not binding when one defendant was only a nominal party* A judgment in a previous suit is not *res judicata* as between co defendants so as to bar a subsequent suit brought by one of them unless there was a conflict of interest between them and the judgment determines the real rights and obligations of the defendants *inter se* Such previous judgment is not *res judicata* when the plaintiff in the subsequent suit was only a nominal party in the prior suit BALAMBHAT v NARAYAN BHAT (1900) I L R 25 Bom. 74

93 ——————— *Civil Procedure Code (Act XIV of 1882) s 13—Res judicata between co defendants* In a suit for a declaration of title to certain property when the Court makes a declaration in favour of the plaintiff as to a certain share of the property and a declaration as to certain other shares in favour of some of the defendants the latter declaration is not binding on the other defendants RAJ NARAIN v KHOBDARI RAI (1901) 5 C W N 724

94 ——————— *Co defendants—Civil Procedure Code (Act XIV of 1882) s 13—Former suit — Between the same parties — Judgment—Contribution right to as between purchasers of mortgaged properties—Transfer of Property Act (IV of 1882) ss 56 81 82—Marshalling—Inter se order rule of* There is nothing in s 13 of the Code of Civil Procedure to prevent an issue raised and decided as between co defendants in a former suit from being *res judicata* in a subsequent suit in which they are arrayed as plaintiff and defendant but the issue raised in the former suit must directly and substantially involve the matter in issue in the subsequent suit *Cottingham* v *Earl of Shresbury 2 Hare 627 Ramchandra Narayan* v *Narayan Mahadev I L R 11 Bom 216 Ahmad Ali* v *Najabat Khan I L R 18 All 65* and *Sheikh Khoorshed Hossein* v *Nubbee Fatima I L R 3 Calc 551* followed To decide whether a question was determined by the decree in a former suit it is open to the Court to refer to the judgment on which the decree was based *Kali Krishna Tagore* v *Secretary of State for India I L R 16 Calc 173* and *Jagajit Singh* v *Sarabjit Singh I L R 19 Calc 173* followed When two properties X and Y are mortgaged to secure one debt and subsequent to the mortgage the property X is purchased by *A* and then the property Y by *B* if the entire mortgage

order does not apply to such a case A claim for contribution is an equitable claim and in determining the amount the Court must take an equitable view of all the circumstances and must not give effect to what is only an apparent and not the real state of things MAGNIRAM v MEHDI HOSSEIN KHAN (1904) I L R 31 Calc 95

(f) DIFFERENT PARTIES.

95 ——————— *Bengal Tenancy Act (VIII of 1885) s 106—Civil Procedure Code (Act XIV of 1882) s 13* Plaintiffs initiated proceedings under s. 106 of the Bengal Tenancy Act

RES JŪDICATA—concld

8 PARTIES—concld

(f) DIFFERENT PARTIES—concld

against the landlord and the defendants Nos 2 to 9 who claimed to be rival tenants of the land to have their names recorded as tenants in the Settlement proceedings. The Settlement-officer held that the plaintiffs were the tenants and made an order in their favour On appeal by defendants Nos 2 to 9 and not by the landlords the Special Judge reversed the decision and ordered that the names of defendants Nos 2 to 9 who he held were the tenants be registered. The plaintiffs thereupon brought the present suit to have their rights declared as tenants of the land. *Held* that the previous decision of the Special Judge not having been a decision between the parties *i e* the tenants on the one hand and the landlord on the other it could not operate as *res judicata* in the present suit MOHUNT JAGANNATH RAMANUJ DAS *v* CHANDRA KUMAR BOSE (1900) **5 C W N 421**

9 COMPETENT COURT

(a) GENERAL CASES

1 ———— **Court without jurisdiction** —*Civil Procedure Code (Act X of 1877) s 13* The decision of a Court in order to be conclusive in another Court must have been that of a Court which would have had jurisdiction to decide the question raised in the subsequent suit in which the decision is given in evidence as conclusive The words Court of competent jurisdiction used in s. 13 of the Court of Civil Procedure include the meaning that the first Court must not have been precluded by the pecuniary limit of its jurisdiction from deciding the question raised in the other The two Courts must exercise such concurrent jurisdiction in regard to the pecuniary limit of their powers that the subject matter of the second suit would not have been beyond the powers of the Court which disposed of the prior one The defence made to a suit on a bond for R12 000 and interest thereon in a Court having no pecuniary limit of jurisdiction was that in a prior suit for R1 665 balance of interest brought in a Court with power to try suits not exceeding R5 000 in value the principal sum due on that bond had been decided to be R4 790 *Held* that the issue as to the amount of principal due on the bond had not been heard and finally decided by a Court of competent jurisdiction within the meaning of s. 13 MISIR RAGHO BARDIAL *v* SHEO BAKSH SINGH

I L R 9 Calc 439 12 C L R 520
L R 9 I A 197

2 ———— *Act VIII of 1859 s 2—Act X of 1877 s 13—Cross appeal—Practice.* The decision in a suit in order to be final and conclusive as *res judicata* upon an issue raised in another suit must be the decision of a Court which would have had jurisdiction to decide the question raised in the subsequent suit in which the prior decision is given in evidence as conclusive This

RES JUDICATA—contd

9 COMPETENT COURT—contd

(a) GENERAL CASES—contd

proposition stated in the judgment in *Edun v Bechun 8 W R 175* and affirmed by the Judicial Committee in *Misir Raghobardial v Sheo Baksh Singh I L R 9 Calc 439* is applicable equally to cases under Act VIII of 1859 s 2 (as supplemented by the general law) and to cases under the more complete enactment in Act X of 1877 s. 13 which is not to be construed as having altered the former law A suit was brought in the Court of a Subordinate Judge by a Hindu against the widow of a deceased brother claiming his property by right of survivorship the issue being whether at the death of the latter the ownership of the brothers was joint or separate An order under Act XXVII of 1860 granting a certificate to the widow did not on the above issue operate as *res judicata* in the widow s favour being a proceeding of representation and not otherwise of title *Held* also that a decision of the same issue in a Munsif s Court in a rent suit brought by the widow the surviving brother on his application having been made a party defendant under s. 73 of Act VIII of 1859 did not constitute *res judicata* in her favour *Krishna Behari Roy v Brajeswari Chowdhrani L R 2 I A 283* referred to and followed *Held* also that the brother having appealed against a decree dismissing th suit as *res judicata* (the judgment which that decree followed having nevertheless found that the widow was disentitled by reason of the brothers havin[illegible] been in fact joint in estate) the widow could have supported the decree without filing a cross appeal [illegible] the decree had [illegible] ven) [illegible] CHO [illegible] 23

Reversing as far as the question of *res judicata* was concerned the decision of the High Court in RUN BAHADUR SINGH *v* LUCHO KOER

I L R 6 Calc 406 7 C L R 251

3 ———— **Courts without concurrent jurisdiction**—*Court not having jurisdiction to decide question of title* Where the Court trying [illegible]

[illegible]

4 ———— **Court without power to make final decision**—*Issue decided in a suit not subject to appeal—Same issue raised in a subsequent suit subject to appeal—Small Cause Court suit—Civil Procedure Code (Act XIV of 1882) s 13—*

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(a) GENERAL CASES—*contd*

Meaning of the words competent to try such subsequent suit In 1879 the plaintiff brought a suit against the defendants to recover R119 which he alleged had been wrongfully exacted from him by the defendants as enhanced rent of certain land in his occupation. He claimed to be owner of the land subject to a quit rent payable to the defendants The defendants denied his ownership and asserted their right to levy the enhanced rent The lower Court held that the defendants were entitled to the enhanced rent and dismissed the plaintiff s claim and the decree was confirmed on appeal by the District Court. The plaintiff appealed to the High

rent of the land in question He made the same allegations as in the former suit The District Judge dismissed the suit holding it to be *res judicata* The plaintiff appealed to the High Court *Held* that although the material question in both suits was the same—i.e. as to the defendant s right to enhance the plaintiff s rent —yet the decision of the District Court upon that point in the *previous suit was not res judicata* so as to prevent the question being again raised between the parties From the decision in the former suit there was no appeal by reason of the suit being one for an amount less than R500 Had that suit been for a larger amount the decision of the District Court would have been subject to an appeal to the High Court It could not have been intended by the Legislature that a decision should acquire a conclusive import

suit and did try it yet it was not competent to try the second suit with final effect as it had tried the earlier one In s 13 of the Civil Procedure Code (Act XIV of 1882) the words competent to try such subsequent suit or issue must mean competent to try the suit or issue with conclusive effect The District Court could not in the present suit have *tried with conclusive effect* and disposed of the issue tried in the first suit and hence the prior decision was not *res judicata* BHOLABHAI *v* ADESANG BHOLABHAI *v* COLLECTOR OF KAIRA I L R 9 Bom 75

5 ———— *Court not of competent jurisdiction* *A* brought a suit against *B* for R3 152 that is for one instalment due under a bond. The suit was heard and decided by a Subordinate Judge of second class who had been deputed to assist a Subordinate Judge of the first

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(a) GENERAL CASES—*contd*

contentions as in the former suit *Held* that the decision in the first suit did not operate as *res judicata* in the second suit as the Court that tried the first suit had no jurisdiction to try the second suit PANDAYAL *v* JANKIDAS I L R 24 Bom 456

6 ———— Decision in superior Court of suit cognizable by inferior Court— *Civil Procedure Code 1877 s 13* In a suit for possession of immoveable property before the Subordinate Judge it was objected that the suit ought to have been instituted before the Munsif the value of the property being less than R1 000 An issue having been framed on this point other issues were also framed as to the sanity of the plaintiff his having had possession of the property and evidence upon all the issues was gone into The Subordinate Judge dismissed the suit on the first issue but expressed his opinion that the other issues ought also to have been decided against the plaintiff In a subsequent suit by the plaintiff for the same relief in the Court of the Munsif *Held* that the questions depending on the issues raised other than the issues as to the valuation of the suit were not *res judicata* RAM GOBIND JHA *v* MUNOAR RAM CHOWDHRY 13 C L R 83

7 ———— Powers of Court deciding suit—*Decision on question of title—Civil Procedure Code (Act X of 1877) s 13* When a question of title has to be and is decided by a Court of competent jurisdiction with reference to the value of the subject matter in dispute such decision or the ultimate decision upon the appeal from such decision is final and the question of title becomes a *res judicata as between the parties to the suit although* it may have the effect of determining the title to an estate or estates the value of which exceeds the jurisdiction of the Court in which the suit was instituted *Per* WHITE *J* —In considering on the hearing of an appeal the competency of a Court for the purpose of deciding upon a question of *res judicata* the powers of the Court in which the suit was instituted and not those of the Court in which the suit was decided on appeal must be looked to TOPONIDHEE DHIRJ GIR GOSAIN *v* SREEPUTTY SAHANEE I L R 5 Calc 832 6 C L R 305

8 ———— *Civil Procedure Code 1882 s 13—Decree of competent Court* In 1875 *P* sued in Munsif s Court to eject a tenant from a house and to recover arrears of rent. *S* intervened and claimed the house under a deed of gift

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(*a*) GENERAL CASES—*contd*

decree for the land In 1882 *S* sued *P* to recover all the property comprised in the deed of gift *Held* that *S* was estopped by the decree in the former suit from claiming the house It was contended by *P* that the deed of gift was invalid *Held* that as to validity of the deed of gift the decree of the Munsif s Court was not the decree of a competent Court within the meaning of s 13 of the Code of Civil Procedure 1882 and therefore that *S* was not estopped from showing that the deed was valid and claiming the rest of the property comprised therein PATHUMA *v* SALIMAMMA I L R 8 Mad. 83

9 ——— Jurisdiction of Court at time suit is brought—*Decision of Munsif—Civil Procedure Code 1882 s 13* In a suit for malikana the issue between the parties substantially raises the question of the proprietary right to the estate in respect of which the malikana is claimed and when the question of the proprietary right has been decided in a previous suit between the same parties a subsequent suit for malikana will be bar [illegible] perty was the same and it was not shown that the present suit if brought in 1860 would not have been within the jurisdiction of the Munsif nor was it alleged that the suit in 1860 was beyond his jurisdiction In s 13 of Act XIV of 1882 the words in a Court of jurisdiction competent to try such subsequent suit refer to the jurisdiction of the Courts at the time the first suit is brought Thus when the first suit is within the jurisdiction of a Munsif and the subsequent suit by reason of an increase in value of the property is beyond his jurisdiction such subsequent suit would nevertheless be barred inasmuch as if the subsequent suit had been brought at the time when the first suit was brought the Munsif would have been competent to try it GOPI NATH CHOBEY *v* BHUGWAT PERSHAD I L R 10 Calc 697

10 ——— Decision of Deputy Collector—*Civil Procedure Code 1882 s 13—Meaning of the words Court of jurisdiction competent to try such subsequent suit* The words of s 13 of the Civil Procedure Code in a Court of jurisdiction competent to try such subsequent suit refer to the jurisdiction of the Court at the time when the first suit was brought Where therefore a suit was brought and decided in 1867 in the Court of a Deputy Collector that Court being at the time of suit [illegible]

—*Held* that the decision of the Deputy Collector was a bar to the second suit under s 13 of the Civil Procedure Code The principle in *Gopinath Chobey* v *Bhugwat Pershad I L R 10 Calc 697* approved RUGHUNATH PANJAH *v* ISSUR CHUNDER CHOWDHRY I L R 11 Calc 153

11 ——— Former judgment in Court without jurisdiction—*Property situate out of jurisdiction* *Held* that the judgment of the Lucknow Civil Court in a suit for property situate within the jurisdiction of that Court was no bar to a subsequent suit in respect to property situate at Allahabad There was no splitting of the claim inasmuch as the former suit was for the entire property situate in Lucknow and Allahabad though leave was not obtained to sue in the Lucknow Court. THAKOOR PERSHAD *v* KALIKA PERSHAD 2 Agra 104

12 ——— Property situate out of jurisdiction—*Suit for land* *A* brought a suit in the Court of S against *B* for certain land as being an accretion to an estate in the district of S *B* claimed it as being part of his estate in the district of G to which district he alleged the land had in a former decision been found to belong The Court of S held that the land was an accretion to *A s* estate in the district of S In a subsequent suit brought by *B* in the Court of G against *A* for the land to which the subject of the former suit had been found to be an accretion —*Held* that the holding in the former suit necessarily decided that the land claimed by *B* was in the district of S and therefore that the Court of G under Act VIII of 1859 s 14 had no jurisdiction PAHALWAN SINGH *v* MAHESSUR BUKSH SINGH 12 B L R P C 391 18 W R 182

13 ——— Decree in claim for rent—*—Subsequent suit to remove attachment—Decision by Court without jurisdiction* Where a Court [illegible]

SINGH [illegible] 7 N W [illegible]

14 ——— Court of Rajah of Independent Tipperah The Court of the Rajah of Independent Tipperah was not a competent Court within the meaning of s 2 Act VIII of 1859 MAHOMED AHMED *v* ALIBUB CAZEE 10 W R 337

15 ——— *Civil Procedure Code 1859 s 2—Competent Court* The Tipperah Rajah s Court was a Court of competent jurisdiction within the meaning of s 2 Act VIII of 1859 [illegible]

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(a) GENERAL CASES—*contd*

16 ———— **Agent to Governor General Court of**—*Beng Reg XIII of 1833 s 2—Order of Agent previous to the Regulation* By Regulation XIII of 1833 s. 2 the Courts of Dewanny Adawlut of Zillahs Ramghur and Jungle Mehals were abolished By the 4th section the administration of civil and criminal justice was vested in an officer appointed by the Governor General in Council to be denominated Agent to the Governor General By the 5th section authority was conferred on the Governor General to determine in Council *inter alia* to what extent the decision of the Agent in civil suits shall be final In 1834 by an order of the Governor General it was ordered that no appeal should lie from the orders of the Agent to the Sudder Court *Held* that an order of an [illegible]

quent suit relating to the inheritance to the same property the heir of *A* could not set up the order as conclusive BINODE KOOMAREE *v* PURDHAN GOPAL

Marsh. 80 W R F B 26 1 Hay 148

17 ———— **Joint contract**—*Liability of partners—Joint liability—Judgment recovered against one partner—Judgment of a foreign Court—Civil Procedure Code (Act XIV of 1882) ss 13 and 14—Consent decree* The defendants were partners trading in the name of Vishnuram Gopinath and Company On 6th July 1895 at Ahmedabad the first defendant borrowed from the plaintiff for the purposes of the partnership business a sum of [illegible]

plaintiff obtained a decree on an award against the first defendant in the Civil Court at Baroda for R13 909 4-0 and in execution of this decree he recovered a sum of R7 000 In 1897 plaintiff filed this suit in the Court of the First Class Subordinate Judge at Ahmedabad to recover the balance viz R6 909 4-0 from all the partners (defendants Nos 1 to 8) Defendants Nos 6 to 8 resided in Baroda territory the rest in British India Defendants Nos 2 3 and 4 defended the suit The rest did not appear The Subordinate Judge dismissed the suit holding on the authority of *King* v *Hoare 13 M & W 494* that the judgment of the Baroda [illegible]

residing in British territory The judgment of the Baroda Court was therefore no bar to the present suit under s 14 of the Code of Civil Procedure LAKSHMIN SHANKAR DEVSHANKAR *v* VISHNURAM

I L R 24 Bom. 77

18 ———— **Foreign Court**—*Judgment of a Native Court—Civil Procedure Code (Act XIV of 1882) s 13 expl VI—Meaning of the words a Court of jurisdiction competent to try such subsequent suit* The words in s 13 of the Code of Civil Procedure (Act XIV of 1882) a Court of jurisdiction competent to try such subsequent suit mean a Court having concurrent jurisdiction with the Court trying the subsequent suit whether as regards the pecuniary limit of its jurisdiction or the subject matter of the suit to try it with conclusive effect Reading expl. VI with the earlier part of s 13 the term Court of competent jurisdiction includes a foreign competent Court The plaintiff sued as the adopted son of *O* to recover certain property in British territory The defendants disputed the plaintiff s adoption The plaintiff relied on a decree of a Native Court which he had obtained against defendant No 2 in a suit for possession of certain other property belonging to *O* and situate within the territorial jurisdiction of the Native Court In that suit the question of plaintiff s adoption had been raised and decided in plaintiff s favour In the present suit both the lower Courts without attaching any weight to this decree of the Native Court held that the plaintiff s adoption was not proved, and dismissed the suit *Held* on second appeal that the question of plaintiff s adoption was *res judicata* as between him and defendant No 2 the judgment of the Native Court being one on the merits and conclusive between the parties within the territory of the Native State BABABHAT *v* NARHARBHAT

I L R 13 Bom. 224

19 ———— **Pecuniary valuation of suit** [illegible]

reason of decrees passed in District Munsif s Courts No objection was taken in the Subordinate Court to the valuation of the suit. *Held* that the plea of *res judicata* failed. GANAPATI *v* CHATHU

I L R 12 Mad 223

20 ———— **Finality of order**—*Civil Procedure Code 1882 s 244* *S S* brought a suit under a mortgage bond making *P S* a subsequent incumbrancer a defendant and obtained a decree for a sale of the whole of the mortgaged premises. After the decree a compromise was effected between all the parties with the exception of *P S* by the terms of which in consideration of the judgment debtors (mortgagors) undertaking to do certain acts, *S S* promised to execute his decree against

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(*a*) General Cases—*contd*

only a 3 annas 12 dams share of the mortgaged premises The judgment debtors (mortgagors) having failed to carry out the compromise *S S* applied for a sale of the whole of the mortgaged premises but on the petition of *R S* setting out the terms of the compromise to which he was no party the Subordinate Judge by an order of the 7th September 1885 held that under the agreement *S S* was entitled to sell only a 3 annas 12 dams share of the mortgaged premises which was accordingly directed to be sold That order was not appealed against but subsequently in March 1886 *S S* made a fresh application for a sale of the remainder of the premises *R S* objecting *Held* that the order of the 7th September was one which the Court was competent to make under s 244 of the Code of Civil Procedure and by reason of that order not being appealed it became final. Basudeo Narain Singh v Seolojy Singh I L R 14 Calc 640

21 ——— **Separate suit on disallowance of objection to execution**—*Evidence Act s 44* In execution of decree the defendant who was sued as the representative of her deceased brother objected under s 244 of the Code of Civil Procedure to the attachment of certain lands to which she set up independent title The objection was disallowed and the land was sold. She then sued the execution purchaser to set aside the Court sale and obtained a decree against which no appeal was preferred She now sued for possession *Held* that as against the execution purchaser the decree in the former suit was *res judicata* and therefore final *Per Curiam* The words not competent in s 44 of the Evidence Act refer to a Court acting without jurisdiction Kettilamma v Kelappan I L R 12 Mad 228

22 ——— **Court of competent jurisdiction** —*Civil Procedure Code ss 13 98 103—Landlord and tenant—Suit for damages against lessor—Joinder of one of two co lessees as defendant—Suit dismissed against such lessee* In 1883 *A* the trustee of a certain charity executed in favour of X and Y an agricultural lease for nine years and delivered over possession of the lands comprised in it being part of the trust property The lease contained a provision that it should be cancelled on default being made in payment of the rent and kist and it contained no express covenant for quiet enjoyment In 1887 default was made in payment of the rent and kist *A* thereupon cancelled the lease and sued *X* and Y in a subordinate Court and obtained a decree for the arrear the total amount of his claim being R2 807 In that suit X alleged that *Y* was merely a name lender for *A* who desired to benefit himself at the expense of the charity and also that certain raiyats setting up a false claim had evicted X from the lands demised at the instigation of *A* who had subsequently sought unsuccessfully to obtain further advantages for himself The Subordinate Judge framed an issue on each of these allegations and recorded findings in the negative In the same year *X* filed a suit for damages for breach of contract against *A* and *Y* in the High Court repeating in his plaint the above allegations When that suit came on for hearing it was dismissed for default *Y* being the only party who appeared. Y now sued *A* again on the same cause of action making the same allegations *Y* was subsequently brought on the record as being a necessary [illegible]

defendant

the record

former suit in the High Court was final as against him *Held* that the matters put in issue in the subordinate Court were not *res judicata* by reason of the decision of that Court and that the plaint disclosed a good cause of action against the lessor Vithilinga Padayachi v Vithilinga Mudali I L R 15 Mad 111

23 ——— **Suit against a Sovereign Prince**—*Civil Procedure Code (Act X of 1877) ss 13 433* A suit for a declaration of the title of the plaintiffs tarwad to certain land was filed in a District Court against the Maharaja of Cochin and others including the trustees of a [illegible]

were parties and that the land was then found to be the property of the devasom and a decree was passed accordingly It was contended that the present claim was not *res judicata* by reason of that decree because under the provisions of Act X of 1877 s 433 which came into operation during the pendency of that suit no Sovereign Prince could be sued in any Court subordinate to a District Court and the Court which passed that decree was not therefore a Court of jurisdiction competent to try the present suit within the meaning of Civil Procedure Code s 13 *Held* that although these words must be taken to refer to the jurisdiction of the Court at the time the suit was heard and determined yet the present claim was *res judicata* since the title to the land was a matter in issue within the cognizance of the Subordinate Judge and was adjudicated on by him Kunji Amma v Raman Menon I L R 15 Mad 494

24 ——— **Munsif jurisdiction of**—*Valuation of suit—Evidence Act s 44—Power of guardian to alienate land—Compromise of litigation* In 1882 the daughter of a deceased Hindu brought a suit in the Court of a District Munsif for a declaration that the defendant was not the adopted son of her father (deceased) as he claimed to be It was found that the alleged adoption was valid and the suit was dismissed The then defendant now brought in 1889 a suit in the same Court to recover possession of land from the then plaintiff alleging that it had been wrongfully transferred to her by way of gift by his adoptive mother The defendant denied the adoption and asserted

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(a) GENERAL CASES—*contd*

that the transfer was valid as having taken place in accordance with an arrangement made by her father in his lifetime. It was admitted that the value of the whole property to which the plaintiff was entitled by virtue of his adoption if it was a valid adoption exceeded R2 500. The Court of first appeal held that the question of the adoption was not *res judicata* and observed that the transfer to the defendant was apparently made to induce her to abandon her litigation as to the adoption. *Held* that the defendant was not at liberty to question the plaintiff s adoption that matter being *res judicata* and that the Court should try whether the transfer was made *bona fide* by the plaintiff s mother as his guardian for his benefit VENKATARACHAYA *v* RANGAMMA

I L R 15 Mad 498

25 ———— *Decision in suit of the nature of Small Cause suit* Decisions in previous suits which were in the nature of Small Cause suits and in which there was no right of second appeal, *held* not to operate as *res judicata* *Bholabhai v Adesang I L R 9 Bom 75* followed GOVIND *v* DHONDBARAV I L R 15 Bom 104

26 ———— *Munsif jurisdiction of—Resistance to execution of decree for possession—Civil Procedure Code ss 13 331* The

land jointly with the objector making the former judgment-debtor and the objector defendants to the suit The Subordinate Judge in first appeal held that the Munsif had acted under s 331 of the Code and applying s 13 of the Code dismissed the suit *Held* on appeal that under the circumstances the Munsif had no jurisdiction to act under s 331 and therefore his order was not a *res judicata* in the proceedings MAHABIR PRASAD *v* PARMA

I L R 14 All 417

27 ———— *Suit by a uralan against an agent of a devasom—Repudiation of agency—Civil Procedure Code (Act XIV of 1882)*

ground of *res judicata* SANKARAN *v* KRISHNA

I L R 16 Mad 456

28 ———— *Civil Procedure Code ss 13 and 43—Suit by mortgagee for personal remedy in one Court—Subsequent suit against mortgaged property in another Court—Latter suit not within jurisdiction of former Court—Munsif jurisdiction of—Transfer of Property Act s 99* A bond whereby certain immoveable property was hypothecated as security for a debt was executed at the place of residence of the obligor which was within the jurisdiction of a Court other than that within the jurisdiction of which the property hypothecated was situate The obligee brought a suit in the former Court to recover the principal and interest due on the bond against the obligor personally on the covenant to pay contained in the bond and prayed also for sale of the property hypothecated That Court dismissed that suit so

under s 43 of the Civil Procedure Code NARASINGA RAU *v* VENKATANARAYANA

I L R 16 Mad 481

29 ———— *Civil Procedure Code 1882 s 13* The term competent jurisdiction in s 13 of the Civil Procedure Code has regard to the pecuniary limit as well as to the subject matter There is no authority for the general proposition that the competency of one Court as compared with another is affected by the circumstance that in the one case an appeal lies in the first instance to the District Court and in the other directly to the High Court *Misr Raghobardial v Sheo Baksh Singh I L R 9 Calc 439* cited and followed *Vithilinga Padayachi v Vithilinga Mudali I L R 15 Mad 111* qualified. SUBHAMMAL *v* HUDDLESTON I L R 17 Mad 273

30 ———— *Civil Procedure Code 1882 s 13— Court of jurisdiction competent to try such subsequent suit* The words a Court of jurisdiction competent to try as used in s. 13 of the Code of Civil Procedure mean a Court having jurisdiction not only as to the nature but also as to the amount of the suit *Misir Raghobar Dial v Sheo Bakhsh Singh I L R 9 Calc 439 L R 9 I A 197* referred to HASSU *v* RAM KUMAR SINGH I L R 16 All 183

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(*a*) General Cases—*contd*

31. ——————— *Civil Procedure Code 1882 s 13—Jurisdiction of Munsif* Defendants against whom the District Munsif had wrongly passed a decree in 1877 in a suit in a

32 ——————— *Civil Procedure Code 1882 s 13* In a suit for arrears of rent brought against *A* in a Munsif s Court *B* intervened as a defendant alleging that he and not *A* was the true tenant in possession *B* succeeded in the first

purchased and took possession of it *B* brought the present suit (valued at more than R1 000) in the Court of the Subordinate Judge for declaration of his right and recovery of possession The lower Court of appeal held that the decision in the former suit in which *B* intervened operated as *res judicata* upon the question of title raised in the present suit and in support of that decision it was contended that the word suit in s 13 of the Civil Procedure Code included an appeal and that as the District Judge who tried the appeal in the former suit had jurisdiction to try the present suit and it was the decision of that Court which was pleaded in bar the defence on the ground of *res judicata* was good and valid *Held* that the contention was not right and the present suit was not barred by *res judicata* the former suit having been brought in a Court which was not a Court of jurisdiction competent to try the present suit *Pun Bahadur Singh* v *Lucho Koer I L R 11 Calc 301 L R 12 I A 23* followed *Misir Raghobardial* v *Sheo Baksh Singh I L R 9 Calc 439 L R 9 I A 197 Toponidhee Dhirj Gir Gossain* v *Sreeputty Sahanee I L R 5 Calc 832 Pathuma* v *Salimamma I L R 8 Mad 83* referred to Bharasi Lal Chowdhry v Sarat Chunder Dass

I L R 23 Calc 415

33 ——————— *Code of Civil Procedure (Act XIV of 1882) s 13—Issue decided in a previous suit not subject to second appeal—Same issue raised in a subsequent suit subject to appeal* In a previous suit for rent valued at less than R100 by the plaintiff against the defendants one of the questions raised was in how many instalments the rent was payable and it was held that it was not payable in instalments In a subsequent suit for rent valued at more than R100 between the same parties, the question of instalment was again raised as the plaintiffs claimed the rent to be payable in four instalments. The defendants *inter alia* pleaded that the question as to instalment was barred as *res judicata* The Munsif held that it was so barred On appeal the Subordinate Judge reversed the

I L R 15 Mad 111 and *Bhola Bhai* v *Adesang I L R 9 Bom 78* dissented from *Misir Raghoobardial* v *Sheo Buksh Singh I L R 9 Calc 439 L R 9 I A 97 Edun* v *Bechun 8 W R 175* distinguished *David* v *Grish Chunder Gula I L R 9 Calc 183* referred to Rai Charan Ghose v Kumud Mohun Dutt Chowdhry

I L R 25 Calc 571
2 C W N 297

34 ——————— *Court competent to try suit* The plea of *res judicata* should be given effect to if the Court which passed the decree in the first suit is a Court of jurisdiction competent to try the subsequent suit whenever its inability to entertain the subsequent suit arises not from incompetence but from the existence of another Court with preferential jurisdiction Ghulapa v Ragevendra (1904) I L R 28 Bom 338

35 ——————— Previous suit in Munsif's Court—*Civil Procedure Code (Act XIV of 1882) s 13—Suit in Subordinate Court—Valuation of a suit for declaration as to membership of tarwad—Specific Relief Act (I of 1877) s 42* A suit was brought in the Court of a Subordinate Judge for a declaration that the plaintiffs and defendants therein had no community of interest and were not members of a *tarwad* having joint property The property of the *tarwad* was valued by plaintiffs at R3 000 and this was held to be a true valuation but it appeared that the value of the plaintiffs interest

the property which was in the enjoyment of the defendants. *Held* that the suit was barred, both as *res judicata* and by s 42 of the Specific Relief Act The value of a suit for declaration that certain persons are or are not members of a *tarwad* is the value of the share of the *tarwad* property which would be allotted to them if a partition were made by common consent Panga v Unnikutti (1900) I. L. R 24 Mad. 275

36 ——————— *Civil Procedure Code (Act XIV of 1882) s 13—Competency of Court to try the previous and the subsequent suit—Concurrent jurisdiction.* Under the present Code of Civil Procedure in order to establish the plea of *res judicata* it has to be shown that the Court of concurrent jurisdiction which decided the former suit was a Court of jurisdiction competent to try

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(a) General Cases—*concld*

the subsequent suit *Topondhee Dhiri Gir Gosain v Sreeputty Sahanee I L R 5 Calc 83* distinguished *B* sold a certain property to *C* *A* brought a suit against *B* *C* and others in the Court of the Munsif for recovery of possession of property so conveyed and to have the *kobala* granted by *B* to his vendee set aside the suit was decreed in favour of *A* on the ground that *B* had no share in the disputed land and that no relationship existed between *A* and *B* In a subsequent suit brought by *B* in the Court of the Subordinate Judge for a declaration of his title to an eight annas share in a certain property a portion of which was covered by the aforesaid *kobala* and for joint possession thereof with *A* the defence was that the suit was barred by *res judicata* or at least it was so with respect to that portion of the disputed property which was the subject matter of the previous litigation *Held* that the suit was not so barred *Bhuguanbutti Choudhrani v A H Forbes I L R 28 Calc 78* distinguished SHIBO PAUT *v* BABAN PAUT (1908)
I L R 35 Calc 353
s c 12 C W N 359

(b) Small Cause Court Cases

37 ———— Question of title—*Decree of Small Cause Court* A decree passed in a suit in Small Cause Court in which a question of title is incidentally dealt with is not a bar to a suit for a general declaration of title KHANDU VALAD KERU *v* TATIA VALAD VITHOBA 8 Bom. A C 23

38 ———— *Suit for rent of the nature cognizable in a Small Cause Court—Determination of title* The incidental determination of an issue of title in a suit for rent of the [illegible]

CHUNDER NARAIN MOZOOMDAR *v* PRITHANUND ASRUM 12 W R 290

39 ———— *Civil Procedure Code 1877 s 13—Question of title Per* INNES J The decree of a Small Cause Court in a case where a question of title is raised incidentally is no bar to a suit upon the title under s 13 expl. II of the Civil Procedure Code because the Small Causes Court is not competent to pass a decree upon the title MANAPPA MUDALI *v* MCCARTHY
I L R 3 Mad 192

40 ———— *Decree for money due on bond—Subsequent suit in which execution and bonâ fides of bond are contested* In a suit to enforce a lien created by a mortgage bond on property which was sold by the mortgagor (*P*) ten months later to the defendant the lower Appellate Court held that the defendant as standing in his vendor's shoes, was concluded by a judgment obtained in the Small Cause Court by the plaintiff against *R* a month after the date of the bond. *Held* that as the Small Cause Court could not have jurisdiction to decide as to the lien its decree would only be relevant as showing that the defendants at the time owed the money to the plaintiff and that it would be open to the defendant to question the execution and *bonâ fides* of the bond as affecting the property which he had taken by conveyance POHOLI MULLICK *v* FUKEER CHUNDER PATNAIK 22 W R 349

41 ———— *Suit for rent in Small Cause Court—Question of title* The plaintiff in a suit to establish her lakhiraj right to lakhiraj land stated in her plaint that she was in possession of certain land by virtue of the will of her husband that while in possession of the land a suit was brought against her in the Small Cause Court for rent by the defendants who obtained a decree and that there being no appeal against the decision the lakhiraj rights in respect of the lands were consequently injured she therefore brought the present suit *Semble Per* JACKSON J dismissing the suit that the plaintiff might if a fresh suit for rent be brought again raise the question of her lakhiraj title because the Small Cause Court had no power to determine finally a question of right PORAN SOOKH CHUNDER *v* PARBUTTY DOSSEE
I L R 3 Calc 612 1 C L R 404

42 ———— *Decree in suit of Small Cause nature—Subsequent suit for declaration of title and to set aside agreement—Civil Procedure Code 1882 s 13* The plaintiff claiming to be entitled together with two of the defendants to the office of archaka of a temple sued in 1889 for a declaration of his title and for a declaration that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them The defendants pleaded that the validity of the agreement was *res judicata* for the reason that they had brought a previous action upon it against the plaintiffs and had obtained a decree for R75 *Held* that the validity of the agreement was not *res judicata* because the previous suit was of a Small Cause nature SRIRANGACHARIAR *v* RAMASAMI AYYANGAR
I L R 18 Mad 189

NAMASIVAYA GURUKKAL *v* KADIR AMMAL
I L R 17 Mad 168

43 ———— *Claim by mortgagor in execution proceedings in Small Cause Court—Civil Procedure Code (Act XIV of 1882) s 278—Presidency Small Cause Court Rules of Practice 49 50 51—Tiled huts— For the purposes of execution meaning of—Question of title—Presidency Towns Small Cause Courts Act (XV of 1882) ss 28 3* An order made upon a claim to attached property filed in the Small Cause Court of Calcutta in a proceeding under

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(b) SMALL CAUSE COURT CASES—*concld*

s 2/8 of the Civil Procedure Code is an order made in a suit within the meaning of s 37 of the *Presidency Small Cause Court Act* (XV of 1882) and is final subject only to the right to apply for a new trial *Ismail Solomon Bhamji* v *Mahomed Khan I L R 18 Calc 296* followed The words of s 28 (Act XV of 1882) for the purpose of execution must mean for all purposes of execution inclusive of the purpose of determining objections made to attachments Tiled huts for all the purposes of execution are therefore moveable property under that section The Small Cause Court has full power and authority to determine the question of title under a mortgage over attached property and that question is therefore *res judicata* DENO NATH BATABYAL v NUFFER CHUNDER NUNDY

I L R 26 Calc 778
3 C W N 590

This case was however reversed on appeal

See DENO NATH BATABYAL v ADHOR CHUNDER SETT **4 C W N 470**

44 ———— *Civil Procedure Code (Act XIV of 1882) s 13—Denial of plaintiff s title in a suit for rent—Decree in favour of defendants—Subsequent suit by same plaintiff against same defendants for possession* In 1898 *A* sued *B C D* and *E* in a Munsif s Court to recover six years rent alleged by *A* to be due in respect of certain land on a registered deed of lease *B C* and *D* denied *A* s title and pleaded that they were not liable for rent and that the land belonged to and was in the possession of *E* This defence was upheld by the Court of first instance and on appeal In 1899 *A* brought the present suit against *B C D* and *E* in the same Court on the same deed of lease [illegible] same land to [illegible] years It was [illegible]ed under s 13 [illegible]smuch as the Court which had tried the former suit was not a Court competent to try the present suit within the meaning of the section referred to for the reason that the former suit was cognizable by a Small Cause Court whereas the present suit was for the recovery of land and a second appeal would lie from a decree passed in it *Held* that the Court which had tried the former case was a Court competent to try the present suit within the meaning of s 13 of the Code of Civil Procedure *Subbammal* v *Huddleston I L R 17 Mad 2/3* and *Bhaqwan butti Choudhrani* v *Forbes I L R 28 Calc 78* followed *Srirangachariar* v *Ramasami Ayyangar I L R 18 Mad 189* referred to AHMED v MOIDIN (1901) **I L R 24 Mad 444**

(c) REVENUE COURTS

In early decisions it was held that a decision of a Revenue Court in a case under the Rent Act 1859 was in some circumstances binding in a Civil Court WOOMESH CHUNDER SOOTEE v RAM CHUNDER MOWREE **4 W R Act X 40**

OOMA CHURN DUTT v BECKWITH **5 W R Act X 3**

EESHOOREE SINGH v HUNTER **2 N W 53**

45 ———— **Decision of Revenue Court** —*Suit for rent—Jurisdiction of Collector* The decision of the Collector in a suit for rent of certain land is conclusive in a subsequent suit between the same parties in a Civil Court for a declaration that the land is liable to pay rent MOHESH CHUNDER BUNDOPADHYA v JOYKISHEN MOOKERJEE

15 B L R 248 note 22 W R 362

46 ———— ———— *Suit for resumption of invalid lakhiraj—Act X of 1859 s 28—Beng Reg II of 1819 s 30* That a rayat s holding was of a date prior to 1790 once decided in the zamindar s suit under s 28 Act X of 1859 must be considered as *res judicata* in a subsequent suit under s 30 Regulation II of 1819 KALLEE PERSHAD HOLDAR v SOOBHOGEA DABEA **1 W R 218**

Most of the later cases however decided that a decision of the Revenue Court was not conclusive on a matter of title in a subsequent suit in the Civil Court

47 ———— *Decision of Collector on question of possession* The decision of a Collector on a question of possession and of the right to receive the rent does not bar an action in the Civil Courts to try the title of the parties KALI DASS GHOSE v CHANDRAMOHINI DASI **8 W R 68**

48 ———— *Entry in revenue record under order of Collector—Suit in ejectment to determine title—N W P Land Revenue Act (XIX of 1873) s 107* An entry in a revenue record which is based solely on the fact of possession cannot operate as *res judicata* on a question of title subsequently raised in a civil suit *Dukhna Kunwar* v *Unkar Pande I L R 13 All 459* referred to KALIANI v DASSU PANDE **I L R 20 All 520**

49 ———— *Suit for declaration of title after suit for rent in Revenue Court* *A* suing *B* for arrears of rent on the allegation that [illegible] had no jurisdiction after the Revenue Court had declared *B* to be his raiyat *Held* that the Revenue Court s decree was not conclusive as to the question of title i e as to whose right it was to have the particular jote jumma as his property DHONAYE MUNDUL v ARIF MUNDUL **8 W R 306**

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) REVENUE COURTS—*contd*

50 ——— *Decree of Revenue Court for arrears of rent—Suit for declaration of title as lakhirajdar* A decree of a Revenue Court awarding arrears of rent for a certain year under a kabuliat against a raiyat does not bar the jurisdiction of the Civil Courts in a suit brought by him for a declaration of his title as lakhiraj lar in the same land TARA CHAND MYTEE *v* NILAMBUR MUNDUL 3 W R 227

51 ——— *Suit for possession after ejectment—Jurisdiction of Collector* In a suit to recover possession on the ground of illegal ejectment a Collector has no jurisdiction to inquire into any matter having reference to the rights of the parties so as to bar a subsequent suit for them SHEEB CHUNDER MAHNEEAH *v* BROJONATH ADITYA 14 W R 301

52 ——— *Suit in Revenue Court under s 23 Act X of 1859—Title—Subsequent suit for possession* A decision in a suit to recover occupation where the plaintiff is found to have been illegally ejected under Act X of 1859 s. 23, cl. 6 does not bar a regular suit for possession by the defendant in the former suit grounding his claim on title and in which the question of title is to be tried SOORJEE KANTO ROY *v* FORLONG 1 Ind Jur N S 382 6 W R Act X 44

53 ——— *Decision of Deputy Collector in suit for ejectment* Where a Deputy Collector declined jurisdiction in a suit for ejectment under s 23 Act X of 1859 and the appeal against this decision to the Judge was dismissed —*Held* that that decision was no bar to a suit for ouster in the Civil Court either in the way of *res judicata* or otherwise BASER MAHOMED *v* SUDDER GHAZEE 7 W R 97

54 ——— *Possessory suit under Rent Act* A possessory suit under cl 6 of s 23 of the Rent Act 1859 by a raiyat against his zamindar did not bar a suit for confirmation of title by the intervenor in that suit TARA CHAND GHOSE *v* RADHAMONEE DOSSEE 7 W R 469

reversing on review 5 W R Act X 9

55 ——— *Suit for rent—*
[illegible]
sequent suit to establish the mokurari right. BABUR ALI *v* DOWLUT ALI 15 B L R 242 19 W R 217

DOSS MONEE DOSSEE *v* HURONATH ROY 4 W R 2

NEYPAL SINGH *v* GUYADUT 3 Agra 311

56 ——— *Decision of Collector on reference from Deputy Collector Held* that reference to the Collector in a suit pending before the Deputy Collector was irregular and his opinion and order on such reference had no weight at all and could not amount to a decision which not having been appealed against would operate as a bar to the adjudication on the point referred SAHIB SINGH *v* PUT RAM 1 Agra Rev 17

57 ——— *Same parties in different character* The decision in a suit under
[illegible]

58 ——— *Suit to assess or resume invalid lakhiraj land—Jurisdiction of Collector—Act X of 1859 s 28* A suit by a zamindar to assess or resume land alleged to be invalid lakhiraj under s 28 of Act X of 1859 had to be brought in the Revenue Courts GUNGA HURRY DHOBEY *v* TRIPP 1 W R 31

In such a suit a Collector had no jurisdiction to try whether a title under a grant made prior to the 1st of December 1790 was valid or not MOOROOBBEE SAHOO *v* LATOO COOMAR W R F B 70

59 ——— *Act X of 1859 s 28—Jurisdiction of Collector* If it was established in a suit under s 28 Act X of 1859 that the defendant s lakhiraj tenure was created prior to 1790 it was immaterial whether it was within plaintiff s talukh or not Therefore the finding upon the question of parcel or no parcel by a Deputy Collector in such a suit was not binding on the Civil Court in any suit which might thereafter be brought to resume the land as invalid lakhiraj created prior to 1790 or in any other suit RAMNEEDHY BOYDE *v* NEAMUT Marsh 355 2 Hay 437

60 ——— *Suit for rent—Act X of 1859—Beng Act VIII of 1869—Jurisdiction of Collector Held* (JACKSON J dissenting) that a judgment by a Collector in a suit under Act X of 1859 declaring the plaintiff entitled to assess rent upon land alleged by the defendant to be lakhiraj is not conclusive in a subsequent suit between the same parties for arrears of rent under Bengal Act VIII of 1869 *Per* JACKSON *J*—A decision in a previous and similar suit upon an issue raised substantially in the same manner by parties
[illegible]

61 ——— *Bengal Tenancy Act (VIII of 1885) s 106—Decision of a Revenue Officer under s. 106* A question heard and decided

RES JUDICATA—contd

9 COMPETENT COURT—contd

(c) REVENUE COURTS—contd

by a Revenue Officer under s 106 of the Bengal Tenancy Act 1885 is *res judicata* between the same parties in a subsequent suit in a Civil Court *Hurri Sunker Mookerjee v Muktaram Patro 15 B L R 238* not applied. GOKHUL SAHU v JODU NUNDUN ROY GOBIND SAHU v LUCHMI NARAIN ROY
I L R 17 Calc 721

62 ——— *Order of Settlement Officer fixing rate of rent—Bengal Tenancy Act (VIII of 1885) s 104 cls 2 and 3 s 107—Civil Procedure Code 1882 s 13—Objection—Dispute* Where a Settlement Officer of his own motion settled what appeared to him to be a fair and equitable rent in respect of the lands held by the plaintiffs and other tenants under s 104 cls 2 and 3 of the Bengal Tenancy Act and the plaintiffs preferred an objection under s 105 cl 1 to certain entries in the record enhancing their rents on the ground that their rents were not liable to be enhanced which objection was disallowed and the record finally published under s 105 (2) —*Held* that the proceedings of the Settlement Officer were of an executive rather than of a judicial character and did not operate either as a *res judicata* under s 13 of the Code of Civil Procedure or as a final decree under s 107 of the Bengal Tenancy Act estopping the plaintiffs from having the same matters tried by the regular Civil Court The words objection and dispute in ss 105 and 106 of the latter Act are not synonymous terms SECRETARY OF STATE FOR INDIA v KAJIMUDDY
I L R 23 Calc 257

63 ——— *Bengal Tenancy Act (VIII of 1885) ss 103 106 107—Record of rights—Landlord and tenant—Cadastral survey* The decision of a revenue officer under s 106 of the Bengal Tenancy Act operates as *res judicata* between the parties in a subsequent suit between the same parties regarding lands which formed the subject matter of the proceeding under s 106 *Pandit Sardar v Meajan Mirdha I L R 21 Calc 378* distinguished *Gocul Sahha v Jodu Nundun Roy I L R 17 Calc 721* relied upon JOYPAL DHOBI v PALUKDHARI DAS 2 C W N 491

See RAM AUTAR SINGH v SANOMAN SINGH
I L R 27 Calc 167

64 ——— Decision in rent suit—*Beng Act VIII of 1869—Jurisdiction of Civil Court* The decision of the Civil Court in a suit for rent under Bengal Act VIII of 1869 was binding in a suit between the same parties for a declaration that the land the rent of which was the subject of the former suit is lakhiraj MOHIMA CHUNDER MOZOOMDAR v ASRADHA DASSIA
15 B L R 251 note 21 W R 207

65 ——— *Question of title in Civil Court in rent suits since the passing of Beng Act VIII of 1869* The old Privy Council and Full Bench rulings that a Revenue Court s decision on title in a rent suit under Act X of 1859 is not conclusive went upon a Collector s incompetency to determine a question of title but do not now apply to the decision of a competent Civil Court hearing a rent suit under the Rent Act 1869 RAM DOSS NUSHKUR v RASH MONEE DOSSEE
25 W R 189

66 ——— Decision in suit declaring title—*Subsequent suit for rent* A decree of a Civil Court in a suit concerning the title is not of itself in all cases a bar to a suit against a tenant for rent by the person against whom such decree has

decree as a bar to the plaintiff s suit for rent notwithstanding that the plaintiff may have an actual receipt of rent prior to the institution of the suit TARINEE v BAMUNDOSS MOAKHEE 1 W R 331

67 ——— Decision as to validity of pottah—*Decision of Revenue Court—Title—Collateral issue* The trial and determination by the Revenue Court of the amount of rent which the plaintiff is entitled to under a mokurari pottah in which the genuineness of the pottah only comes collaterally in issue in determining the amount of rent was not a bar to a subsequent suit in the Civil Court to try the validity of the pottah JANESWAR DAS v GULZARI LAL
5 B L R 666 note 11 W R 216

TEKAITNE GOWRA KUMARI v BENGAL COAL COMPANY 5 B L R 667 note 13 W R 129

Affirmed by the Privy Council in TEKAITNE GOURA COOMAREE v SAROO COOMAREE
19 W R P C 252

68 ——— *Decision of Revenue Court—Suit for ejectment* A Collector s judgment as to the genuineness of a pottah could not be pleaded as an estoppel in the Civil Court in an action for ejectment on account of trespass ARADHUN DEY v COLAM HOSSEIN 8 W R 487

69 ——— *Civil Procedure Code 1859 s 2—Suit for declaration of title—Order of Collector under Act X of 1859 s 23* In a suit for declaration of title to land from which a raiyat had been ejected at the suit of his zamindar by the order of a Collector under s 23 Act X of 1859 and wherein the genuineness of the pottah upon which the suit was brought was at issue the order of the Collector could not be pleaded in bar BHAIRO SINGH v UDIRARAN SINGH 3 B L R Ap 139

s c BHYRO SINGH v OODEE KUER SINGH
12 W R 284

70 ——— *Suit to declare pottah forged* The proceedings in a suit under Act X of 1859 in which the Collector did not finally adjudicate upon the genuineness of a pottah although he accepted it as genuine were no bar to a subsequent suit in the Civil Court for a declaration

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) REVENUE COURTS—*contd*

that the pottah was a forgery PITAMBUR SHAHA v RAMJOY GHOSE 7 W R 92

SHIB PERSHAD PANAH v MUDDUN MOHUN DOSS 15 W R 415

71 — — — Decision as to validity of kabuliat—*Court of competent jurisdiction—Question of title decision of by Revenue Court* Where for the purpose of a rent suit a Revenue Court found that a kabuliat propounded by the plaintiff was a genuine document such finding was no bar

72 — — — Decision as to validity of bond—*Court of competent jurisdiction—Concurrent jurisdiction—Civil Procedure Code 1859 s 2* A brought a suit against B in the Collector s Court for rent In answer B set up a bond by the terms of which A in consideration of a loan of R10 000 stipulated that B should apply a certain portion of the annual rent to the reduction of the loan and the payment of the interest thereon. A alleged that the bond was false The Collector in an issue directed by the High Court decided that it was genuine and this decision was affirmed on appeal B afterwards sued A in the Civil Court upon the bond *Held per* PEACOCK, C J and PHEAR J (CAMPBELL J *dissentiente*) that the Collector s decision as to the genuineness of the bond did not operate as an estoppel. The two Courts were not Courts of concurrent jurisdiction *Per* PEACOCK C J—*Quære* Is a judgment of a Court of concurrent jurisdiction between the same parties on the same point conclusive between the parties in another Court in the country? EDUN v BECHUN

2 Ind Jur N S 264 8 W R 175

73 — — — Decision as to genuineness of document—*Decision by Deputy Collector—Jurisdiction of the Revenue Courts* A a raiyat

UNNODA PERSHAD MOKERJEE v SOORENDRONATH PAL CHOWDHRY 20 W R 105

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) REVENUE COURTS—*contd*

GUNGA GOBIND ROY v KALA CHAND SURMA GANGOOLY 20 W R 455

(*Contra*) HURO LALL SAHA v TIRTHANUND THAKOOR 11 B L R 437 note 13 W R 417

74 — — — Decision as to validity of document—*Civil Procedure Code 1859 s 2—Former suit in Revenue Court* In a suit by a tenant to recover possession of land from which he had been dispossessed by defendant under colour of a sub lease alleged to have been exported by force it appeared that plaintiff had on the very cause of action sued the defendant in the Court of the Collector who had found the sub lease to be good and valid and had dismissed the suit *Held* that the

75 — — — Order of Revenue Court for ejectment—*Suit for possession—Act X of 1859 s* The defendant had obtained an order under s 25 Act X of 1859 to eject the plaintiff who now sued in the Civil Court for recovery of possession *Held* that s 2 Act VIII of 1859 did not bar the suit AMANAT ALI CHOWDHRY v MUSSEN ALI

2 B L R Ap 36 11 W R 145

76 Suit for ejectment—*Order on application under Act X of 1859 s 25* A suit for ejectment from land assigned for building purposes under a contract was not barred under s 2 Act VIII of 1859 by reason of a previous order for ejectment obtained on an application under s 25 Act X of 1859 such an application not being a suit RAM NARAIN MITTER v NOBIN CHUNDER MOORDAFARASH 18 W R 208

77 — — — *Suit for ejectment dismissal of—Subsequent suit for ejectment*

dismissed on other grounds HEERA RAWUT v RACHA RAWUT 22 W R 115

78 — — — Refusal of Collector in suit under s 25 Act X of 1859—*Subsequent suit for ejectment* A Collector s refusal to give assistance under s. 25 Act X of 1859 was not a determination by a Court of competent civil jurisdiction in a former suit within the meaning of s. 2 Act VIII of 1859 GOCOOL CHUNDER v ALI MAHOMED 10 W R 6

See MUDUN MOHUN ROY v GOURMONEE COOPTO B L R Sup Vol 31 W R F B 126

79 — — — Order by Revenue Courts for registration of name—*Suit for declaration*

RES JUDICATA—contd

9 COMPETENT COURT—contd

(c) REVENUE COURTS—contd

of title In a suit for declaration of title the mere fact that the Revenue Courts decreed the registration of the plaintiff s vendor s name as a joint sharer of the estate and that no steps were taken during twelve years to set aside that decree was *held* to operate as an estoppel NITTANUND ROY v BIDONATH MOHAPATHUR W R 1864 350

80 ———— *Proceedings under s 27 Act X of 1859* Two purchasers of holdings in the defendant s zamindari at a sale for arrears of revenue applied to the Collector to have the transfer registered in the zamindar s sherista under Act X of 1859 s. 27 Their application was refused and then they brought a suit in the Civil Court to set aside the Collector s order and register their names *Held* that proceedings authorized to be taken in the Collector s Court under s 27 Act X of 1859 were not proceedings in a suit and consequently that such proceedings were no bar to a suit in the Civil Court under s 2 Act VIII of 1859 CHANDRA NARAYAN GHOSE v KASINATH ROY CHOWDHRY 4 B L R F B 43

s c CHUNDER NARAIN GHOSE v KASHEENATH ROY CHOWDHRY 12 W R F B 30

81 ———— Orders of Collector amending Collectorate record and refusing partition—*Adjudication of rights* Two applications before a Collector the one by defendant asking an amendment of the Collectorate record by expunging therefrom plaintiffs names as being out of possession and which after evidence taken was ordered to be done and the other by plaintiff praying a partition under Act XIX of 1863 which was refused on the ground that they had not established their possession were *held* not to be such an adjudication [illegible]

[illegible] AUHOO SINGH [illegible]

82 ———— Order by Settlement Officer —*Civil Procedure Code 1882 s 13—Act XIX of 1873 ss 56 62 64 241 (g)* *Held* that an order by a Settlement Officer directing that certain persons should be recorded as the sub proprietors of certain land as they claimed to be and not as lessees as certain persons asserted that they were did not operate as *res judicata* in a suit by the latter persons against the former for a declaration that the former were not sub proprietors of the land but lessees thereof the Settlement Officer not being competent under Act XIX of 1873 (N W P Land Revenue Act) to try such a question of right TOTA RAM v HAR KISHEN I L R 7 All 224

83 ———— Decision of Collector in measurement proceedings—*Beng Act VIII of 1869 s 38—Jurisdiction of Collector* If a Collector professing to proceed under the provisions of s. 38, Bengal Act VIII of 1869 does not ascertain the existing rates of rent but proceeds to assess the rents —in other word to determine what rates are in his opinion fair and equitable —he exceeds his *jurisdiction* and his *proceedings are null and void* But if he has properly exercised the jurisdiction conferred on him by that section his proceedings are conclusive between the parties in a subsequent suit for rent MERJAH JANAND v KRISTO CHUNDER *alias* KANOO LAHARY I L R 10 Calc 507

84 ———— Decision as to surety in rent suit—*Jurisdiction of Revenue Court —Suit against sureties of lessee—Competent Court decision by* When a person became security for the due payment of rent by a third party and on default of such payment the creditor sued both the principal debtor and the surety in the Revenue Courts for the amount owing and such suit as against the surety was on appeal thrown out by the High Court on the ground that the Revenue Courts had no jurisdiction to entertain it and the creditor then sued the surety in the Civil Courts —*Held* that the proceedings instituted in the Revenue Courts were no bar to the entertainment of this suit GUNESH KOOER v OOMDUT OON NISSA BEGUM 6 N W 77

85 ———— Dismissal of suit for rent —*Subsequent suit for possession with mesne profits* The dismissal of a suit for rent is no bar to suit for title and possession with mesne profits GORE HURREE DOSS v MUTTEEOOLAH 1 W R 99

86 ———— Dismissal of suit in Re [illegible]

BHIKAREE PANDAH v AJOODHYA PERSHAD 3 W R 176

87 ———— Decree for rent at enhanced rate—*Suit for declaration of right to same land* A decree in a suit for a kabuliat at an enhanced rate was no bar under s 2 Act VIII of [illegible]

v POOROSUTTUM DOSS 16 W R [illegible]

88 ———— Decision as to liability for rent—*Subsequent suit for declaration of title* [illegible] that a party was [illegible]

NATH SEIN v RAM COOMAR CHATTERJEE 9 W R 359

ISHAN CHUNDER ROY CHOWDHRY v BRYRUB CHUNDER DOSS 21 W R 25

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) REVENUE COURTS—*contd*

89 ———— **Decision as to tenancy agreement** A Deputy Collector having in a suit for rent given plaintiff (*M*) a decree determining adversely to defendant (*K*) an issue which he had raised as to an arrangement of tenancy —*Held* that *K* could not succeed as plaintiff in a new suit in the same Court in which he set up the same arrangement and asked to have it declared as that under which he held the land from *M* KALEE DASS GHOSAL *v* MUDDOOSOODUN ROY
10 W R 465

90 ———— **Suit in Revenue Court on a lease**—*Subsequent suit for same sum as damages* When a suit for rent due on a certain stipulation in a patni lease was dismissed in the Revenue Courts —*Held* that another suit could not be brought in the Civil Court as for damage laid at the amount of rent which would have been realized GOPALKISTO MOOKERJEE *v* MUDHOOSOODUN PAUL CHOWDHRY W R 1864 Act X 82

91 ———— **Suit in Revenue Court to set aside attachment**—*Subsequent suit in Civil Court to assess rent on same land* A suit was brought in the Revenue Court to set aside an attach

made a decree setting aside the attachment on the ground that the landholder failed to prove that the higher amount was due *Held* that the landholder could not maintain a suit in the Civil Court to assess the land at the higher rate claimed for the year for which the attachment had issued on the ground of prior service of notice of demand of the higher rate under Bengal Regulation V of 1812 that question having been already adjudicated upon by a Court of competent jurisdiction REAZOONNISSA KHANUM *v* DOYANAUTH JHA Marsh 638

92 ———— **Decision of Revenue Court as to possession**—*Former suit by lessee against zamindar* *Held* that a decree of the Revenue Court in a suit for possession brought by one lessee against the zamindar was no bar to a suit in the Civil Court brought by another lessee to obtain possession against both the zamindar and the first lessee RUN SINGH *v* MAHOMED ABID
2 Agra 127

93 ———— **Dismissal of suit for ejectment**—*Suit for removal of trees—Jurisdiction of Revenue Court—Act X of 1859 s 23* The dismissal of a previous suit brought by plaintiff for ejectment of defendant his cultivator on account of breach of contract under cl 5 s 23 Act X of 1859 as being barred by limitation was *held* not to operate as a bar to a suit for removal and possession of certain trees and avoidance of sale deed executed by cultivator which was of a different nature from the one dismissed and did not come within the suits defined in s 23 Act X of 1859 and therefore was not cognizable by the Revenue Court JOGUL KISHORE *v* CHUTTER SINGH 1 Agra 27

94 ———— **Refusal of application for ejectment**—*Civil Procedure Code 1882 s 13—Landholder and tenant—Application for tenant's ejectment for building on land—Suit for demolition of building* A decision of a Revenue Court disallowing an application to eject a tenant because he has built on his land does not under s 13 of the Civil Procedure Code bar a suit in the Civil Court to have the building demolished AMRIT LAL *v* BALBIR
I L R 6 All 68

95 ———— **Decision ordering ejectment**—*Jurisdiction of Revenue Court—N W P Rent Act (XVIII of 1873) s 93—Landlord and tenant—Determination of title* The decision of a Revenue Court in a suit by a landholder against a tenant under s 93 (*b*) of Act XVIII of 1873 for the

consequently such a decision is not a bar to a suit by the landholder in the Civil Court for the demolition of the well as having been so constructed RAJ BAHADUR *v* BIRMHA SINGH I L R 3 All 85

96 ———— **Decision as to existence of relation of landlord and tenant**—*Civil Procedure Code 1877 s 13—Suit for arrears of rent—Determination of title—N W P Rent Act (XVIII of 1873) ss 93 95 148* The question whether the parties to a suit in a Court of revenue for arrears of rent stand in the relation of landlord and tenant is one which it is necessary for such Court to try incidentally for the purpose of disposing of such suit but not one which such Court has special jurisdiction to determine and its determination of that question is not that of a competent Court Consequently where a Court of revenue determines in such a suit that the parties do not stand in such relation such determination does not bar the party alleging that the parties do stand in such relation from suing in the Civil Court to establish such relation GOPAL *v* UCHABAL
I L R 3 All 51

97 ———— **Decree of Revenue Court in suit as to rate of rent**—*Suit for arrears of*

tenant for arrears of rent at a certain rate and

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) REVENUE COURTS—*contd*

precluded from setting up as a defence to the second suit that it was not maintainable as the rate of rent had not been fixed PHULAHRA v JEOLAL SINGH I L R 6 All 52

98 ———— **Determination of question of title**—*Act XIX of 1863 ss 8 9* Where *M* the recorded proprietor of an estate applied to have his share of such estate separated and an objection was made to such separation by *H* another recorded proprietor of the estate which raised the question of *M* s proprietary right to a portion of his share and the Collector proceeded under s 8 Act XIX of 1863 to inquire into the merits of such objection and decided that *M* s interest in such portion of his share was that of a mortgagee and not a proprietor and *M* did not appeal against such decision and it became final —*Held* in a suit in the Civil Court by *M* against *H* in which he claimed declaration of his proprietary right to such portion that a fresh adjudication of his right was barred HAR SAHAI MAL v MAHARAJ SINGH I L R 2 All 294

99 ———— *Partition—Appeal—Act XIX of 1873 (N W P Land Revenue Act) ss 113 114* Where in proceedings for partition under Act XIX of 1873 a question of title to land is raised between the parties to the partition and there is an adjudication of such question such adjudication will operate as a bar to a suit between the same parties in the Civil Courts to contest the title to such land notwithstanding that in some respects such adjudication may have been irregular or defective *Har Sahai Mal v Maharaj Singh I L R 2 All 294* and *S A No 179 of 1881* decided the 27th July 1881 followed *Held* in this case on consideration of the partition proceedings that the question of title raised therein had been adjudicated on and therefore the rule mentioned above applied BATYSHAR NATH v FAIZ UL HASAN I L R 5 All 280

100 ———— *Determination of proprietary right—N W P Land Revenue Act (XIX of 1873) ss 113 114* In the case of an objection to a partition raising a question of title it is only when the Collector or Assistant Collector records a proceeding declaring the rights of the parties after an adjudication of the objection on its merits that his order becomes an order under s 113 of Act XIX of 1873 within the meaning of s 114 of that Act Where therefore an Assistant Collector made an order disallowing an objection to a partition raising a question of title on the ground that such question had been determined against the objector in a suit for profits between the parties —*Held* that such order was not a decision of a Court [illegible]

Agra 161 and *Har Sahai Mal v Maharaj Singh I L R 2 All 294* distinguished ASHGAR ALI SHAH v JHANDA MAL I L R 2 All 839

101 ———— *N W P Rent Act (XII of 1881) ss 36 39 95 (e) and 96 (b)—Suit in a Civil Court for a declaration on a question of title decided by a Court of revenue under s 39 of Act XII of 1881—Jurisdiction of Civil and Revenue Courts* The defendants served a notice of ejectment under s 36 of Act XII of 1881 on the plaintiffs alleging the plaintiffs to be their sub tenants and themselves to be tenants with a right of occupancy The plaintiffs objected that they and not the defendants were the tenants in chief of the land in question This objection was decided under s 39 of the said Act by a Court of Revenue adversely to the plaintiffs The plaintiffs thereupon sued in a Civil Court for a declaration that they were tenants with a right of occupancy and for maintenance of possession *Held* that inasmuch as s 96 (b) of Act XII of 1881 gave to a decision of a Court of revenue under s 39 the effect of a judgment of a Civil Court the hearing of the plaintiff s present suit by a Civil Court was barred The principle of the decision in *Tarapat Ojha v Ram Ratan Kuar I L R 15 All 387* affirmed The jurisdiction of Civil Courts and Courts of Revenue in the North Western Provinces considered SHEO NARAIN RAI v PARMESHAR RAI I L R 18 All 270

102 ———— *Civil Procedure Code s 13—Partition—N W P Land Revenue Act (XIX of 1873) ss 113 114—Irregular procedure* Upon an application made under Ch IV [illegible]

an objection was raised that the land [illegible] divided into parts proportionate to the size of the different pattis The Assistant Collector before whom the objection was made disallowed it with [illegible] ul urz in [illegible] l and [illegible] No [illegible] istrict [illegible] and [illegible] istant [illegible] ectors [illegible] Collector s decision [illegible] declara [illegible]

raised in the Revenue Court was one which [illegible] question of title or of proprietary right in respect [illegible] within the meaning of s 113 of [illegible] e decision [illegible] within the [illegible] equently [illegible] Procedure [illegible] was not [illegible] Code *Held* also that [illegible] affected by any mistakes in procedure that had

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) REVENUE COURTS—*contd*

been made in the Revenue Courts AMIR SINGH v NAIMATI PRASAD I L R 9 All. 388

103 ——————— *Estoppel—Suit for a declaration of proprietary right* In 1864 the defendants served a notice upon the plaintiff demanding rent for land in his possession for which the plaintiff had not paid them rent previously The plaintiff thereupon instituted a suit in the Revenue Court contesting his liability to pay rent for such land on the ground that he was the proprietor thereof. A decree was made in that suit on the 16th August 1865 directing the plaintiff to execute a kabuliat to pay the defendants rent for such land at a certain rate The plaintiff did not appeal from that decree but from its date until August 1877 paid the defendants rent for such land On the 8th August 1877 the plaintiff instituted the present suit against the defendants in the Civil Court in which he claimed a declaration of his proprietary right to such land and to be maintained in possession thereof as proprietor free from the liability to pay rent and to have the decree of the Revenue Court dated the 16th August 1865 declared null and inoperative *Held* that the plaintiff s suit in the Revenue Court not being one which that Court was competent to entertain the decision in that suit could not be held final on the question of title raised in the present suit and that there was nothing in the conduct of the plaintiff which estopped him from instituting the present suit DEBI PRASAD v JAFAR ALI I L R 3 All. 40

104. ——————— *Jurisdiction of Revenue Courts—Landlord and tenant—N W P Rent Act (XVIII of 1873) ss 36 39* The question of title raised in a suit for a declaration that the defendant holds an estate paying revenue to Government as a manager subject to ejectment at will and for ejectment is not concluded by the orders of the Revenue Courts establishing the relationship of landlord and tenant between the parties on an application having been made by the defendant under s. 39 of Act XVIII of 1873 upon a notice having been served upon him by the plaintiff under s 36 of that Act objecting to his ejectment MUHAMMAD ABU JAFAR v WALI MUHAMMAD I L R 3 All 81

See CHOTU v JITAN I L R. 3 All 63

105 ——————— *Landholder and tenant—Decision of Revenue Court on an application under s 39 of Act XVIII of 1873* The plaintiffs in this suit landholders had caused a notice of ejectment to be served on the defendants their tenants under a lease on the ground that the tenancy had expired The defendants applied to the Revenue Court under s 39 of Act XVIII of 1873 contesting their liability to be ejected on the ground that the lease was a perpetual lease The Revenue Court held with reference to the word istemrari contained in the lease that the lease was perpetual and defendants were not liable to be ejected. The plaintiffs thereupon sued in the Civil Court for the cancelment of the word istemrari in the lease on the ground that it had been inserted fraudulently *Held* on appeal from the decree of [illegible]

[illegible] I L R [illegible] All 428

106 ——————— *Civil Procedure Code 1877 s 13—N W P Rent Act (XVIII of 1873) s 39* S caused a notice of ejectment to be served upon K in respect of certain land alleging that he held the same by virtue of a lease which had expired K contested his liability to be ejected under s 39 of Act XVIII of 1873 denying that he held the land by virtue of such lease and alleging that he had a right of occupancy The Revenue Court decided that K held the land under a right of occupancy and not under such lease S thereupon sued K in the Civil Court claiming possession of such land on the allegation that K was a trespasser wrongfully retaining possession thereof after the expiration of his lease *Held* that the decision of the Revenue Court did not render the matter in issue *res judicata* The provisions of s 13 of Act X of 1877 do not apply to applications such as those under s 39 of Act XVIII of 1873 SUKH DAIK MISR v KARIM CHAUDHRI I. L R 3 All. 521

107 ——————— *Jurisdiction of Civil Court—Act XVIII of 1873 (N W P Rent Act) ss 36-39* The defendants claiming to be occupancy tenants of certain land and alleging that the plaintiff was their sub tenant caused a notice of ejectment to be served on the plaintiff under ss 36 39 of Act XVIII of 1873 The plaintiff thereupon under the provisions of s. 39 of that Act preferred an application contesting his liability to be ejected alleging that he had a right of occupancy in such land jointly with the defendants and was not their sub tenant The Assistant Collector trying the case finally decided that the plaintiff was the sub tenant of the defendants and the plaintiff was ejected The plaintiff then sued the defendants in the Civil Court for a declaration of his [illegible]

[illegible]

108 ——————— Decision as to liability to ejectment—*Landholder and tenant—Ejectment*

RES JUDICATA—*contd*

3 COMPETENT COUPT—*contd*

(c) PEVENUE COURTS—*contd*

of tenant—Suit by tenant for declaration of right —Jurisdiction—Act XVIII of 1873 (N W P Rent Act) s 93 (b) An occupancy tenant who had been ejected under ss 34 and 93 (b) of the N W P Pent Act on the ground that he had committed an act mentioned in those sections which [illegible]

that his act was not one of the e rendering him liable to ejectment being authorized by local custom *Held* that the question of the plaintiff s liability to ejectment on account of the act in question being a matter the cognizance of which was limited to the Pevenue Courts and the decision of the Pevenue Court against him having become final the plaintiff s suit was barred by s 13 of the Civil Procedure Code *Raj Bahadur* v *Birmha Singh I L R 3 All 85* distinguished PADHA PRASAD SINGH v SALIK PAI
I L R 5 All. 245

109 ———————— *Act XVIII of 1873 s 95—Determination of title under cl (n)* S applied to the Revenue Court under cl (n) of s 95 of Act XVIII of 1873 for the recovery of the occupancy of certain land alleging that the occupancy of such land had devolved upon her by inheritance and that the landholder had wrongfully dispossessed her The landholder set up as a defence to this application that S was not entitled to the occupancy of the land by inheritance but that she was a trespasser The Revenue Court determined that S was entitled to the occupancy of the land by inheritance and granted her application The landholder then sued *S* in the Civil Court for the possession of the land. *Held per* PEARSON J and TURNER J that the question of S s title to the occupancy of the land wa with reference to the decision of the Pevenue Court *res judicata* and could not again be raised in the Civil Court *Per* SPANKIE J and OLDFIELD J (*contra*) SHIMBHU NARAIN SINGH v BACHCHA I L R 2 All. 200

110 ———————— *Decision as to liability to ejectment—N W P Rent Act 1881 ss 36 40 95* The plaintiffs who claimed to be tenants of certain land under a lease from the zamindar alleging that the defendant was their sub tenant under s 36 of the N W P Rent Act 1881 caused a notice of ejectment to be served upon the latter under the provisions of that Act The defendant did not make an application under that Act contesting his liability to be ejected and the plaintiffs applied under ss 40 and 95 (*f*) of that Act for assistance to eject him The Pevenue Court trying this application rejected it on the ground that the defendant was not a sub tenant of the plaintiffs but a co sharer in their tenancy The plaintiffs thereupon sued the defendant in the Civil Court for a declaration that the latter was not a partner with them in the lease and for possession of the land by his ejectment therefrom. *Held* that the relief

RES JUDICCATA—*contd*

9 COMPETENT COUPT—*contd*

(c) PEVENUE COURTS—*contd*

sought in the suit by the plaintiffs was not one which a Revenue Court could give under any of the clauses of s. 95 of the Rent Act which presupposes an admitted relation of landholder and tenant and therefore the determination by the Pevenue Court of the plaintiff s application for ejectment of the defendant was not the decision of a Court competent to try the suit and was no bar to its maintenance in a Civil Court within the principle of s 13 of the Civil Procedure Code LODHI SINGH v ISHRI SINGH I L R 6 All. 295

111. ———————— *Resumption of rent free grant—Suit for declaration that land is garden land and for possession—Act XII of 1881 ss 10 30 95 (a) (c) (n)* A zamindar applied to the Revenue Court under s 30 of the N W P Rent Act and obtained an order for the resumption of certain plots of land on the finding that they were resumable rent free grants The occupiers of the land were ejected and the zamindar obtained possession. Subsequently the occupiers brought a suit in the Civil Court to obtain a declaration that they held plots in question under a license from the zamindar s predecessor in title as orchard land without payment of any rent or other allowance to the landlord and that they were entitled to [illegible]

[illegible] of the suit of, of, the not

presented by the plaintiffs was not one on which an application of the nature mentioned in that section could by them have been made to a Court of revenue cls (a) (c) and (n) of the section not being applicable to the case AJUDHIA PRASAD v SHEODIY
I L R 6 All. 403

112 ———— Suit to contest demand of distrainer—*Act XII of 1881 (N W P Rent Act) ss 84 148* A decree of a Pent Court passed upon enquiries made under ss. 84 and 148 of the Rent Act (XII of 1881) is not conclusive as between the parties to the enquiry upon the ques [illegible] he land [illegible] was [illegible]

suit in the Civil Court as prescribed in these sections applies only to suits brought by plaintiff or unsuccessful intervenor to have it declared that plaintiff had a title to receive the particular rent claimed and which the Pent Court has refused to give him and not to suits for declaration of title to and possession of the land in respect of which the rent accrued due In 1881 the plaintiffs had under the provisions of the Rent Act (XII of 1881) made a distraint for rent alleged to be due by

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) REVENUE COURTS—*contd*

one of their tenants. The tenant contested the legality of the distraint by a proceeding in the Rent Court and the defendant intervened on the ground that he had been actually and in good faith in receipt and enjoyment of the rent of the land occupied by the tenant On the 28th of June 1881 the Rent Court decided against the defendant but owing to some irregularity the distraint was withdrawn. Plaintiffs subsequently instituted a suit in the Rent Court against the tenant for recovery of arrears of rent and the defendant again intervened and upon enquiry under s. 148 of the Rent Act (XII of 1881) plaintiffs suit for arrears of rent was dismissed. Plaintiffs then instituted this suit in the Civil Court for declaration of their right to and possession of the land in respect of which distraint proceedings had been taken and suit for recovery of arrears of rent instituted. The Court of first instance dismissed the suit on the merits

the inquiry held under s 84 of the Rent Act (XII of 1881) was not conclusive between the parties in a subsequent suit between them to determine their title to the land in respect of which the distraint proceedings had been taken. GANGA PRASAD v BALDEO RAM I. L. R. 10 All 347

113 ———— Court of jurisdiction competent to try the suit in which such issue has been subsequently raised —*N W P Land Revenue Act (XIX of 1873) ss 113 and 114—Civil Procedure Code 1882 s 13—Mortgage—Foreclosure—Suit for redemption* One *H S* mortgaged in 1864 by two mortgages of the same date certain immoveable property to one *A S* In 1877 *A S* applied for foreclosure of these mortgages and obtained an order under s 8 of Regulation XVII of 1806 but these proceedings were it was

113 and 114 of Act XIX of 1873 overruled that objection and granted partition in favour of the mortgagee In 1892 the mortgagor sued the representatives of the original mortgagee in a Civil Court for redemption of the mortgages of 1864 The defendants resisted the suit principally on the plea that s 13 of Act XIV of 1882 applied and was a bar to the suit but no plea of *res judicata* outside s 13 was raised. The plaintiff s suit was dismissed as stated by the principle of *res judicata*. The

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) REVENUE COURTS—*contd*

referred to *Per* BURKITT *J* (*contra*)—The provisions of s 13 of Act XIV of 1882 are not exhaustive and the plaintiff not having appealed herefrom the decision of the Court of revenue must be held upon the principle of *res judicata* to be a bar to the present suit *Ram Lal v Chhab Nath I L R 12 All 5 8* and *Ra Kirpal v Pup Kuari I L R 6 All 69* referred to HAR CHARAN SINGH v HAR SHANKAR SINGH I L R 16 All. 464

Held in the same case by KNOX BLAIR and

will operate as *res judicata* in a subsequent civil suit in which the same question is being litigated. HAR CHARAN SINGH v HAR SHANKAR SINGH

I L R 18 All. 59

114 ———— *Transfer of Property Act (IV of 1882) s 99—Sale by a Court of revenue in contravention of s 99—Subsequent suit for partition in a Civil Court based upon rights acquired under such sale—Co sharers* A Court of Revenue in execution of a decree for rent sold the mortgagor s interest in a certain house which had been mortgaged together with other property and the sale was upheld on appeal to the Board of Revenue Subsequently the auction purchaser at the sale above referred to sued in a Civil Court for partition of the share purchased by him *Held* that the co sharers in the property in question could not dispute the validity of the sale notwithstanding that the decree and the sale in pursuance thereof were in direct violation of s 99 of Act IV of 1882 TARA CHAND v IMDAD HUSAIN

I L R 18 All. 325

115 ———— Decision of Revenue Court —*Civil Procedure Code 1882 s 13* A zamindar distrained for rent under the Rent Recovery Act

tendered was not *res judicata*. RANGAYYA APPA RAU v RATNAM I L R 20 Mad 392

116 ———— Decision of Collector under Mad. Reg V of 1822 when unappealed. A case decided by a Collector under Regulation V of 1822 from whose decision no appeal was

ot be

Ur

Mad. 475

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) REVENUE COURTS—*contd*

But *see* ADMULAM PILLAI *v* KOVIL CHINNA PILLAI 2 Mad 22

117 ———— **Decision as to rate of rent** —*Decision on agreement set up by tenant* In a suit brought in a Revenue Court by a landlord against his tenant to enforce acceptance of a pottah at certain rates for a certain year the tenant pleaded that by virtue of a special agreement he was entitled to hold at favourable rates but failed to establish this plea and a decree was passed in favour of the landlord The tenant then sued in the Civil Court to establish his right to compel the landlord to grant him a pottah at favourable rates for the next year by virtue of the special agreement put forward by him in the suit in the Revenue Court *Held* that the decision of the Revenue Court was no bar to the suit HARIKA RAMAYYAR *v* SINDU TIRTASAMI I L R. 7 Mad 61

118 ———— **Former suit under Madras Rent Recovery Act (Mad Act VIII of 1865)**—*Jurisdiction of Revenue Court—Question of title* In a suit for land it appeared that the defendant had obtained under the Madras Rent Recovery Act a judgment that the present plaintiff should accept from him a pottah for the land in question and deliver to him a corresponding muchalka and subsequently an order for ejectment which was executed. The present plaintiff did not appear when the above orders were made The defendant relied on these proceedings as constituting a bar to the present suit *Held* following *Harika Ramayyar v Sunder Tirtasami I L R 7 Mad 61* that the decision of the Revenue Court was no bar to the suit GANGARAJU *v* KONDIREDDI SWAMI I L R 17 Mad 106

119 ———— **Decision as to right to possession**—*Dismissal of application by Collector to raise attachment* S the mortgagee of a talukhdari village obtained a decree upon his mortgage against his mortgagor the talukhdar of the village under which S attached the village The Collector of the district in which the attached village was situated thereupon came in under s 246 of the Civil Procedure Code 1859 and sought to raise the attachment but as he failed to appear when the matter came on for adjudication his application was dismissed The village was then sold under the decree and was purchased by *S* the mortgagee Upon S seeking to obtain possession of the village he was resisted by the Collector whereupon *S* (after proceedings ineffectually taken by him under s. 269 [illegible]

of the village was as between him and the Collector *res judicata* by reason of the dismissal of the Collector s application under s. 246 of the Code (to set aside which he must al the Collector had not filed a suit within the year allowed for that purpose) and that *S* ought therefore to have been at once put in possession of the village without further proof of his titl COLLECTOR OF AHMEDABAD *v* SAMALDAS BECHARDAS 9 Bom 205

120 ———— **Order of Mamlatdar under Bom Act V of 1864**—*Effect of order on mortgagee* A mortgagee is not affected by the order of a Mamlatdar made under Bombay Act V of 1864 on the application of the mortgagor for possession subsequent to the date of the mortgage KISHNAJI NARAYAN *v* GOVIND BHASKAR 9 Bom 275

121 ———— **Dismissal of suit by Mamlatdar on the merits**—*Possessory suit in Mamlatdar s Court—Subsequent suit in Civil Court under s 9 of the Specific Relief Act (I of 1877)—Mamlatdars Act (Bom Act III of 1876) s 18—Specific Relief Act (I of 1877) s 9* A possessory suit filed in the Mamlatdar s Court was dismissed by the Mamlatdar on the merits. The plaintiff thereupon filed another suit under s 9 of the Specific Relief Act (I of 1877) in a Civil Court which allowed the claim and passed a decree in his favour The defendant applied to the High Court in its extraordinary jurisdiction and contended that the plaintiff s claim was *res judicata* and that the Mamlatdar s decree barred the second suit. *Held* that having regard to s 18 of the Mamlatdars Courts Act (Bom Act III of 1876) the Mamlatdar s decision was not conclusive and that the plaintiff was entitled to bring the second suit under s. 9 of the Specific Relief Act RAMCHANDA BALAJI PHADNIS *v* NARSINHACHARYA VEDUNATHACHARYA KATTI I. L R. 24 Bom. 251

122 ———— **Decision of Revenue Court as to landholder's title**—*Civil Procedure Code s 13—Madras Rent Recovery Act s 9* In a summary suit filed by a landlord against his tenant in the Court of the Deputy Collector under the Madras Rent Recovery Act s. 9 to enforce acceptance of a pottah by the defendant it appeared that in a former suit between the same parties in the same Co[illegible] was the [illegible] accept a [illegible] question in the present suit *Held* [illegible] fendant was not entitled in the present suit to dispute the plaintiff s title since the former decision constituted it *res judicata* VENKATACHALAPATI *v* KRISHNA I L R 13 Mad. 287

123 ———— **Denial of relationship of landlord and tenant**—*Civil Procedure Code (Act XIV of 1882) s 13—Bengal Tenancy Act (VIII of 1885) s 103—Record-of-rights—Ejectment* When there is a total denial of relation of landlord and tenant by one of the parties a Revenue-officer has jurisdiction in a proceeding under s. 103 of the Bengal Tenancy Act to decide that question but his decision although it may have the force of a decree cannot operate as *res judicata* in a subsequent suit in ejectment and for declaration of the

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) Revenue Courts—*contd*

title brought in a Civil Court DHARANI KANTA LAHIRI v GAFER ALI KHAN (1902)
I L R 30 Calc 339
s c 7 C W N 33

124 ——— Ejectment—*Act XII of 1881 (North Western Provinces Rent Act) ss 93 95—Jurisdiction—Civil and Revenue Courts—Suit to eject as a trespasser a person who claimed to be entitled to succeed to the holding of a deceased occupancy tenant* Upon the death of an occupancy tenant a person who alleged that he was entitled to succeed the deceased in his holding obtained mutation of names in his favour and also got possession of the holding The zamindars thereupon brought a suit in the Civil Court for ejectment of such person as a trespasser who had no right whatever to succeed to the holding of the late occupancy tenant *Held* that such a suit was properly brought in a Civil Court and could not have been instituted in a Court of Revenue and further that the decision of the ... names in ... rate as *res* ... *Subarni* v *Bhaguan Khan* ... distinguished *Sheo Narain Rai* v *Parmeshar Rai I L R 18 All 2 0 Dulhna Kuar* v *Unkar Pande I L R 19 All 4*52 and *Kaliani* v *Dassu Pande I L R 20 All 529* referred to BARU MAL v NIADAR (1901)
I L R 23 All 360

125 ——— *Act XII of 1881 (North Western Provinces Rent Act) ss 93 95—Act XIX of 1873 s 10—Jurisdiction—Civil and Revenue Courts—Suit to eject as a trespasser a person who claimed to be entitled to the holding of a deceased occupancy tenant* Upon the death of an occupancy tenant a person who alleged that he was entitled to succeed to the deceased occupancy holding obtained from the revenue authorities by means of an application under s 102 of the North Western Provinces Land revenue Act mutation ... holding of their late occupancy tenant *Held* that such suit was properly brought in a Civil Court and could not have been instituted in a Court of revenue and the decision of the Revenue authorities allowing mutation of names in the defendant s favour could not operate as *res judicata* in respect of such suit *Subarni* v *Bhagwan Khan I L R 19 All 101* distinguished NIADAR v BARU MAL (1901)
I L R 24 All 153

126 ——— Genuineness of document—*Civil Procedure Code s 13—Decision by a Court of Revenue in a suit for rent as to the genuineness of a document no bar to the determination of such issue by a Civil Court* In a suit for rent brought in a Court of Revenue the plaintiff produced in support of his claim the counterpart of a lease alleged to have been executed by the defendant The defendant denied execution but the Revenue Courts both ... was not executed by him and was not a genuine document *Held* that the decision of the Revenue Courts could not operate as *res judicata* such Courts having no jurisdiction to try the subsequent suit and s 13 of the Code of Civil Procedure being exhaustive on the subject of what constitutes a *res judicata* *Gokul Mandar* v *Pudmanund Singh 6 C W N 825* referred to *Rai Krishn Chand* v *Mahadeo Singh All Weekly Notes (1901) 49* distinguished GOMTI KUNWAR v GUDRI (1902)
I L R 25 All 138

127 ——— Jurisdiction—*Decision of Revenue Court effect of—Civil Procedure Code (Act XIV of 1882) s 13* Under s 13 Civil Procedure Code a decree in a previous suit cannot be pleaded as *res judicata* in a subsequent suit unless the Judge by whom it was made had jurisdiction to try and decide not only the particular matter in issue but also the subsequent suit itself in which the issue is subsequently raised In this respect this section goes beyond the law laid down in the *Duchess of Kingston s Case 2 Smith s Leading Cases 10th Ed p 713* GOPAL MONDUL v PUDMANUND SINGH (1902)
I L R 29 Calc 707
s c 6 C W N 825
L R 29 I A 196

128 ——— Settlement Proceeding—*Record of rights—Bengal Tenancy Act (VIII of 1885) Ch X ss 105 106—Civil Procedure Code (Act XIV of 1882) s 13—Settlement Proceeding—Entry of rent—Procedure* S 105 of the Bengal Tenancy Act lays down that during the pendency of the draft publication any person affected by an entry in the record may raise an objection with regard to it which the Revenue Officer is to receive and consider and dispose of in a summary manner From an order disposing of such an objection there would be no appeal and no second appeal and the order cannot have the effect of *res judicata* A dispute under s 106 is to be heard and decided by the Revenue Officer under the procedure laid down in the Code of Civil Procedure for the trial of suits and is subject to appeal and second appeal and an order disposing of such a dispute will have the effect of *res judicata* *Dengu Kazi* v *Nobin Kishore Choudhrain 1 C W N 94* considered and explained KAFRAN ALI v JAFAR ALI (1901)
5 C W N 798

129 ——— Status of tenant and nature of holding—*Bengal Tenancy Act (VIII of 1885) ss 104 cl (2) 10—Civil Procedure Code (Act XIV of 1882) s 13* During the preparation

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) Revenue Courts—*contd*

of a record of righ s of an estate under s 103 of the Bengal Tenancy Act by a Settlement Officer the landlord put in a petition under s 104 cl (?) of the Act for settlement of rent of a certain tenant s holding The tenant notwith tanding the fact that notice was served upon him did not adduce any evidenc and the Settlement Officer decided that the tenant was an occupancy *raiyat* and fixed a fair and equitable rent for the holding Against this decision of the Settlement Officer no appeal was preferred to the Special Judge Subsequently a suit was brought in the Civil Court by the tenant to have the class to which he belonged and the nature of his holding *i e* whether the rent was enhanceable or not determined The defence of the landlord was that having regard to the decision of the Settle ment Officer the question could not be re opened *Held* that under the provisions of s 104 cl (?) and s 107 of the Bengal Tenancy Act the decision of the Settlement Officer amounted to a decree and the matters determined by that decision could only be r opened on an appeal to the Special Judge As no appeal was preferred the decision became final and the questions decided in that could not be re opened in this suit DURGA CHURN LAW *v* HA TEEN MANDAL (1901) **I L R 29 Calc 252**
s c 6 C W N 238

130 ——————*Madras Rent Re covery Act (VIII of 1865) s ?2—Decision of Rev enue Court on terms of pottah—Confirmation on appeal to District Court—Subsequent suit for rent—*

[illegible]

Courts in respect of rent recoverable for that fasli *Villiammalachie* v *Sre Gulam Gouse Sahib (Appeal No 118 of 1900* unreported) followed VEDACHALA GRAMANI *v* BOOMIAPPA MUDALIAR (1904)
I L R 27 Mad 65

131 —— ——————*Question of title decided by a Court of Revenu* The decision by a Court of Revenue of a question of title though such decision was necessary for the disposal of the case before it cannot prevent the same question being again litigated between the same parties in a Civil Court *D bi Prosad* v *Jafar Ali I L R 3 All 40 Husain Shah* v *Gopal Rai I L R 2 All 428 Ajudhia Prosad* v *Sheodin I L R 6 All 403* and *Conti Kunwar* v *Gudri All Weekly Notes (190?) 2 0* referred to *Rai Krishna Chand* v *Mahadeo Singh All Weekly Notes (1901) 49* and *Subarni* v *Bhagwan Khan I L R 19 All 101* distinguished JANKI KISHORI *v* RAJA RAM (1904)
I L R 26 All 468

132 ————*Gujrat Talukdar s Act (Bombay Act VI of 1888) ss 10 11 16 and 17—Talukdari Settlement Officer—Decision—Appeal—Second appeal—Subsequent suit in a Court of com*

RES JUDICATA—*contd*

9 COMPETENT COURT—*contd*

(c) Revenue Courts—*contd*

petent jurisdiction Certain proceedings which had arisen out of an application to the Talukdari Settle ment Officer under s 11 of the Gujrat Talukdars Act (Bombay Act VI of 1888) went up to the High Court in second appeal Subsequently the same question having arisen between the same parties in a regular suit in a Court of competent jurisdiction —*Held* that the question was not *res judicata* A Talukdari Settlement Officer is not a Court of juris diction competent to try the suit He is an ad ministrative officer according to the machinery pre scribed by the Bombay Legislature In consider ing the competency of a Court for the purpose of deciding on a question of *res judicata* the Court must look to the powers of the Court in which the suit was instituted and not to the powers of the Court by which that suit was decided on appeal *Toponidhee Dhiraj Gir Gosain* v *Sreepully Sahanee I L R 5 Calc 832 838* followed MALUBHAI *v* SURSANGJI (1905) **I L R 30 Bom 220**

133 ——————*Finding of Rev enue Court that there was no proper tender of patta is not res judicata in a civil suit for rent for the fasli*

[illegible]

enue Court held that the second tender made more than a month after the first with a view to taking proceedings under s 9 of the Madras Rent Recovery Act was not legal In a suit in the Civil Court by the landlord under s 7 of the Rent Recovery Act to recover rent for the fasli on proving the second tender *Held* that the decision of the Revenue Court even if it amounted to a decision that there was no proper tender of patta would not operate as *res judicata* as the Revenue Court had no juris diction to decide the suit brought in the Civil Court *Vedachella Gramany* v *Boomiappa Mudli liar I L R 27 Mad 65* distinguished KIDAMBI VENKATACHARIAR *v* LAKSHMI DOSS (1907)
I L R 31 Mad 62

(d) Criminal Courts.

134 ———— **Decision of Criminal Court** —*Civil Procedure Code 1877 s 13—Suit by Hindu father for compensation for the lo s of his daughter s services in consequence of her abduction —Compensation for costs of prosecuting abductor* A Hindu sued for compensation for the l ss of his daughter s services in consequence of her abducti n by the defendant and for the costs incurred by him in prosecuting the defendant criminally for such abduction The defendant was convicted on such prosecution *Held* that the decision of the Criminal Court did not operate under s. 13 of Act X of 1S to bar the determination in such suit of the question whether the defendant had or ha l not abducted the plaintiff s daughter RAM LAL *v* TULA RAM
I L R 4 All 97

RES JUDICATA—*contd*

9 COMPETENT COURT—*concld*

(d) CRIMINAL COURTS—*concld*

135 ——— Conviction in Criminal case—*Subsequent civil suit for damages* The conviction in a criminal case is not conclusive evidence in a civil suit for damages in respect to the same act BISHONATH NEOGY *v* HURO GOBIND NEOGY 5 W R 27

136 ——— Decision as to validity of document in criminal case—*Subsequent suit in Civil Court* A Civil Court is not bound by a Magistrate s view of the genuineness of a document NITTYANUND SURMAH *v* KASHEENATH NYALUNKAR 5 W R 26

JUGGUT MISSER *v* BABOO LALL 5 W R Cr 50

OOMANATH ROY CHOWDHRY *v* RAGHOONATH MITTER Marsh. 43 W R F B 10 1 Hay 75

10 RELIEF NOT GRANTED

1. ——— Dismissal of suit without leave to bring fresh suit—*Civil Procedure Code s 373—Withdrawal of suit* Expl III of s 13 of the Civil Procedure Code contemplates a decree which does not expressly grant the relief claimed the termination of a suit by the plaintiff being allowed to withdraw it without leave to bring a fresh one is not a bar under expl III to a subsequent suit in which the same matter is in issue KAMINI KANT ROY *v* RAM NATH CHUCKERBUTTY I. L. R 21 Calc 265

2 ——— Refusal to give relief not claimed in plaint—*Subsequent suit for possession of the land not claimed—Civil Procedure Code 1859 s 2* A B instituted a suit against V B to

[illegible]

cipal Sudder Ameen awarded to *A B* one fourth of the field and to *S N* and *B N* conjointly he awarded one fourth but as to the remaining one half he passed no decree as it had not been claimed in the plaint *S N* and *B N* thereupon filed a fresh suit to recover possession of their remaining one fourth of the field and the Principal Sudder Ameen passed a decree in their favour This decree was confirmed by the Joint Judge *Held* that the decrees of the lower Courts were erroneous and that the claim of

[illegible]

3 ——— Plaint in former suit description of property in—*Variance between body of plaint and schedule* [illegible]

[illegible]

RES JUDICATA—*contd*

10 RELIEF NOT GRANTED—*contd*

In the schedule annexed to the plaint the mortgaged property was described as Mouzah B ushi with dakhili —that is Mouzah V K and Mouzah M B —but in the body of the plaint it was described simply as Mouzah B On the death of plaintiff in that suit the reversionary heirs of *G* sued the appellant for an adjudication of their right to 16 annas of Mouzah M B and it was found that Mouzahs B K and M B were not ushi with dakhili but

[illegible]

as described in the body of the plaint and not as described in the schedul annexed thereto and that the question in the latter suit was therefore not *res judicata* HET NARAIN SINGH *v* RAM PERSHAD SINGH 7 C L R. 404

4 ——— Refusal to decide question of title—*Reference of party to another suit* In a suit between *A* and *B* a question of title was raised

[illegible]

43 cited and distinguished EMAMOODEEN SHOWDAGHUR *v* FUTTEH ALI 3 C L R 447

5 ——— Suit to determine issue left untried by Judge—*Fresh suit* A fresh suit will not lie to determine an issue left untried by the Judge The plaintiff s remedy where such is the case should be by special appeal to the High Court JUGGESSUR NUNDEE *v* CHUNDER GOBIND SINGH 9 W R. 524

6 ——— Declaratory decree—*Civil Procedure Code s 13—Maintenance suit decree in—Annual payments* A Hindu widow obtained a decree in 1876 which provided that she should receive future maintenance annually at a certain rate but

[illegible]

natha v *Lakshmi I L R 7 Mad 80* distinguished VENKANNA *v* AITAMMA I L. R 12 Mad. 183

7 ——— Issue advisedly left undecided in former suit In 1878 *A* as the auction purchaser of a talukh sued 35 persons for possession of a part of this talukh. In this suit the issues raised were—(i) whether *A* had purchased the whole talukh or an 8 anna share of the right title and

[illegible]

and as it did not appear what portions of the talukh were held by the several defendants,

RES JUDICATA—*contd*

10 RELIEF NOT GRANTED—*contd*

lower Appellate Court dismissed the suit with liberty to the plaintiff to bring a fresh suit within the proper time In 1880 *A* brought a fresh suit against 16 of the same defendants and 19 others for possession of a portion of the same talukh The issues raised were—(i) whether the suit was barred under s 13 of the Code (ii) whether *A* had purchased the whole or a portion of the talukh (iii) whether the defendants were in possession of all the disputed land and if not what portions of the talukh were held by the several defendants (iv) as to the correctness of the boundaries of the talukh. The Munsif held that the suit was not barred and on the merits gave *A* a decree The Subordinate Judge held that the suit was barred and refused to go into the merits *Held* that the question whether *A* had purchased the whole or only a portion of the talukh was *res judicata* but that the question as to what lands *A* was entitled to by virtue of his purchase having been left undecided in the former suit *A* was entitled to a decision on that point RAM CHARAN BUHARDAR *v* REAZUDDIN I L R 10 Calc 856

8 ———— **Judgment in former suit appealed from**—*Stay of execution pending appeal—Review Held* that a former judgment by a Court of competent jurisdiction upon the same cause of action was conclusive between the same parties in a subsequent suit brought in another Court notwithstanding the pendency of an appeal against it but that the Judge passing a decree in the subsequent suit might upon application made to [illegible] tertain an application for the review of his own decision in the subsequent suit BULKIRAM NATHURAM *v* GUJARAT MERCANTILE ASSOCIATION 4 Bom A C 81

9 ———— **Affirming judgment in special appeal**—*Affirmation in general terms by rejecting appeal* In a special appeal the general affirmation of a judgment can only refer to the points raised by the appellant the rejection of the appeal not n[illegible]s[illegible]arily affirming the other findings of fact or law incidentally arrived at by the lower Appellate Court. AHMED HOSSEIN *v* BANDEE 15 W R 91

10 ———— **Decision on issue not afterwards appealed from**—*Preliminary issue* The decision of an Appellate Court on a preliminary issue of fact, which was not at the time appealed against and [illegible] was not alter[illegible] Court is con[illegible] issue determined cannot be re-opened on a second special appeal SUBHANJI BIN BAHIRJI *v* BHAVANRAV BIN ANANDRAV 1 Bom 173

11 ———— **Omission to appeal against adverse decision in one suit**—*Civil Procedure Code (Act XIV of 1882) s 13—Effect of omission on decision in appeal in another* The decision of an issue in one of two suits tried together which is not appealed against cannot be treated as *res judicata* so far as the same issue is concerned in an appeal from the decision in the other suit. *A* a ticcadar sued *B* for rent in respect of a holding in the ticca In that suit *B* pleaded that he was a partner of *A* in the ticca transaction and that no rent was due from him in consequence thereof *B* then sued *A* for an account of the partnership in the same transaction and *A* in that suit denied the partnership Both suits were heard together by the Munsif who held *A* was not a partner *B* appealed against the judgment and decree in the account suit but did not appeal against that in the rent suit It was contended on the appeal that the question as to whether *A* was or was not a partner was *res judicata* by reason of the decision in the rent suit not being appealed against and having become binding *Held* that s 13 of the Code of Civil Procedure did not apply and that the question was not *res judicata* There was no bar at the time the issue was tried and decided by the Munsif and the Appellate Court was bound to decide the appeal upon the evidence ABDUL MAJID *v* JEW NARAIN MAHTO I L R 16 Calc 233

12 ———— **Suit for possession and mesne profits**—*Civil Procedure Code (Act XIV of 1882) ss 13 211 244—Decree for possession and mesne profits up to date of suit—Separate suit for* [illegible] And where a decree for possession is silent as regards mesne profits which have accrued between the date of the institution of the suit and delivery of possession a separate suit will lie for such subsequent mesne profits ss 13 and 244 of the Code being no bar to it *Sadasiva Pillai* v *Ramalinga Pillai* L R 2 I A 219 15 B L R 383 *Fakharuddin Mahomed Ashan Chowdhry* v *Official Trustee of Bengal* L R 8 I A 197 I L R 8 Calc 178 *Byjnath Pershad* v *Badhoo Singh* 10 W R 486 *Pratap Chandra Barua* v *Swarnamayi* 4 B L R F B 113 13 W R F B 15 and *Haramohini Chowdhrani* v *Dhanmani Chowdhrani* 1 B L R A C 138 referred to MON MOHUN SIRKAR *v* SECRETARY OF STATE FOR INDIA I L R 17 Calc 968

13 ———— *Civil Procedure Code ss 13 211 244—Claim as to which judgment is silent—Mesne profits subsequent to suit.* In a suit for the partition of the zamindari the plaintiffs asked (*inter alia*) for ten years past profits and for subsequent profits. The Judge passed a decree for partition in which mesne profits for three years prior to the suit were decreed to the plaintiffs but his judgment and decree were silent with regard to the subsequent profits claimed in the plaint. The defendant appealed against the decree and the

RES JUDICATA—*contd*

10 RELIEF NOT GRANTED—*contd*

plaintiffs preferred a memorandum of objections against part of it but did not object to it so far as it omitted to provide for subsequent mesne profits. The plaintiffs instituted the present suit to recover from the defendants mesne profits from the date of the above suit *Held* that the plaintiffs claim so far as concerned me ne profit accrued since the decree in the former suit was not *res judicata* and the suit to that extent was not precluded by the Civil Procedure Code s 13 RAMABHADRA v JAGAN NATHA I L R 14 Mad. 328

14. ———— *Ex parte decree for possession without mention of mesn profits—Subsequent suit for same mesne profits and for subsequent mesne profits—Civil Procedure Code (Act XIV of 1882) s 13* A uit was instituted for recovery of possession and for mesne profits. An *ex parte* decree for pos es ion only was made but that decree was silent as regarded the mesne profits. Subsequently a second suit was instituted for the same mesne profits as well as for mesne profits for a sub equent period *Held* that the claim for mesne profits prior to the institution of the first suit was barred under s 13 of the Civil Procedure Code JIBAN DAS OSWAL v DURGA PERSHAD ADHIKARI I L R 21 Calc 252

15 ———— *Civil Procedure Code s 13 expl III—Suit for possession of land and mesne profits past and future—Future mesne profits not granted—Subsequent suit for such future mesne profits* *Held* that where a suit has been

as a bar to a subsequent suit for mesne profits accruing due after the institution of the former suit *Mon Mohun Sirkar* v *Secretary of State for India I L R 17 Calc 968* followed *Jiban Das Oswal* v *Durga Pershad Adhikari I L R 21 Calc 252* *Pratap Chandra Burua* v *Swarnamayi 4 B L R A C 113* *Julius* v *Bishop of Oxford L R 5 Ap Cas 214* *In re Baker L R 44 Ch D 262* *Bhirrav* v *Sitaram I L R 19 Bom 532* and *Thyila Kandi Ummatha* v *Thyila Kandi Cheria Kunhamed I L R 4 Mad 308* referred to *Ramabhadra* v *Jagannatha I L R 14 Mad 328* discu sed *Narain Das* v *Khan Singh Al Weekly Notes (1884) 159* overruled RAM DAYAL v MADAN MOHAN LAL I L R 21 All 425

16 ———— **Dismis al of application to set aside ex parte decree and sale in execution on ground of fraud**—*Right to bring suit for same purpose without appealing against order—Effect of not appealing against an appealable order—Civil Procedure Code 1882 ss 13 108 244 and 311* The plaintiff having applied unsuccessfully under ss. 108 and 311 of the Civil Procedure Code to set aside an *ex parte* decree against him and the sale of his property in execution there

RES JUDICATA—*contd*

10 RELIEF NOT GRANTED—*contd*

of on the ground of fraud, and without preferring an appeal against the order rejecting his said application under s. 108 of the Code instituted this suit praying for the same relief The Subordinate Judge dismissed the suit as not maintainable *Held* that such a suit was maintainable and that ss. 13 and 244 of the Civil Procedure Code were no

decision holds good for what it is worth so far as concerns any other modes of relief available the person not appealing is in no worse position than if he had appealed and failed. *Raj Kishen Mookerjee* v *Modhoo Soodun Mundle 17 W R 413* distinguished PRAN NATH ROY v MOHESH CHANDRA MOITRA I L R 24 Calc 546

17 ———— **Dismissal of application to set aside ex parte decree as barred by limitation**—*Suit to set aside as obtained by fraud—Civil Procedure Code 1882 s 180 and s 13* An *ex parte* decree was passed against a defendant The defendant judgment debtor applied under s 108 of the Code of Civil Procedure to have such *ex parte* decree set aside but his application was dismissed as barred by limitation *Held* that the defendant was not thereafter precluded from bringing a suit to set aside the *ex parte* decree as having been obtained by fraud *Pran Nath Roy* v *Mohesh Chandra Moitra I L R 4 Calc 546* followed DWARKA PRASAD v LACHHOMAN DAS I L R 21 All. 289

18 ———— **Point decided by lower Court but not dealt with on appeal**—*Issue as to enhancement of rent—Subsequent suit for enhancement* In a suit for enhancement of rent the Munsif found that the service of notice was sufficient but that the rent could not be enhanced On appeal the District Judge found that the service was insufficient and dismissed the suit expressly declining to consider the question whether the rent was enhanceable In a subsequent suit for enhancement by the same plaintiff against the same defendant the Munsif found that no sufficient ground for enhancement had been made out and dismissed the suit On appeal the District Judge agreed with the Munsif on this point and held also that the decision of the Munsif in the first suit, that the rent could not be enhanced was *res judicata* *Held* that where the decision of a lower Court is appealed to a superior tribunal which for any reason does not think fit to decide the matter the question is left open and is not *res judicata* CHUNDER COOMAR MITTER v SIB SUNDARI DASSEE

I L R 8 Calc 631 11 C L R 22

RES JUDICATA—contd

10 RELIEF NOT GRANTED—contd

19 ———— **Effect of appealing against a judgment**—*Civil Procedure Codes (Act VIII of 18 9 s 2 Act X of 1877 s 13 expl 4)—Title —Trespass—Damages* When the judgment of a Court of first instance upon a particular issue is appealed against that judgment ceases to be *res judicata* and becomes *res sub judice* and if the Appellate Court declines to decide that issue and disposes of the case on other grounds the judg ment of the first Court upon that issue is no more a bar to a future suit than it would be if that judg ment had been reversed by the Court of Appeal NILVARU v NILVARU I L R 6 Bom 110

20 ———— *Effect of judg ment pending appeal—Dismissal of appeal for want of prosecution* The plaintiff sued to recover two villages from the defendants claiming title from *C* the purchaser The first defendan alleged that her husband not *C* was the purchaser This question was determined in a former suit in which the pre sent first defendant was plaintiff and the present plaintiff defendant in favour of the present plaintiff by the Civil Judge and the decision was confirmed on appeal by the Sudder Court An appeal to Her Majesty in Council was dismissed for want of prose cution *Held* that the matter in issue was *res judicata* *Quære* Whether the former judgment could be deemed conclusive whilst an appeal was pending KARKARLAPUDI SURIYANARAYANARAZU GARU v CHELLAMKURI CHELLAMMA 5 Mad 176

21 ———— **Decision on a point of law subsequently disapproved of by a Full Bench**—*Suit as to same subject matter* Where a Division Bench of the High Court decided as a point of law that a property had not passed under a cer tain deed of sale and subsequently the decision on that point of law was in another cas disapproved of by a Full Bench the decision of the Division Bench (where the same plaintiff has again sued to recover the same property relying on the same deed of sale) is no less a *res judicata* because it may have been founded on an erroneous view of the law or a view of the law which a Full Bench has subsequently dis approved GOWRI KOER v AUDH KOER I L R 10 Calc 1087

Followed in RAI CHURN GHOSE v KUMUD MOHON DUTTA CHAUDHURI 1 C W N 687

Same case on review I L R 25 Calc 571
2 C W N 297

22 ———— **Application in execution for two reliefs**—*Civil Procedure Code (Act XIV of 1882) s 13 expln III—Order passed granting one relief and making no reference to the other—Subsequent application for the other relief power of Court to grant* A decree awarded a plaintiff possession of land together with mesne profits. Plaintiff subsequently applied in execution for delivery of the land and for the mesne profits. The Court passed an order on this application di recting plaintiff to be put into possession of the land but making no reference whatever to the mesne profits Plaintiff subsequently made another application for mesne profits when it was contended that inasmuch as the prayer for mesne profits had not been granted when the previous applica tion was dealt with it must be taken that the application for mesne profits had been refused and [illegible]
Held [illegible]
the [illegible]
III [illegible]
no application to the case NITYANANDA GANTAYET v GAJAPATI VASUDEVA DEVU (1901)
I L R 24 Mad. 681

23 ———— **Prior mortgage omission to plead as a defence in a former mortgage suit**—*Civil Procedure Code (Act XIV of 1882) s 13 expln II—Mortgage suit—Transfer of Property Act (IV of 1882) s 85* If a prior mortgagee is made a party to a suit brought by a subsequent mortgagee on a mortgage bond of certain property but omits to enter appearance and set up his prior right and claim that he should be paid off or that the property should be sold subject to his mortgage his mortgage lien must be deemed to be extinguished A suit sub sequently brought by him or his heirs on his mort gage is barred by expln II of s 13 of the Civil Pro cedure Code *Sri Gopal v Pirthi Singh I L R 24 All 429 L R 29 I A 118* GOPAL LAL v BENARSI PERSHAD CHOWDHURY (1904)
I L R 31 Calc 428

24 — **Taking money decree on mortgage**—*Causes of action—Suit on mortgage —Refusal o*[illegible] *not granted —Second s*[illegible]
XIV of 18[illegible]
gagee had [illegible]
his security and was content in that suit to take merely a money decree but failed to obtain satis faction of the decree —*Held* that having regard to s 13 expln (3) of the Code of Civil Pro [illegible] *res judicata* and he [illegible] lize the [illegible] Jon [illegible] *L R* [illegible] *Ko hoo* [illegible] BERA v
CHANDRA MOHUN JANA (1906) I L R 33 Calc. 849

11 PRIVATE RIGHTS

1 ———— **Prescriptive right**—*Civil Procedure Code (Act X of 1877) s 13 expln. 5* Expln 5 of s 13 of Act X of 1877 only applies to cases where several different persons claim an easement or other right under one common title [illegible] the inhabitants of a village [illegible] over the same [illegible] from the same spring or well where [illegible] in defending

RES JUDICATA—*contd*

11 PRIVATE RIGHTS—*contd*

ing to use the same drain as an easement and asking for the removal of the wall in question in the former suit and *B* set up the judgment in the suit between himself and *A* as a bar to the suit —*Held* that the right claimed by *C* not being one which he and other inhabitants of the neighbourhood claimed under one common title but a prescriptive right which he claimed individually in respect of his own house and premises and depending upon the length of time he had used the right was a separate claim and that the judgment in the suit between *B* and *A* did not operate as a bar to his suit KALISHUNKUR DOSS *v* GOPAL CHUNDER DUTT

I L R 6 Calc 49 6 C L R 543

2 ———— *Right to use of water—Decision in former suit* A decision in a former case in which a mere question as to the use of the water in a water course arose cannot operate as *res judicata* in a subsequent case in which the subject matter is whether the defendants have the right of throwing up an embankment and obstructing the water way MUNMOHUN SINGH *v* AMRIT NATH CHOWDHRY

W R 1864 167

3 ———— *Civil Procedure Code 1859 s 2—Suit on same cause of action—Suit to obtain right of way* Where a suit for right of

decided in the first trial s 2 of the Code of Civil Procedure did not bar a second suit for the removal of the obstruction NUREEM MUNDLE *v* BORAMDY SIRDAR

25 W R 208

4 ———— **Right to fees for hereditary services**—*Decision in former suit* In an action to recover fees claimed for services as an hereditary family and village priest it appeared that a deceased brother of the plaintiff had recovered judgment against one of the defendants and others in an action for similar fees *Held* that the former judgment was not conclusive in favour of the plaintiff nor as against a brother of one of the original defendants KRISHNAMBHAT BIN SHIVRAM BHAT *v* LAKSHUMANBHAT BIN GANESHBHAT

1 Bom 141

5 ———— **Right to receive honours as priest of temple**—*Right decided in former suit* Plaintiff sued to establish his right to receive

iff and the first defendant the claim to sit at the right side of the idol at festivals was admitted but the right to receive a cake on the same occasion was disallowed *Held* that the claim of the plaintiff so far as it sought to establish the plaintiff s right was *res judicata* ARCHAKAM SRINIVASA DIKSHATULU *v* UDAYAGIRY ANANTHA CHARLU

4 Mad 349

6 ———— **Right to water for irrigation**—*Civil Procedure Code 1882 s 1 n expl 5* In 1881 *A* sued *B C* and others for damages

the suit were entitled to use the water during the night time In 1882 *A* and four other raiyats not parties to the former suit sued *B C* and thirteen others not parties to the former suit for a decree declaring that the plaintiffs were entitled to the exclusive use of the water in the channel by day The lower Courts held that the suit was barred by s 13 of the Code of Civil Procedure *Held* that as between the plaintiffs other than *A* and the defendants and as between *A* and the defendants other than *B* and *C* the suit was not barred by s 13 of the Code of Civil Procedure THANAKOTI *v* MUNIAPPA

I L R 8 Mad 496

RES NULLIUS

See CRIMINAL MISAPPROPRIATION

I L R 11 Mad 145

See STOLEN PROPERTY OFFENCES RELATING TO

I L R 11 Mad 145
I L R 8 All 51
I L R 9 All 348

See THEFT I L R 17 Calc 852

RESPONDENT

See CIVIL PROCEDURE CODE 1882 s 368

8 C W N 442

See COSTS—SPECIAL CASES—RESPONDENTS.

See MESNE PROFITS

I L R 33 Calc 329

See PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS.

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS

See RELIGIOUS ENDOWMENTS ACT s. 5

8 C W N 404

———— assent of—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW

5 C W N 193

———— cost of—

See PRIVY COUNCIL, PRACTICE OF—COSTS.

9 B L R 460
11 B L R 158
I L R 25 Calc. 187
L R 24 I A 191
I L R 21 All 496 L R 26 I A 58

RESPONDENT—*concld*

——— death of—

See ABATEMENT OF SUIT—APPEALS
I L R 23 All 22
I L R 26 Bom 203

See PRIVY COUNCIL PRACTICE OF—DEATH OF PARTY ON RECORD
I L R 19 Calc 513
L R 19 I A 108

— death of pending appeal—

See LIMITATION I L R 34 Calc 1020

——— not appearing in lower Court—

See PRACTICE—CIVIL CASES—APPEAL.
I L R 3 Calc 228

——— notice to—

See PRIVY COUNCIL PRACTICE OF REHEARING I L R 19 All 209
L R 24 I A 49

——— objections by—

See APPEAL—OBJECTIONS BY RESPONDENT

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

See LIMITATION ACT 1877 s 5
I L R 16 Bom 249

See PRACTICE—CIVIL CASES—APPEAL.

See PRIVY COUNCIL PRACTICE OF—PRACTICE AS TO OBJECTIONS

——— withdrawal of from appeal—

See INSOLVENCY ACT s 73
I L R 14 Bom 189

RESTITUTION

See CIVIL PROCEDURE CODE 1882 ss 244 583 I L R 33 Calc 857

See CIVIL PROCEDURE CODE 1882 s 583
12 C W N 642

RESTITUTION OF CONJUGAL RIGHTS

See BURMA CIVIL COURTS ACT 1875 s 49
I L R 13 Calc 232

See CIVIL PROCEDURE CODE 1882 ss 258 260 (1859 s 200)
I L R 1 All 601
1 Ind Jur N S 101
11 Moo I A 551

See HINDU LAW—HUSBAND AND WIFE.
I L R 28 Calc 751

See HINDU LAW—MARRIAGE—RESTRAINT ON OR DISSOLUTION OF MARRIAGE
I L R 3 Calc 305

See HINDU LAW—MARRIAGE—VALIDITY OR OTHERWISE OF MARRIAGES
I L R 17 Bom. 400

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—RESTITUTION OF CONJUGAL RIGHTS
I L R 18 Bom 316

RESTITUTION OF CONJUGAL RIGHTS—*contd*

See LIMITATION ACT 1877 s. 23
I L R 16 Bom 714 715 note
I L R 13 All 126
I L R 23 Bom 307

See LIMITATION ACT 1877 SCH II ART 35 I L R 25 Bom 644
I L R 23 Bom 307

See MAHOMEDAN LAW—DOWER.
I L R 1 All 483
I L R 2 All 831
I L R 8 All 149
I L R 11 Mad. 327
I L R 30 Bom 122

See MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS

See MARRIAGE I L R 12 Calc 706

See PARSIS I L R 23 Bom 278

See VALUATION OF SUIT—SUITS
I L R 13 Calc 232
I L R 18 Calc 378

——— second suit for—

See RES JUDICATA—CAUSE OF ACTION
I L R 18 Bom 327

1 ——— Right of suit—*Jurisdiction of Civil Court—Suit by husband against wife for restitution of conjugal rights* A suit by husband against wife for restitution of conjugal rights will lie in the Civil Courts JHOTUN BEEBEE *v* AMEER CHAND 1 Ind Jur N S 317

S C CHOTUN BEBEE *v* AMEER CHUND
8 W R 105

2 ——— *Suit to recover possession of wife. Held* that a suit by a husband to recover possession of the person of his wife will lie HUR SOOKHA *v* POORUN 2 Agra 115

(*Contra*) MELARAM NUDIAL *v* THANOORAM BAMUN 9 W R 552

3 ——— Parsis—*Ecclesiastical law* A suit for the restitution of conjugal rights which is strictly an ecclesiastical proceeding cannot consistently with the principles and rules of ecclesiastical law be applied to parties who profess the Parsi religion. ARDASEV CURSETJEE *v* PEROZEBOYE 6 Moo I A 348 4 W R P C 91

4 ——— Suit for restitution by Mahomedan before payment of dower A suit will not lie by a Mahomedan to enforce the return of his wife to his house even after consummation with consent until her dower (prompt) has been paid. ABDOOL SHUKKOAR *v* RAHEEM OONNISSA 6 N W 94

5 ——— *Suit by Mahomedan husband against wife—Procedure—Beng Reg* [illegible] husband may

RESTITUTION OF CONJUGAL RIGHTS
—contd

Regulation IV of 1793 and the nature of the thing be determined according to the principles of Mahomedan law JUDOONATH BOSE v SHUMSOONISSA BEGUM BUZLOOR RUHEEM v SHUMSOONISSA BEGUM 8 W R P C 3 11 Moo I A 551

6 ———— **Hindu husband convert to Christianity** A Hindu husband who has been repudiated by his wife on his conversion to Christianity cannot sue for the restitution of conjugal society MUCHOO v ARZOON SAHOO
5 W R 235

7 ——— **Mahomedan converted to Christianity** *Semble* That where persons of Mahomedan faith are married according to the Mahomedan law and either party becomes a convert to Christianity a claim for restitution of conjugal rights cannot be supported. ZUBURDUST KHAN v HIS WIFE 2 N W 370

8 —— —— **Right to decree**—*Marriage complete except one ceremony which would have altered status of woman as to caste* Where a man who had been married to a woman but had failed to go through the second ceremony without which according to the customs of his caste the woman would have been defiled had he obtained possession of her and had actually married a second wife and left the first woman to believe that she was at liberty to contract another marriage which

were other ceremonies which were usual but had been neglected, and the claimant had not shown cause for his neglect he was not entitled to a decree BOOLCHAND KOLLTA v JANOKEE 25 W R 386

9 ———— **Custom as to child wife living apart from husband till puberty**

been justified while such contingency had not happened in refusing to order such a wife to go to her husband although the marriage was valid SUNTOSH RAM DOSS v GERU PATTUCK 23 W R 22

as his mistress and was still so keeping her at the date of the institution of the suit and further had not contributed to the maintenance of his wife during the period of the separation —*Held* that the husband was not entitled without his wife s consent to have that agreement set aside or to insist upon restitution of conjugal rights MOOLA v NUNDY 4 N W 109

11 ———— **Specific performance of contract of marriage made in infancy**—*Suit*

RESTITUTION OF CONJUGAL RIGHTS
—contd

by a husband—Marriage during wife s infancy—Non consummation of marriage—Hindu law—Poverty of husband A Hindu aged nineteen years was

of marria e

with the co

marriage *B*

where *A* visited from time to time The marriage was not consummated Eleven years after the marriage —*viz* in 1884 —the husband called upon the wife to go to his house and live with him and she refused He thereupon brought the present suit praying for restitution of conjugal rights and that the defendant might be ordered to take up her residence with him *Held* that the suit was not maintainable DADAJI BHIKAJI v RUKHMABAI
I L R 9 Bom 529

Held on appeal reversing the decree that the suit was maintainable and that the case should be remanded for a decision on the merits DADAJI BHIKAJI v RUKHMABAI I L R 10 Bom 301

12 ———— **Plea of impossibility of sexual intercourse**—*Legal defences to suit for restitution—Discretion of Judge to refuse decree except when legal plea is proved—Husband and wife* A plea by a wife that sexual intercourse with her is impossible owing to her incurable disease or physical malformation is not in itself a good defence to a suit by the husband for restitution of conjugal rights A Judge has no discretion to refuse a decree for restitution of conjugal rights for other causes than those which in law justify a wife from refusing to return to live with her husband and he cannot abstain from passing a decree in favour of a plaintiff spouse because he considers that it would not be

I L R 21 Bom 510

13 ———— **Suit by Hindu husband out of caste at time of suit**—*Husband and wife—Hindu law—Decree for restitution conditional on plaintiff s obtaining restoration to caste* In a suit by a Hindu a Sunar by caste against his wife for restitution of conjugal rights it was found that the plaintiff in consequence of having left his wife and cohabited with a Mahomedan woman (whom however he had left at the time of suit) had been turned out of caste but that the misconduct of which he had been guilty was not of such a character as to render him liable to perpetual excommunication and upon making certain

RESPONDENT—*concld*

——— death of—

See Abatement of Suit—Appeals
I L R 23 All 22
I L R 26 Bom 203

See Privy Council Practice of—Death of Party on Record
I L R 19 Calc 513
L R 19 I A 108

— death of pending appeal—

See Limitation I L R 34 Calc 1020

——— not appearing in lower Court—

See Practice—Civil Cases—Appeal
I L R 3 Calc 228

——— notice to—

See Privy Council Practice of Re hearing I L R 19 All 209
L R 24 I A 49

——— objections by—

See Appeal—Objections by Respondent

See Appellate Court—Objections taken for first time on appeal

See Limitation Act 1877 s 5
I L R 16 Bom 249

See Practice—Civil Cases—Appeal

See Privy Council Practice of—Practice as to Objections

——— withdrawal of from appeal—

See Insolvency Act s 73
I L R 14 Bom 189

RESTITUTION

See Civil Procedure Code 1882 ss 244 583 I L R 33 Calc 857

See Civil Procedure Code 1882 s 583
12 C W N 642

RESTITUTION OF CONJUGAL RIGHTS

See Burma Civil Courts Act 1875 s 49
I L R 13 Calc 232

See Civil Procedure Code 1882 ss 258 260 (1859 s 200)
I L R 1 All 501
1 Ind Jur N S 101
11 Moo I A 551

See Hindu Law—Husband and wife
I L R 28 Calc 751

See Hindu Law—Marriage—Restraint on or Dissolution of Marriage
I L R 3 Calc 305

See Hindu Law—Marriage—Validity or otherwise of Marriages
I L R 17 Bom 400

See Jurisdiction—Causes of Jurisdiction—Cause of Action—Restitution of Conjugal Rights
I L R 18 Bom 316

RESTITUTION OF CONJUGAL RIGHTS —*contd*

See Limitation Act 1877 s 23
I L R 16 Bom 714 715 note
I L R 13 All 126
I L R 23 Bom 307

See Limitation Act 1877 Sch II Art 35 I L R 25 Bom 644
I L R 23 Bom 307

See Mahomedan Law—Dower
I L R 1 All 483
I L R 2 All 831
I L R 8 All 149
I L R 11 Mad 327
I L R 30 Bom 122

See Mahomedan Law—Restitution of Conjugal Rights

See Marriage I L R 12 Calc 706

See Parsis I L R 23 Bom 279

See Valuation of Suit—Suits
I L R 13 Calc 232
I L R 18 Calc 378

——— second suit for—

See Res Judicata—Cause of Action
I L R 18 Bom 327

1 ——— Right of suit—*Jurisdiction of Civil Court—Suit by husband against wife for restitution of conjugal rights* A suit by husband against wife for restitution of conjugal rights will lie in the Civil Courts Jhotun Beebee *v* Ameer Chand 1 Ind Jur N S 317

s c Chotun Beebee *v* Ameer Chund
6 W R 105

2 ——— *Suit to recover possession of wife* *Held* that a suit by a husband to recover possession of the person of his wife will lie Hur Sookha *v* Poorun 2 Agra 115

(*Contra*) Melaram Nudial *v* Thanooram Bamun 9 W R 552

3 ——— Parsis—*Ecclesiastical law* A suit for the restitution of conjugal rights which is strictly an ecclesiastical proceeding cannot consistently with the principles and rules of ecclesiastical law be applied to parties who profess the Parsi religion Ardaseer Cursetjee *v* Perozeboye 6 Moo I A 348 4 W R P C 91

4 ——— Suit for restitution by Mahomedan before payment of dower A suit will not lie by a Mahomedan to enforce the return of his wife to his house even after consummation with consent until her dower (prompt) has been paid Abdool Shukkoar *v* Raheem-oon-nissa 6 N W 94

5 ——— *Suit by Mahomedan husband against wife—Procedure—Beng Reg* ... husband may ... [illegible] ... ree ... her ... such ... 15

RESTITUTION OF CONJUGAL RIGHTS
—*contd*

Regulation IV of 1793 and the nature of the thing be determined according to the principles of Mahomedan law JUDOONATH BOSE *v* SHUMSOONISSA BEGUM BUZLOOR RUHEEM *v* SHUMSOONISSA BEGUM 8 W R P C 3 11 Moo I A 551

6 ———— **Hindu husband convert to Christianity** A Hindu husband who has been repudiated by his wife on his conversion to Christianity cannot sue for the restitution of conjugal society *MUCHOO v ARZOON SAHOO*
5 W R 235

7 ———— **Mahomedan converted to Christianity** *Semble* That where persons of Mahomedan faith are married according to the Mahomedan law and either party becomes a convert to Christianity a claim for restitution of conjugal rights cannot be supported ZUBURDUST KHAN *v* HIS WIFE 2 N W 370

8 ———— **Right to decree**—*Marriage complete except one ceremony which would have altered status of woman as to caste* Where a man who had been married to a woman but had failed to go through the second ceremony without which according to the customs of his caste the woman would have been defiled had he obtained possession of her and had actually married a second wife and left the first woman to believe that she was at liberty to contract another marriage which [illegible]

were other ceremonies which were usual but had been neglected and the claimant had not shown cause for his neglect he was not entitled to a decree BOOLCHAND KOLLTA *v* JANOKEE 25 W R 386

9 ———— **Custom as to child wife living apart from husband till puberty** Where it was the universal custom of the community to which the plaintiff belonged that a child wife should remain away from her husband until a certain event had occurred a Court was *held* to have been justified while such contingency had not happened in refusing to order such a wife to go to her husband although the marriage was valid. SUNTOSH RAM DOSS *v* GERU PATTUCK 23 W R 22

10 ———— **Agreement to separate suit to set aside**—*Consent of wife* Where a husband and wife (Hindus) thirteen years previously had agreed to separate the husband having treated his wife with cruelty and kept his sister in law as his mistress and was still so keeping her at the date of the institution of the suit and further had not contributed to the maintenance of his wife during the period of the separation —*Held* that the husband was not entitled without his wife s consent to have that agreement set aside or to insist upon restitution of conjugal rights MOOLA *v* NUNDY 4 N W 109

11 ———— **Specific performance of contract of marriage made in infancy**—*Suit*

RESTITUTION OF CONJUGAL RIGHTS
—*contd*

by a husband—Marriage during wife s infancy—Non consummation of marriage—Hindu law—Poverty of husband A Hindu aged nineteen years was married by one of the approved forms of marriage to *B* then of the age of eleven years with the consent of *B s* guardians After the marriage *B* lived at the house of her step father where *A* visited from time to time The marriage was not consummated Eleven years after the marriage —*viz* in 1884 —the husband called upon the wife to go to his house and live with him and she refused He thereupon brought the present suit praying for restitution of conjugal rights and that the defendant might be ordered to take up her residence with him *Held* that the suit was not maintainable DADAJI BHIKAJI *v* RUKHMABAI
I L R 9 Bom 529

Held on appeal reversing the decree that the suit was maintainable and that the case should be remanded for a decision on the merits DADAJI BHIKAJI *v* RUKHMABAI I L R 10 Bom 301

12 ———— **Plea of impossibility of sexual intercourse**—*Legal defences to suit for restitution—Discretion of Judge to refuse decree except when legal plea is proved—Husband and wife* A plea by a wife that sexual intercourse with her is impossible owing to her incurable disease or physical malformation is not in itself a good defence to a suit by the husband for restitution of conjugal rights A Judge has no discretion to refuse a decree for restitution of conjugal rights for other causes than those which in law justify a wife from refusing to return to live with her husband and he cannot abstain from passing a decree in favour of a plaintiff spouse because he considers that it would not be for the benefit of either side that the decree should be granted *Dadaji* v *Rukhmabai I L R 10 Bom. 301* followed Where therefore the lower Appellate [illegible]

I L R 21 Bom 610

13 ———— **Suit by Hindu husband out of caste at time of suit**—*Husband and wife—Hindu law—Decree for restitution conditional on plaintiff s obtaining restoration to caste* In a suit by a Hindu a Sunar by caste against his wife for restitution of conjugal rights it was found that the plaintiff in consequence of having left his wife and cohabited with a Mahomedan woman (whom however he had left at the time of suit) had been turned out of caste but that the misconduct of which he had been guilty was not of such a character as to render him liable to perpetual excommunication, and upon making certain

RESTITUTION OF CONJUGAL RIGHTS —contd

amends he could obtain restoration to his caste *Held* that while the plaintiff was entitled to come into Court for the relief prayed unless in the circumstances above stated the marriage had under the Hindu law been dissolved the Court was bound when asked to employing coercive process to compel a wife to return to her husband not to disregard any reasonable objection she might raise to such process being granted either on the ground that she had been subjected before to personal injury or cruelty at the hands of her husband or that she went in fear of one or the other or that the husband was actually living in adultery with another woman or that if she resumed cohabitation or association with him he being outcasted she would herself incur the risk of being put out of caste *Held* therefore that in decreeing a claim of this description a Court was entitled if it saw good reason to do so while recognizing the civil rights of husband to his wife to put such conditions upon the enforcement of his rights by legal process as the circumstances of the case might fairly demand and that applying this principle to the present case the defendant might reasonably ask the Court before compelling her return to her husband to make it a condition that he should first obtain his restoration to caste *Held also* that under the Hindu law the fact that a husband had had adulterous intercourse with another woman which had ceased at the time of suit was not an answer to a claim by him for restitution of conjugal rights PAIGI *v* SHEONARAIN

I L R 8 All 78

14. ——— Ground for suit—*Mahomedan law—Dower—Lien of wife for dower* In a suit brought by a husband for restitution of conjugal rights the parties being Sunni Mahomedans governed by the Hanafi law the defendant pleaded that the suit was not maintainable as the plaintiff had not paid her dower debt The plaintiff thereupon deposited the whole of the dower debt in Court It appeared that the defendant s dower had been fixed without any specification as to whether it was to be wholly or partly prompt It also appeared that she had attained majority before the marriage and that she had cohabited with the [illegible]

[illegible]

payment Besides the plea already mentioned she also relied upon allegations of divorce and cruelty but these allegations were found to be [illegible]

[illegible]

Mahomedan law relating to conjugal rights and the husband s obligation to pay dower was erroneous and that the plaintiff under the circumstances of the case had a right to maintain the suit ABDUL KADIR *v* SALIMA I L R 8 All 149

RESTITUTION OF CONJUGAL RIGHTS —contd.

15 ——— *Mahomedan law—Dower—Prompt dower—Stipulation as to residence* In a suit by a Mahomedan husband for restitution of conjugal rights the defendant his wife pleaded first that he had entered into a stipulation at the time of the marriage to reside with her in the house of her father and that he had not done so and secondly that he had not paid the exigible portion of the dower due to her the marriage having been consummated —*Held* as to the first point upon the facts (after referring to the authorities but without deciding whether a stipulation of this kind can be valid in any case) that the stipulation relied upon was not a sufficient answer to the plaintiff s claim *Held* upon the authorities that the non payment of prompt dower is not a sufficient plea in bar of such a suit *Abdul Kadir v Salima I L R 8 All 149* approved HAMIDUNNESSA BIBI *v* ZOHIRUDDIN SHEIK

I L R 17 Calc 670

16 ——— *Hindu law—Defence to suit—Cruelty of husband* A suit for restitution of conjugal rights may be maintained by a Hindu but *quære* if the same state of circumstances which would justify such a suit or which would be an answer to such a suit in the case of a European would be equally so in the case of a Hindu. Where cruelty on the part of the husband has been condoned by the wife a much smaller measure of offence would be sufficient to neutralize the condonation than would have justified the wife in the first instance in separating from her husband But the act or acts constituting the offence must be of such a nature as to give the wife just reason to suppose that the husband is about to renew his former course of conduct and consequently to entertain well founded apprehension for her personal safety JOGENDRONUNDINI DOSSEE *v* HURRY DOSS GHOSE

I L R 5 Calc 500 5 C L R 65

17 ——— Defence to suit—*Cruelty of* [illegible] defence of cruelty she [illegible]

[illegible]

BUZLOOR RUHEEM *v* SHUMSOONNISSA BEGUM

8 W R P C 3 11 Moo I A 551

18 ——— *Husband and wife—Cruelty—Action for harbouring wife—Civil Procedure Code 1883 s 200* In a suit by a [illegible] restitution [illegible] gal cruelty [illegible] ame in this [illegible] re has been actual violence of such a character as to endanger personal health or safety or whether there is the reasonable apprehension of it Every person who receives a married woman into his house and suffers her to continue there after he has received notice from the husband not to harbour her is

RESTITUTION OF CONJUGAL RIGHTS —contd

liable to an action for damages or injunction unless the husband has by his cruelty or misconduct forfeited his marital rights or has turned his wife out of doors or has by some insult or ill treatment compelled her to leave him YAMUNABAI v NARAYAN MORESHWAR PENDSE I L R 1 Bom 164

19 ———— *Suit by husband*

20 ———— *Divorce—Hindu law—Custom* Where a Hindu sued his wife for restitution of conjugal rights and the defendant pleaded divorce it was held that though the Hindu law does not contemplate divorce still in those districts where it is recognized as an established custom it would have the force of law KUDOMEE DOSSEE v JOTEERAM KOLITA I L R 3 Calc 305

21. ———— Declaration of nullity of marriage—*Divorce Act s 53* It is competent to

LOPEZ v LOPEZ I L R 1 Calc 106

22. ———— Presumption of validity of marriage—*Consent of lawful guardian—Non performance of ceremonies* The ceremony of nandimukh or bridhishradh is not an essential of Hindu marriage nor would the want of consent by the lawful guardian necessarily invalidate such marriage In a suit for restitution of conjugal rights the fact of the celebration of marriage having been established the presumption in the absence of anything to the contrary is that all the necessary ceremonies have been complied with BRINDABUN CHUNDRA KURMOKAR v CHUNDRA KURMOKAR I L R 12 Calc 140

23 ———— Form of decree—*Order for restitution—Order for recovery of wife s person*

24 ———— *Declaratory order—Order for delivery of wife to husband* Held (by JACKSON J and MACPHERSON J) that the decree in a suit for restitution of conjugal rights ought to be declaratory only and to be enforced in case of disobedience by attachment *Held* (by SETON KARR J) that the wife may be ordered to be delivered over to her husband JHOTUN BIBEE v AMEER CHUND 1 Ind. Jur N S 317

CHOTUN BEBEE v AMEER CHUND 6 W R 105

25 ———— *Order enjoining wife to return to husband—Order to abstain from preventing her return* In a suit for restitution of conjugal rights brought against a wife and certain persons said to be detaining her from her husband the proper form of decree is one enjoining the wife to return to her husband and the other co defendants to abstain from preventing her return JAFFREE KHANUM v IMDAD HOSSEIN 2 N W 314

KUROONAMOYEE DEBEE v GUNGADHUR SURMAH 20 W R 50

LALL NATH MISSER v SHEOBURN PANDEY 20 W R 92

26 ———— *Order for bodily delivery of wife to husband* *Quære* Whether the Court can enforce its order on a wife to return to her husband by giving her over bodily into her husband s hands JUDOONATH BOSE v SHUMSOONNISSA BEGUM BUZLOOR RUHEEM v SHUMSOONNISSA BEGUM 8 W R P C 3 11 Moo I A 551

27 ———— *Execution of decree—Order for return of wife and against interference...*

that her parents do not interfere in any manner to prevent her so doing RAM TAHUL v MADHO 2 Agra 111

KOOBUR KHANSAMA v JAN KHANSAMA 8 W R 467

28 ———— *Order for return of wife—Procedure on failure to comply with order* In suits for restitution of conjugal rights the decree should be in the form that the wife do return to her husband with which decretal order if she fails to comply she may be dealt with under the provisions of the Code of Civil Procedure relating to attachment and imprisonment for non performance of the act decreed for a wife cannot be delivered in execution as a chattel TOOFEAH v JUSSOODA 2 Agra 337

IMAMUN v MAHOMED MAJEEDOOLLAH 3 Agra 88

29 ———— *Civil Procedure Code (VIII of 1859) s 200* *Per* MARKBY J —In a suit by a husband for restitution of conjugal rights a decree that the case be decreed awarding the plaintiff to take defendant as his married wife is not a proper form of decree The decree may order the wife to return to her husband s protection but such a decree is not one which can be enforced in the manner provided by s 200 Act VIII of 1859 as being an order for the performance of a particular act GATHA RAM MISTREE v MOOHITA KOCHIN ATTEAH DOMOONEE 14 B L R 298 23 W R 179

30 ———— Execution of decree—*Civil Procedure Code 1859 s 200* *Semble* That a decree for restitution of conjugal rights between Mahomedans or Hindus may be enforced under

RESTITUTION OF CONJUGAL RIGHTS —*contd*

s 200 of Act VIII of 1859 YAMUNABAI *v* NARAYAN MOPESHWAR PANDSE I L R 1 Bom 164

31. ——— *Decree under Parsi Marriage and Divorce Act (XV of 1865) s 36—Enforcing decree—Civil Procedure Code 1859 s 200* A decree for restitution of conjugal rights under the Parsi Marriage and Divorce Act is enforceable only in the manner provided in s 36 of the Act such provision is in substitution of and not in addition to the ordinary remedies provided by s 200 of the Code of Civil Procedure ARDESAR JAHANGIR FRAMJI *v* AVABAI 9 Bom 290

32 ——— *Maintenance order obtained by a wife against husband—Subsequent decree for restitution of conjugal rights obtained by a husband—Effect of such decree on previous order of maintenance—Criminal Procedure Code (Act X of 1882) s 488* A decree of a Civil Court for restitution of conjugal rights supersedes

treat it as determined if the wife failing to comply with the decree for restitution refuses to live with her husband *In re* BULAKIDAS

I L R 23 Bom. 484

LUPOTEE DOOMONY *v* TIKHA MOODOI

13 W R Cr 52

33 ——— Minority of wife—*Husband and wife—Hindu law—Marriage—Right of suit—Jurisdiction of Civil Courts—Suit by husband for possession of wife—Limitation Act (XV of 1877) s 23 and Sch II Arts 35 and 120—Cause of action—Demand and refusal—Restitution conditional on restoration to caste—Dispute as to validity of marriage—Proof of rites and ceremonies* In a suit for

was maintainable in spite of the fact that the wife was a minor although in some cases it might be necessary to impose suitable terms on the husband The Limitation Act is not intended to define or create causes of action but only to prescribe the period within which existing rights may be enforced When in a suit for the restitution of conjugal rights the validity of the marriage itself is disputed it is not enough to find that the marriage took place leaving it to be presumed that the rites and ceremonies necessary to constitute a legal marriage in the particular case were performed The Court must find specifically what these rites and ceremonies are and whether they were performed Art 35 Sch II of the Limitation Act does not apply to suits for restitution of conjugal rights between Hindus SURJYAMONI DASI *v* KALI KANTA DAS (1900)

I L R 28 Calc 37
s.c. 5 C W N 195

RESTITUTION OF CONJUGAL RIGHTS —*contd*

34 ——— Suit by an excommunicated member of a caste—*Husband and wife—Mussalman Kharwa Community of Broach—Custom* The plaintiff an excommunicated member of the Mussalman Kharwa community of Broach sued his wife (defendant No 1) for restitution of conjugal rights At the time of their marriage the parties were members of the caste but subsequently the plaintiff was excommunicated from his caste The defendant contended that she should not be compelled by the Court to go and live with him as his wife before the plaintiff was re admitted into the caste *Held* upholding the contention that at the time of marriage she was not only a Mahomedan by faith but also a member of the Kharwa community occupying that status she married the plaintiff It was therefore of the essence of the marriage contract that they married because they were members of that particular community and they must be regarded as having entered into the marital relation on the basis of that status BAI JINA *v* KHARWA JINA (1907)

I L R 31 Bom. 366

35 ——— Jurisdiction of Munsif—*Bengal North Western Provinces and Assam Civil Courts Act (XII of 1887) ss 18 19 21—Suits Valuation Act (VII of 1887) ss 9 11—Valuation of suit—Jurisdiction—Mahomedan marriage requirements of* A suit for restitution of conjugal rights is not triable by a Munsif under s 19 sub s (1) of Act XII of 1887, but is triable by a District Judge or a Subordinate Judge under s 18 of that Act *Matra Mondol* v *Hari Mohan Mullick I L R 11 Calc 15 Golam Rahman* v *Fatima Bibi I L R 1 Calc 232 Moula Newaz* v *Sajidunnissa Bibi I L R 18 Calc 378* and *Shire* v *Shire 5 Moo P C 81* referred to Where a Court of first instance exercised jurisdiction with respect to a suit by reason of an arbitrary valuation

jurisdiction regard being had to s 11 of the Suits Valuation Act *Semble* When a Judge has no inherent jurisdiction over the subject matter of a suit the parties cannot by their mutual consent convert it into a proper judicial process *Ledgard* v *Bull I L R 9 All 191 L R 13 I A 134 Meenakshi Naidoo* v *Subramaniya Sastri I L R 11 Mad. 26 L R 14 I A 160* and *Raja Har Narain Singh* v *Chaudhurain Bhagwant Kuar I L R 13 All 300 L R 18 I A 55* referred to The formal requirements of a valid Mohamedan marriage discussed *Badal Aurat* v *Queen Empress I L R 19 Calc 79* referred to AKLEMANNESSA BIBI *v* MAHOMED HATEM (1904) I L R 31 Calc. 849
8 C W N 705

36 ——— *Restitution of conjugal rights—Appeal—Jurisdiction—Valuation of suit—Suits Valuation Act (VII of 1887), ss 1 et—Jurisdiction of Munsifs—Civil Courts Act (XII of*

RESTITUTION OF CONJUGAL RIGHTS —*contd.*

1887) ss 18 19 21—Practice An appeal from a decree in a suit for restitution of conjugal rights valued at less than 1 000 rupees and instituted in the Court of a Subordinate Judge without any objection by the defendant lies to the District Court and not to the High Court The plaintiff in a suit for restitution of conjugal rights is the proper person to value his suit but if from improper motives he undervalues or overvalues it the Court must decide what should be the proper value The decision in *Allemannes a B bi* v *Mahomed Hatem I L R 31 Calc 849* as to the jurisdiction of a Munsif to entertain such a suit is an *obiter dictum* *Zair Husain Khan* v *Khurshed Jan I L R 2? All. 545* referred to *Golam Rahman* v *Fatima Bibi I L R 13 Calc 23?* and *Moula Newa* v *Sajidunnissa Bibi I L R 18 Calc 378* discussed and distinguished JAN MAHOMED MANDAL *v* MASHAR BIBI (1907) I L R 34 Calc 352

37 ——— *Suits Valuation Act (VII of 188) ss 9 and 21—Valuation of suit —Jurisdiction* A suit for restitution of conjugal rights is not a suit which is of necessity excluded from the jurisdiction of a Munsif The value of such a suit is as a rule the value which the plaintiff chooses to put upon it provided that the suit be not unwarrantably undervalued or overvalued from improper motives *Allemannessa Bibi* v *Mahomed Hatem I L R 31 Calc 849* dissented from *Golam Rahman* v *Fatima Bibi I L R 13 Calc 23?* *Moula Newaz* v *Majid un nissa Bibi I L R 18 Calc 3 8* *Shire* v *Shire 5 Moo P C 81* and *D Orliac* v *D Orliac 24 Moo P C 3?4* distinguished *Sheodeni Ram* v *Tulshi Ram I L R 15 All 378* *Jag Lal* v *Har Narain Singh I L R 10 All 524* *Mahabir Singh* v *Bekari Lal I L R 13 All 3 0* *Madho Das* v *Ramji Pathak I L R 16 All 286* and *Lakshman Bhatkar* v *Babaji Bhatkar I L R 8 Bom 31* referred to ZAIR HUSAIN KHAN *v* KHURSHED JAN (1906) I L R 28 All. 545

38 ——— Cruelty—Matrimonial offence—*Restitution of conjugal rights—Hindu Law—Husband and Wife—Safety of wife in peril* *Per* HARINGTON J —It would not be safe to say that whatever is a defence to an action for restitution of conjugal rights in the case of a European would also be in every case a defence in the case of a Hindu but the Court is not bound in the case of Europeans and Indians alike to order [illegible]

[illegible]

for restitution of conjugal rights The husband would not be entitled to succeed even if his conduct did not amount to cruelty but constituted a grave matrimonial offence DULAR KOER *v* DWARKA NATH MISSER (1905) I L R 34 Calc 971

39 ——— *Mahomedan law —Suit for restitution of conjugal rights—Legal cruelty—Other misconduct of the plaintiff pleaded as a defence to the suit* In a suit for restitution of conjugal rights the parties being Mahomedans if the defendant raises a plea of legal cruelty the facts to be proved to establish such a plea are similar to those which must be proved to establish a similar plea under the English law *Moonshee Buzloor Ruheem* v *Shumsoonnissa Begum 11 Moo I A 551* referred to But in a suit for restitution [illegible]

morality of the most serious kind a charge which he totally failed to substantiate it was *held* that the Court would be justified in refusing him relief *Mackenzie* v *Mackenzie [1895] A C 384* referred to On the general facts of the case also it was found that the defendant had reasonable grounds for believing that her health and safety would be endangered if she returned to her husband s house which was situated in a native State HUSAINI BEGAM *v* MUHAMMAD RUSTAM ALI KHAN (1907) I L R 29 All. 222

RESTITUTION OF PROPERTY

See CIVIL PROCEDURE CODE 1882 ss 244 583 I L R 29 All 348

RESTITUTION OF RIGHTS BY MOTION

See LIMITATION ACT 1877 SCH II ART 179—

NATURE OF APPLICATION—GENERALLY I L R 20 Mad 448

[illegible]

by a Court of first instance is executed pending [illegible]

a 15 odd pie share of certain indigo land brought a suit for partition against his co sharer *B* the owner of the rest of the land and obtained a decree from [illegible]

but no order as to restitution was made in it. *Held* on motion by *H* that he was entitled to be put into the same position as before the partition was made (*i e*, joint possession with *A*) and to remove

RESTITUTION OF RIGHTS BY MOTION—*contd*

any tenants who refused to vacate ROHNI SINGH v HODDING I L R 21 Calc 340

2 ——— **Restitution of an advantage obtained by virtue of a decree of High Court subsequently reversed on appeal to Privy Council**—*Civil Procedure Code 1882 s 583—Right of suit—Parties Non joinder of* The holder of a decree of the High Court for costs assigned his rights under that decree The assignee caused his name to be brought on to the record as transferee in place of the decree holder and he and after him his legal representative executed the decree against the judgment debtor The decree was appealed to the Privy Council but the assignee was not a party to the record in that Court The Privy Council reversed the decree Thereupon the successful plaintiff applied under s 583 of the Code of Civil Procedure to obtain restitution from the representative of the assignee of the amount realized in execution of the decree of the High Court *Held* that whether or not the amount realized by the assignee was recoverable by suit it was not recoverable by proceedings under s 583 of the Code inasmuch as the assignee was no party to the decree of the Privy Council BHAGWATI PRASAD v JAMNA PRASAD I L R 19 All 136

3 ——— **Restitution of benefit obtained under a decree which is reversed in appeal**—*Restitution sought by means of execution of appellate decree against a person not a party to the appeal* *Held* that appellants in the Privy Council who had antecedently to filing their appeal to Her Majesty in Council paid to the assignee of the decree appealed against which was for costs only the amount then payable under that decree could not on succeeding in their appeal obtain restitution merely by virtue of and in execution of the order of Her Majesty in Council of the amount so paid from the assignee when that assignee had been no party to the appeal to Her Majesty in Council *Bhagwati Prasad* v *Jamna Prasad I L R 19 All 136* referred to SADIQ HUSAIN v LALTA PRASAD I L R 20 All 139

4 ——— *Civil Procedure Code 1882 s 583—Interest on amount so recovered* Where in consequence of a decree having been reversed on appeal the decree holder is entitled to recover under s 583 of the Code of Civil Procedure

Comptoir D Escompte de Paris L R 3 P C 465 Jaswant Singh v *Dip Singh I L R 7 All 432 Ram Sahai* v *Bank of Bengal I L R 8 All 262 Bhagwan Singh* v *Ummatul Hasnain I L R 18 All 26? Ayyaiyyar* v *Shastram Ayyar I L R 9 Mad 506* and *Hatti Prasad* v *Chatarpal Dube All Weekly Notes (1889) 287* referred to *Mewa Kuar* v *Banarsi Prasad All Weekly Notes 189?) ?6* dissented from PHUL CHAND v SHANKAR SARUP I L R 20 All 430

RESTITUTION OF RIGHTS BY MOTION—*concld.*

5 ——— *Civil Procedure Code 1882 s 583—Interest—Mesne profits* *Held* that a person who is entitled under s 583 of the Code of Civil Procedure to the restoration of a benefit of which he has been deprived by reason of a decree which has been subsequently reversed in appeal is entitled if the thing to be restored is money to interest for the time during which he has been deprived of the use of it or if the thing to be restored is land to mesne profits for the time during which he has been kept out of possession *Phul Chand* v *Shankar Sarup I L R 20 All 430* approved HARDAT v IZZAT UN NISSA I L R 21 All 1

6 ——— **Petition for restitution**—*Civil Procedure Code 1882 s 583—Property taken from petitioner by process of Court under decree—Subsequent reversal of decree—Custody of third party—Principles on which restitution is ordered* Two trustees of a temple having been removed from office a suit was brought against them by the newly appointed trustees and a decree obtained restraining them from interfering with the affairs of the temple In accordance with that decree property of the temple was taken from them by process of the Court and handed to the new trustees. On appeal to the High Court however the decree was reversed and restitution was now applied for by the survivor of the late trustees from whom the property had been taken In the meanwhile a third party had been appointed an additional trustee to the newly appointed trustees *Held* that the principle of the doctrine of restitution is that on the reversal of a judgment the law raises an obligation on the party to the record who received the benefit of the erroneous judgment to make restitution to the other party for what he had lost and it is the duty of the Courts to enforce that obligation unless it be shown that restitution would be clearly contrary to the real justice of the case That with reference to the position of innocent third parties the rule that a plaintiff in an action to recover land cannot by his writ of resti

restored to possession has been wrongfully possessed by the agency of the Court *Held* therefore that the trustee who had been dispossessed must

whether the newly appointed trustees acquired the custody of them thereunder and that if substantiated the claim for restitution could not be successfully resisted DORASAMI AYYAR v ANNASAMI AYYAR I L R 23 Mad 306

RESTRAINT

See WRONGFUL RESTRAINT

RESTRAINT—*contd*

——— on anticipation—

See MARRIED WOMAN PROPERTY OF
I L R 30 Mad. 378

RESTRAINT OF TRADE

See COMPANY I L R 29 Bom. 107

See CONTRACT I L R 36 Calc 354

——— *Agreement—Contract Act (IX of 1872 ss 23 and 27—Continuous cause of action—Damages—Transfer of business to a limited Company—Effect* In March 1902 certain Ice Manufacturing Companies in Bombay entered into an agreement relating to the manufacture and sale by them of ice The agreement fixed *inter alia* the minimum price at which ice was to be sold by the parties the proportion of the manufacture which each was to bear and the proportion of the profits which each was to receive It further created a monthly obligation to pay into and a corresponding right to receive from a general common fund the difference if any between the profits actually received by the parties and those to which they were under the agreement entitled. On a suit being instituted for breach of the agreement in which damages sustained prior to and pending the hearing of the suit were claimed —*Held* the fact that an agreement if carried out would limit competition and keep up prices did not necessarily bring it within the terms of s. 27 of the Contract Act (IX of 1872) to succeed in the defence under that section it was necessary to establish that the agreement was one whereby a person was restrained from exercising a lawful profession trade or business of any kind FRASER AND COMPANY *v* BOMBAY ICE MANUFACTURING COMPANY (1905)
I L R 29 Bom 107

RESULTING TRUST

See TRUSTS ACT I L R 31 Bom. 222

RESUMPTION

See BOMBAY REVENUE JURISDICTION ACT
I L R 28 Bom. 435

See CANTONMENT PROPERTY
I L R 30 Bom. 137

See CHAUKIDARI CHAKRAN LANDS
I L R 34 Calc 109 564
9 C W N 571

See GHATWALI TENURE

See GRANT—RESUMPTION OR REVOCATION OF GRANT

See ONUS OF PROOF—RESUMPTION AND ASSESSMENT

RESUMPTION—*contd*

See SERVICE TENURE

See SETTLEMENT

——— of chakran lands—

See CHAUKIDARI CHAKRAN LANDS
I. L. R 35 Calc 346

——— of ferry—

See JURISDICTION OF CIVIL COURT—FERRIES B L R Sup Vol. 630

——— of jaghir by East India Company—

See ACT OF STATE 12 B L R 120
L R I. A. Sup Vol. 10

——— power of—

See BENGAL TENANCY ACT s 101
I L R 20 Calc 577

1 RIGHT TO RESUME

1 ——— Right to resume mokurari tenure—*Death of grantor without heirs* A mokurari tenure granted in perpetuity cannot be resumed by the grantor even if the grantee dies without heirs HIMMUT BAHADOOR *v* SOONEET KOER
15 W R 549

2 ——— Grant in lieu of maintenance—*Limitation* Although a grant of a mokurari lease in lieu of maintenance may be resumable by the grantor and his heirs yet if the grantor or any of his successors receives distinct notice of a claim on the part of the grantee to hold in perpetuity and not subject to resumption and allows twelve years to go by without contesting such claim he (such grantor or successor) will be barred for the time of his own enjoyment PETAMBAR BABOO *v* NILMONEY SINGH DEO
I. L. R 3 Calc 793

3 ——— *Grant in lieu of maintenance—Hindu Law—Alienation—Impartible estate* The mere fact of the impartibility of an estate or rather the mere fact that the succession to a zamindari is governed by the law of primogeniture does not deprive the zamindar of his ordinary [illegible]

the law of primogeniture is valid and the lands comprised in it cannot be resumed on the death of the grantor by his successor But a mokurari khorposh or allowance for maintenance or an estate for life in lieu of maintenance granted by the owner of a zamindari impartible by special custom but otherwise subject to Bengal law to a member of his family is resumable by his successor on the death of the grantor UDOY ADITTYA DEB *v* JADUBLAL ADITTYA DEB
I. L. R 5 Calc 113 4 C L. R. 181

See WOODOYADITTO DEB *v* MUKOOND NARAIN ADITTO
22 W R 225

RESUMPTION—*contd*

1 RIGHT TO RESUME—*contd*

4. ——— Right to resume julkurs in navigable rivers—*Beng Reg II of 1819* A

gulations either before or after Regulation II of 1819 and (ii) by reason of the difference in the nature of the claims between one to take possession of julkur and one to resume lands COLLECTOR OF MALDAH v SUDDUROODDEEN 1 W R 116

5 ——— Right to resume jaghir—*Alienation by grantee.* A zamindar cannot sue to resume a jaghir on the ground of its alienation by the grantee so long as there are heirs male of the grantee existent PAMESWAR NATH SINGH v HAYAT ALL SINGH 1 B L R A C 170

6 ——— Right to resume permanent

shares and some of the sharers make default in the payment of their quota of the Government assessment the portion of the tenure held by the sharers who paid their shares of the assessment cannot be resumed or forfeited by the Government In such a case the onus lies on the Government to make out by clear evidence under what special contract or agreement or regulation it forfeits the entire tenure BRETT v ELLAIYA

12 W R P C 33 13 Moo I A 104

affirming the decision of the High Court in ELLAIYA v COLLECTOR OF SALEM 3 Mad 59

7 ——— Right to resume village—*Village entered as jaghir in accounts of permanent settlement—Zamindars right of* Where a village part of a zamindari has been entered as a jaghir in the accounts of the permanent settlement the zamindar cannot resume the village and is entitled in respect thereof only to the usual kuttubandi HARISCHANDANA DEVA v RAMANNA CHANDRI

1 Mad. 355

8 ——— Right to resume Neemuk Sayer mehals—*Beng Regs VIII and XXVII of 1793—Right of Government as Sovereign* The resumption by Government of Neemuk Sayer mehals (saltpet e-duty e tates) upheld the sanads of the Subadar of Behar the ruling power previous to the Company s accession to the Dewanny purporting to grant the Government as mokurari

only and not to sayer duties claimed by a party not a land proprietor GOVERNMENT OF BENGAL v JAFUR HOSSEIN KHAN 5 Moo I A 467

9 ——— Right to resume subordinate tenure by istemrardar—*Customary right* A custom was alleged entitling a Patwi Thakur or chief belonging to the Rathor clan of Rajputs who was the istemrardar of an ancient and impartible taluk in Ajmere to resume land formerly part

without issue and without adopting *Held* that the Commissioner s judgment which was that a right of resumption exercisable merely on the above ground had not been established was correct being supported to some extent certainly by answers received by the Chief Commissioner on enquiry from the neighbouring Durbars of Rajputana chiefs and on the whole by the balance of the evidence RAO BAHADUR SINGH v JOWAHIR KUAR

I L R 10 Calc 887 L R 11 I A 75

10 ——— Right of maafidar—*Recognition of right to resume—Limitation—Cause of action. Held* that mere recognition of right to resume contained in the wajib ul urz where the grant existed many years previous to the date of that document does not re grant to a maafidar so as to give plaintiff a new starting point from which his right to resume should date DAYUM KHAN v TUNSOOKH RAI 2 Agra 189

11 ——— Right of manager of religious endowment—*Beng Reg XIX of 1793* The manager of a religious endowment consisting of the profits of a number of villages after paying revenue was not a zamindar under Regulation XIX of 1793 and could not sue for resumption of invalid lakhiraj land NOBIN CHUNDER ROY CHOWDHRY v PEAREE KHANUM 3 W R 143

12 ——— Right of talukdars—*Limit of area in suit for resumption* Talukhdars had no legal right to sue for resumption of areas containing more than 100 bighas of land GOPAL CHUNDER ROY v OODHUB CHUNDER MULLICK

W R 1864 156

13 ——— Right of Government as agent for zamindar—*Limit of area in suit for resumption* The Government when acting as agent of a zamindar could only sue to resume invalid lakhiraj lands under 100 bighas PAN LOCHUN SIRCAR v DENONATH PAUL 2 W R 279

14. ——— Right of zamindar—*Presumption—Land held under different sanads—Limit of area in suit for resumption* When land beyond 100 bighas in extent is admittedly held by a lakhirajdar the presumption is that it is held under one grant and that it is resumable by Government and not by the zamindar To rebut the presumption the zamindar must show that the land though beyond 100 bighas in extent is

RESUMPTION—*contd*

1 RIGHT TO RESUME—*contd*

held under different sanads JOGENDRO NARAIN ROY v HURRY DOSS ROY W R 1864 145

15 —— ———— — *Right of zamindar to assess and resume invalid lakhiraj tenures—Limit of area in suit for resumption* When a zamindar engaged to pay a certain amount of revenue on certain lakhiraj land on condition of Government stopping resumption proceedings in respect to such lands he had a right under that engagement to resume invalid rent free tenures below 100 bighas in extent whatever had been the nature of agreement with Government in previous years but he had no right to resume lands of greater extent than 100 bighas covered by one sanad BEER CHUNDER JOOBRAJ v UMAKANT SEIN W R 1864 232

See BEERCHUNDER JOOBRAJ v SHIBJOY TAKOOR W R 1864 8

16 ———— *Beng Reg II of 1819 s 30—Limit of area in suit for resumption* To bar a zamindar s right to resume as invalid lakhiraj under s 30 Regulation II of 1819 lands in excess of *100 bighas it must be shown that the* lands are held under a sanad in excess of 100 bighas or under different sanads each in excess of 100 bighas MAHOMED MUNSOOR v UMBICA CHURN ROY W R 1864 132

17 ———— *Beng Reg XIX of 1793—Limit of area in suit for resumption* A zamindar is not precluded by Regulation XIX of 1793 from suing for the resumption of invalid lakhiraj lands exceeding 100 bighas held under several sanads provided none of them singly is a grant for more than 100 bighas The release of lands covered by one such sanad from the claim *of Government to resume on the ground that they* were under 50 bighas does not bar the zamindar s *right to resume them* ELIAS v MAHOMED PEERFEE W R 1864 217

18 ———— *Beng Reg X of 1793 s 19—Limitation in suit for resumption* A zamindar suing for resumption of alleged invalid lakhiraj land under s 19 Regulation X of 1793 *was not limited to time provided he could prove* that at some time subsequent to the decennial settlement the land sought to be resumed was part of his mal estate and had paid rent GOPAL CHUNDER SHAHA v BHABO TARINEE DOSSEE 7 W R 240

19 ———— Service inam lands The combination of an interest in land and an obligation as to service may fall under three heads viz (i) there may be a grant of land burdened with service (ii) there may be a grant in consideration of past and future service and (iii) there may be the grant of an office the services attached to which are remunerated by an interest in land In either of the first two classes of grants it may be made a condition that the interest in the land should cease when the services are no longer required but in the absence of a provision to that effect lands held under those grants are not resumable at will Where a plaintiff inamdar asserts that he has a right to resume to establish that the combination is such as permits of resumption and where there has been long and undisturbed possession enjoyed by the defendant and his predecessors it will require strong evidence on plaintiff s part to make *out his case* LAKHAMGAVDA v KESHAV ANNAJI (1904) I. L. R 28 Bom 305

2 PROCEDURE

1 ———— Assessment of resumed lands—*Beng Reg XIX of 1793—Beng Reg II of 1819 s 30—Suit for rent* Unless the holder of a resumption decree took steps under Regulation XIX of 1793 to have the revenue fixed by the Collector and the defendant consented to pay the revenue required of him he had no *locus standi* [illegible]

to ascertain whether the existence of the lakhiraj prior to 1791 had been decided by the decree for resumption It could not be presumed that every case instituted under s 30 Regulation II of 1819 dealt with an estate which was held lakhiraj prior to 1791 POGOSE v EKRAM HOSSEIN 15 W R 483

2 ———— Question of validity of grant *Limitation—Existence of tenure before 1790* In a suit for resumption where the defendant pleads a lakhiraj tenure before 1790 the validity of the grant is not open to the Judge s consideration but only whether the tenure was in existence before 1790 and if so to apply the law of limitation SAGORE MONEE DOSSEE v BIPRO DOSS DEY 1 W R 249

3 ———— Limitation—*Beng Reg II of 1819 s 30—Lakhiraj—Beng Reg XIX of 1793 s 10* A suit for resumption under s 30 Regulation II of 1819 must be assumed to refer only to lakhiraj created prior to the 1st of December 1790 and therefore was not exempt from limitation under s 10 Regulation XIX of 1793 HEERA MONEE DABEE v KOONJ BEHARY HOLDAR B L R Sup Vol Ap 8 2 W R 207

4 ———— *Beng Reg XIX of 1793 s 10—Beng Reg II of 1819 s 30* Re [illegible] pply to a suit [illegible] 10 of Regu [illegible] in *Sonatun* [illegible] *Vol 109* and *Heera Monee Dabee v Koonj Behari Holdar B L R Sup Vol Ap 8* upheld. HARIHAR MUKHOPADHYA v MADAB CHANDRA BABU NABA KRISHNA MOOKERJEE v KAILAS CHANDRA BHUTTACHARJEE 8 B L R 566 20 W R 459 14 Moo I A 152.

RESUMPTION—*contd*

2 PROCEDURE—*concld.*

SONATUN GHOSE *v* ABDUL FARAR
B L R Sup Vol 109 2 W R. 91

5 ——— Notice to parties—*Party not in possession* In resumption proceedings it is not necessary to give notice to a party not in possession or to make him a formal party to the suit RAM CHUNDER SHAHA *v* COLLECTOR OF MYMENSINGH 22 W R 48

6 ——— *Beng Reg II of 1819 s 16—Omission to give notice* Where the resumption officer as directed by s 15 Regulation II of 1819 supplied the defendant in a resumption suit with a copy of his reasons for considering the lands in question liable to resumption and subsequently in the absence of the defendant declared the lands liable to assessment —*Held* that as defendant failed to appear either in person or by agent it was impossible for the resumption officer to give him the warning mentioned in s 16 of the [illegible]

[illegible]

7 ——— Right to intervene in suit —*Beng Regs II of 1819 and III of 1828—Decree of Special Commissioner* In a suit by Government under Regulation II of 1819 to resume invalid lakhiraj land held by a mohunt as the interests of the zamindar who claimed a portion of the lands sought to be assessed as forming part of his permanently assessed estate were liable to be affected by the decision of the Collector —*Held* that he had a right to intervene and become a party to the suit and to prefer an appeal from the decree The decree of the Special Commissioners under Regulation III of 1828 was final if no appeal or petition of review was presented within a reasonably sufficient period MOHESHUR SINGH *v* GOVERNMENT OF INDIA
3 W R P C 45 7 Moo I A 283

3 EFFECT OF RESUMPTION

1 ——— Finality of proceedings—*Injury to parties —Diluvion* Resumption proceeding are final and not liable to question by the Civil Courts But when proceedings take place in the nature of extensive settlements with other parties after intermediate and temporary settlements and acts are done wholly without jurisdiction or lands [illegible]

re form on the same site Government does not thereby lose its rights to them nor is it obliged to institute wholly new proceedings Diluvion does not create any new right COLLECTOR OF DACCA *v* KISHEN KISHORE CHATTERJEE JUGO BUNDHOO BOSE *v* COLLECTOR OF DACCA
W R. 1864, 273

RESUMPTION—*contd*

3 EFFECT OF RESUMPTION—*contd*

2 ——— Finality of resumption-decree—*Settlement proceedings—Jurisdiction of Civil Court* The ruling of the late Sudder Court as to the final and conclusive character of a resumption decree was held not to apply to what was subsequently done administratively by a Settlement Officer the proper distinction being that the decree of the Resumption Court as to the liability of the resumed mehal to be passed with a Government demand is final but the subsequent dealing by the Settlement Officer with alleged proprietary right and claim to land not mentioned in the decree is open to the jurisdiction of the Civil Court MAHOMED GAZEE CHOWDHRY *v* LALL BEBEE 10 W R 103

RAM CHUNDER SHAHA *v* COLLECTOR OF MYMENSINGH 22 W R. 48

3 ——— Effect on contract between zamindar and tenant—*Resumption of lakhiraj tenure by Government—Under tenants rights of* The mere resumption of a lakhiraj tenure by Government does not dissolve the contract between the zamindar and tenant The tenant has the option to determine his tenancy or he may consent that the amount of revenue which the landlord must pay to Government or a portion of it shall be added to his original jumma FARZHARA BANU *v* AZIZUNNISSA BIBI
B L R Sup Vol. 175 3 W R. 72

4 ——— Effect on tenant—*Illegal assessment of revenue—Mad Reg XXVII of 1802* In a suit against a Collector for an illegal seizure and subsequent usurpation of plaintiff s shares in an agraharam village for non payment of tirvai due from other tenants of the village and to recover the increased tirvai imposed by the Collector —*Held* that the plaintiff s right to enjoy his share of the village lands under the original pottah was not legally determined by resumption and that continuing liable only to the fixed rent the plaintiff was entitled to the return of the amount paid under compulsion in excess of such rent at the date of the suit Madras Regulation XXVII of 1802 considered ELLAIYA *v* COLLECTOR OF SALEM
3 Mad. 59

Affirmed by the Privy Council on appeal in BRETT *v* ELLAIYA
13 Moo I. A 104 12 W R P C 33

5 ——— Effect on howladar—*Rights of howladars* The resumption by Government of a parent estate did not nullify the existing rights of a howladar within the estate or deprive him of the benefit of the presumption arising under s 16 of Act X of 1859 MOTHOORA NATH GUNGOPADHYA *v* SHEETA MONEE 9 W R. 354

6 ——— Effect on sub tenure—*Sub tenures before decennial settlement* A sub tenure created before and in existence at the time of the decennial settlement cannot be invalidated by any subsequent settlement of the mehal in which it is

RESUMPTION—*contd*

3 EFFECT OF RESUMPTION—*contd*

situated Resumption of lakhiraj land under the revenue law does not destroy any such sub tenure in the estate resumed ABDOOL ALI v RAMGUTTY 12 W R 128

7 ———Effect on lakhirajdars—*Rights* [illegible] A re prietary s unless and until they are dispossessed in due course of law By obtaining a permanent settlement they acquire no new right a cause of action accruing to them if ousted before settlement THAKOOR DASS ROY CHOWDHRY v NUBEEN KISHEN GHOSE 15 W R 552

8 ——— Effect on charitable trust—*—Omission of mention of existence of charitable trust or endowment* The resumption of lands by Government and the making a fresh settlement of the resumed lands without any allusion to their being held in trust for charitable purposes prior to the resumption proceedings are not conclusive proof that there was no such trust The only question decided by the Government in resuming was that those who claimed the land as lakhiraj had not been able to prove that the land was held under any such religious or charitable trust as would debar Government from resuming LEELANUND SINGH BAHADOOR v ISHUREE NUNDUN DUTT JHA 8 W R 316

9 ———Effect on rights acquired previous to resumption—*Liability of purchaser of rent free holding to pay rent or revenue* Where the plaintiff s ancestor purchased a certain quantity of land from a rent free holder of the mouzah who on the resumption of the maafi tenure by Government was admitted to a proprietary settlement of the mouzah and acquired a good prescriptive title —*Held* that the resumption by the Government did not affect the right which the plaintiff s ancestor had previously acquired in the land and the land not having been assessed with revenue by the Government the plaintiff could not be treated as a mere cultivator and liable to pay either rent or revenue AHMED v GUNAISH PERSHAD 2 Agra 9

10 ———Effect on right of collection or profits—*Maafi lands* Where maafi lands are after resumption and assessment left in the possession of the ex maafidars the persons entitled to collection or profits are in the absence of any stipulation to the contrary the ex maafidars and not the lambardar of the village DAL CHUND v SEETA KOONWAR 2 Agra 152

11 ——— Liability to pay rent—*Resumption and assessment by Settlement Officer* Where land is resumed and assessed by a Settlement Officer the tenant is bound to pay rent at the rate assessed by the Settlement Officer WOOMANATH ROY CHOWDHRY v DEBNATH ROY CHOWDHRY 14 W R 471

RESUMPTION—*contd*

3 EFFECT OF RESUMPTION—*contd*

D SILVA v RAJ COOMAR DUTT 16 W R 153

12 ——— Effect on mortgagee under zur i peshgi lease—*Omission to call in advance —Acquiescence in liability of profits for revenue* [illegible] rity or to call in his money His not adopting either course for a long period was construed into assent on his part to receive the profits minus the Government revenue as security JOY PROKASH NARAIN v RADHA KISHEN W R 1864 227

13 ——— Effect of resumption and settlement of lakhiraj on the holder of a mokurari lease from the lakhirajdar—*Lakhiraj tenure—Settlement of invalid lakhiraj* Assessment of revenue by Government on invalid lakhiraj land after resumption does not confer a new estate on the lakhirajdar and does not cancel or extinguish a mokurari lease granted by the lakhirajdar previous to the settlement and during the time he was in possession of the land as lakhiraj PRATAB NARAYAN MOOKERJEE v MADHU SUDAN MOOKERJEE 8 B L R 197 16 W R 35

14 ——— Effect of resumption on mortgages created by inamdar *Inam lands* An inamdar having granted several mortgages upon his inam lands died The right to hold the lands rent free was ruled by Government to have ceased upon the death but the inam was continued to his representatives subject to the payment of assessment under the Government circular of 18[illegible] *Held* that the original estate in the lands was not destroyed that no new title in the inamdar s representatives was created and that the lands continued chargeable in their hands with any valid specific liens created upon them by the inamdar VISHNU TRIMBAK v TATIA alias VASUDEV PANT 1 Bom 22

15 ——— Effect on inamdar—*Inam—Landlord and tenant* On the resumption of an inam the inamdar s right to exemption from the payment of the Government assessment ceases and the inamdar becomes liable to pay such assessment but all his other rights remain unaffected, and therefore those who were his tenants before the resumption do not thereby cease to be so and can be ejected if they are not permanent tenants or are not otherwise entitled to remain in possession. GANGABHAI v KALAPA DARI MUKRYA I L R 9 Bom. 419

16 ———Resumption of inam village and re grant effect of—*Acts of State—Waikars status of—Treaties of 1820—effect of grant of inam under construction—Attachment by Government of such village effect of* From the year 18?0 down to the year 1872 the Waikar family had been in the enjoyment of the village of Pasarni under a treaty between the East India Company and one M

RESUMPTION—*contd*

3 EFFECT OF RESUMPTION—*contd*

A and *K M* were brothers and the last male descendants of *M* For an alleged fraud of *K M* Government restricted the enjoyment of the said village to his lifetime only *A* predeceased *K M* On the death of *K M* Government on the 31st December 1872 placed an attachment over the village On the 13th July 1874 a judgment creditor of *A* caused the lands in dispute which were mirasi lands of the Waikar family situated at Pasarni to be sold in execution of his decree against *A* and they were purchased by the defendants who was put in possession on the 22nd April 1876 In the meanwhile Government having chosen to recognize the plaintiff as a representative of the Waikar family had removed the attachment and re granted the village to the plaintiff shortly before *viz* on the 3rd April 1876 The plaintiff being dispossessed sued the defendant contending (*inter alia*) that *A* having predeceased his brother had no interest in the land which had been purchased by the defendant The Court of first instance awarded the plaintiff s claim and directed the defendant to pay the plaintiff s costs The defendant appealed to the District Judge who was of opinion that the proceedings of Government since the attachment in 1872 and restoration of the village were acts of State and he varied the decree of the lower Court by cutting down the plaintiff s costs made payable by the lower Court s decree to half On appeal by the defendant to the High Court —*Held* reversing the decree of the lower Appellate Court that the plaintiff s claim should be dismissed The attachment placed by Government on the death of *K M* in December 1872 was limited to an exemption from assessment and the resumption and re grant to the plaintiff did not give the plaintiff any title to the lands in question The proceedings of Government in 1873 and 1876 by which the plaintiff was recognized as the representative of the Waikar family were not acts of State The status of the Waikars and other persons with whom the agreements of 1820 were entered into was not that of an independent sovereign They (the Waikars) were merely powerful saranjamdars subordinate to the Raja of Satara and after the annexation of the territory of the Raja in 1849 they held their lands under the East India Company *Secretary of State for India* v *Narayan Balbhant Bhosle Printed Judgments for 1883 p 244* HARI SADASHIV *v* AJMUDIN

I L R 11 Bom 235

17 ———— Resumption of saranjam by British Government effect of on position and rights of the saranjamdar—*Occupancy rights of a saranjamdar—Inam resumption of—Public and private property of an absolute Chief—Landlord and tenant—Tenancy created by Chief prior to resumption of land by Government—Effect of resumption on rights of landlord—Adverse possession—Recognition of tenant by Government officers as occupant paying assessment does not prejudice landlord s rights* *A* the Chief of Kagvad let certain land to the defendant for a term of twelve years by a lease dated 12th June 1857 *A* died in the same year without male issue and his saranjam was resumed by the British Government In 1858 the Collector treated the defendant as occupant of the land in question for the purposes of assessment and again in 1860 entered his name as occupant in the Government books In January 1868 the widow of *A* adopted the plaintiff as his son In 1881 the plaintiff sued the defendant to recover possession of the land let to the defendant in 1857 The defendant contended that the land was not the private land of *A* but belonged to the State of Kagvad which was resumed on his death by the Government and that the plaintiff s claim was barred by the law of limitation. The Subordinate Judge allowed the plaintiff s claim holding that the land was the private property of *A* and that the claim was not barred The District Judge on appeal held that the land was not the private property of the Chief but was the property of the State and that on the resumption of the State by the British Government the defendant s lease came to an end and the relation of landlord and tenant previously existing between the Chief and the defendant ceased He also held that the plaintiff s claim was barred by limitation and reversed the decree of the Subordinate Judge On appeal to the High Court —*Held* that no distinction could be drawn between the public and private property of an absolute Chief which *A* was That in the absence of a contrary intention the resumption by the British Government of a saranjam or inam leaves the occupancy rights of the saranjamdar or inamdar untouched that a saranjamdar or inamdar may acquire occupancy rights during the continuance of the saranjam or inam *Held* also that the fact that the revenue officers placed the defendant s name in the Government books as the occupant paying assessment did not make the defendant s possession adverse and could not prejudice the plaintiff s rights as landlord. GANPATRAV TRIMBAK PATWARDHAN *v* GANESH BAJI BHAT

I L R 10 Bom 112

18 ———— Effect on patta—*Bengal Act VIII of 1879 s 10—Resumption of lands included in a patta—Re settlement with grantor of patta—Liability for rent—Parties* *Held* that when lands are re settled with the original holder or his heirs s 10 of B n. Act VIII of 1879 does not on its true construction interfere with the contractual rights of a subordinate holder The respondent having a permanent *ganti* tenure subject to a fixed rent for the whole of it under a patta executed in 1831 the Government resumed lands comprised in the tenure and settled in 1834 with the heirs of the respondent s grantor in respect thereof In an action by the appellant as purchaser of the resumed and re settled lands to recover the rent thereof as fixed in 1834 —*Held* that the respondent s liability was under the *patta* and not under the settlement and that all in right of the lands granted by the *patta* were necessary parties to an action for

RESUMPTION—*contd*

3. EFFECT OF RESUMPTION—*contd*

the rent sued for PRIA NATH DAS v. RAM TARAN CHATTERJI (1903) I L R 30 Calc 811
s c L R 30 I A 159
7 C W N 601

19 ——— Enfranchisement—*Enfranchisement of inam service land in name of office holder—Hindu law—Effect of enfranchisement—Liability to partition* Three items of land numbered 5, 6 and 7 were originally village service *nams* having been annexed by the State as emoluments to the office of *karnam* in a ryotwari village *P* the father of plaintiff and first defendant and grand father of second defendant in March 1889 established his right as the heir to the late incumbent to this office of *karnam* and the lands were in November 1889 ordered to be delivered to *P* and were actually delivered to him in December 1889 Before the actual delivery *P* applied that the land might be registered and a title deed be issued in his name as the Government were taking steps to enfranchise service *inams* in the district and the *Inam* Commissioner in November 1889 notified to *P* that his name was included in the register In January 1890 second defendant s father the eldest son of *P* died and in February 1890 *P* resigned the office of *karnam* in favour of his grandson second defendant who was duly appointed by the Collector Item No 5 was enfranchised and a title deed issued to and in the name of *P* The *Inam* Commissioner in 1891 passed an order that items 6 and 7 had been resumed and fully assessed. *P* had died at a date prior to this and second defendant was holding the office On a suit being instituted by plaintiff for partition —*Held per* BHASHYAM AYYANGAR *J*—That when a personal *inam* is enfranchised by the imposition of a quit rent the resumption by Government imply consists of so much of the assessment or *melvaram* as is equal to the quit rent neither the land nor the assessment in excess of the quit rent being resumed Similarly the enfranchisement of a service *inam* does not operate as a resumption and fresh grant by Government subject to the payment of a quit rent any more than it is so in the case of the enfranchisement of a personal *inam* It stands on the same footing so far as the family in which the village office is hereditary is concerned The enfranchisement only converts the *inam* into ordinary property *Narayana* v *Chengalammal I L R 10 Mad 1* followed. *Venkata* v *Rama I L R 8 Mad 249* explained *Dharmipragada* v *Kadambari I L R 21 Mad 47* and *Venkatarayadu* v *Venkata Ramayya I L R 15 Mad 284* dissented from *Per* MOORE *J*—Even assuming item No 5 to be the self acquisition of *R* according to *Dharmipragada* v *Kadambari I L R 21 Mad 47* and *Venkatarayadu* v *Venkata Ramayya I L R 15 Mad 284* the plaintiff was entitled as his son to his share As to items 6 and 7 there was no enfranchisement and no fresh grant or title-deed in favour of second defendant They were liable to partition and it was unnecessary therefore to decide whether *Narayana* v *Chengalammal I L R 10 Mad 1* or *Dharmipragada* v *Kadambari I L R 21 Mad 47* and *Venkatarayadu* v *Venkata Ramayya I L R 15 Mad 284* were correctly decided *Venkata* v *Rama I L R 8 Mad 249* explained. *Per Curiam*—That items 5 6 and 7 were liable to partition GUNNAIYAN v KAMAKCHI AYYAR (1902) I. L R 26 Mad. 339

RESUMPTION—*concld*

3 EFFECT OF RESUMPTION—*concld*

4 MISCELLANEOUS CASES

1 ——— Illegal resumption by Government—*Liability to account* The Government having seized certain chur lands and dispossessed the proprietor in possession and having entirely failed to establish any claim for assessment or resumption during the period of attachment following the dispossession of the proprietor —*Held* that the Government must be regarded as a wrong doer for the whole period and must account to the proprietor for all the collections made by its officers up to the time of the restitution. BURNOMOYEE v. COLLECTOR OF RUNGPORE
W R F B 4 Marsh 13
1 Hay 37

2 ——— Right of mortgagee or transferee of maafi land on resumption—*Right* [illegible]

3 ——— Purchases before resumption—*Jagir* Where the evidence showed that certain arms and stores seized had been purchased by the jaghirdar before the resumption and there was no authority or evidence to show that those who held by jaidad were not entitled to things so purchased —*Held* that the representatives of the jaghirdar were entitled to recover the value of the arms and stores so seized FORESTER v SECRETARY OF STATE
12 B L R 120 18 W R 349
L R I A Sup Vol. 10

RESUMPTION CHITTAS

See EVIDENCE ACT 1872 s 83
I L R 14 Calc 120

RETAINER (ATTORNEY S)

——— how recoverable—

See ATTORNEY AND CLIENT
I L R 38 Calc. 609

RE TRANSFER.

See JURISDICTION
I L R 38 Calc 193

RESUMPTION—*contd*

3 EFFECT OF RESUMPTION—*contd*

A and *K M* were brothers and the last male de cendants of *M* For an alleged fraud of *K M* Government restricted the enjoyment of the said village to his lifetime only *A* predeceased *K M* On the death of *K M* Government on the 31st December 1872 placed an attachment over the village On the 13th July 1874 a judgment credi tor of *A* caused the lands in dispute which were mirasi lands of the Waikar family situated at Pasar ni to be sold in execution of his decree against *A* and they were purchased by the defendants who was put in possession on the 22nd April 1876 In the meanwhile Government having chosen to recognize the plaintiff as a representative of the Waikar family had removed the attachment and re granted the village to the plaintiff shortly before ... on the 3rd April 1876 The plaintiff being dispossessed sued the defendant contending (*inter alia*) that *A* having predeceased his brother had no interest in the lands which had been pur chased by the defendant The Court of first in stance awarded the plaintiff s claim and directed the defendant to pay the plaintiff s costs The defendant appealed to the District Judge who was of opinion that the proceedings of Government since the attachment in 1872 and restoration of the village were acts of State and he varied the decree of the lower Court by cutting down the plaintiff s costs made payable by the lower Court s decree to half On appeal by the defendant to the High Court —*Held* reversing the decree of the lower Appellate Court that the plaintiff s claim should be dismissed. The attachment placed by Government on the death of *K M* in December 1872 was limited to an exemption from assessment and the resump tion and re grant to the plaintiff did not give the plaintiff any title to the lands in question The proceedings of Government in 1873 and 1876 by which the plaintiff was recognized as the representa tive of the Waikar family were not acts of State The status of the Waikars and other persons with whom the agreements of 1820 were entered into was not that of an independent sovereign They (the Waikars) were merely powerful saranjamdars subordinate to the Raja of Satara and after the annexation of the territory of the Raja in 1849 they held their lands under the East India Com pany *Secretary of State for India v Narayan Balbhant Bhosle Printed Judgments for 1883 p 244* HARI SADASHIV *v* AJMUDIN

I L R 11 Bom 235

17 ———— Resumption of saranjam by British Government effect of on position and rights of the saranjamdar—*Occupancy rights of a saranjamdar—Inam resumption of—Public and private property of an absolute Chief—Landlord and tenant—Tenancy created by Chief prior to resumption of land by Government—Effect of resumption on rights of landlord—Adverse pos session—Recognition of tenant by Government officers as occupant paying assessment does not prejudice landlord s rights* A the Chief of Kagvad let certain land to the defendant for a term of twelve years by a lease dated 12th June 1857 *A* died in the same year without male issue and his saranjam was resumed by the British Government. In 1858 the Collector treated the defendant as oc cupant of the land in question for the purposes of assessment and again in 1860 entered his name as occupant in the Government books In January 1868 the widow of *A* adopted the plaintiff as his son In 1881 the plaintiff sued the defendant to recover possession of the land let to the defendant in 1857 The defendant contended that the land was not the private land of *A* but belonged to the State of Kagvad which was resumed on his death by the Government and that the plaintiff s claim was barred by the law of limitation. The Subordinate Judge allowed the plaintiff s claim holding that the land was the private property of *A* and that the claim was not barred The District Judge on ap peal held that the land was not the private property of the Chief but was the property of the State and that on the resumption of the State by the British Government the defendant s lease came to an end and the relation of landlord and tenant previously existing between the Chief and the de fendant ceased He also held that the plaintiff s claim was barred by limitation and reversed the decree of the Subordinate Judge *On appeal to* ... [illegible]

the British Government of a saranjam or inam leaves the occupancy rights of the saranjamdar or inamdar untouched that a saranjamdar or inamdar may acquire occupancy rights during the continuance of the saranjam or inam. *Held* also that the fact that the revenue officers placed the defendant s name in the Government books as the occupant paying assessment *did not* make the defendant s possession adverse and could not prejudice the plaintiff s rights as landlord. GANPATRAV TRIMBAK PATWARDHAN *v* GANESH BAJI BHAT

I L R 10 Bom. 112

18 ———— Effect on patta—*Bengal Act VIII of 1879 s 10—Resumption of lands included in a patta—Re settlement with grantor of patta—Lia bility for rent—Parties* *Held* that when lands are re settled with the original holder or his heirs s 10 of Ben Act VIII of 1879 does not on its true construction interfere with the contractual rights of a subordinate holder The respondent having a permanent *ganti* tenure subject to a fixed rent for the whole of it under a patta executed in 1867 the Government resumed lands comprised in the tenure and settled in 1884 with the heirs of the respondent s grantor in respect thereof In an action by the appellant as purchaser of the resumed and re settled lands to recover the rent therefor as fixed in 1884 —*Held* that the respondent s liabil ... ter the settle ... granted by ... an action for

REVENUE—*concld*

———— suit for contribution for payment of—*concld*

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N W PROVINCES I L R 1 All 28

———— *Revenue Recovery Act II of 1864 s 35—Applies only where party paying is tenant mortgagor or incumbrancer—Unregistered owner not bound to pay the revenue* The revenue due on land owned by one who is not the registered holder is not money which such owner is bound to pay under the Revenue Recovery Act though it may be to his interest to do so and the registered holder voluntarily paying such revenue cannot recover it under s 69 of the Contract Act Neither can he recover it under s 35 of the Revenue Recovery Act unless he is a tenant mortgagor or incumbrancer of such land BOJA SELLAPPA PEDDI v VPIDHACHALA PEDDI (1906)
I L R 30 Mad 35

REVENUE COMMISSIONERS

———— sanction of to graze cattle—

See BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865) s 3?
I L R 2 Bom 110

REVENUE COURT

See BENGAL TENANCY ACT 1885 s 106
8 C W N 741

See JURISDICTION
I L R 31 Calc 937

See N W P RENT AND REVENUE ACT s 241 8 C W N 121

See SALE FOR ARREARS OF REVENUE

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE I L R 24 Mad 121

———— decree of—

See CIVIL PROCEDURE CODE 1882 s 492
I L R 36 Calc 252

———— jurisdiction of—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS

See JURISDICTION OF REVENUE COURT

See PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880) ss 2 17 24 L R 33 Calc 1178

See RENT SUIT FOR.
I L R 28 Calc 485

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

———— suit in—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS

See WITHDRAWAL OF SUIT
I. L. R. 21 Calc 428 514

REVENUE COURT—*concld*

———— suit to set aside order of—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS

REVENUE JURISDICTION ACT (BOM X OF 1876)

———— s 4, Proviso—*Grant—Civil Court —Jurisdiction—Pensions Act (XXIII of 1871) s 4* The proviso to s 4 of the Bombay Revenue Jurisdiction Act (X of 1876) contains no exception in respect of holdings unaccompanied by proprie[illegible]

Government is clearly recognised by the proviso above cited and the only condition required is that the claim should be under an enactment instrument sanad written grant or judgment such as is described in the proviso BALVANT RAMCHANDRA v SECRETARY OF STATE (1904)
I L R 29 Bom 480

REVENUE OFFICER

See BENGAL TENANCY ACT s 102
I L R 21 Calc 38
I L R 22 Calc 244

See BENGAL TENANCY ACT *s 104*
I L R 32 Calc 162

See BENGAL TENANCY ACT ss 101 TO 108 I L R 30 Calc 339

See BOMBAY LAND REVENUE ACT s 3
I. L R 20 Bom 803

See BOMBAY REVENUE JURISDICTION ACT s 11 I. L R 20 Bom. 803

See SETTLEMENT OFFICER.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
I L R 24 Calc 462

REVENUE PAYING ESTATE

See COURT FEES ACT (VII OF 1870) s 7 (v) 12 C W N 990

REVENUE RECOVERY ACT (I OF 1890)

———— s 6—

See MADRAS REVENUE RECOVERY ACT ss 5 25 AND 44
I. L R 28 Mad. 521

REVENUE RECOVERY ACT (MAD. II OF 1864)

———— ss 36 38, 40—

See LIMITATION ACT (XV OF 1877) SCH. II ARTS. 178 179
I. L. R. 31 Mad 24

RE TRIAL

See CRIMINAL PROCEDURE CODE s 437

See CRIMINAL PROCEEDINGS
I L R 28 Calc 104

See MAGISTRATE—RE TRIAL OF CASES

See NEW TRIAL

See RE HEARING

See REVISION—CRIMINAL CASES—REVIVAL OF COMPLAINT AND RE TRIAL

See SESSIONS JUDGE JURISDICTION OF—ORDER FOR RE TRIAL ON APPEAL
7 C W N 301

POWERS ON REVISION
I L R 28 Calc 63

——— *Order for—Sentence suffered under conviction set aside Per* JENKINS *C J* — I have no doubt should the accused be again convicted the Court in estimating what would be the proper sentence will have regard to the detention already suffered by him EMPEROR v NAKUL KABIRAJ (1909) 13 C W N 754

RETURN

See MAHOMEDAN LAW—INHERITANCE
I L R 3 Calc 702
I L R 11 Calc 14
17 W R P C 108

RETURN OF PLAINT

See PLAINT

See PROVINCIAL SMALL CAUSE COURTS ACT s 23 13 C W N 403

REUNION

See HINDU LAW—INHERITANCE
I L R 33 Calc 371
10 C W N 236

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—SEPARATED SONS OR BROTHERS AND REUNION

See HINDU LAW—MITAKSHARA
12 C W N 687

See HINDU LAW—PARTITION—REQUISITES FOR PARTITION
I L R 30 Calc 738

EFFECT OF PARTITION
I L R 30 Calc 725

REVENUE

See CIVIL PROCEDURE CODE 1882 s 43
8 C W N 54

See JURISDICTION OF CIVIL COURT—LAND REVENUE

See RENT I L R 33 Calc 140

See SALE FOR ARREARS OF REVENUE

——— as distinguished from rent—

See APPEAL—N W P Acts
I L R 18 All 302

See GRANT—POWER TO GRANT
B L R Sup Vol 75 774

REVENUE—*contd*

——— assessment of—

See BOMBAY LAND REVENUE ACT s 216
I L R 16 Bom 525

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS

See MADRAS LAND REVENUE ASSESSMENT ACT s 2
I L R 19 Mad 292 308
I L R 22 Mad 270
L R 26 I A 16

——— deposit of—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE

——— liability to pay —

See SALE FOR ARREARS OF REVENUE—PURCHASER RIGHTS AND LIABILITIES OF

See SALE IN EXECUTION OF DECREE—PURCHASERS TITLE OF—CERTIFICATES OF SALE I L R 2 Calc 141

——— matter concerning—

See JURISDICTION OF CIVIL COURT—REVENUE
2 Mad 167
I L R 1 Mad 89

See MANDAMUS 11 B L R 250

See RIGHT OF SUIT—ACTS DONE IN EXERCISE OF SOVEREIGN POWER
I L R 1 Calc 11

See SMALL CAUSE COURT PRESIDENCY TOWNS—JURISDICTION REVENUE
5 Bom O C I

——— payment and non payment of—

See CONTRACT ACT ss 69 70
I L R 6 All 67
I L R 7 All 660
I L R 12 Calc 213

See CO SHARERS—GENERAL RIGHTS IN JOINT PROPERTY
14 B L R 155
I L R 9 Calc 377
I L R 14 All 273
I L R 14 Calc 809

See MONEY PAID 7 N W 155

See MONEY PAID FOR BENEFIT OF ANOTHER
I L R 21 Calc 142
L R 20 I A 160
I L R 16 All 471

See RIGHT OF OCCUPANCY—LOSS OF FORFEITURE OF RIGHT
I L R 20 Bom 747

See SET OFF—GENERAL CASES
I L R 1 All 135

——— suit for contribution for payment of—

See CONTRIBUTION SUIT FOR—VOLUNTARY PAYMENTS

REVENUE SALE LAW (BENG ACT XI OF 1859)—*contd*

——— s. 5—*concld*

proprietor was not an illegality which rendered the sale a nullity *Ram Narain Koer* v *Mahabir Prosad Singh I L R 13 Calc 208* referred to In a notice issued under s 13 of the Revenue Sale Law the details of the shares about to be sold were fully given but certain separate account shares which were excluded were not mentioned It was however explained in a note at the foot of the notice that when in certain columns of the notice there is an entry that only a share is to be sold then it ought to be understood that there is a separate account in respect of such a share and that other share or shares will be exempted from sale and in this notice there was such an entry in the columns mentioned *Held* that the provisions of 13 had been complied with The issue of a notice under s 5 of the Revenue Sale Law is not a condition precedent to the sale taking place the non compliance with which makes the sale no sale The non issue of such a notice is only an irregularity *Mahabeer Pershad* v *Collector of Tirhoot 15 W R 137* explained *Raja Gobinda Lal Roy* v *Ram Janam Misser L R 20 I A 165* referred to The non issue of a notice under s 5 is an irregularity of the nature contemplated in s. 33 of the Revenue Sale Law and if not specified in an appeal to the Commissioner cannot be urged in a subsequent suit DEVONANDAN SINGH v MANBODH SINGH (1904) 8 C W N 757

——— ss 5 6 7 14 17 33— *Year current year meaning of—Estate under attachment by order of judicial authority—Estate under attachment or managed by a revenue officer—Common manager under the Bengal Tenancy Act effect of appointment of—Proceeding when share of estate is not sold at auction sale—Declaration of sale of entire estate—Notice of declaration—Notification of sale—Sale of separate share—Specification—Suit to set aside sale—Certificate of sale—Bengal Act VII of 1868 s 8—Irregularity in serving or posting notice* The word year in the Revenue Sale Law means the official year and current year is the official year within which the different *kists* of revenue have to be paid. The case of an estate managed by a common manager appointed under the Bengal Tenancy Act is excluded from the operation of s 5 of Act XI of 1859 nor does management by such common manager fall within s 17 of the Act Non publication of notice under 7 of Act XI of 1859 does not affect the sale Under s 8 of Bengal Act VII of 1868 after the grant of certificate the Court is precluded from going into the question whether notice were duly served or posted provided that they were issued It is not necessary under s. 14 of Act XI of 1859 to give

Mul I L R 21 Calc 844 referred to BHAWANI KOER v AFZAL HUSSAIN (1907) I L R. 34 Calc 381

REVENUE SALE LAW (BENG ACT XI OF 1859)—*contd*

——— ss 5 13—*Arrears of revenue—Kist—Payment after last day of one kist and on the last day of the next kist—Appropriation—Implication from amount paid—Notice—Contract Act (IX of 1872) ss 59 60* Where the revenue for the January *kist* of a *mahal* was not paid on the last day of payment and subsequently the Collector issued a notification under ss 5 and 13 of Act XI of 1859 that if arrears of revenue be not paid on or before the 28th March (the next latest day for payment of revenue) the *mahals* mentioned therein would be sold and where the amount remitted by the defaulting proprietor and received by the Collector on the 28th of March was very much less than the revenue for the March *kist* but somewhat in excess of the arrear in question *Held* that the payment was by implication intended for the January *kist* and should have been so appropriated by the Collector *Held* further that there being nothing specific on such a matter in Act XI of 1859 we must fall back upon the general law which is practically the same as embodied in ss 59 and 60 of the Contract Act *Ganga Bishun Singh* v *Mahomed Jan I L R 33 Calc 119* not followed JOGENDRA MOHAN SEN v UMA NATH GUHA (1908) I L R 35 Calc 636 s c 12 C W N 646

——— ss 5 31 33—*Bengal Act VII of 1868 s 1— Malikana — Land revenue —Sale for arrears accruing subsequently to notification of sale—Point not taken in Court below or before Commissioner* Malikana comes under the definition of Land Revenue given in s 2 of Act XI of 1859 and s 1 of Bengal Act VII of 1868 The revenue authorities are entitled to calculate them together and where part of the arrears for which a sale takes place under Act XI of 1859 is malikana no separate notice under s 5 of the Act in respect of such portion is necessary A sale for arrears of revenue is not necessarily bad because it was held not only for arrears specified in the notice under s 5 of Act XI of 1859 but also for arrears that accrued subsequently Where it appeared that the Collector had acted under s 31 of the Act and that the objection to the sale had not been taken either in the Court below or before the Commissioner and therefore could not under s 33 be taken on appeal the objection was not sustained Under the circumstances the High Court *held* that there had been no irregularity in the sale and the judgment of the High Court was upheld by the Judicial Committee BAGESWARI PROSAD SINGH v MAHOMED GOWHAR ALI KHAN (1904) I L R 31 Calc 256 s c 8 C W N 649 L R 31 I A 52

——— ss 6 7 13—*Description of property in the sale notification. Held* that in the notification of sale in the present case the specification of the property to be sold (which was a share of an estate) was sufficient and the notification contained all the particulars required by s. 3 of Act XI of 1859 *Ram Narain Koer* v *Mahabir Prasad Singh I L R. 13 Calc 208* referred to *Hem Chandra Choudhry*

REVENUE SALE

See CHAUKIDARI CHAKRAN ACT
10 C W N 598

See LANDLORD AND TENANT
I L R 34 Calc 57

See REVENUE SALE LAW (BENG ACT XI OF 1859)

See SALE FOR ARREARS OF REVENUE

——————— *Revenue sent by money order—Estate wrong description of—Mistake—Revenue in arrear—Revenue Sale Law (Act XI of 1859) ss 8 20 33—Land Revenue rules in the Land Revenue and Cesses in Bengal rule 29—Jurisdiction* Where the actual amount of revenue remitted by money order reached the Collectorate in time but the remitter made a mistake

of the Collectorate to rectify the mistake under rule 29 of the Land Revenue Rules and not to put up the property to sale which if held would be without jurisdiction and ought to be set aside *Bal Krishna Das v Simpson I L R 26 Calc 853 L P 25 I A 151* referred to HAMID HOSSEIN v MUKHDUM REZA (1905)
I L R 32 Calc 229
9 C W N 300

REVENUE SALES ACT (BENG XI OF 1859)

See ACT—1859—XI

See REVENUE SALE LAW

REVENUE SALE LAW (BENG ACT XI OF 1859)

See SALE FOR ARREARS OF REVENUE

——————— ss 2 3—*Panchannagram tenure in—Sale for arrears— Latest day of payment — Arrears —Survey and Settlement Manual Part III Ch XVI Rule 7* S 2 of Act XI of 1859 is applicable to revenue paying estates the revenue of which is payable in monthly instalments It does not apply to tenures such as those in Panchannagram paying a yearly jama In the *kabuliyat* of the tenant executed on the 18th February 1874 the jama was stipulated to be paid on the 28th June every year — *Held* that under Rule 7 of Part III Chap XVI of the Survey and Settlement Manual the jama became payable on the first day of the financial year i e 1st April On failure to pay it by the 28th June the latest day fixed by the Board

the first day of the financial year by the latest day of payment as fixed by the Board of Revenue DURLABH CHANDRA KAR v BUKSH ELLAHI (1908)
13 C W N 633

REVENUE SALE LAW (BENG ACT XI OF 1859)—*contd*

——————— s 3—*Advertisement and notification of circular orders of the Board if necessary— Latest days of payment of Government revenue in the case of new estates Board s Rules of 1859 Rule 1—Sale for arrears of revenue—No arrears—Sale not legal setting aside of* The latest days for the payment of Government revenue in the case of any new estate formed after partition of a parent estate must be fixed in accordance with the provision contained in Rule No 1 of the Board s Rules issued under the powers conferred by s 3 of Act XI of 1859 and any Revenue Circular issued by the Board or any Rule framed by the same in any way affecting Rule No 1 must be advertised and notified as required by s 3 of Act XI of 1859 before such a circular or a rule may have the force of law and when not so published it is *ultra vires* Any sale held for arrears of revenue which would not have been due if the *kists* were fixed under Rule 1 of the Board s Rules is invalid and illegal and therefore liable to be set aside MAHOMED JAFIR v SHYAMA SUNDARI DASI (1904)
8 C W N 826

——————— s 5—

See SALE **8 C W N 757 337**

——————— ss 5, 6 13 33—*Suit to set aside sale —Sale brought about by fraud of a co sharer—Purchase by co sharer—Remedy—Right to sue for damages or reconveyance—Notice of sale—Names of proprietors entry of if necessary—Entry of name of a deceased person not a proprietor—Irregularity—Non entry of shares excluded when share sold—Notice under s 5 not a condition precedent to sale—Ground not taken before Commissioner* Plaintiff sued to set aside a revenue sale as having been brought about by the fraud of a co sharer the defendant upon the allegation that two days before the sale the latter told the plaintiff and induced him to believe that he would pay up the arrears that he never intended to do so as is shown by the fact that he did not pay up the arrears though the Collector had agreed to receive them and that he bought the estate himself at a very inadequate price It appears that the plaintiff was present at the sale and by paying up the arrears himself might have prevented the sale from taking place *Held* that the fraud if any might give the plaintiff a good claim against the defendant for damages for breach of contract or for a reconveyance of the plaintiff's share in the estate purchased by him but it was not such a fraud as brought about the sale and the sale could not be set aside *Amirunnessa Khatoon v Secretary of State I L R 10 Calc 63* referred to. It being found that with the defendant there were other innocent and *bona fide* purchasers who were no parties to the fraud *Held* that no equitable relief such as was granted in the case of *Bhoobun Chandra Sen v Ram Soondar Surma I L R 3 Calc 300* could be given in this case It is not necessary under the law in a notice under s 6 of the Revenue Sale Law to enter the names of any proprietors at all The entry in such notice of the names of a deceased person who was not a

REVENUE SALE LAW (BENG ACT XI OF 1859)—*contd*

——— s. 5—*concld*

proprietor was not an illegality which rendered the sale a nullity *Ram Narain Koer v Mahabir Prosad Singh I L R 13 Calc 208* referred to In a notice issued under s 13 of the Revenue Sale Law the detail of the shares about to be sold were fully given but certain separate account shares which were excluded were not mentioned It was however explained in a note at the foot of the notice that when in certain columns of the notice there is an entry that only a share is to be sold then it ought to be understood that there is a separate account in respect of such a share and that other share or shares will be exempted from sale and in this notice there was such an entry in the columns mentioned *Held* that the provisions of s 13 had been complied with. The issue of a notice under s 5 of the Revenue Sale Law is not a condition precedent to the sale taking place the non compliance with which makes the sale no sale The non issue of such a notice is only an irregularity *Mahadeo Pershad v Collector of Tirhoot 15 W R 137* explained *Puja Gobinda Lal Roy v Ram Janam Misser L R 20 I A 165* referred to The non issue of a notice under s 5 is an irregularity of the nature contemplated in s. 33 of the Revenue Sale Law and if not specified in an appeal to the Commissioner cannot be urged in a subsequent suit DEVONANDAN SINGH v MANBODH SINGH (1904) **8 C W N 757**

——— ss 5 6 7 14 17 33— *Year current year meaning of—Estate under attachment by order of judicial authority—Estate under attachment or managed by a revenue officer—Common manager under the Bengal Tenancy Act effect of appointment of—Proceeding when share of estate is not sold at auction sale—Declaration of sale of entire estate—Notice of declaration—Notification of sale—Sale of separate share—Specification—Suit to set aside sale—Certificate of sale—Bengal Act VII of 1868 s 8—Irregularity in serving or posting notice* The word year in the Revenue Sale Law means the official year and current year is the official year within which the different *kists* of revenue have to be paid The case of an estate managed by a common manager appointed under the Bengal Tenancy Act is excluded from the operation of s. 5 of Act XI of 1859 nor does management by such common manager fall within s 17 of the Act Non publication of notice under s 7 of Act XI of 1859 does not affect the sale Under s 8 of Bengal Act VII of 1868 after the grant of certificate the Court is precluded from going into the question whether notice were duly served or posted provided that they were issued It is not necessary under s 14 of Act XI of 1859 to give notice to the co sharers of the declaration which has to be made under the section calling on them to buy up the shares in arrears within the period of ten days. *Gossain Chutturbhooj Das v Ishri Mul I L R 21 Calc 844* referred to BHAWANI KOER v AFZAL HUSSAIN (1907)

I L R. 34 Calc 381

——— ss 5 13—*Arrears of revenue—Kist—Payment after last day of one kist and on the last day of the next kist—Appropriation—Implication from amount paid—Notice—Contract Act (IX of 1872) ss 59 60* Where the revenue for the January *kist* of a *mahal* was not paid on the last day of payment and subsequently the Collector issued a notification under ss 5 and 13 of Act XI of 1859 that if arrears of revenue be not paid on or before the 28th March (the next latest day for payment of revenue) the *mahals* mentioned therein would be sold and where the amount remitted by the defaulting proprietor and received by the Collector on the 28th of March was very much less than the revenue for the March *kist* but somewhat in excess of the arrear in question *Held* that the payment was by implication intended for the January *kist* and should have been so appropriated by the Collector *Held* further that there being nothing specific on such a matter in Act XI of 1859 we must fall back upon the general law which is practically the same as embodied in ss 59 and 60 of the Contract Act *Ganga Bishun Singh v Mahomed Jan I L R 33 Calc 1193* not followed JOGENDRA MOHAN SEN v UMA NATH GUHA (1908) **I L R 35 Calc 636**
s c 12 C W N 646

——— ss 5 31 33—*Bengal Act VII of 1868 s 1— Malikana — Land revenue —Sale for arrears accruing subsequently to notification of sale—Point not taken in Court below or before Commission r* Malikana comes under the definition of Land Revenue given in s 2 of Act XI of 1859 and s 1 of Bengal Act VII of 1868 The revenue authorities are entitled to calculate them together and where part of the arrears for which a sale takes place under Act XI of 1859 is malikana no separate notice under s 5 of the Act in respect of such portion is necessary A sale for arrears of revenue is not necessarily bad because it was held not only for arrears specified in the notice under s 5 of Act XI of 1859 but also for arrears that accrued subsequently Where it appeared that the Collector had acted under s 31 of the Act and that the objection to the sale had not been taken either in the Court below or before the Commissioner and therefore could not under s 33 be taken on appeal the objection was [illegible]

(1904) **I L R 31 Calc 256**
s c 8 C W N 649 L R 31 I A 52

——— ss 6 7 13—*Description of property in the sale notification.* *Held* that in the notification of sale in the present case the specification of the property to be sold (which was a share of an estate) was sufficient and the notification contained all the particulars required by s. 6 of Act XI of 1859 *Ram Narain Koer v Mohabir Prasad Singh I L R 13 Calc 208* referred to *Hem Chandra Chowdhry*

REVENUE SALE LAW (BENG ACT XI OF 1859)—*contd*

——— s 6—*concld*

v *Sarat Kamini Dasya 6 C W N 526* *Annada Charan Mukuti v Kishori Mohan Rai 2 C W N 479* distinguished. DILCHAND MAHTO *alias* LOOTAL MAHTO v BAIJNATH SINGH 8 C W N 337

——— ss 6 33 and 58—*Public Demands Recovery Act (Bengal Act VII of 1868) s 11—Sale under s 11 of Act VII (B C) of 1868—Arrears of rent due from a dakhal situated in a Government khas mehal—Highest bid offered by the defaulters agent—Collectors closing the bid and purchasing the property at that bid legality of* A dakhal situated in a Government khas mehal fell into arrears and it was advertised for sale under Act XI of 1859 pursuant to the provisions of s 11 of Act VII of 1868 (B C) Before the sale the agent of the defaulter offered to deposit the arrears but the Collector refused to receive the money The Collector began with a bid of one rupee the agent of the defaulter followed with a bid of ten rupees but the Collector enquired whether any one was willing to increase the bid and as one came forward the Collector forthwith closed the bid and declared that he had purchased the property on account of Government on the bid of ten rupees under s. 58 of the Revenue Sale Law (Act XI of

the procedure followed by the Collector and the purchase made by him were not in accordance with the provisions of s. 58 of the Revenue Sale Law (Act XI of 1859) HALIMANNISSA CHOWDHRANI v SECRETARY OF STATE FOR INDIA (1904)
I L R 31 Calc 1036
s c 8 C W N 880

——— ss 7 18 33—*Collector s order exempting from sale—Conditional order effect of—Notice of sale on raiyat—Irregularity in issue and service—Proof—Onus—Presumption—Bengal Act VII of 1868 s 8—Evidence Act (I of 1872) s 114 (e)—Substantial injury—Collector s grounds for exempting from sale—Court s power to examine.* The plaintiff respondents (proprietors of a mehal) defaulted to pay the June instalment of the revenue of 1898 namely R22 9 2 the latest day of payment of which sum was the 28th June 1898 On the 19th August 1898 they remitted to the Collector by postal money order a sum R30 1 0 on account of the revenue of the mehal

be released from liability to sale The total amount of Government dues upon the estate at the time including revenue cesses and other fees being R46-8 6 the Collector on the 16th September 1898 made the order Accept all dues if paid within 3 days and exempt. Six days later the Collector further ordered applicant has not appeared since so payment not accepted Before the passing of these two orders on the 12th Sep-

REVENUE SALE LAW (BENG ACT XI OF 1859)—*contd*

——— s 7—*concld.*

tember 1898 the respondents had sent to the Collector by postal money order R30 1 anna for revenue of the mehal, without any specification as to instalment for which it was intended and this sum had been credited in the Collectorate books against the September instalment of R30 1 4 The fact of this payment had not been brought to the notice of the Collector when he made his order of the 16th September 1898 On the 22nd September 1898 the estate was put up to auction and was purchased by the appellants for an inadequate price *Held* that as there was no order of exemption from sale within s. 18 of the Revenue Sale Law the estate was liable to sale under its provisions The conditional order made on the 16th September was not an order under s 18 of the Act *Per* MOOKERJEE J —It is not open to the plaintiff in a suit to set aside a revenue sale to urge under cover of a general ground taken in his appeal before the Commissioner specific irregularities other than those urged before the Commissioner *Bal Mukoond Lall v Jirjudhun Rai I L R 9 Calc 271* commented on It is not open to a Civil Court to examine the reasons of an order of the Collector purporting to be made under s. 18 of the Revenue Sale Law and to hold that the Collector ought to have made an order different from that made. The operation of s 8 of Bengal Act VII of 1868 in curing defects in the issue and service of notices under s 7 of the Revenue Sale Law considered The onus is on the person who seeks to have a sale set aside to establish that the requirements of the Statutes had not been complied with by the Collector The fact that notice under s. 7 of the Act was not served in accordance with the provisions of that section does not necessarily lead to an inference of substantial injury to the proprietor MOHAMMED AGA v JADUNANDAN JHA (1905)
10 C W N 137

——— s 13—
See post s 54 13 C W N 407

——— ss 15 33 37—
See SALE 8 C W N 115 649 757

——— s 25—*Sale for arrears of revenue—Bengal Act XI of 1859 s 25 as amended by s 2 of Bengal Act VII of 1868—Order setting aside a sale—Review—Final meaning of—Commissioner power of* The word final in s. 25 of Bengal Act XI of 1859 means at least not open to review A Commissioner or any Revenue authority has no power to review his order annulling a sale held for arrears of Government revenue *Lala Pryag Lal v Jai Narayan Singh, I L R 20 Calc 419* referred to BAIJNATH RAM GOENKA v NAND KUMAR SINGH (1904)
I. L R. 34 Calc 677

——— ss 28 30—*Liability of an auction purchaser to pay arrears of Government revenue—Date of sale—Contract Act (IX of 1872) s 59* The liability of an auction purchaser at the sale

REVENUE SALE LAW (BENG ACT XI OF 1859)—*contd*

——— s 28—*concld*

held under Act XI of 1859 to pay arrears of Government revenue arrears from the date of the sale when the title vests in the purchaser and not from the date of the sale certificate Laws regulating the relations of an ordinary creditor and debtor do not apply to the realization of land revenue Where therefore a proprietor of an estate makes a payment expressly for a later period when there were earlier arrears the Collector was fully competent to set off the amount paid against the earliest arrears due GANGA BISHUN SINGH v MAHOMED JAN (1906)
I L R 33 Calc 1193
s c 10 C W N 948

——— s 33—*Setting aside sale—Suit by minor—Limitation—Fraud—Purchase by co sharer in benami—Limitation Act (XV of 1877) s 7 and Sch II Arts 12 95—Consequential relief—Reconveyance of share—Pleadings* The provisions of Act XI of 1859 are complete and therefore s 7 of the Limitation Act has no application to a suit to set aside a revenue sale although s 33 of the Revenue Sale Law provides the same limitation as Art 12 of Sch II of the Limitation Act A suit by a co sharer of a revenue paying estate for a declara[illegible] does not affec[illegible] co sharer pur[illegible] of another is [illegible] of limitation as provided for in the Revenue S[illegible] I[illegible] I[illegible] I[illegible]
13 C W N 518

——— s 37—

1. ——— *Assignee of an auction purchaser of an entire estate if entitled to avoid an encumbrance* An assignee of an auction purchaser of an entire estate sold for arrears of revenue can exercise the privileges given to an auction [illegible] 37 of the [illegible] *Koilas* [illegible] followed [illegible] IATULLAH [illegible] W N 148

2. ——— *Act XI of 1859 s 37—Suit for ejectment by purchaser—Occupancy raiyat—Defence—Onus—* [illegible] ambit of the estate *Held* that the onus is in the first instance [illegible] *facie* case [illegible] took place [illegible] he held th[illegible] [illegible] sale [illegible] igal [illegible] 197

3. ——— *Occupancy right* [illegible]

Revenue Sale Law in a share of an undivided property *Jardine Skinner & Co* v *Rani Surut Soondari Debi 3 C L R 140* referred to There is nothing in the Bengal Tenancy Act to take away a right of occupancy acquired under leases granted at a time when Bengal Act VIII of 1869 was in force *Hurry Churn Bose* v *Rajah Ranjit Singh 1 C W N 521* *Haribole Brohmo* v *Tusimuddin Mondul 2 C W N 680* and *Asudulla Sheikh* v *Gogan Molla 6 C W N lxxrii* distinguished A tenancy which was originally created for the purpose of cultivation and not for collection of rent was partly held *nij jote* and partly let out to sub tenants *Held* that this did not change to original character of the grant which was raiyati even in respect of the portion let out BAIDYA NATH MONDAL v SUDHA RAM MISRI (1904)
8 C W N 751

4. ——— *Share in a tank appertaining to agricultural holding—Right of occu*[illegible]

in such share and when acquired would be protected under s 37 of the Revenue Sale Law *Hari Charan Bose* v *Runjit Singh I L R 25 Calc 917* explained and distinguished *Jardine Skinner & Co* v *Surat Soondari Debi 3 C L R 140* relied on UMA CHARAN BAROAH v MONI RAM BAROAH (1902)
8 C W N 192

5. ——— *The words under the law in force in the proviso to that section meaning of—Ejectment suit—Lands—Rent Act (X of 1859)—Occupancy raiyat—Bengal Tenancy Act (VIII of 1885) ss 20 21 and 195 cl (c)* The words under the laws in force in the proviso to s 37 of Act XI of 1859 have reference to assessment or enhancement of rent and not to the rules as to the mode of acquisition of occupancy rights and mean under the laws for the time being in force A purchaser of an entire estate sold for arrears of revenue sued the cultivating raiyats in ejectment The defendants contended that their interests were protected by the proviso to s 37 of Act XI of 1859 It was found that the holdings of the defendants consisted of land held by them partly for more than twelve years and partly for less than twelve years at the date of the sale and that the two classes of lands were undistinguishable Upon an objection that the defendants under the law in force i e Act XI of 1859 could not acquire rights of occupancy to all the lands held by them and as such they were not protected by the proviso to s. 37 of Act XI of 1859 *Held* that

REVENUE SALE LAW (BENG ACT XI OF 1859)—*contd*

——— s 37—*contd*

the defendants were protected by the proviso to s 37 of Act XI of 1859 inasmuch as they were settled raiyats under s 20 of the Bengal Tenancy Act (VIII of 1885) the law for the time being in force and had under s 21 of the said Act occupancy rights in all lands for the time being held by them SARAT CHANDRA ROY CHOWDHRY *v* ASIMAN BIBI (1904) I L R 31 Calc 725 s c 8 C W N 601

6 ——— *Permanent Settlement meaning of—Suit to avoid tenures—Burden of proof—Proof that tenure dates from the Permanent Settlement—Presumption backward Semble* The expressions permanently settled and permanent settlement in s 37 of the Revenue Sale Law contemplate the Permanent Settlement of 1793 *Koonar Singh* v *Gom Sundar Persad Singh I L R 24 Calc 88,* and *Rai Chunder Choudhry* v *Sheikh Bashir Mahomed 24 W R 476* referred to In a suit to avoid certain tenures by a purchaser at a revenue sale of an estate which was once permanently settled in 1793 purchased by Government at a sale under Act I of 1845 and again permanently settled in 1864 the plaintiff contended that these tenures were liable to be avoided unless the defendants proved by positive evidence the existence of the tenures from the Permanent Settlement of 1793 The defendants proved that the tenures were mentioned in the Survey Chitta of 1839 that they were not avoided on purchase by Government and were again recognised by Government in 1864 that rents had been paid at a uniform rate for at least 60 years and that there had been sales of the tenures *Held* that the Court may and ought to presume backwards and hold that the defendants have discharged the onus thrown on them by s 37 of the Revenue Sale Law *Upendra Krishna* v *Ismail Khan L R 31 I A 144 s c 8 C W N 889* followed NAGENDRA LAL CHOWDHURY *v* NAZIR ALI (1906) 10 C W N 503

7 ——— s 37 exceptions (3) and (4)—*Talukdari tenures created since Permanent Settlement on portions of which permanent dwelling houses gardens tanks etc made—Suit by auction purchaser to avoid tenure—Pleadings in defence—Decree directing executing Court to determine portions built on* The plaintiff a purchaser of an estate at a revenue sale sued to recover *khas* possession of certain lands included within it alleging that the defendants held those lands as a taluk created since the Permanent Settlement The defendants pleaded that the lands were their raiyati lands created before the Permanent Settlement and that consequently they could not be ejected under exception (3) of s 37 of Act XI of 1859 The lower Appellate Court found that the lands formed a taluk created after the Permanent Settlement but that on portions of it permanent dwelling houses tanks and gardens had been made *Held* that the plaintiff is entitled to get *khas* possession of the lands held by the defendants excepting such portions of them as are occupied by the dwelling houses gardens and tanks etc *Kiron Chunder Roy* v *Naimuddi Talukdar I L R 30 Calc 498* distinguished *Bhajo Bibee* v *Ramkanto Ray I L R 3 Calc 293 Ajgur Ali* v *Asmut Ali I L R 8 Calc 110* and *Gobind Chundra* v *Joy Chundra I L R 12 Calc 327* followed That although the defendants did not adduce evidence in the case as to the exact position of the portions covered by the dwelling houses tanks gardens etc the direction of the Lower Appellate Court for the determination of those portions in the execution proceedings is in the circumstances of the case just and proper *Brij Sundar* v *Coury Persaud S D A (1852) 6 5* referred to Though a person may fail to prove a defence under exception (3) of s 37 of Act XI of 1859 it is still open to him to plead that he is protected under the 4th exception NAJEMODDEEN MOONSHI *v* HASSAN HYDER CHOWDHRY (1905) 9 C W N 652

8 ——— *Act XI of 1859 s 37 Exc 4—Houses and tank built by incumbrancer—Suit to avoid incumbrance—Assignee from purchaser—Right of suit—Limitation Act (XV of 1877) Sch II Art 121* Where a person claims exemption from the provisions of the Revenue Sale Law which entitled a purchaser to annul incumbrances in respect of land in his possession The benefit of the 4th exception to s 37 of the [illegible] of land [illegible] cannot [illegible] in the [illegible] have not been constructed An assignee of a purchaser of an estate sold under the Revenue Sale Law is entitled to bring a suit to avoid incumbrances Art 121 of Sch II of the Limitation Act applying to such a suit WAHID ALI *v* RAHAT ALI (1908) 12 C W N 1029

9 ——— ss 37 53—*Sale for arrears of revenue—Incumbrance avoidance of* A purchased an estate at a sale for arrears of revenue in the name of his servant Thereupon one of the defaulting proprietors brought a suit against the said servant and other persons for setting aside the sale and obtained a decree for reconveyance on certain terms Owing to this litigation another default occurred in repaying of revenue and the estate was again put up for sale and purchased by A *Held* [illegible] by annul [illegible] was not [illegible] as owing [illegible] 3 of Act [illegible] CHOW-DHURI (1904) I L R [illegible] Calc 393 s c 8 C W N 115

——— s 53—*Purchase at execution sale after default in payment of revenue—Purchase at revenue sale by purchaser if purchase by proprietor*

REVENUE SALE LAW (BENG ACT XI OF 1859)—*contd*

——— s 53—*concld*

—*Incumbrances purchase subject to—Debtor and creditor—Assignment by debtor to creditor of debt due to debtor by third person—Failure of creditor to realise debt—Debtor s accountability—Practice —Leave to apply for further hearing on fresh materials on a point not raised in the lower Court* An estate was purchased at a revenue sale by a person who had purchased the same at an execution sale before the revenue sale took place but after default occurred in the payment of revenue *Held* that the purchase was a purchase by a proprietor within the meaning of s 53 of the Revenue Sale Law and the purchaser took subject to incumbrances. *Ab lool Bari* v *Ram lass Coondoo I L R 4 Calc 0* referred to SHAM KUMARI v RAJA RAMESWAR SINGH (1904) **8 C W N 786**
s c L R 31 I A 176

——— s 54—

1. ——— *Revenue Sale Law (Act XI of 1859) ss 13 54—Sale of a share—Purchaser s right to eject person in adverse possession for over 12 years before sale—Encumbrance* The purchaser of a share of a revenue paying estate at a sale for arrears of revenue is entitled to that share even if a person other than the recorded proprietor has acquired a title by 12 years adverse possession previously to the sale *Kumar Kalanand Singh v Syed Sarafat Hossein 12 C W N 528* followed Adverse possession for 12 years does not constitute an encumbrance on the share It might be an encumbrance on the right of the recorded proprietor but at a sale under s 13 of Act XI of 1859 it is not merely the rights of the recorded proprietor that pass but the share itself *Karmi Khan v Brojo Nath Das I L R 22 Calc 244* distinguished. *Bhowani Koer* v *Mathura Prosad 7 C L J 1* referred to PAHIMUDDI MUNSHI v NALINI KANTA LAHIRI (1909) **13 C W N 407**

2 ——— *Separate accounts —Sale of a share of revenue paying estate in possession of Hindu lady as female heir—What interest passes —Reversionary interest if an incumbrance* When a share in a revenue paying estate in respect of which a separate account had been opened was inherited by a Hindu lady from her father and was then sold for default in paying Government revenue *Held* that the complete owner s interest and not merely a life estate in the share passed to the purchaser The interest of a reversionary heir is not an incumbrance within the meaning of s. 54 of Act XI of 1859 BANALATA DASI v MONMOTHA NATH GOSWAMI (1907) **11 C W N 821**

3 ——— *Act XI of 1859 s 54 —Purchaser of share—Right to recover from person who has acquired title by adverse possession previous to default* Whether adverse possession is completed before or after the date of default a purchaser at a revenue sale of a share of an estate in respect of which a separate account has been opened in the Collectorate becomes entitled to possession of the share If the adverse possession was completed before default the default must be treated as the default of the person who has acquired title by adverse possession and the sale must be held to pass his interest KALANAND SINGH v SARAFAT HOSSEIN (1908) **12 C W N 528**

REVENUE SERVANTS

See MADRAS REVENUE RECOVERY ACT s 52 **I L R 15 Mad 35**

REVERSAL OF DECREE ON APPEAL

See EXECUTION OF DECREE **I L R 30 All. 476**

REVERSIONER

See ADVERSE POSSESSION **I L R 30 Mad 145**

See DECLARATORY DECREE SUIT FOR—REVERSIONERS

See HINDU LAW **I L R 28 All 241**
L R 35 I A 166

See HINDU LAW—
ALIENATION—ALIENATION BY WIDOW REVERSIONERS
WIDOW—POWER OF WIDOW—
POWER OF DISPOSITION OR ALIENATION DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION **I L R 1 All 530**
I L R 8 Mad 304
9 W R 598
I L R 14 Calc 323
I L R 10 All. 407
I L R 14 All. 377
I L R 18 Bom. 534
I L R 19 Bom 36
I L R 22 Mad. 356
I L R 34 Calc 329

See LAND ACQUISITION ACT (I OF 1894) ss 18 30 32 **I L R 35 Calc 1104**

See LETTERS OF ADMINISTRATION **6 C W N 912**

See LIMITATION ACT 1877 SCH II ARTS 140 AND 141

See LIMITATION ACT 1877 ART 144 (1859 s 1 CL 12)—ADVERSE POSSESSION

See MORTGAGE **I L R 32 Bom 32**

See PROBATE **I L R 33 Calc 1001**

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES **5 B L R. 585**
I L R. 1 All. 282
I L R 8 All. 365 429
I L R. 9 Calc 463
I L R 22 All. 382

REVERSIONER—*concld*

See SPECIFIC RELIEF ACT (I OF 1877) s 42 I L R. 30 Mad 195

See STAMP I. L. R 33 Bom. 657

——— consent of—

See HINDU LAW 13 C W N 931

——— gift to, by Hindu widow—*Gift by widow to presumptive reversioner* A gift by a Hindu widow of property in which she has a widow s estate to the presumptive reversioner has not the effect of accelerating the succession of such rever sioner if the tran fer impo es on the rever ioner obligations which would not have existed if the property had devolved on him by inheritance SRIRAMULU NAIDU v ANDALAMMAL (1906)
I L R 30 Mad. 145

——— interest of—

See INSOLVENCY ACT s 7
I L R 21 Bom. 319

See REVENUE SALE LAW
11 C W N 821

——— power of—

See HINDU LAW I L R 36 Calc 780

——— ratification or election by—

See HINDU LAW 13 C W N 201

——— rights of—

See LIMITATION ACT 1877 SCH II ART 127 I L R 30 Mad. 201

——— suit by—

See LIMITATION ACT 1877 SCH II ARTS 95 120 I L R. 30 Mad. 402

——— suit for possession by—

See DECLARATORY DECREE
I L R. 35 Calc 189

REVIEW

REVIEW—*contd*

See ADEN COURTS ACT
I L R 31 Bom. 335

See CIVIL PROCEDURE CODE 1882 s. 244—QUESTIONS IN EXECUTION OF DECREE
5 C W N 627

See CIVIL PROCEDURE CODE 1882 s 620
I L R. 27 All. 695

See CIVIL PROCEDURE CODE 1882 s 622
I L R 26 All. 572

See CIVIL PROCEDURE CODE 1882 s 623
I L R. 28 All 240

See CRIMINAL PROCEDURE CODE ss 145 439 I L R. 27 All. 296

See CRIMINAL PROCEDURE CODE s. 439

See DIVORCE ACT s. 16
I L R 6 Bom 416

See JURISDICTION I L R 35 Calc 350

See LETTERS PATENT HIGH COURT cl. 15
I L R. 10 Calc. 108

See LIMITATION ACT 1877—
S 5 AND SCH. II ART 173.
I L R. 26 Bom. 485

SCH. II ART 179—PERIOD FROM WHICH LIMITATION RUNS—WHERE THERE HAS BEEN A REVIEW

See MINOR—REPRESENTATION OF MINOR IN SUITS I L R. 29 Calc 735

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION 5 C W N 63

See PRACTICE—CIVIL CASES—REVIEW
10 W R 54
24 W R 430

See PRACTICE—CIVIL CASES—WITHDRAWAL OF SUITS OR APPEALS
I L R 7 Bom. 287

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT I OF 1895) ss 15 19 31 AND 33 I L R 30 Calc 619

See SALE FOR ARREARS OF REVENUE
I L R. 34 Calc 677

See SMALL CAUSE COURT MOFUSSIL—PRACTICE AND PROCEDURE—NEW TRIALS.

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—REVIEWS

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15—CIVIL CASES.
I L R. 1 All 296
4 C L R 14

——— admission of after time—

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s. 15—CIVIL CASES
2 B L R A. C. 191
5 B L R 316

REVIEW—*contd*

——— application for—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR APPEALING B L R Sup Vol 585

See CONSENT DECREE 13 C W N 1197

See COURT FEES ACT s 14 9 C L R 479

See COURT FEES ACT SCH I ARTS 4 AND 5 14 W R 249
7 Mad Ap 1
I L R 4 Bom 26
I L R 9 Mad 134
I L R 20 All 410
I L R 11 All 176

See LIMITATION ACT 1877

See LIMITATION ACT 1877 ART 179 (1859 s 20)—STEP IN AID OF EXECUTION—RESISTANCE TO LEGAL PROCEEDINGS B L R Sup Vol 718
3 B L R Ap 33
16 W R 266
18 W R 180

——— by High Court of valuation of land by special Judge—

See COMPENSATION I L R 36 Calc 967

——— of interlocutory order—

See COURT FEES ACT s 5 I L R 31 All 262

——— of judgment—

See CIVIL PROCEDURE CODE 1882 ss 626 629 I L R 31 All 610

See COURT FEES ACT 1870 SCH I ARTS 4 5 I L R 31 All 294

——— order granting—

See APPEAL—ORDERS I L R 12 Bom 171
I L R 16 Calc 788
I L R 13 Bom 496
I L R 22 Calc 3 734 984
I L R 18 All 44
I L R 21 Bom 328
I L R 24 Calc 878

——— order rejecting—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS 1 W R Mis 13
5 W R Mis 17
1 B L R F B 1

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES 2 B L R A C 284

See LETTERS PATENT HIGH COURT CL 15 4 B L R A C 10

REVIEW—*contd*

——— order rejecting—*concld*

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15—CIVIL CASES 5 B L R Ap 29

——— order setting aside or affirming order granting—

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL I L R 11 Calc 296
I L R 13 Bom 496
I L R 11 All 383
I L R 24 Calc 319 319 note

1 ORDERS SUBJECT TO REVIEW

1 ——— **Decrees**—*Civil Procedure Code 1859 s 376—Orders review of* S 376 of the Code of Civil Procedure authorized reviews of judgment in respect to decrees of Court and also in respect to orders which are not decrees DEEN DYAL PURAMANIC v RAM COOMAR CHOWDHRY 10 W R 345

2 ——— **Order relating to execution of decree** A Judge has power to review an order relating to the execution of a decree (MORGAN J dissenting) HARADHUN MOOKERJEE v CHUNDER MOHUN ROY Marsh 205 W R F B 66
1 Hay 577

LOTF ALI KHAN v COURT OF WARDS 6 W R Mis 127

NARAYANBHAI LALBHAI v GANGAKRISHNA BALKRISHNA 4 Bom A C 87

3 ——— **Review of an order dismissing an execution case**—*Civil Procedure Code (Act XIV of 1882) ss 623 647* The scope of s 623 Civil Procedure Code is wide enough to admit of the review of an order dismissing an execution case *Ramu Rai* v *Dayal Singh I L R 16 All 390* and *Hajrat Akramnissa Begam* v *Valianissa Begam I L R 18 Bom 429* ASOKA KUMAR ROY CHAUDHURI v KHETRAMONI DASI 2 C W N 606

4 ——— **Order in proceedings under Act XXVII of 1860** A review of judgment is admissible in proceedings under Act XXVII of 1860 although no express provisions for reviews are contained in the Act *In the matter of the petition of* POONA KOOER I L R 1 Calc 101 24 W R 376

In the matter of PURMUN I L R 1 All 287

(*Contra*) SIVU v CHENAMMA 5 Mad 417

[illegible]

of ACT II OF 1874 I L R 3 Calc 340

6 ——— **Order rejecting application for registration**—*Civil Procedure Code 1859 s 376—Registration Act 1871 s 76—Act XXIII*

REVIEW—*contd*

1 ORDERS SUBJECT TO PEVIEW—*contd*

of 1861 s 38 S 38 Act XXIII of 1861 which enacted that the procedure prescribed by Act VIII of 1859 shall be followed as far as it can be in all miscellaneous cases and proceedings which after the passing of the Act shall be instituted in any Court rendered the whole procedure of Act VIII of 1859 including the power of admitting a review applicable to a proceeding to compel registration under the Registration Act An order rejecting an application for registration under s 76 of the Registration Act of 1871 being in respect of the Court pronouncing it a final order of adjudication between the parties is so far in the nature of a decree within the meaning of Act VIII of 1859 as to fall within the operation of the sections of that Act which provide for the admission of a review *In the matter of the petition of* ABDOOLLAH PEASUT HOSSEIN v ABDOOLLAH

I L R 2 Calc 131 L R 3 I A 221

reversing the decision of the High Court *In the matter of the petition of* ABDOOLLAH

10 B L R 394 19 W R 303

7 ——— **Order admitting appeal to Privy Council.** An appeal to the Privy Council being once admitted whether properly or erroneously the High Court has no further jurisdiction to review its order and declare the appeal rejected AMEERUNISSA BEGUM v INDULJEET KOONWUR

6 W R Mis 97

In re WOOMATARA DEBEA 6 W R Mis 120

8 ——— **Order granting leave to appeal to Privy Council** *Per* PRINSEP J—An

9 ——— **Order refusing to admit special appeal**—*Act VIII of 1859 ss 376 and 378—Power of High Court to grant a review—Notice of application for review* An order refusing to admit a special appeal is open to review and the application for review may be made without notice to the other side JOY COOMAR DUTTA JHA v ESHAREE NUND DUTTA JHA

10 B L R 155 18 W R 475

See In re BARMUTOLLAH

10 B L R 156 note

where however under the circumstances the Court refused the application

s c BURRAMOOLLAH v NIL CHAND DUTT

17 W R 484

10 ——— **Judgment passed on compromise** No review can be admitted of a judgment passed on a compromise PURMESSUREE NARAIN SINGH v TOMEEZOODDEEN AHMED

5 W R 226

11 ——— **Order refusing leave to sue as a pauper**—*Suit in formâ pauperis—Court of original jurisdiction.* A Court of original jurisdiction has power to entertain an application to review an order refusing a petition for leave to sue *in formâ pauperis* *In the matter of the petition of* UMA SUNDARI DEBI 5 B L R Ap 29

See MAHOMED GAZEE CHOWDHRY v DULLAB BIBEE 5 B L R 318 note 11 W R 22

12 ——— *Civil Procedure Code (Act X of 1877) ss 409 413 541 623 625* An order made under s 409 of the Civil Procedure Code (Act X of 1877) refusing leave to sue as a pauper is subject to review under s 623 The provisions of s 413 do not affect the right of a person against whom such order has been made to obtain a review A petitioner applying for such review must file a copy of the order of which he seeks a review together with a memorandum of objections (ss 541 and 625) ADARJI EDULJI v MANEKJI EDULJI I L R 4 Bom 414

13 ——— **Order disallowing claim to attached property**—*Civil Procedure Code 1859 s 246* A Court has power to grant a review of an order which it has passed under s. 246 Civil Procedure Code 1859 disallowing a claim made to property attached in execution of a decree The order granting the review is final under s. 378 COCHRANE v HEERA LAL SEAL 7 W R 79

14 ——— **Order for probate**—*Probate and testamentary matters* When once probate in solemn form has been granted no one who has been cited or has taken part in the proceeding or who was cognizant of them can afterwards seek to have it cancelled. *Quære* Whether a review may not be granted *In the matter of* PITAMBER GIRDHAR I L R 5 Bom 638

See In the goods of BHAGGOBATTY DASSEE. PROSUNNOMOYEE DASSEE v ADHORE CHANDRA DUTT 4 C W N 757

15 ——— **Order on reference from Small Cause Court** An application for a review of judgment by the High Court on a reference from a Small Cause Court was not admissible under the Code of 1859 DOYLE v KHOSAL MUNDLE 3 W R S C C Ref. 8

16 ——— *Civil Procedure Code (Act XIV of 1882) ss 61 619 and 623—Judgment on reference from Subordinate Judge with Small Cause Court powers* The High Court has no power to review a judgment passed by it on a reference from a Subordinate Judge with Small Cause Court powers Cl (c) of s 623 of the Code of Civil Procedure (Act XIV of 1882) allows of a review of judgment on a reference only from a Court of Small Causes The judgment of the High Court in such a case is not a decree or order within the meaning of cl (b) of the section but is simply a statement of the grounds in conformity with which the lower Court is to dispose of the case as provided by s 619 RAMCHANDRA BABAJI v SITARAM VINAYAK I L R 10 Bom 68

17 ——— **Small Cause Court suit.** *Civil Procedure Code ss 622 623 6 5 and 627—*

REVIEW—*contd*

1 ORDERS SUBJECT TO REVIEW—*contd*

Review of judgment—Application for review rejected—Revision An application for review of judgment in a Small Cause Court suit was rejected wrongly on the ground of a supposed deficiency in the Court fee paid upon the application *Held* that this order was open to revision *Ram Lal v Ratan Lal I L R 2? All 6?* distinguished WILLIS v JAWAD HUSAIN (1907) I L R 29 All 468

18 ——— Order in rent suit—*Bengal Rent Act (VIII of 1869)—Orders in rent suits previous to passing of Act* Orders in rent suits were not subject to review until the passing of Bengal Act VIII of 1869 which made the Civil Procedure Code applicable to such suits MAHOMED TUCKEE v AHMUDEE BEGUM 3 N W 22

MONEEKURNIKA CHOWDHRAIN v COLLECTOR OF MYMENSINGH 16 W R 159

RADHA PERSHAD SINGH v SANSAR ROY 14 W R 27

Though it was held in some cases that the admission of a review in such a case was not illegal HURCHUND SINGH v ROOPA KOOER 4 N W 171

ALI AZIM v RAM MANICK ROY 12 W R 195

RAM JEEBUN DOSS v DOYALEE DOSSEE 11 W R 246

SREENATH DUTT v RAMGOPAL CHATTERJEE 11 W R 108

SOOBUL CHUNDER GOOHO v TUMEEZOODDEEN CHOWDHRY 14 W R 414

19 ——— *Order on appeal from Collector under Mad Act VIII of 1865—Civil Procedure Code ss 3? 3 8* A Civil Court in hearing an appeal from the decision of a Collector under Madras Act VIII of 1865 must be guided by the Civil Procedure Code and the judgment of the Civil Court may be reviewed under s 376 of the Code The order granting a review is final SUBRAMANIYA PILLAY v PERUMAL CHETTY 4 Mad. 251

20 ——— Ex parte decree—*Civil Procedure Code s 623* It is competent to a party against whom an *ex parte* decree has been made to apply for review of judgment MUTTO v ILAHI BEGAM I L R 6 All 65

PORESH NATH MUNDUL v KHETTROMONEE DEBIA 20 W R 284

ALI AZIM v RAM MANICK ROY 12 W R. 195

(*Contra*) MOTEE CHAND v RADHAMADHUB CHAND 2 W R Mis 34

21 ——— *Civil Procedure Code 1882 s 623—Application of section* S 623 of the Civil Procedure Code applies to all cases whether they are disposed of in the presence of the parties or *ex parte* in the absence of the defendants

REVIEW—*contd*

1 ORDERS SUBJECT TO REVIEW—*concld*

HARI HUR PERSHAD NARAIN SINGH v BUDDU PERSHAD 13 C L R 254

22 ——— Order dismissing suit for default of prosecution—*Civil Procedure Code 1859 ss 119 376—Re admission of suit* The plaintiff s suit was dismissed in default of prosecution on the [illegible]
bana [illegible]
purpo [illegible]
adjou [illegible]
the r [illegible]
had [illegible]
monc [illegible]
been [illegible]
Code but might fairly be regarded as an application for review of judgment under s 376 and in that view the misconstruction by the Munsif of the nature of the application was not a sufficient reason for depriving the plaintiff of the relief which he not inequitably obtained by the order passed in it and the Court of first instance was directed to call on the plaintiff to pay the fee payable on his application for a review of judgment and in the event of his complying with the requisition to give effect to the Munsif s order for re admission of the suit RAM SUNDAR SINGH v RAM BANDHAN SINGH 7 N W 126

See also MAHOMED AZEEMOOLLAH v ALI BUKSH 5 N W 74

23 ——— Order for dismissal for default of appearance on order for local investigation [illegible]
the presenc [illegible]
gation A [illegible]
r cords had [illegible]
conduct the [illegible]
appeared the lower Court treated it as a case of default whereupon the petitioner made an application under s 376 Act VIII of 1859 *Held* that an application for a review was not the proper course in such a case *In re* KALEE MOHUN DOSS 17 W R. 70

2 POWER TO REVIEW

1 ——— Power of High Court to review or alter its own decree—*Civil Procedure Code 1882 s 623—Ground for review* The High Court has no power to alter its own decree except under the provisions of either s 206 or s 623 of the Code of Civil Procedure The ground of [illegible]

VELLANKI VENKATARAMA RAO I L R 24 Mad 1 L R 27 I A. 197

2 ——— Power where appeal is admitted by superior Court—*Civil Procedure Code 1859* Under the Code of 1859 a Judge was

REVIEW—*contd*

2 POWER TO REVIEW—*contd*

JUGGURNATH SINGH *v* AFZUL KHAN 17 W R 130

LALLMUN *v* MANICK CHUND 1 Agra 133

LUCAS *v* STEPHEN 9 W R 301

NARAYAN BIN SIDOJI *v* DAVUDBHAI VALAD FATEBHAI 9 Bom 238

3 ——— **Power of Judge to review order made in course of liquidation of company**—*Companies Act* (*VI of 1882*) *s 169* S 169 of Act VI of 1882 is not intended to refer to a case in which a Judge upon the discovery of fresh matter considers it expedient to pass a fresh order or to review an order passed by him *In re National Assurance and Investment Association Ex parte Munday 31 Beav 206* referred to MUSSOORIE BANK *v* HIMALAYA BANK I L R 16 All 53

4 ——— **Order of Revenue Commissioner setting aside sale**—*Public Demands Recovery Act* (*Beng Act VII of 1880*)—*Beng Act VII of 1868*—*Review of order setting aside sale* A revenue paying talukh was sold for arrears of dak cess under the Public Demands Recovery Act The sale was set aside on appeal by the Revenue Commissioner but on an application for review made to his successor the sale was confirmed and the purchaser took possession In a suit to recover possession of an 8 annas share of the talukh on the grounds among others that the order on review was passed without jurisdiction and without notice

s 566 for trial of the question of notice On the case coming back to the Appellate Court before another Judge he held the order on review to be *ultrâ vires* and the trial of the question of notice to be unnecessary The defendants preferred a second appeal against the last judgment *Held* that the provisions of the Code of Civil Procedure relating to reviews of judgment were not extended to proceedings under Bengal Act VII of 1868 and VII of 1880 and that in the present case the order passed on review confirming the sale was *ultrâ vires* and of no effect LALA PRAYAG LAL *v* JAI NARAYAN SINGH I L R 22 Calc 419

5 ——— **Power after admission and hearing of special appeal**—*Civil Procedure Code 1859 s 376* A Judge is right in refusing to entertain an application for review where a special appeal has been admitted tried and disposed of The words of s 376 Act VIII of 1859 special appeal shall have been admitted referred to cases which had advanced beyond the inchoate stage of appeals and in which it had been shown *primâ facie* that there were errors in law RAJ DHAREE LALL *v* MOHADEO SINGH 11 W R 511

6 ——— **Correction of clerical errors** A lower Appellate Court has a right to grant a review of its own judgment for the purpose of correcting a clerical error even after a special appeal from its decision has been heard and determined by the High Court A lower Appellate Court has no jurisdiction to review its own judgment so as to modify its substance as for example to alter an award of costs after a special appeal from its decision has been heard and determined by the High Court OOMANUND ROY *v* SUTTISH CHUNDER ROY 9 W R 471

7 ——— **Power of lower Appellate Court after dismissal of special appeal**—*24 & 25 Vict c 104 s 15* Upon the dismissal of a special appeal by the High Court the appellant in special appeal applied to the High Court for a

that the lower Appellate Court had no jurisdiction to admit the application for review *In the matter of the* PETITION OF JADUNATH MOOKERJEE 6 B L R 333

s c JODOONATH MOOKERJEE *v* PUNCHANUN MOOKERJEE 14 W R 438

See also In re GUNGA BISHEN SAHU 6 B L R 334 note

BROJONATH KOONDOO CHOWDHRY *v* JUMEEROONISSA BIBEE 7 W R 218

8 ——— **Power where one of several defendants has appealed**—*Application for review on behalf of other defendants* The preferring of an appeal against a decision by one defendant does not deprive another defendant of his right to apply for a review of the same decision with reference to s 376 Act VIII of 1859 BUNKOO LALL SINGH *v* BASSOOMUNISSA BIBEE 7 W R 166

9 ——— **Power to proceed with review where appeal is subsequently brought**—*Act VIII of 1859 ss 375 and 376* A Judge is bound to proceed with an application for a review of his judgment even though a petition of appeal has been filed subsequently to the application for review BHABAT CHANDRA MAZUMDAR *v* RAMGUNGA SEN B L R Sup Vol 362 5 W R 59

10 ——— **Power of inferior mofussil Courts to review judgments**—*Review before Civil Procedure Code 1859*—*Beng Reg XXVI of*

REVIEW—*contd*

2. POWER TO REVIEW—*contd*

1814 Whereas by the law in force previous to the Code of Civil Procedure the subordinate Courts could not review their judgment without the permission of a superior Court the Code removed that inability and the removal extended to suits past and pending as well as future A party petitioning after the Code of Civil Procedure came into force for the review of a judgment in appeal passed in 1849 is entitled to be governed by the terms of the old law (Regulation XXVI of 1814) which allows a review in respect to a decree from which no further appeal may have been admitted by a superior Court and a further appeal included both a second or special appeal and a summary appeal JOOGUL KISHORE SINGH v OOGUR NARAIN SINGH 8 W R 483

11 —————— The inferior Courts in the mofussil have no jurisdiction to review their own judgments except under the circumstances and with the limitations set forth in the Code of Civil Procedure BURRA FUKEER DOSS BERA v FUKEER DOSS BERA 20 W R 180

12 —— Power of Insolvency Court —*Insolvency Court Bombay—Jurisdiction* The Court for the Relief of Insolvent Debtors at Bombay has jurisdiction to review its own orders *In the matter of* THUCKER BHAGVANDAS I L R 4 Bom 489

13 ——— Power of Judge of mofussil Small Cause Court—*Mofussil Small Cause Courts Act (XI of 1865) s 21—Code of Civil Procedure (Act X of 1877) s 63 and Ch XLVII Sch II* The Judge of a mofussil Small Cause Court may grant an application for a review of judgment under the Code of Civil Procedure ISAN CHUNDER BANERJEE v LUCHUN GOPE KEMP v PREM NARAYAN SING I L R 5 Calc 699 5 C L R 539

14 ——— Application for re admission of appeal dismissed on failure to deposit costs of paper book—*High Court Rules Part II Ch VIII Rule 1 —Civil Procedure Code 1882 s 776* The appellant in an appeal from an original decree having failed to deposit the estimated amount of costs for the preparation of the paper book the appeal was dismissed under rule 17 of the High Court Rules Part II Ch VIII

Court was not an application for review of judgment and could not be disposed of by a single Judge of the High Court under s 627 of the Civil Procedure Code RAMHARI SAHU v MADAN MOHAN MITTER I L R 23 Calc 339

15 ——— Order dismissing appeal for default in depositing costs of paper book—*High Court Rules Part II Ch VIII Rule 17—Procedure to set aside order—Civil Procedure Code 1882 ss 623 and 626* A decree of a Division

decides the contrary is wrongly decided FATI MUNNISSA *alias* KANIZ FATIMA v DEOKI PERSHAD I L R 24 Calc 350

IKBAL HOSSAIN v DEOKI PROSHAD 1 C W N 21

16 ——— Decree properly made

decree was made on the 1st October 1887 by which it was declared that *K* s adoption was a condition precedent to his inheritance and that unless he was adopted he was not entitled to any part of the testator s property On the 22nd October 1894 *K* filed a petition of review stating that at the date of the decree he was a minor and had only recently viz on the 14th December 1894 attained the age of eighteen year He contended that there was

Courts in India after deciding an issue in which an infant party to suit is interested have no power to reserve to the infant the right of questioning such decision At all events a decree is not erroneous for not containing such a provision when the issue in which the infant is interested has been fully gone into and argued before the Court A decree passed against an infant properly represented is binding upon him like a decree passed against an adult but it is open to the infant to impeach such decree by a suit in cases where his guardian has been guilty of fraud or negligence in allowing the decree to be passed against him CURSANDAS NATHA v LADKAVAHU I L R 19 Bom. 571

17 ——— Dismissal of suit for default —*Civil Procedure Code 1882 ss 98 99 and 623—No application to reinstate suit—Application barred by negligence.* When a suit was dismissed for default under s. 98, Civil Procedure Code and the plaintiff neglected to make an application within thirty days from the date of dismissal to get the suit restored to the file —*Held* that the Court had no jurisdiction under s. 623 Civil Procedure Code

REVIEW—*contd*

2 POWER TO REVIEW—*contd*

to re instate the case where a person by his own negligence has allowed his rights under s 99 to be barred KOILASH MUNDAL *v* NABADWIP CHANDRA KAR 2 C W N 318

18 ——— **Dismissal of a suit for default under s 102**—*Civil Procedure Code (Act XIV of 1882) ss 102 103 and 623—Review of judgment without applying to re instate the suit under s 103 of the Code* When a suit was dismissed for default under s 102 of the Code of Civil Procedure and an application for review of judgment was made by the plaintiff without a previous application to have the order of dismissal set aside under s 103 of the Code —*Held* that the Court had jurisdiction to entertain the application for review of judgment *Koilash Mundal v Nabadwip Chandra Kar 2 C W N 318* distinguished RAJ NARAIN PURKAIT *v* ANANGA MOHAN BHANDARI I L R 26 Calc 598

19 ——— **Order for review**—*Civil Procedure Code 1882 s 626—Omission to record reasons for granting—Validity of order* An order intended to operate as an order for review is not invalidated by an irregularity in its form by reason of which it purports to be an order made on an application to set aside a decree and restore a suit for trial The provision in s 626 of the Code of Civil Procedure that a Judge granting an application for a review shall record with his own hand his reasons for such opinion is directory and an order is not necessarily invalidated by the fact that the reasons are not recorded, though there may be cases in which it is necessary in the interests of justice that the reasons should be recorded and in such cases the record would be essential to the validity of the order *Gyanund Asram v Bepin Mohan Sen I L R 22 Calc 734* referred to MANICKA MUDALIAR *v* GURUSAMI MUDALIAR I L R 23 Mad 498

20 ——— Power of Special Judge to

review an *ex parte* order made by him RAMCHANDRA NARAYAN KULKARNI *v* DRAUPADI I L R 20 Bom 281

21 ——— **Review of first Court s order**—*Dekkhan Agriculturists Relief Act (XVII of 1879) ss 53 73 and 74—Civil Procedure Code 1882 Application of—District Judge jurisdiction of—Assistant Judge jurisdiction of—Discretion of Court* An Assistant Judge having found that the defendants in a suit pending before him were not agriculturists the defendants presented a petition for review of that finding and in review the Assistant

before a District or Assistant Judge when sitting in revision under s 53 of Act XVII of 1879 is within his own discretion and the granting of a review on the ground of mistake as to the nature of a defendant s income is a reasonable exercise of such discretion BADARICHARYA *v* RAMCHANDRA GOPAL SAVANT I L R 19 Bom 113

22 ——— **Power of Special Judge to review his own decree**—*Dekkhan Agriculturists Relief Act (XVII of 1879) ss 53 73 and 74—Application of Civil Procedure Code 1882 to proceedings of Special Judge—Discretion of Court—Superintendence of High Court—Civil Procedure Code s 622* The Special Judge appointed under the Dekkhan Agriculturists Relief Act (XVII of 1879) (the defendant not appearing) reversed in revision under s 53 of that Act the decree of a Subordinate Judge and passed a decree for the plaintiff One of the defendants who it appeared had not been

notice of the former review On this subsequent review the Special Judge discovered that he

the Subordinate Judge The plaintiff then applied to the High Court under its extraordinary jurisdiction (s 622 of the Civil Procedure Code Act XIV of 1882) *Held* that in granting a re hearing the Special Judge had exercised a reasonable discretion with which the High Court could not interfere in its extraordinary jurisdiction. The Civil Procedure Code is not applicable to proceed

SING *v* KISANSINGH

23 ——— **Bengal Tenancy Act (VIII of 1885) ss 103 143**—*Rules framed under s 189 of the Bengal Tenancy Act—Whether proceedings under s 103 of the Bengal Tenancy Act are suits between landlord and tenant—Code of Civil Procedure (Act XIV of 1882)* Proceedings under s 103 of the Bengal Tenancy Act are suits between landlord and tenant within the meaning of s 143 by virtue of the rules framed under s 189 of that Act therefore the provisions of the Code of Civil Procedure relating to review of judgment are applicable to such proceedings ACHHA MIAN CHOWDHRY *v* DURGA CHURN LAW I L R 25 Calc 146 2 C W N 137

REVIEW—*contd*

2. POWER TO REVIEW—*concld*

24 ——— **Power to grant second review**—*Civil Procedure Code 1859* A Court has no jurisdiction to grant a second review of judgment on the application of the same party under the Code of Civil Procedure 1859 VENCAMA SHETTY *v* PAMOO SHETTY 5 Mad 323

25 ——— *First review not appealed from nor shown to be erroneous* A second

NASIRUDDIN KHAN *v* INDRONARAYAN CHOWDHRY B L R Sup Vol 367 5 W R 93 1 Ind Jur N S 147

26 ——— **Admission of review after prior order rejecting it**—*Act VIII of 1859 ss 376 377 378 and 380—Order rejecting review* An order rejecting a review is not conclusive and the Court may in the exercise of its discretion admit a review even after a prior order rejecting it SETON KARR, J differed. NASIRUDDIN KHAN *v* INDRONARAYAN CHOWDHRY B L R Sup Vol 367 1 Ind Jur N S 147 5 W R 93

KASHEENATH ROY *v* LUCKHEENARAIN CHATTERJEE W R 1864 91

FUKHEEROODEEN *v* KALACHAND SIRDAR 1 W R 287

NEEDOO MONEE DOSSEE *v* SARODA MONEE DOSSEE DOORGANATH SHOOR *v* SOOKHMY BISWAS 2 W R 61 62

PASH BEHAREE SINGH *v* KOONJ BEHAREE SINGH W R 1864 Mis. 31

ASUDOODEEN HYDER *v* ABDOOL KUREEM 6 W R 110

27 ——— **Second application for review**— *Final* —*Civil Procedure Code (Act VIII of 1859) s 378—Civil Procedure Code (Act XIV of 1882) ss 623 629* There is nothing in the Civil Procedure Code (Act XIV of 1882) which

in s. 629 of Act XIV of 1882 bears the same mean

Vol. 367 GOBINDA RAM MONDAL *v* BHOLANATH BHATTA I L R. 15 Calc 432

3 FORM OF AND PROCEDURE ON APPLICATION

1. ——— **Form of application.** Applications for review of judgment should set forth concisely the grounds of objection to the decision of which a review is sought without argument or narrative and such grounds should be numbered consecutively MAHADAJI RAMCHANDRA MULE *v* VITHAL VISHVANATH 1 Bom. 185

2. ——— **To what Court to be made**—*Review of judgment of Sudder Court rejecting*

3 ——— *Presentation of application to munsarim instead of Judge* On the 26th January 1889 an application was presented to the Munsarim of the District Judge's Court for review of a judgment passed on the 19th December 1888 The application was insufficiently stamped and the Munsarim endorsed on it stamp insufficient On this a dispute ensued between the pleader for the applicant and the Munsarim as to the sufficiency of the stamp On the 25th April 1889 the deficiency pointed out by the Munsarim was made good On the 26th May the Judge admitted the application on the applicant paying the Court fee payable on an application pre

I L R. 12 All. 67

4. ——— **Application for review by minor**—*Civil Procedure Code 1859 ss 376 377* An infant is as much bound by a judgment in his own action as if of full age and if an application for review is made on his behalf it must be subject to the conditions of the 376th and 377th sections of the Code of Civil Procedure MODHOO SOODUN SINGH *v* PRITHEE BULLUB PAUL 16 W R 231

5 ——— **Admission of review without notice** A proceeding admitting a review without notice to the opposite party as required by s 378 of the Code of Civil Procedure 1859 is wholly vitiated by such defect and not binding on that party GOLABOO *v* PAMDYAL SINGH 8 W R. 304

6. ——— **Application for review**—*Copy of judgment decree or order sought to be reviewed—Civil Procedure Code 1882 ss 411 and 625—Limitation Act (XV of 1877) s 12* It is not necessary that an application for review of judgment should be accompanied by a copy of the decree order or judgment sought to be reviewed. WAJID ALI SHAH *v* NAWAL KISHORE I L R. [illegible]

4. REVIEW BY JUDGE OTHER THAN [illegible] IN ORIGINAL CASE

1 ——— **Proper Court to review judgment**—*Power of one Judge* [illegible]

REVIEW—*contd*

4 REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE—*contd*

judgment As a general rule the Court which pronounces a judgment is the only Court that can review that judgment PAM NATH v GOWHUR 2 N W 230

2 ———— **Hearing of application by different Judge when allowable**—*Delay* A review was intended to be a consideration of the same subject by the same Judge as distinguished from an appeal which is a hearing before another tribunal. A review therefore should be presented with as much expedition as possible with a view to the re hearing before the same Judge The exceptions to this rule are allowable only *ex necessitate* that is from death of the original Judge or some unexpected and unavoidable cause which prevents him from hearing the review The causes accounting for delay in applying for a review must to justify the grant of it be of grave importance MOHESHUR SINGH v GOVERNMENT OF INDIA 3 W R P C 45 17 Moo I A 283

See SURUT SOONDUREE DEBIA v PAJENDUR KISHORE ROY CHOWDHRY 9 W R 125

3 ———— **Power of Judge to review judgment of predecessor**—*Civil Procedure Code 1859* 379 The law makes no distinction between the power of a Judge who originally heard a case and subsequently has an application for review before him and the power of a Judge subsequently succeeding to the same office who has such an application before him and is not barred by the circumstances stated in s 379 Act VIII of 1859 from considering that application AMAN ALI CHOWDHRY v KASIM ALI 6 W R 316

4 ———— **Power to review judgment of predecessor**—*Ground of review* A lower Court acts without jurisdiction if it admits a review of its predecessor s judgment unless either the [illegible]

PURMESSUREE NARAIN SINGH v POMEEZOODDEEN AHMED 5 W R 226

SREENATH CHOWDHRY v KRITATTOMOYE DOSSEE 18 W R 286

5 ———— *Exercise of* [illegible]

[illegible]UNEE DOSSEE 18 W R 198

6 ———— *Civil Procedure Code 1859 ss 376 378—Power of Judge to review* [illegible]

and restricted by the particular words and it is only the discovery of new evidence or the correction of [illegible] or some [illegible]scription [illegible] w ROY [illegible] R 438

See In the matter of the petition of MATHRA PARSHAD I L R 1 All. 296

BANEE MADHUB BOSE v KALI CHURN SINGH ROY 24 W R 387

MUNEEROODEEN v KADIR BUKSH 24 W R 410

WOLFUT v NUSRUTOOLLAH 25 W R 48

7 ———— *Ground for review—Civil Procedure Code 1859 ss 376 378* Where a Judge allowed a review of his predecessor s [illegible] appeared to [illegible]

Act VIII of 1859 relating to review of judgment— [illegible] other good and sufficient reason (s 376) and otherwise requisite for the ends of justice" (s 378)—confers a wide jurisdiction this jurisdiction could not be held to authorize a Judge to revise and reverse his predecessor s decree on the ground above mentioned. If the review is asked for in reference to the conclusions of fact drawn from the evidence it should not be granted simply upon the same evidence *Reasut Hossein* v *Abdoollah I L R 2 Calc 131* discussed. PAMAN v KRISNATHA THARAKAN I L R 2 Mad 10

8 ———— **Power of Judge to review case after transfer to his file**—*Order dismissing suit* A Judge cannot by transferring a case to his own file confer on himself the power to review an order of dismissal pronounced by a Principal Sudder Ameen GOLAM ESHA v HURRISH CHUNDER MOOKERJEE W R 1864 Mis 29

9 ———— **Case transferred to another Court on abolition of original Court**—*Civil Procedure Code 1882 ss 623 624* S 624 of the Code of Civil Procedure must be read as a proviso to s 623 *Held* therefore that when a Court had been abolished and its business transferred to a [illegible] another Judge such Judge [illegible] for review of [illegible] for by s. 624 [illegible]

I L R 8 Mad 567

10 ———— **Application presented to original Judge**—*Grant of application Notice of—Hearing by successor—Civil Procedure Code (Act XIV of 1882) s 624* An application for review of judgment upon a ground other than those mentioned in s 624 of the Civil Procedure Code if presented to the Judge who delivered it and who thereupon directs notice to be given to the oppo-

REVIEW—*contd.*

4. REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE—*contd*

site party may be heard and disposed of by his successor *Pancham v Jhinguri I L R 4 All 278* dissented from KAROO SINGH v DEO NARAIN SINGH I L R 10 Calc 80 13 C L R 261

11 ——— *Civil Procedure Code (Act XIV of 1882) s 624—Execution case struck off in absence of decree holder and without giving him notice of day fixed for hearing it—Ground for review by another Judge—Practice* In the absence of the decree holder and without giving him notice of the day fixed for the hearing of the darkhast the Subordinate Judge struck off an execution proceeding *Held* that under s. 624 of the Civil Procedure Code an application to review the order could not be heard by the successor of the Judge who made it KHEMA KANUJI v DHANJI FRAMJI I L R 14 Bom 101

12 ——— *Civil Procedure Code (Act XIV of 1882) ss 624 626 (c)—Civil Procedure Code Amendment Act (VII of 1888) s 59—Notice of hearing review* An application for review of judgment upon grounds other than those mentioned in s. 624 of the Code of Civil Procedure (as amended by Act VII of 1888) if presented to the Judge who delivered it and who has thereupon directed notice to be given to the opposite party may be heard and disposed of by his successor GANPAT v JIVAN I L R 16 Bom 603

13 ——— *Civil Procedure Code 1882 s 624—Application for review heard by successor to Judge who passed the decree* When an application for review is presented to the Judge who made the decree and he thereupon issues notice to the other side the application is made to him within the meaning of s. 624 of the Civil Procedure Code and may be heard and disposed of by his successor in office *Karoo Singh v Deo Narain Singh I L R 10 Calc 80* followed. FAZEL BISWAS v JAMADAR SHEIK I L R 13 Calc 231

14 ——— *Civil Procedure Code 1877 ss 623 624—To whom application may be made—Meaning of made* The term made in s. 624 of the Civil Procedure Code does not mean presented but means and includes the hearing and determination of the application for review of judgment *Held* therefore where an [illegible]

presented to the District Judge who delivered the judgment and such Judge was transferred before he could entertain such application that his successor was not competent to entertain it. PANCHAM v JHINGURI I L R 4 All 278

15 ——— *Civil Procedure Code (Act XIV of 1882) ss 623 and 624— New and important matter —Money paid into Court under a decree to abide the result of an appeal to the Privy Council from a former decree on which it is based—Application to recover the money on the reversal of the former decree* By a deed of sale dated 9th May 1858 certain lands belonging to a minor talukhdar were sold by his mother and natural guardian to the plaintiff's father The lands were described as nakri (*i e* held free of assessment) and the sale deed provided that in case the vendee were at any future time compelled to pay assessment to Government in respect of the nakri lands the vendor would recoup the vendee for any payment so made In 1872 Government for the first [illegible]

The High Court passed a decree in plaintiffs favour in March 1883 Against this decree the talukhdar appealed to the Privy Council. In April 1883 the plaintiffs filed a second suit on the same cause of action to recover from the talukhdar the amount of assessment levied on the nakri lands for the years 1877—82 In this suit a decree was passed against the talukhdar solely on the strength of the High Court's decree in the former suit In execution of this decree the plaintiffs attached the talukhdar's property Thereupon the talukhdar deposited in Court the amount due under the decree and applied to the Court for removal of the attachement and for stay of further proceedings in execution pending the disposal of his appeal to the Privy Council in the former suit This application was granted. In March 1887 the Privy Council decided the appeal in favour of the talukhdar and reversed the High Court's decree Thereupon the talukhdar applied for a refund of the money he had deposited in Court. The Court suggested that his proper remedy was by an application for review of the decree in the second suit The talukhdar accordingly presented a petition of review This petition [illegible]

Held that the District Judge had jurisdiction to [illegible]

[illegible] I L R 15 Bom 500

16 ——— *Code of Civil Procedure (Act XIV of 1882) ss 623 627—Practice* A second appeal was decided on the 1st June 1888 in favour of the respondent by two Judges of the High Court. On the 24th July 1888 an application for review was filed with the Registrar Various

REVIEW—*contd*

4 REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE—*concld*

reasons prevented the two Judges from sitting together until the month of March 1889 On the 6th March the matter came up before them when a rule was issued calling upon the other side to show cause why a review of judgment should not be granted being made returnable on the 28th March 1889 On the 28th March one of the two Judges had left India on furlough and the rule was taken up heard and made absolute by the other sitting alone *Held* that he had jurisdiction to hear the rule AUBHOY CHURN MOHUNT *v* SHAMONT LOCHUN MOHUNT I L R 16 Calc 788

17 ———————— *Civil Procedure Code s 624—Grant of application for review by successor of original Judge* An application for review of judgment was presented on other grounds than those specified in s 624 to a District Munsif *who had delivered the judgment and he thereupon* ordered the decree to be produced The District Munsif having resigned his successor heard and determined the application *Held* that it was not competent to the District Munsif who had not *delivered the original judgment to entertain the* application for review CHERU KURUP *v* CHERU KANDA KURUP I L R 12 Mad 509

18 — N W P Rent Act (XII of 1881) s 185—*Civil Procedure Code 1882 s 623 S 623 and the following sections of the Code of* Civil Procedure which deal with reviews of judgments have no application to suits and proceedings under the N W P Rent Act 1881 Where s 185 of Act XII of 1881 applies it is only in cases where *there is no right of appeal that a review can be* granted and that only on the special ground provided for in the Act itself WAZIR SINGH *v* KISHORI RAWANJI I L R 19 All 522

5 GROUNDS FOR REVIEW

1 ———— Good and sufficient reason —*Change of incumbent of office of Judge* A Court has the power for any reason that it may consider

change (during the ninety days) of office incumbents. MONTOORA *v* ABLAK ROY II W R 197

2 ———— Unfairness of decision—*Power to admit review* When once a Civil Court has passed a final decision between the parties it loses jurisdiction over the suit except for the purposes of executing the decree and it cannot hold a new trial of the same unless for some reason

3 ———— Correction of error or omission—*Civil Procedure Code 1859 ss 376-378*

REVIEW—*contd*

5 GROUNDS FOR REVIEW—*contd*

PINHEY J—A review may be admitted on any ground whether urged at the original hearing of the appeal or not whenever the Court considers that it is

omission

justice

Mookerjee

VISHRAM MAWAJI I L R 1 Bom 54

4 ———————— The ground of review of a decree must have been existing at the time of the decree s. 623 not authorizing a review of a decree

certain ever

RAO *v* VEL

L R 27 I A 197

5 ——— Error in law An error on a point of law is a ground for a review of judgment KOH POH *v* MOUNG TAY 10 W R 143

6 ———— Omission to try material issue—*Act VIII of 1859 s 376* The omission of a Court to take into consideration a material issue is a sufficient ground to admit an application for review of judgment BIHARI LAL NANDI *v* TRAI LAKHOMAYI BARMANI 3 B L R A C 346 12 W R 223

HUSSUN ALI CHOWDHRY *v* NASIYOODDEEN 16 W R 134

WISE *v* HURO LALL GIREE GOSSAIN 16 W R 150

7 ———————— *Civil Procedure Code (Act X of 1877) s 623—Reasons for applying for review—Error in fact or law* A Divisional second

dure Code of that Code relating to review of judgment on the grounds reasons for R. 5 All 14

8 ———— Omission to decide issue The absence of a formal finding on an issue tried and decided by a Court of first instance is not an error calling for review of judgment in the High Court. SABAPATHI *v* SUBRAYA I L R 3 Mad 58

REVIEW—*contd*

5 GROUNDS FOR REVIEW—*contd*

9 ———— **Omission to consider effect of documentary evidence**—*Civil Procedure Code 1859 ss 376-378* Where a Judge has in deciding a ca e omitted to consider the effect of important documentary evidence filed with the plaint which was not taken issue upon and which materially affects the merits of the ca e he is com petent under ss 3,6 to 378 of Act VIII of 1859 to grant a review and re hear the ca e MAHADEVA PAYAR v SAPPANI I L R 1 Mad 396

10 ———— **Erroneous decision on im material point.** *Held* that when an issue which decides the case on the merits has been found in favour of either party a review of judgment will not be granted merely because there has been an erroneous decision on a point affecting an i ue which in con equence of the finding has become immaterial. PAKUB DOSS v SOORAJ MULL Bourke O C 131

11 ———— **Summarily discrediting do cumentary evidence without inspection**—*Report of Commissioner to make local inquiry* An *application for a review of judgment was made to a* Court of appeal on the ground that certain very material documents on which the Court of first instance had relied had been summarily discredited without being inspected by the Court of appeal

was a mohurrir of the Court of first instance *Held* that in granting the review applied for the lower Appellate Court had not exceeded the discretion vested in it by law ABDUL RAHIM v RACHA RAI I L R 1 All 363

12 ———— It may be com petent to a Judge to entertain an application for a review although such application contains no di tinct allegation of an error in law in the orders sought to be reviewed nor any suggestion of the discovery of new evidence *In the matter of the petition of* ABDOOLLAH PEASUT HOSSEIN v ABDOOLLAH

I L R 2 Calc 131 L R 3 I A 221

13 ———— **Omission to examine wit ness**—*Objection not taken on appeal.* That the lower Court should have improperly neglected to examine a witness is not a ground for a review of judgment if the objection was not taken when the ca e was heard by the Court in regular appeal. MUNSHAD BIBEE v LUCHMEEPUT SINGH 9 W R 129

14 ———— **Error in not remanding**

PAUL 9 W R 589

15 ———— **Further consideration of evidence**—*Probability of different conclusion.* It is not a proper ground for granting a review of judgment that a Judge by going through the evid ence a second time might arrive at a different con clusion CHUNDER CHURN AUGORODANY v LOO DUNRAM DEB 25 W R 324

16 ———— **Opportunity to re argue case**—*Chance of altering decision* A review cannot be given merely for the purpose of allowing the

17 ———— **Error in decision**—*Addi tional evidence* Where a Subordinate Judge ad mitted a review on the representation of plaintiff that he (the Jud e) had made a mistake as to the subject of a certain dagh in a Government hala badee chitta the applicant filing with his petition for review another chitta and other evidence for the purpose of convincing the Court that it had made an error —*Held* that an error of this kind wa sufficient to found the juri diction of the Court *to entertain the review* GUNESH PAH SURMAH v ROHINEE DASSEE 14 W R 236

18 ———— **Erroneous refu al to admit additional evidence** Where a Judge on appeal declined to admit additional evidence on the

19 ———— **Decision of special appeal on ground not taken in lower Courts**—*Re view of special appeal* It is not a sufficient ground for a review of judgment passed on special appeal that the point which was then raised and on which the Court s deci ion was ba ed was one not raised in either of the Lower Courts and especially as in this case where the question was pointedly raised in the special appeal and the respondent had ample time to prepare himself to meet the statement therein COWELL v MOHADEV MUNDUL 17 W R 182

20 ————**Necessity of review for ends of justice**—*Omission to raise issue* A case hav ing been remanded for the trial of an issue under

21 ———— **Later Privy Council deci sion**—*Facts not fully placed before Court* A review cannot be granted on the ground that if the facts

REVIEW—*contd*

5 GROUNDS FOR REVIEW—*contd*

had been better or more fully placed before the Court the judgment would have been different or even on the ground of a subsequent decision of a question of law by the Privy Council in another suit where there has been no discovery of new evidence such as is contemplated in s 376 of Act VIII of 1859 JADUB RAM DEB v RAM LOCHUN MUDDUCK 19 W R 189

22 ——— Subsequent Full Bench ruling A lower Court admitted a review of judgment on the ground that the decision of a Divisional Bench of the High Court which it had followed in that judgment had subsequently been overruled by the Full Bench *Held* that the lower Court was not authorized to admit a review of judgment on such ground AMRIT LAL v MADHO DAS I L R 6 All 292

23 ——— New contrary ruling—*Civil Procedure Code 1882 s 623* Although the discovery of a new ruling may not entitle a party to a review of judgment yet when a Court is satisfied that its judgment has proceeded upon an erroneous view of the law the provisions of s. 623 of the Code of Civil Procedure allow a review of judgment VELLAYA v JAGANATHA I L R 7 Mad 307

24 ——— Different decisions of Division Benches That one Division Bench of the High Court has decided a point at variance with the decision of another Division Bench is no reason for granting a review of judgment NOBEEN KISHEN MOOKERJEE v SHIB PERSHAD PATTUCK 9 W R 161

FERGUSSON v GOVERNMENT GOVERNMENT v FERGUSSON 9 W R 158

25 ——— Production of authority on law not before produced—*Civil Procedure Code 1859 s 376—Error in law* The production of an authority which was not brought to the notice of the Judge at the first hearing and which lays down a view of the law contrary to that taken by the Judge is not a sufficient ground for granting a review ELLEM v BASHEER I L R 1 Calc 184 24 W R 382

26 ——— Errors of law—*Law Mistaken view of—Civil Procedure Code (Act XIV of 1882) s 623* A review of judgment may be granted (if it is necessary for the ends of justice that the judgment should be reviewed) where there is an error of law on the face of the judgment or where the decision of the Court has proceeded upon a mistaken view of the law *Rewa Mahton v Ram Kishen Sing I L R 14 Calc 18 L R 13 I A 106* referred to In this case without deciding whether there was or not any error in law the application for review of judgment was refused on the [illegible] any danger [illegible] *the matter* [illegible] SHARUP [illegible] I L R 14 Calc 627

REVIEW—*contd*

5 GROUNDS FOR REVIEW—*contd*

27 ——— Subsequent publication of report of case—*Case not brought forward at hearing* Where a review of judgment was applied for on the ground of the subsequent publication of the report of a High Court decision on a point of law which governed the case but which had not been urged at the previous hearing it was considered that the applicant was not to blame for his omission to bring the decision to the notice of the Court at the first hearing and the application for review of judgment was granted ACHUTA v MAMMAVU I L R 10 Mad. 357

28 ——— Any other sufficient reason'—*Civil Procedure Code 1882 s 623—Power to grant review* S 623 gives a more extensive right of review than existed in England, where a review could only be obtained by showing that there was apparent on the record error in law or that new and relevant matter had been discovered after the judgment which could not possibly have been used when the judgment was given or that judgment was obtained by fraud. The words or for any other sufficient reason mean that the reason must be one sufficient to the Court or Judge to whom the application for review is made and they cannot be held to be limited to the discovery of new and important matter or evidence or the occurring of a mistake or error apparent on the record. Whether [illegible]

or set aside his order must be implied if not expressed *Fritz v Hobson L R 14 Ch Div 54?* referred to On the 29th July 1886 an application was made by a party against whom the High Court on second appeal had passed a decree dated the 18th March 1886 for review of judgment On the 28th August the applicant made a further application that execution of the decree might be stayed pending the determination of the application for review and an order was passed *ex parte* granting [illegible]

review of judgment and no order for stay of execution pending such review *Held* that the Court had power under s. 623 of the Code to review the *ex parte* order of the 28th August and that such order had been made without jurisdiction and ought to be reviewed. *Held* that having regard to the circumstances that the order of the 28th August was made without jurisdiction and upon an *ex parte* application of which the opposite party had no notice and interfered perhaps indefinitely with his right to obtain the money in Court under the final and unappealable decree

REVIEW—*contd*

5 GROUNDS FOR REVIEW—*contd*

in his favour as to which no application for review had been granted and that the application for review of judgment was made after the statutory period of ninety days had expired, and contained no explanation of the delay sufficient reason for reviewing the order of the 28th August had been shown AMIR HASAN v AHMAD ALI

I L R 9 All 36

29 ———— *Civil Procedure Code s 623—Omission to serve notice of hearing of appeal on applicant—Practice—Notice to show cause—Right to begin* An appeal which was referred to the Full Bench for disposal was heard and determined by the Full Bench and judgment given in

at the hearing before the Full Bench was due to a mistake which had been made in not serving him with notice of the reference *Held* by the Full Bench that under the circumstances the applicant's absence at the hearing came within the words any other sufficient reason in s 623 of the Civil Procedure Code and the review should be granted and the appeal re heard Upon the hearing of an application for review of judgment upon which an

begin GHANSHAM SINGH v LAL SINGH

I L R 9 All. 61

30 ———— **Question of general commercial importance**—*Special ground* Where the point sought to be raised in review had not been

but is one of great general commercial importance and under the circumstances and on the very special grounds I have mentioned we think that the review ought to be granted SULLEMAN HUSSEIN v NEW ORIENTAL BANK CORPORATION

I L R 15 Bom 287

31 ———— **Application for review of an order contrary to law**—*Attachment of person in execution of decree—Liability of married woman—Waiver* R as surety for her husband joined with him in executing a bond for R90 In a suit brought upon the bond a decree was passed

she was committed to jail. Subsequently however she applied to be declared an insolvent but her application was rejected. She then claimed to be released on the ground of her coverture The Judge rejected her application as being too late On reference to the High Court —*Held* that her

REVIEW—*contd*

5 GROUNDS FOR REVIEW—*contd*

application for release was virtually an application for review of the order for her imprisonment on the ground that it was contrary to law that her mere omission to take the objection at the time of her arrest could not be regarded as a waiver of her right of exemption from arrest and having regard to the nature of the right claimed it was one which the Court could not properly decline to consider on review however late the application might have been *In re the petition of* PADHI

I L R. 12 Bom. 228

32 ———— **Erroneous application of s 575 Civil Procedure Code**—*Civil Procedure Code s 623* One of the cases to which s 575 of the Code does not apply is where a preliminary objection being taken to the hearing of a first appeal before the High Court on the ground that the appeal is time barred the Judges of the Division Bench differ in opinion as to whether the appellant has shown sufficient cause within the meaning of s. 5 of the Limitation Act (XV of 1877) for not presenting the appeal within the prescribed period. The decision of such a preliminary objection is not a hearing of the appeal but precedes the hearing or determines that there is no appeal which the Court can hear or decide Where such a preliminary objection is allowed it cannot be said that the Court which by reason of the Limitation Act has no jurisdiction to hear the appeal should nevertheless affirm the decree of the Court below In the case of such a preliminary objection and such a difference of opinion (the Bench being equally divided the opinion of the senior Judge should under s 27 of the Letters Patent prevail *Appaji Bhivrav* v *Shivlall Khubchand I L R 3 Bom 204* and *Girdharji Maharaj Tikait* v *Purushotum Gossami I L R 10 Calc 814* distinguished Where in such a case the provisions of the second paragraph of s 575 of the Code were erroneously applied and the judgment of the junior Judge holding that the appeal should be dismissed as time barred prevailed and the Court on appeal under s 10 of the Letters Patent affirmed such judgment —*Held* that under the circumstances there was a mistake or error apparent on the face of the record and that there was sufficient cause for granting a review of the Court's decree under s. 623 of the Code HUSAINI BEGAM v COLLECTOR OF MUZAFFARNAGAR

I L R 11 All 176

33 ———— **Production of new document.** The objection to the admission of a review of judgment on the strength of a new document

34. ———— **Reversal of decree on which decision was based.** Where claims for rent were decreed by a Deputy Collector on the basis of a decree for a kabuliat which latter decree was subsequently set aside the proper remedy was

REVIEW—*contd*

5 GROUNDS FOR REVIEW—*contd*

an application to the Deputy Collector for a review of his decision. MOORAREE MOOBAJIM *v* MAHOMED AKMAL 22 W R 161

35 ——— Discovery of new evidence —*Grounds for admission of review in special appeal* The High Court has no authority to admit a review of a judgment passed in special appeal merely on the ground that new evidence to prove a fact has been discovered. BHYRUB NATH DYE *v* KALLY CHUNDER CHOWDHRY 16 W R 112

Ex parte BASHIYAGARULU NAYADU 1 Mad 254

JACKAMMAL *v* PALNIAPPA CHETTY 5 Mad 464

PANCHANAN MOOKERJEE *v* RADHA NATH MOOKERJEE 4 B L R A C 213

36 ——— *Special Judge power of to review his own order on ground of discovery of fresh evidence—Dekkhan Agriculturists Relief Act s 53* The Code of Civil Procedure is not applicable to proceedings before the Special Judge under the Dekkhan Agriculturists Relief Act (XVII of 1879) The Special Judge has therefore no jurisdiction to grant a review of a decree or order once made by him on the ground of the discovery of new evidence BABAJI *v* BABAJI I L R 15 Bom 650

37 ——— Discovery of fresh evidence —*Evidence showing want of jurisdiction—Ground of review* As a general rule the discovery of new evidence is not a ground for the admission of review of a judgment passed in special appeal *Quære* Whether this is so when such new evidence might affect the jurisdiction of the Court which tried the case When new evidence is discovered the proper course for the appellant to adopt is to ask leave to withdraw his special appeal and to apply to the lower Court for a review of its judgment NANABHAI VALLABHDAS *v* NATHABHAI HARIBHAI 9 Bom 89

PANDURANG SADASHIV *v* MORO VASUDEV 6 Bom A C 68

38 ——— *Proof that evidence was not before available* Before a review can be granted upon the ground of the discovery of new matter it must be stated in the petition and proved that the new matter was not within the applicant s knowledge or could not be adduced at the time when the decree was passed. DWARKA NATH CHOWDHRY *v* KISHENLALL CHOWDHRY Marsh 553 2 Hay 650

RADHEY KOONWER *v* AJOODHYA PANDEY 3 Agra 69

NUBO KISHORE BISWAS *v* JADUB CHUNDER SIRCAR 20 W R 426

39 ——— *Act VIII of 1859 s 376—Proof of alleged ground of review* A review of judgment under s. 376 of Act VIII of 1859 on the ground of discovery of new evidence not within the applicant s knowledge at the hearing of the case should not be admitted without proof of the truth of the ground alleged. UMRAO THAKUR *v* GAKUL MUNDAL 8 B L R Ap 34 16 W R 7

NOLITA MOHAN ROY CHOWDHRY *v* DINONATH MOOKERJEE 13 B L R 427 note

KHELUT CHUNDER GHOSE *v* PRANKISTO GHOSE 11 B L R 428 note 13 W R 461

NAFFAR CHAND PAL CHOWDHRY *v* SANDES 8 B L R Ap 35 note 10 W R 432

RAMDHAN CHUCKERBUTTY *v* JAINARAYAN PANJA 8 B L R Ap 36 note 12 W R 536

SITANATH GHOSE *v* SHAMASHUNDARI DASI 8 B L R Ap 37 note 14 W R 26

NUDARCHAND BHOOYA *v* PEEDOY MUNDUL 11 B L R 424 note 17 W R 458

SHUMSHEIR ALI KHAN *v* RAM CHUNDER COOTTO 2 W R 174

Otherwise the application will be refused. RAKUB DOSS *v* SOORAJ MULL Bourke O C 131

JHUBHOO SAHOO *v* JUSODA KOER 17 W R 230

AMFITRAV P KOKDE *v* MANAJI J JAGTAP 3 Bom A C 49

BROJENDRO COOMAR ROY CHOWDHRY *v* WISE 19 W R 130

NISSA BIBEE *v* ABDOOR RUHMAN 18 W R 413

40 ——— *Civil Procedure Code 1859 s 376* During the pendency of a suit for rent a plaintiff applied for postponement on the ground that he was unable to obtain a copy of a document which he had applied for from the Collectorate The Munsif refused postponement and gave him a modified decree The plaintiff subse[illegible] ment and a decree [illegible] that the [illegible] because [illegible] was pre[illegible]e of the [illegible] properly [illegible] Coos [illegible] admitted under Act [illegible] 22 W R 446 DYAL ROY *v* DEKA NOONYA

41 ——— *Nature of evidence—Civil Procedure Code 1859 s 376* The new evidence referred to in s. 376 Act VIII of 1859 is evidence that would probably alter the decision of the Court The affidavit on which an application for review is grounded must state what the new evidence to be relied on is in such an affidavit no reliance can be placed on a statement of belief of good defence on the merits but the fact to be relied on as such must be set out DURGA CHURN DASS *v* HURRY BABOO Bourke O C 115

42 ——— *Fresh evidence Nature of requisite for review* Where new evidence is adduced in an application for review it need not be *per se* sufficient to show that the previous

REVIEW—*contd*

5 GROUNDS FOR REVIEW—*concld*

deci ion is wrong or such as to cause an over mastering balance of evidence If there is sufficient ground for receiving the new evidence the ca e is to be heard as if it were being originally heard with the materials then before the Court SAHEBJAN BIBEE v SUFDUR ALI **22 W R 288**

43 ——————— *Civil Procedure Code 1882 s 623—Review of judgment on second appeal—Alleged discovery of new and important documentary evidence—Ground which could not be relied on on second appeal* In a suit on a mortgage it was held by the lower Appellate Court and by the High Court on second appeal that the properties comprised therein were under attachment at the time of its execution and that it was accordingly void under the Civil Procedure Code s 276 as against the claims of judgment creditors enforceable under the attachment The plaintiff who was the appellant on second appeal sought a review of the judgment pronounced therein on the ground of the di covery of new and important documentary evidence from which it would appear that the properties in question were not under attachment

44. ——— **Error in adjudication of costs**—*Other ground for application untenable—Civil Procedure Code 1877 s 206* When an application for a review of judgment is made upon several grounds one of which refers only to the question of adjudication of costs and the Court to whom the application is made holds all the other grounds to be untenable but is of opinion that there has been a clerical mistake in that part of its order or judgment which refers to costs it may reject the application ab olutely and permit the applicant to apply under s 206 of the Civil Procedure Code 1877 for a rectification of the clerical mistake JOYKISHEN MOOKERJEE v ATAOOR POHOMAN **I L R 6 Calc 22 8 C L R 575**

45 ——————— In granting a review the Court should not travel beyond the grounds mentioned in the application for review PURNA CHANDRA SARKAR v NIL MADHUB NANDI (1901) **5 C W N 485**

46 ——— **Grounds of appeal**—*Review of judgment—Appeal from order granting a review* When an application for review of judgment has been granted for any other sufficient reason the sufficiency or otherwise of the reason for granting it is not a ground of appeal within the meaning of s. 629 of the Code of Civil Procedure *Per* RICHARD J—But the fact that the Court fee on the plaint at first held to be inadequate is afterwards found to be sufficient is a good ground for granting a review of judgment. ALI AKBAR v KHURSHED ALI (1905) **I L R 27 All. 695**

REVIEW—*contd*

6. REVIEWS AFTER TIME.

1 ——— **Power to grant review after time** A Judge has power to grant a review after the lapse of the ninety days within which the application ought to be made RAMGUTTEE DOSS v GHOLAM AHMED KHONDKAR **W R F B 84**

2 ——————— *Just and reasonable ground for delay* A Court has no jurisdiction to entertain an application for review after the lapse of ninety days of the judgment to be reviewed unless just and reasonable cau e for the delay be given SHAMA CHURN CHUCKERBUTTY v BINDABUN CHUNDER ROY **B L R Sup Vol. 892 9 W R 181**

MAHOMED GAZI CHOWDHRY v DULLAB BIBI **5 B L R 318 note 11 W R 22**

KASHEENATH ROY v LUKHEENARAIN CHATTERJEE **W R 1864, 91**

JHUBHOO SAHOO v JUSADA KOER **17 W R 230**

FAKIRA v BASAPA MAHADAN SHETTI **8 Bom A C 234**

3 ——————— *Petition for correcting decree—Just and reasonable ground for delay* A petition for the rectification of a decree is not different from an application for a review when the object of the rectification is to alter the decision of the Court and such a petition cannot be received

4 ——— **Improper grant of review after time**—*Act VIII of 1859 s 377* Where a party applying for a review of judgment after the expiry of the period of ninety days allowed by s 377 Act VIII of 1859 had not as required by that section shown any just and reasonable cause for not preferring his application within the prescribed period the order admitting the review was held to have been improperly granted and was set a ide with all subsequent proceedings thereon LUCHMUN SINGH v TIRBANI BAKSH **14 B L R 373**

s c LUCHMUN SINGH v SHUMSHERE SINGH **L R 2 I A 58**

LULEETMOHUN ROY CHOWDHRY v SOWTRA BEEBEE **10 W R 42**

GOUR PERSHAD SURMAH v ANJUB ALI **24 W R 294**

FAKIRA v BASAPA MAHADAN SHETTI **8 Bom. A C 234**

GUNGANARAIN ROY v GOONOMONEE **8 W R 184**

BETTS v BONSI MUNDUL **25 W R 343**

KRISTO GOBIND JAORDAR v JUGOBUNDHOO SIRCAR **12 W R 94**

SREENATH CHOWDHRY v KRITATTOMYEE DOSSEE **18 W R 286**

REVIEW—*contd*

6 REVIEWS AFTER TIME—*contd*

5 ——— **Admission of review after time for good grounds** There seems to be no

8 W R. 483

6 — **Reversal by High Court of decision in similar case**—*Review granted on insufficient grounds* Where an application for review of an order in execution made after ninety days from the order was granted simply on the ground that in the execution case of another person

7 ——— **Different construction of law by High Court**—*Civil Procedure Code 1859 s 377* Where the only cause for admitting a review after the ninety days prescribed by s 377 Act VIII of 1859 was that the High Court construed the law differently from the way in which it had been laid down in the decision admitted to review —*Held* that the cause alleged was no excuse for the delay PRAN KISHEN BHUTTACHARJEE *v* BUKSHEE CAZEE 10 W R 26

8 ——— *Subsequent varying decision of law—Order on remand—Ground for review* A remand order made on special appeal is (unless a review of it be obtained within the prescribed time) a conclusive determination of the points of law involved in it and the correctness of the law laid down upon a remand cannot be questioned on a second special appeal nor is the fact of the Courts adopting a different view of the law after an order has been made in general a good ground for allowing a review of such order after the time for a review has elapsed RAMKUVARBAI *v* DAMODHAR NARBHERAM 6 Bom A C 146

9 ——— **Subsequent Full Bench decision**—*Ground for review* A Full Bench judgment after the original judgment has been given in a suit is not a ground of reveiw a Full Bench judgment being prospective and not retrospective MADHUB CHUNDER GHOSE *v* RADHIKA CHOWDHRAIN 7 W R. 405

DWARKANATH DOSS BISWAS *v* MANICK CHUNDER DOSS 9 W R 102

(*Contra*) FORBES *v* DYANUTOOLLAH 10 W R 415

10 ———A new exposition of the law by a Full Bench after the passing of the original decree is not 'just and reasonable cause' for admitting a review after the prescribed period. When a review has been granted the Court is bound to decide the case according to any new exposition of the law by a Full Bench made since the original decision SHAMA CHURN CHUCKERBUTTY *v* BINDABUN CHUNDER ROY B L R. Sup Vol. 892 9 W R 181

BURA BOODHO *v* KOYLASH CHUNDER KUNDEE 6 W R. 100

ALLADMONEE DOSSIA *v* JOY SUNKAR ROY 7 W R 408

11 ——— *Ground for review—Suit by mortgagee to declare lien—Subsequent suit for possession* The plaintiff a mortgagee obtained a money decree against the defendant A third party in execution of another decree ob ... sale ... to

and the third party to have it declared that the latter held the property subject to his mortgage The suit was decreed by the Subordinate Judge but eventually dismissed by the High Court on the ground that the plaintiff by suing for his money decree only had deprived himself of the benefit of his lien as against the third party The plaintiff thereupon brought another suit against the same parties to recover possession of the mortgaged property which suit eventually came up before a Full Bench where it was decided that the plaintiff had no right to bring the suit for recovery of possession but that his proper course was to sue to have his lien upon the property declared the Court intimating that it would be open to the plaintiff to apply for a review of judgment in the suit originally brought by him. On the review coming on to be heard it was *held* that the plaintiff was entitled to a review of that judgment, and that the case was distinguishable from the general rule as to reviews laid down in *Madhub Chunder Ghose v Radhika Choudhrain 7 W R 405 Dwarkanath Doss Biswas v Manick Chunder Doss 9 W R 102* and *Shama Churn Chuckerbutty v Bindabun Chunder Roy B L R Sup Vol 892*—inasmuch as the granting the review did not interfere with previous decisions of the Court in other cases between other parties JOY MENJOY MULLICK *v* DASMONEY DASSEE I. L. R 8 Calc 700

12 ——— **Decision of High Court or Privy Council modifying the law** An application for review of judgment of a lower Court is not admissible after the limited period merely in consequence of a decision of the High Court or of the Privy Council modifying the law or practice which prevailed at the time when the judgment sought to be reviewed was passed. ONOOP CHUNDER PAUL *v* EKKOWREE SINGH 6 W R. 167

13 ——— **Subsequent decision of Privy Council**—*Right to retrial of case.*

REVIEW—*contd*

6 REVIEWS AFTER TIME—*contd*

Where the decision of a lower Court follows a view of the law taken by the High Court and that view

14. ——— Decision of Privy Council —*Civil Procedure Code 1859 s 3 9—Ground for review out of time* A decision of the Privy Council in 1871 as to a question of fact in another suit or the pendency of the appeal in the High Court was held to be no cause (under s 379 Act VIII of 1859) for not having preferred an application for review of a judgment passed in May 1866 within ninety days from the date of the decree BOLAKEE LALL *v* MONJEE LALL 17 W R 163

15 ——— *Application for review after appeal by party who did not appeal—Act VIII of 1859 s 377—Just and reasonable cause for delay in filing petition of review* Upon the appeal of one of the defendants to the Privy Council the judgment of the High Court was reversed Another defendant whose defence was the same as that of the defendant who had appealed applied to the High Court to review its judgment after a lapse of several years from the date of the judgment of the High Court but within three months from the date on which he became aware of the decision of the Privy Council. The application was refused. *Satto Saran Ghosal* v *Tarini Charan Ghose 3 B L R A C 287* doubted PANCHANAN BOSE *v* GURUDAS ROY 9 B L R 187 18 W R 317

16 ——— *Analogous cases*

GHOSE 3 B L R A C 287

S C SUTTO SURUN GHOSAL *v* TARINEE CHURN GHOSE 12 W R 154

17 —— — Execution of decree against wrong person—*Act VIII of 1859 ss 376 377—Reasonable ground for review—Appeal by one defendant right of review by another* A decree for wasilat was passed against the defendant in a case where there were several defendants and as soon as one of them who was not the person against whom the plaintiff sought for wasilat in the original plaint found that the decree was to be executed

review not being preferred within the limited time BUNKOO LALL SINGH *v* BASSOOMUNISSA BIBEE 7 W R 168

REVIEW—*contd*

6 REVIEWS AFTER TIME—*contd*

18 ——— Pendency of special appeal —*Ground for delay—Civil Procedure Code 1859 s 377* Where an application for review is not made within the ninety days provided by Act VIII of 1859 the pendency of a special appeal is not a just and reasonable cause for the loss of time such as the Court to which the application is made is bound to arrive at under s 377 before it can entertain the application at all. LUCAS *v* STEPHEN 9 W R 301

FAKIRA *v* BASAPA MAHADAN SHETTI 8 Bom. A C 234

19 — — Mistake of counsel—*Civil Procedure Code (Act XIV of 1882) s 623— Sufficient cause* In a suit between *A* and *B* heard to the 29th January 1883 a certain conveyance was filed with the plaint but up to the hearing this conveyance had been protected from discovery *B*s counsel had however had a copy thereof *delivered to him at the time B s written statement* was being drawn and a copy briefed to him at the hearing At the hearing *A* s counsel stated that the effect of the conveyance was to vest the entirety of a certain property in *A* this view was accepted by *B* s counsel who did not read the conveyance The only issue in the case was who was in possession of the property and the Court decided this

as he alleged for the first time that under the conveyance a moiety of a seven twenty fourth share remained in *B* On that day instructions were given to *B* s counsel to draw up a petition of review of the judgment of the 5th February This petition owing to the Easter vacation was not and could not have been presented till the 9th April *Held* that the words sufficient reason in s 623 of the Code should receive a liberal construction and should be construed so as to do substantial justice to the parties that as in this case it appeared to the Court that the construction *placed upon the conveyance by B s counsel* was the correct one sufficient reason had been shown for making the application *In the matter of the petition of* SOLOMON GOPAUL CHUNDER LAHIRI *v* SOLOMON I L R 11 Calc 767

Held on the appeal, *per* GARTH, *C J*—Although it is difficult and perhaps undesirable to attempt to define precisely the meaning of the words any other sufficient reason in s. 623 of the Civil Procedure Code yet from the earlier part of the clause it is clear that a point which might have been but which was not discovered at the trial by the exercise of due diligence was not intended by the section to afford any sufficient reason for review *Per* WILSON *J*—*Semble* If at a trial all parties counsel on both sides, and the Judge are under a misapprehension as to the contents of a document or even if the Judge alone is misled on such a point

REVIEW—*contd*

6 REVIEWS AFTER TIME—*contd*

and in consequence a wrong decree is made the mistake ought to be corrected on review GOPAL CHANDRA LAHIRI v SOLOMON

I L R 13 Calc 62

20 ———— **Discovery of new evidence** —*Lapse of time* The discovery of new evidence may make it proper to grant a review but the circumstances must be very special—the more so when the application for review is made many years after the date of the decree and the evidence discovered must be of a clear and conclusive character HEERA LALL GHOSE v RAM TARUCK DEY

23 W R 323

21 — — **Ground for delay**—*Effect of ignorance of effect of judgment* An applicant for

22 ———— *Adoption of daughter's son—Custom—Breaches of custom—Practice—New case set up in special appeal* An application for review was presented to the High Court more than eighteen months after time the applicant alleging that soon after the decision sought to be reviewed he was engaged in collecting instances of the special custom relied upon by him in support of his claim The special custom was not set up in the Courts below but an objection was taken for the first time in special appeal that an issue regarding it should have been raised in the lower Courts. No instance of such special custom had been given in evidence It was urged that the applicant was a minor until shortly before the making of the High Court decree and was only represented by his adoptive mother as his guardian. The High Court considered that there was no sufficient excuse for the delay and rejected the application observing that unless upon very strong grounds and under very special circumstances the Court would hesitate to permit a party at such a stage of his suit to set up a case which was not set up for him in the Courts below where his professional representative must have been well aware whether such a case could be legitimately set up and abstained from any attempt to do so GOPAL SAFRAY v HANMANT SAFRAY

I L R 6 Bom 107

23 ———— *Just and reasonable cause.—Civil Procedure Code 1859 s 377* The plaintiff in a suit applied more than two years after the proper time for a review of judgment in such suit filing with his application a copy of a decision by the High Court which had been passed subsequently to the date of such judgment in support of a contention contained in his application which should have been but was not urged at the hearing of his suit Such contention and the other arguments and statements contained in his application might have been adduced within the time allowed by law for an application for a review of judgment *Held* that as such contention might have been urged at the first hearing of the case there was no just and reasonable cause for preferring the application after time and the Court of first instance was therefore not warranted in granting the application and reviewing its judgment MADHO DAS v RUKMAN SEWAK SINGH

I L R 2 All 287

24 ———— *Necessity for review not arising—Civil Procedure Code 1859 s 376* Though a certain issue in a suit was decided against the plaintiff the suit was decreed and the defendants obtained a review on which that decree was set aside and the plaintiff's suit declared barred by limitation On this the plaintiff applied for a review of both judgments *Held* that though his application in relation to the former judgment was not in time yet as he had no occasion to ask for a review until the latter judgment was passed, the words of s 376 Civil Procedure Code 1859 entitled him to ask the Court to reconsider both judgments BAGOO JAN v CHOWDHRY ZUHOORUL HUQ

13 W R 69

7 *QUESTIONS WHICH MAY BE RAISED ON REVIEW*

1 ———— **Raising new grounds**—*Civil Procedure Code 1859 s 374* A party wishing to be heard in support of new grounds must apply for permission under s. 374, Act VIII of 1859 he cannot be permitted to raise them in an application for review FUKUROODDEEN MAHOMED AHSAN CHOWDHRY v ANNUNDNATH ROY

9 W R 370

2 ———— **Issue not raised in lower Courts**—*Application for review after special appeal* In an application for review after special appeal the Court will not entertain a question not raised before at a former stage of the suit. *In re* TUFANI SINGH

6 B L R Ap 141

3 ———— **New arguments**—*Matter previously adjudicated on.* The Judges are not required to re adjudicate points considered and adjudicated when brought before them by a pleader then employed though they may be better argued and put in a different light by another pleader

R 334

4 ———— **Issue not noticed in the lower Court**—*Arguments on appeal and review* In the first Court an issue was raised whether or no the hearing of this suit was barred by the law of limitation. One of the grounds of appeal to the Judge was that the Principal Sudder Ameen ought to have held the suit barred as regards the ... under the special limitation of three years from the date of the Collector's settlement. The Judge did ... The same ... special appeal ... d to enter

REVIEW—*contd*

7 QUESTIONS WHICH MAY BE RAISED ON REVIEW—*contd*

tain it for the reason that it did not appear to have

on review upon the same points as were argued on special appeal *Raj Kunwar v Indirjit Kunwar* 5 B L R 585 13 W R 52

5 ———— Points for argument—*Questions already discussed and decided—New points* On application for review of judgment —*Held* that a party applying for the review of judgment must show that there is good and sufficient cause for granting the review before he can be heard to ... that the decision is erroneous In so showing

appeal can be argued on the application for review BHAWABAL SINGH v RAJENDRA PRATAP SAHOY 5 B L R 321

RAJENDRO PROTAB SAHEE v BHOWABUL SINGH 14 W R 105

Upholding on review BHOWABUL SINGH v RAJENDRO PROTAB SINGH 13 W R 157

JANAB ALI v CHANDI CHARAN DEY 5 B L R 334 note 11 W R 202

GUNGAPERSHAD v AGRA AND MASTERMAN'S BANK 5 B L R 340 note

s c AGRA AND MASTERMAN'S BANK v GUNGA PERSHAD 15 W R F B 5 note

HAZRA BEGUM v HOSSEIN ALI KHAN 5 B L R 341 note

COLLECTOR OF TIPPERAH v MAFZUNNISSA BIBI 5 B L R 341 note 14 W R 84

GARIB HOSSEIN CHOWDHRY v WISE 5 B L R 342 note

s c MEHUROONISSA KHATOON v WISE 15 W R F B 2 note

BENI MADHAB GHOSE v GANGA GABIND MANDAL 5 B L R 345 note 15 W R F B 3 note

6 ———— Points for argument—*Act VIII of 1859 s 376—Arguments and grounds to be raised on review* It cannot be treated as a universal rule that no point can be raised on an

correct any evident error or omission or is otherwise requisite for the ends of justice *In the matter of the petition of* CHINTAMANI PAL CHINTAMANI PAL v PYARI MOHUN MOOKERJEE. *In the matter of the petition of* SALEH SHABI SABI UD DIN ABU SALEH SALEH SHABI SABI UD DIN ABU SALEH v ASADUNISSA BIBEE 6 B L R 126 15 W R F B 1

7 ———— *Points already decided—New points—Discretion of Court* Parties applying for a review of judgment are not absolutely debarred from asking for a re hearing of a matter which has been already argued and considered nor are they debarred from raising a point which has not but which might have been raised previo[illegible]
party
some [illegible]
asked
allow
PERSH [illegible]

[illegible]

8 ———— Question raised and abandoned A party who not only had an opportunity of raising a question but who did raise it on appeal and on argument abandoned it cannot under ordinary circumstances be allowed to agitate the question on review SARAPATHI v SUBRAYA RAMANADHA I L R 2 Mad 58

9 ———— Admissibility of admitted documents Whether certain documents which have already been admitted as evidence were so admissible or not is not a point which can be urged in review KOLEEMOODDEEN MUNDUL v HEERUN MUNDUL 24 W R 186

8 GRANT OR REFUSAL OF REVIEW

1. ———— Reasons for granting order for review—*Record of reasons* Before a review of judgment is granted ...

2 ———— Effect of refusal to grant review—*Judgment of refusal* A mere refusal to grant a review of judgment cannot alter the judgment sought to be reviewed or the decree founded on it and nothing which the Judge says with refer

3 ———— *Second Appeal.* Application for review granted and the case directed to be restored to the file and re heard. RAJ NARAIN DAS v SHAMANANDA DAS CHOWDHRY (1900) I L R 33 Calc 1362

4 ———— Negligence—*Discovery of fresh evidence—Laches—Civil Procedure Code (Act XIV of 1882) ss 623 568* S 623 exacts very strict conditions, so as to prevent litigants being negligent and enjoins the Court to require the facts as to the absence of negligence to be strictly proved. Where the defendants on the day after

REVIEW—*contd*

8. GRANT OR REFUSAL OF REVIEW—*concld*

judgment had been given against them discovered fresh evidence which with diligence they might under the circumstances have obtained before or during the trial of the suit and even after such discovery delayed for two weeks before making an application for review of judgment —*Held* that the application was rightly dismissed. KESSOWJI ISSUR *v* GREAT INDIAN PENINSULA RAILWAY COMPANY (1907)
I L R 31 Bom 381 L R 34 I A. 115

9 APPEALS AND PROCEDURE IN APPEALS

1 ——— Orders rejecting review——*Orders on review—Civil Procedure Code 1859 s 378—Application of section* S 378 (s. 626 of Civil Procedure Code 1882) does not apply to judgments on review but only to orders rejecting reviews APCAR *v* HOWAH BYE
1 Ind Jur N S 231

RUGHOONATH ROY *v* ANUNDO PAURAY
10 W R. 387

2 ——— Appeal by some only of several defendants—*Application for review by some only of defendants in separate interests—Effect of decree on review modifying decision on appeal* In a suit in which several defendants were joined to set aside alienations made at different times and to different persons, plaintiff succeeded in the first Court partly and on appeal wholly and obtained a decree ordering the alienated property to be restored to him Then the defendants their interests being separate, brought separate special appeals which were dismissed After this two of them applied for a review and the decrees were modified (a portion of the claim being declared barred by limitation) but on a ground not applicable to all the defendants *Held* that if these decrees were separate decrees in each appeal the High Court had no power to modify the decrees in which there was no application for review and which therefore remained in force and should be executed. PEGOO JAN *v* MULLICK WAIZOODDEEN
18 W R 464

3 ——— Order other than order rejecting applications for review—*Order modifying original decree—Right of appeal* Any order made upon an application for a review of

clerical mistake the final order in the case and the party aggrieved by the original decree is entitled although the modification or alteration was made in his favour to treat the order upon review of judgment as the final decree or order in the case and if it was made by a Court an appeal from which lies to the Court of a District Judge he is entitled to prefer his appeal at any time within thirty days from its date JOYKISHEN MOOKERJEE *v* ATAOOR ROHOMAN
I L. R. 6 Calc 22 6 C L. R. 575

4. ——— Order rejecting review—*Finality of order* An order rejecting a review is final. NOBIN CHUNDER CHOWDHRY *v* GRIDHAREE LALL
11 W R 264

BANEE RAM *v* HOSSEIN ALI 11 W R 164

5 ——— Order granting review on ... *1859 ss 376* ... Subordinate ... granted an application for review of judgment on the ground that new evidence had been discovered but without any inquiry or proof that such evidence was not within the knowledge of the applicant or could not have been adduced by him at the time the decree was passed —*Held* that this was an error or defect in the procedure or investigation of the case which affected the decision and was a ground of appeal when the decision upon review was brought before the High Court on special appeal. The word final in s 378 of Act VIII of 1859 means that the order rejecting the application or granting the review shall not by itself be open to appeal. BHYRUB CHUNDER SURMAH CHOWDHRY *v* MADHUB RAM SURMAH
B L. R. F B 423
20 W R. 84

NUBO KISHORE BISWAS *v* JADUB CHUNDER SIRCAR
20 W R 426

DHUNKA DEVLA *v* HIRA RAMLA
4 Bom. A. C 57

6 ——— Decision as to what is just ... as to *what constitutes just and reasonable cause for admitting a review after prescribed period is appeal ... Act VIII of 1859* ... the appli ... final, are ... the applica ... the decision ... able cause for allowing the application to be made after the period of ninety days prescribed by s. 377 had elapsed. SHAMA CHURN CHUCKERBUTTY *v* BINDABUN CHUNDER ROY
B L R Sup Vol. 892 9 W R. 181

GEORGE *v* HAMILTON BROWN & CO 4 N W 74

7 ——— Presumption as to performance of preliminaries to review The Court will presume that the proper preliminaries have been observed in admitting the review and unless anything appears to have been done contrary to law will not set aside the decision. AKEEL SAHOO *v* ABDOOL GUFFOOR
18 W R. 15

REVIEW—*contd.*

9 APPEALS AND PROCEDURE IN APPEALS —*contd.*

See GURUMURTTI NAYUDU *v.* PAPPA NAYUDU I Mad 164

8 ——— Objection taken on appeal —*Objection as to improper grant of review—Civil Procedure Code 1859 s 3 6* Although the order itself for granting a review of judgment is final yet on appeal against the decision passed in review objection may be taken that the review was improperly granted. ABDUL RAHIM *v.* RACHA RAI I L R 1 All. 363

9 ——— *Objection that evidence was within knowledge of applicant* Where owing to the conduct of the opposite party who though served with notice made no objection an applicant for review had no opportunity of showing that a new piece of evidence which he adduced was not within his knowledge and could not be adduced by him when the decree was passed such opposite party cannot afterwards be allowed to object on the ground of the Full Bench ruling in *Bhyrub Chunder Surmah Choudhry v Madhubram Surmah 11 B L R 4 3 20 W R 84* RAM JOY GOOPTO *v.* JUGODESSUREE 22 W R 399

10 ——— *Civil Procedure Code 1859 s 378—Appeal against review not*

the order was held to apply to cases in which a

11 ——— Fresh evidence—*Error in granting review* The Munsif dismissed a suit Afterwards he issued a rule calling upon the defendant to show cause why a review of judgment should not be granted The defendant showed cause but his objections were overruled the review was granted both plaintiff and defendant adduced new evidence and a decree was given for the plaintiff On appeal the Subordinate Judge reversed this decision on the ground relied upon by the defend

his application for review was based *Held* on special appeal that the fact of the defendant having adduced fresh evidence in the Court below did not debar him from objecting before the Subordinate Judge that the review was wrongly granted because the order admitting it was final. PRAN NATH BHADOORY *v.* SREEKANT LAHOORY 2 C L R. 257

REVIEW—*contd*

9 APPEALS AND PROCEDURE IN APPEALS —*contd*

12 ——— *Discovery of*

appeal to be withdrawn in order that a review petition may be presented to the lower Appellate Court But this course cannot be pursued when the review petition has been already presented to and rejected by the lower Court RAMCHANDRA *v.* KRISHNAJI (1904) I L R 28 Bom. 4

13 ——— Effect of order on review—*Review of judgment—Appeal from original decree.* Where an application for review of judgment is granted the result is a new decree superseding the original decree and not merely some amendment thereof An appeal was filed pending an application for review of judgment in the Court below the review was granted and an order passed which purported merely to amend the decree then under appeal *Held* that the order for review superseded the original decree the decree under appeal had ceased to exist and the appeal could not be heard *Kuar Sen v Ganga Ram All Weekly Notes (1890) 144* followed KANHAIYA LAL *v.* BALDEO PRASAD (1905) I L R. 28 All. 240

14 ——— Dismissal of appeal effect of—*Civil Procedure Code (Act XIV of 1882) ss 551 623—Decree passed by first Court allowing plaintiff s claim—Appeal by defendant—Application by defendant to the first Court for review —Jurisdiction* Plaintiff having obtained a decree in the first Court the defendant appealed but his appeal was summarily dismissed under s. 551 of the Civil Procedure Code (Act XIV of 1882) Subsequently the defendant applied to the first Court for review of judgment under s. 623 of the Code on the ground of discovery of new and important evidence *Held* that as the defendant had preferred an appeal and it was dismissed under s. 551 of the Code his application to the first

though no appeal was preferred. But when an appeal is actually dismissed, it was in fact preferred and cannot be regarded as not having been preferred RAMAPPA *v.* BHARMA (1906) I. L R 30 Bom. 625

15 ——— Order rejecting application for review—*Civil Procedure Code (Act XIV of 1882) ss 623 and 696—Order in execution—Decree—Appeal.* An order in execution being a decree under the Civil Procedure Code (Act XIV of 1882) was passed on the 20th November 1902

REVIEW—*contd*

9 APPEALS AND PROCEDURE IN APPEALS —*contd*

for a review of judgment Notice was issued to the opposite party and the application for review was heard with the result that the Judge after disposing of certain technical objections proceeded to deal with the case on the merits and having done so he rejected the application for review with costs on the 14th September 1903 Against the said order the applicant having appealed —*Held* that the order rejecting the application for review was not appealable The proper procedure would be to appeal from the order of the 20th December 1902 relating to costs A petition of review involves three stages of procedure The first stage commences ordinarily with an *ex parte* application under s. 623 of the Civil Procedure Code The Court ...
or ma ...
show ...
In the ...
or rejected and the hearing of the rule may involve to some extent an investigation into the merits ...

former decree or some variation of it Though in one aspect the result is the same whether the ...

former case the parties are relegated to and still rest on the old decree VADILAL *v* FULCHAND (1906) I L R 30 Bom 421

10 PROCEDURE ON RE HEARING OF CASE

1. ———— **Effect of order for review** —*Re opening of whole case* When a review of a decision has been admitted the whole case is there by re opened. SAJVAL RANCHHOD *v* DULLABH DVARKA 10 Bom. 360

2. ———— **Re trial by different Judge** —*Point directed by order of review* When a case is admitted to review by the deciding Judge and tried afterwards by another Judge the new Judge ought to try only the point directed by the order of review HURRO CHUNDER CHUCKERBUTTY *v* RAMKISHORE CHUCKERBUTTY W R 1864 142

3 ———— **Review granted on particular ground**—*Civil Procedure Code (Act X of 1877) s 630—Discretion of Court as to re hearing whole case or not* Where a review of judgment is granted on a particular ground the Court is not bound to re hear the whole case under s. 630 of the Civil Procedure Code it is in the discretion of the Court to re hear the whole case or only the

REVIEW—*contd*

10 PROCEDURE ON RE HEARING OF CASE —*contd*

particular point on which the review has been granted HURBANS SAHYE *v* THAKOOR PURSHAD I L R. 9 Calc 209

S C THAKOOR PROSAD *v* BALUCK RAM 12 C L R 64

4 ———— *Review of portion of case—Power to re hear case on another point* Where a Judge who had ordered a certificate of guardianship to be granted under Act XL of 1858 granted a review of his order on one point —*Held* that he had no power to re open another question which he had already decided finally and on which no application for review was made BYJNATH SAHOY *v* WUZEER NARAIN 24 W R 427

5 ———— *Power to entertain another objection without remand* In a suit to recover possession of certain land which though described in the plaint as partly bastoo and partly agricultural land was treated by both parties as agricultural only it was found by the Court of first ...

issue on that point KHORESH MAHOMED *v* MAHOMED TAKEE 10 C L R. 108

6 ———— **Power to reverse order for re hearing of suit**—*Re hearing before another Judge* Where one Judge decided that the suit was not barred as a *res judicata* and directed the suit to be re tried on the merits and after another trial it came on appeal to the same Court before another Judge —*Held* that whatever power he would have had to review the order of his predecessor had nothing been done on it he could not reverse the order at that stage one Court having no power to reverse an order of a co ordinate Court. PALAVARAPU MUTANNA *v* CHANDURI NARAPPA 2 Mad. 349

But *see* MURDAN ALI *v* TUFUZZUL HOSSEIN 16 W R. 78

SALAHMUNISSA KHATOON *v* MOHESH CHUNDER ROY 16 W R. 85

7 ———— **Admission of review by one Judge only of Bench who heard the case** —*Objection to propriety of order admitting review* Where a review has been admitted by the sole remaining Judge of the Bench which heard the case originally it is not open to counsel on the ... the propriety of ... the ... nted ... nal

to hear the appeal after its restoration to ... number on the file JARDINE SKINNER & Co *v* DHUN KISHEN SEIN 13 W R. 83

REVIEW—*contd*

10 PROCEDURE ON RE HEARING OF CASE —*contd*

8 ———— Qualified order for admission of review—*Discretion of Court as to extent case should be reopened* *Held* that Judges of the

9 ———— Admission of additional evidence on re hearing—*Act VIII of 1859 s 376* When an application for review is admitted upon other grounds fresh evidence not produced at the trial may be received although no reason as required by s. 376 Act VIII of 1859 had been assigned for the non production at the trial. BEHARI LAL NANDI v TRAILAKHOMAYI BARMANI
3 B L R A C 346

10 ———— *Question as to genuineness of pottah* In a suit for confirmation of title to a village alleged to be in the possession of plaintiff under a mokurari pottah the first Court found the pottah to be genuine and gave plaintiff a decree The lower Appellate Court at first doubted the genuineness of the pottah and reversed that

SEE ROY 10 W R 8

11 ———— Reasons for different opinion—*Duty of Court on review* A Court should give reasons on review of judgment for coming to a differen conclusion from that which it had previously formed. ANUNDMOYEE DOSSIA v KALEE COOMAR POKHEET 6 W R 18

12 ———— Notice of proceedings—*Special Judge appointed under Deklan Agriculturists Relief Act* It is illegal on the part of the Special Judge appointed under Act XVII of 1879 to reverse the decree of a Subordinate Judge on review without giving a proper and sufficient notice to the party in whose favour the decree was passed. RUPCHAND KHEMCHAND v BÁLVANT NARAYAN
I L R 11 Bom 591

13 ———— Admission of review and dismissal of appeal effect of. One of the

REVIEW—*contd*

10 PROCEDURE ON RE HEARING OF CASE —*concld*

ROY v KANHYA SINGH 18 W R 494

11 CRIMINAL CASES

See CHARGE TO JURY—MISDIRECTION
I L R 17 Calc 642

See REVISION—CRIMINAL CASES

1. ———— Power of review—*Judgment in criminal appeal* The High Court cannot review its judgment passed in a criminal case before it on appeal. QUEEN v GODAI RAOUT
B L R Sup Vol 436 5 W R 61

KRISTO CHUNDER MAHATA v OBINESSUREE DEBIA 11 W R 532

In the matter of the petition of KRISHNO CHURN
17 W R Cr 2

2 ———— *Criminal Procedure Code* The Code of Criminal Procedure contains no provision for a review of an order passed in a criminal case PEG v MEHTARJI GOPALJI
7 Bom. Cr 67

QUEEN v TILOKE CHUND 3 N W 273

3 ———— *Review of judg*

officio and neither the Court itself nor any Bench of it has any power to revise that decision or interfere with it in any way *In the matter of the petition of* GIBBONS I L R 14 Calc 42

4. ———— *Application to set aside order of third Judge agreeing with junior Judge where there is difference of opinion between the Judges of Division Bench* *Held* by MORGAN C J and TURNER J (ROSS and SPANKIE JJ dissenting) that an application to set aside an order made by the junior Judge of a Division Bench and a third Judge contrary to the opinion of the senior Judge of the Division Court in a case where the two Judges differed in opinion is not in the nature of a review of judgment and is cognizable by the Court. Where an order has been actually issued by the High Court, a Division Bench will not disturb the same, unless in the opinion of a majority of the Court the order is bad. QUEEN v NYN SINGH
2 N W 117 s c Agra F B Ed. 1874 196

REVIEW—*contd*

11 CRIMINAL CASES—*contd*

5 ——— **Review of sentence once passed** A sentence duly passed and recorded cannot be revised by the Judge ANONYMOUS
4 Mad Ap 19

ANONYMOUS 5 Mad Ap 18

ANONYMOUS 6 Mad Ap 8

(*Contra*) ANONYMOUS 5 Mad Ap 20

6 ——— **Order obtained on misstatement of facts**—*Forfeited property—Criminal Procedure Code (Act XXV of 1861) ss 184 185* Where an order for the release of the property of an absconding offender which had been attached under s 184 of the Criminal Procedure Code (Act XXV of 1861) had been obtained from the High Court on an *ex parte* application and on an incorrect statement of fact the High Court on the application of the Government cancelled such order *In the matter of the petition of the* GOVERNMENT OF BENGAL 9 B L R 342

7 ——— **Order dismissing application by accused person for revision**—*Criminal Procedure Code ss 369 434—Letters Patent, High Court N W P cls 18 and 19* The High Court had no power under s. 369 of the Criminal Procedure Code to review an order dismissing an application for revision made by an accused person and the only remedy was by an appeal to the prerogative of the Crown as exercised by the local Government *Per* BRODHURST J—The Legislature has not conferred in express words upon a High Court the power of reviewing its judgments in all criminal cases as it has done under the Civil Procedure Code in civil cases and the provisions of s. 369 of the Criminal Procedure Code so far as they affect the High Court apply merely to questions of law arising in its original criminal jurisdiction and which are reserved and are subsequently disposed of under the provisions of s 434 of the Criminal Procedure Code and ss. 18 and 19 of the Letters Patent for the High Court of the N W P *Queen v Godai Raout B L R Sup Vol 436* referred to QUEEN EMPRESS v DURGA CHARAN
I L R 7 All. 672

8 ——— **Order made on revision**—*Power of High Court—Criminal Procedure Code s 439* A Division Bench of the High Court has not under s 439 of the Code of C[illegible]
(Act X[illegible]
pronour[illegible]
Empress[illegible]
followe[illegible]
I L R 10 Bom 176

See QUEEN EMPRESS v GANESH RAM KRISHNA
I. L R 23 Bom 50

9 ——— *Order rejecting appeal as barred by limitation—Review of such order—Finality of judgments in criminal matters—Criminal Procedure Code 1882 ss 421 and 430* A Sessions Judge dismissed an appeal on the ground that it was barred by limitation. On a subsequent application by the accused the Judge admitted the appeal and at the hearing acquitted him. The High Court sent for the record in the exercise of its revisional jurisdiction *Held* that the order of acquittal was *ultra vires* under s. 430 of the Code of Criminal Procedure The order dismissing the appeal was final and not open to review It was argued that s. 421 of the Criminal Procedure Code only applies to orders passed on the merits and that as the order rejecting the appeal was not of that class it was an order upon appeal and was not final under s. 430 *Held* that s. 421 was not limited to orders passed on the merits and that the order in question was an order upon appeal and final [illegible]

[illegible]

PRESS v BHIMAPPA BIN RAMANNA
I L R 19 Bom. 732

10 ——— **Power of review by District Magistrate** Where a District Magistrate on 12th June 1897 made an order after hearing an inquiry as to the possession of some missing property [illegible] afterwards on 3rd [illegible]

[illegible] sideration which prevent subordinate Courts from altering their judgments on review hold good in respect of final orders which are of the nature of a judgment *In re* HARILAL BUCH
I L R 22 Bom. 949

11 ——— **Power of review by High Court in Criminal cases**—*Finality of order of High Court—Order not sealed—Criminal Procedure Code ss 107 and 110—Security for keeping the peace—Security for good behaviour* An application from jail—worded as an appeal—against an order passed under ss. 110 and 118 of the Code of Criminal Procedure was summarily rejected by means of the following order — No appeal lies in this case and no sufficient ground appears for interference in revision The application is dismissed. This order was signed by the Judge who passed it, but was not sealed with the seal of the Court *Held* that the Judge who had passed the order quoted above was not under the circumstances precluded from entertaining an application for revision presented by counsel in relation to the same matter *Queen Empress v Lalit Tiwari I L R 21 All 177* followed. *Held also* that where it appears from the evidence that there is an apprehension of any one using violence towards a particular person or particular persons, he ought to be bound over to keep the peace as provided by s. 107 and not be proceeded against under s. 110 of

REVIEW—*concld*

II CRIMINAL CASES—*concld*

the Code of Criminal Procedure EMPEROR v KALLU (1905) I. L. R. 27 All. 192

F 12. ——— Subordinate Judge power of—*Criminal Procedure Code (Act V of 1898) s. 195—Application for sanction to prosecute—Dismissal of the application for default—Appellate Court cannot grant sanction on appeal—Dismissal of application for default not permissible—Review of order not permissible under the Code.* An application was made by the Public Prosecutor of Belgaum to the Subordinate Judge of Gokak for sanction to prosecute one *G* for offences committed in his Court. The Public Prosecutor failed to appear in the Court on the day and at the hour fixed for the hearing of the application The Subordinate Judge dismissed the application as for default. On an application being made to review this order the Subordinate Judge declined to do so On appeal however the District Judge granted the sanction under s 195 of the Criminal Procedure Code (Act V of 1898) *Held* that the Subordinate Judge had no power to review his order because the Criminal Procedure Code contained no provision giving jurisdiction to a Court to review orders passed under it. *In re* GOPAL SIDDESHWAR DESHPANDE (1907). I. L. R. 32 Bom. 203

REVISION—CIVIL CASES

		Col.
1	GENERAL CASES	10867
2.	SMALL CAUSE COURT CASES	10867

See ACT V OF 1881 s 4 (2)
I L R 27 All. 192 292 296 359 380 397 439 531

See AGRA TENANCY ACT 1901 s 167
I L R 31 All. 445

See APPEAL. I L R 32 Calc 572
I. L R 35 Calc 648

See ARBITRATION—AWARD
I L R 33 Calc 757
10 C W N 609

See CIVIL PROCEDURE CODE CRIMINAL PROCEDURE CODE
I L R. 26 All 1 244 249 572
8 C W N 73 587 839

See CIVIL PROCEDURE CODE 1882 ss 206 622 9 C W N 695
I L. R 31 Bom. 447

See CIVIL PROCEDURE CODE 1882 ss. 244 622 I L R 28 All 72

See CIVIL PROCEDURE CODE 1882 ss. 310 A 622 I. L. R. 28 All. 84

See CIVIL PROCEDURE CODE 1882 s 622
I. L. R. 31 Mad. 490
12 C W N 16

See CIVIL PROCEDURE CODE 1882 ss. 626 629 I L R 31 All. 610

REVISION—CIVIL CASES—*contd*

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 115 13 C W N 793

See DEKKAN AGRICULTURISTS RELIEF ACT s. 3 I. L R 14. Bom. 387

See DEKKAN AGRICULTURISTS RELIEF ACT s. 53 I L R 15 Bom. 180
I L R 19 Bom. 286

See JUDGMENT—CIVIL CASES
I. L. R 13 All. 533

See LAND ACQUISITION ACT (I OF 1894) s. 32. I L R 35 Calc 1104

See LEGAL PRACTITIONERS ACT s 36
I L R. 31 All 59

See LIMITATION 9 C W N 956

See MUNSIF I L R 24 Mad 335

See PRACTICE—CIVIL CASES—VAKIL AND COUNSEL I. L R. 30 Calc 986
11 C W N 112

See PRESIDENCY SMALL CAUSE COURTS ACT I L R 31 Bom 138

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT I OF 1895) ss. 15 19 32 33
I L R 30 Calc 619

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS
I L R 29 Calc 773

See STATUTE 24 & 25 VICT CAP CIV s 15 I L R 26 All 144

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT s 15—CIVIL CASES

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 188 s 622

——— by High Court—

See LAND REGISTRATION ACT (Beng VII of 1876) ss 52 55 62
I L R 35 Calc 120

See LAND REGISTRATION ACT (Beng VII of 1876) ss 59 63
I L. R. 35 Calc 571

——— of entries—

See RECORD OF RIGHTS
I. L. R 35 Calc 176

——— order on—

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW
I. L. R. 16 Bom 550

See LETTERS PATENT HIGH COURT N W P cl. 10 I L R. 15 All 373

——— power of—

See HIGH COURT JURISDICTION OF—BOMBAY—CIVIL I. L. R. 20 Bom 680

REVISION—CIVIL CASES—*contd*

1 GENERAL CASES

———— **Power of High Court**—*Rules 18 20 made under Act XXIV of 1839—Agent to the Governor at Vizagapatam* The Agent to the Governor at Vizagapatam dismissed an appeal under the Agency Rules No 18 The appellant preferred a petition to the High Court against the order of the Agent *Held* that the High Court had no power to interfere JAGANNADHA *v* GOPPANNA I L R 16 Mad 229

2 SMALL CAUSE COURT CASES

Courts Act (IX of 1887) was not intended to give in effect a right of appeal in all Small Cause Court cases either on law or fact The revisional powers given by that section are only exerciseable where it appears that some substantial injustice to a party to the litigation has directly resulted from a material misapplication or misapprehension of law or from a material error in precedure *Muhammad Nizam ud din Khan* v *Hira Lall All Weekly Notes (1890) 121* and *Masum Ali* v *Mohsin Ali All Weekly Notes (1890) 01* approved. MUHAMMAD BAKAR *v* BAHAL SINGH I L R 13 All 277

2 ———— *Civil Procedure Code s 622—Superintendence of High Court—Wrong decision on a question of limitation* An application under s 25 of Act IX of 1887 to set aside a decree ought not to be entertained except

referred to RAGHU NATH SAHAI *v* OFFICIAL LIQUIDATOR OF THE HIMALAYA BANK. I L R 15 All 139

3 ———— *Discretion of Court —Superintendence of High Court under Civil Procedure Code 1882 s 622* S 25 of Act IX of 1887 was not intended to give what would practically be an appeal in every case from the decision of a Court of Small Causes but the discretion to be

Raghunath Sahai v *Official Liquidator of the Himalaya Bank I L R 15 All 139* referred to SARMAN LAL *v* KHUBAN I L R 16 All 476

4 ———— *Civil Procedure Code 1882 s 622—Superintendence of High Court—Ground for revision—Question of limitation* It

REVISION—CIVIL CASES—*contd*

2 SMALL CAUSE COURT CASES—*contd.*

Singh I L R 11 Calc 6 referred to SARMAN LAL *v* KHUBAN I L R 17 All. 422

5 ———— *Jurisdiction and superintendence of the High Court—Civil Procedure Code 1882 s 622—Practice* An error of law or procedure in the Small Cause Court confers jurisdiction upon the High Court to exercise the power committed by s 25 of the Provincial Small Cause Courts Act (IX of 1887) The powers conferred by the section are however purely discretionary and the section does not give a right of appeal in all Small Cause Court cases either on law or on fact The High Court is to determine in what cases it shall exercise the powers conferred upon it. It is not the practice of the Bombay High Court to interfere under s. 25 of the Act when there are no substantial merits in the case of the applicant It interferes to remedy injustice It is slow to interfere where substantial justice has been done by the subordinate Court, although that Court may technically have erred The provisions of s 622 of the Code of Civil Procedure (Act XIV of 1882) do not afford a safe guide for the exercise of the extraordinary jurisdiction under s 25 of the Provincial Small Cause Courts Act. The wording of the two sections is wholly different that of s 25 of the Provincial Small Cause Courts Act being of the widest description and conferring the most ample discretion on the High Court while it has been held by the Privy Council that s 622 of the Civil Procedure Code ought to be construed in a very restricted and limited sense POONA CITY MUNICIPALITY *v* RAMJI RAGHUNATH I L R 21 Bom. 250

6 ———— *Civil Procedure Code 1882 s 622—Discretion of Court in dealing with applications under s 25 of Act IX of 1887* Although s. 622 of the Code of Civil Procedure may properly be taken as indicating the lines along which a Judge would do well to exercise his discretion in admitting an application under s. 25 of the Small Cause Courts Act a Judge is not absolutely bound to refuse any application under s. 25 of the latter Act which could not be admitted under s. 622 of the Code of Civil Procedure. *Sarman Lal* v *Khuban I L R 17 All 422* referred to and explained UMA SHANKAR *v* RALLA RAM MISIR I L R 21 All. 89

7 ———— *Civil Procedure Code (Act XIV of 1882) s 203—Decree not according to law—Substantial failure of justice—Interference under extraordinary jurisdiction* The plaintiff a Hindu widow sued for R74-4 0 being the balance due on an account. She called six witnesses to prove her claim The defendant did not appear to defend the suit. The Judge however dismissed the suit the only judgment recorded by him being as follows Claim not proved. Claim rejected with costs. The plaintiff thereupon applied to the High Court under its extraordinary jurisdiction and the above decree was set aside and a decree passed for the plaintiff with costs. *Held* that

REVISION—CIVIL CASES—*contd*

2. SMALL CAUSE COURT CASES—*contd*

the decree being founded on a judgment not in accordance with s. 203 of the Civil Procedure Code was not according to law and therefore the High Court under s. 25 of the Provincial Small Cause Courts Act had jurisdiction to pass such order in the matter as it thought fit *Per* FARRAN *C J*—In a case where there is nothing to excite suspicion, and where the plaintiff had given such proof of her claim as the law requires the plaintiff is entitled and this Court is entitled to have some indication from the Judge of the point upon which he dismisses the suit to show that he is not acting from mere caprice or in ignorance of the rules of law which regulate the proof requisite to establish a plaintiff's claim *Per* FULTON *J*—The ground on which I would base our decision is that the error under s. 203 brings the case within our jurisdiction and that the case being thus before us we are entitled on being convinced that a failure of justice has occurred to pass an order which will rectify the mistake BAI JASODA *v* BAMANSHA MANCHERJI I L R 23 Bom. 334

8 ——————— *Calcutta Municipal Consolidation Act (1888) s 135 and 157—Valuation, Meaning of—Re valuation made by the Municipality within six years from the date of the valuation made after hearing objection legality of—Code of Civil Procedure (Act XIV of 1882) s 622—Stat 24 & 25 Vict c 104 s 15—Superintendence of High Court* The word valuation in s. 135 of the Calcutta Municipal Consolidation Act (Bengal Act II of 1888) means not the amount of the valuation only but also the process [illegible] the [illegible] pave [illegible] Chai [illegible] objection fixed the valuation at a certain amount Within six years from this valuation fixed after objection, a re valuation was made by the Municipality and the rate payer objected to the legality of such valuation on the ground that the Municipality had no power to make a re valuation within six years from the date of the last valuation The Vice Chairman overruled the objection and the rate payer appealed under s 157 of the Act to the Judge of the Court of Small Causes at Sealdah who allowed the appeal *Held* that inasmuch as the objection raised by the rate payer was an objection to the valuation within the meaning of s 135 of [illegible]

OF CALCUTTA *v* BHUPATI ROY CHOWDHURY I L R 26 Calc 74 3 C W N 70

9 ——————— *Review of judgment application for—Civil Procedure Code (Act XIV of 1882) ss 622 623 626 629—Small Cause*

REVISION—CIVIL CASES—*concld*

2 SMALL CAUSE COURT CASES—*concld*

[illegible]

REVISION—CRIMINAL CASES

See ABSCONDING OFFENDER. I L R 19 Mad 3; I L R 20 Mad. 88

See ACCOMPLICE I L R 14 Bom 115

See ACCUSED PERSON RIGHT OF I L R 19 Mad. 14

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE I L R 15 All 61

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE I. L. R 2 Bom. 564

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL. I. L. R 28 Calc 102

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES 4 C W N 825

See CRIMINAL PROCEDURE CODE 1898 ss 145 435 I L R. 31 All. 150

See CRIMINAL PROCEDURE CODE ss 145 (1) 439 (3) I. L R 27 All. 296

See CRIMINAL PROCEDURE CODE ss 195 439 I L R 28 All 554

See CRIMINAL PROCEDURE CODE 1898 ss 435 to 442

See HIGH COURT JURISDICTION OF—CALCUTTA—CRIMINAL. I. L R 9 Calc 288; I L R. 26 Calc 746

See JOINDER OF CHARGES 5 C W N 866

REVISION—CRIMINAL CASES—*contd*

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS
I L R 12 Bom 561

See JURY—WITHDRAWAL OF CASE FROM JURY 5 C W N 411

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES 6 B L R 74
I L R 19 Calc 127

See POSSESSION ORDER OF CRIMINAL COURT AS TO —COSTS
I L R 22 Calc 387
I L R 33 Calc 33

See ATTACHMENT OF PROPERTY
6 C W N 882

See LIKELIHOOD OF BREACH OF THE PEACE I L R 30 Calc 112

See PERJURY I L R 28 Bom. 479

See PRACTICE—CRIMINAL CASES—REVISION I L R 21 Calc 827
I L R 36 Calc 643

See REFORMATORY SCHOOLS ACT 1876 s 8 I L R 14 Bom 381

See REFORMATORY SCHOOLS ACT—
ss 8 9 16 5 C W N 210
ss 8 16 I L R 28 Calc 423

See REFORMATORY SCHOOLS ACT 1897 s 16 I L R 20 All 158 159 160
3 C W N 576
I L R 21 All 391

See SANCTION TO PROSECUTE—DISCRETION IN GRANTING SANCTION
I L R 15 Mad. 224

See SECURITY FOR GOOD BEHAVIOUR
I L R 16 Bom. 372

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—MITIGATION
B L R Sup Vol. 484

See SESSIONS JUDGE JURISDICTION OF
I L R 20 Calc 633
I L R 28 Calc 63
I L R 23 Bom 50
I L R 23 Mad. 205 225

See VILLAGE CHOWKIDARS ACT s 8
I L R 23 Calc 421

———— **revisional jurisdiction over immoveable property**—

See REVISION—CRIMINAL CASES
I L R 36 Calc 45

1 GENERAL RULES FOR EXERCISE OF POWER.

1. ———— **Cases where appeal lies**—*Appeal preliminary to application for revision* Where there is a Court of appeal resort should be had thereto before application is made to the High

REVISION—CRIMINAL CASES—*contd*

1 GENERAL RULES FOR EXERCISE OF POWER—*contd*

Court for the exercise of its powers of revision EMPRESS *v* NILAMBHAR BABU
I L R 2 All. 276

2 ———— *Appeal by Local Government—Application for revision by Local Government—Criminal Procedure Code 1882 ss 417 439* It is not an inflexible rule that where either Government on the one side or an accused on the [illegible]

and save in very exceptional circumstances not at all in reference to questions of fact QUEEN EMPRESS *v* ALA BUKSH I L R 6 All 484

3 ———— **Error which cannot be corrected by appeal**—*Power of High Court* The [illegible]
[illegible] 443
1 Ind Jur N s 177
5 W R Cr 45

4 ———— **Power of High Court on revision**—*Letters Patent High Court N W P cl 27 24 & 25 Vict c 104 s 13* S 13 of 24 & 25 Vict c 104 and s 27 of the Letters Patent of the High Court apply to the High Court in its revisional as well as in its appellate jurisdiction. QUEEN *v* NYN SINGH
2 N W 117 s c Agra F B Ed. 1874 196

5 ———— *Criminal Procedure Code 1882 s 439* The provisions of s. 439 of the Criminal Procedure Code in no way affect the powers of the High Court as a court of revision vested in it by the High Courts Act. CHAKOWRI LALL *v* MOTI KURMI 13 C L R. 275

6 ———— **Irregularity or illegality in proceedings**—*Ground for revision.* A fair primâ facie case as to the irregularity of those proceedings or the illegality or impropriety of the sentence or order must appear before the Court will call for or direct a return of the record of the proceedings. QUEEN *v* SUBBAYYA GAUNDAN 1 Mad. 133

7 ———— **Application by private prosecutor**—*Act X of 1872 s 297—Power of private prosecutor to move the Court in a case of acquittal* A private prosecutor can move the High Court, in the case of an acquittal to exercise its powers of revision under s. 297 of Act X of 1872. SUKHO *v* DURGA PRASAD I L R. 2 All. 443

See In the matter of HARDEO I L R 1 All 139

8 ———— **Power of High Court to act on private information**—*Revision by High Court power of—Ground for revision* In the course of a serious riot one *S* was killed by a shot from a gun. The first prisoner and others were charged with murder The Sessions Judge believing the

REVISION—CRIMINAL CASES—*contd*

1 GENERAL RULES FOR EXERCISE OF POWER—*contd*

statement of the first prisoner and his witnesses that he had fired in self-defence acquitted him of the charge Upon a petition presented by the widow of the deceased praying the Court to exercise their powers of revision —*Held* that under the provisions of s. 297 of the Criminal Procedure Code the High Court might exercise its powers of revision upon information in whatever way received *In the matter of* AUROKIAM I L R 2 Mad 38

9 ———— Revision by the High Court —*Practice—Criminal Procedure Code (Act X of 1882) s 435—Petition where lower Court has*

[illegible]

QUEEN EMPRESS *v* REOLAH I. L. R. 14 Calc 887

10 ———— Defect in enquiry by lower Court—*Criminal Procedure Code 1882 ss 435 439* The High Court will exercise its powers under ss 435 and 439 in the interests of justice in exceptional cases as where the enquiry in the lower Court has been faulty BHAWOO JIVAJI *v* MULJI DAYAL I L R 12 Bom 377

11 ———— Exercise of revisional power during hearing of case—*Illegal prosecution by Municipal Commissioners under the Penal Code* Where during the hearing of proceedings in a prosecution by certain Municipal Commissioners under the Penal Code of a man who had made a false

[illegible]

case for over two months to the harassment of an illegal prosecution it is its bounden duty to interfere CHANDI PERSHAD *v* ABDUR RAHMAN I L R 22 Calc 131

12 ———— Power of interference by the High Court—*Test as to whether case is of exceptional nature or not—Practice in criminal case* The High Court will not interfere in a case during its pendency in a subordinate Court unless it is of

[illegible]

case is a fit one for its interference at an intermediate stage *Chandi Pershad v Abdur Rahaman I L R* 22 *Calc 131* discussed. CHOA LAL DASS *v* ANANT PERSHAD MISSER I L R 25 Calc 233

13 ———— Interference in pending case grounds for It is inadvisable to interfere in a pending case unless there is some manifest and patent injustice apparent on the face of the proceedings and calling for prompt redress JAGAT CHANDRA MOZUMDAR *v* QUEEN EMPRESS I L R 26 Calc 786 3 C W N 491

14 ———— Power of High Court on revision—*Criminal Procedure Code 1882 s 439—Setting aside conviction* In exercising its powers under s 439 of the Code of Criminal Procedure it is open to the High Court to alter any

[illegible]

of the evidence by the lower Court is not sustainable or some fact which ought to have been found by that Court is not found or found incorrectly BALMAKAND RAM *v* GHANSAMRAM I L R 22 Calc 39

15 ———— Power to interfere with interlocutory orders of subordinate Courts The High Court can interfere with an interlocutory order passed by a Magistrate *Abdul Kadir Khan* v *Magistrate of Purneah 11 B L R Ap 8 20 W R Cr 23* and *Chandi Pershad* v *Abdur Rahman I L R 22 Calc 131* followed QUEEN EMPRESS v NAGESHAPPA PAI I. L. R 20 Bom. 543

16 ———— Conviction under Cattle Trespass Act (I of 1871)—*Appeal—Criminal Procedure Code ss 435 and 438* There being no appeal from a conviction under the Cattle Trespass Act the High Court refused to revise the proceedings of the lower Court under ss. 435 and 438 Criminal Procedure Code since there being evidence to support the conviction to adopt such a course would be to substantially allow an appeal QUEEN EMPRESS *v* LAKSHMI NAYAKAN I. L. R. 19 Mad 238

17 ———— Power of Local Legislature—*Criminal Procedure Code (Act V of 1898) ss 145 435—Order concerning a ferry purporting to be made under s 145* The local Legislature has

[illegible]

referred to The terms of s. 435 mean that orders under the exempted sections mentioned in cl. (3) must have been passed with jurisdiction If such orders are challenged as made without jurisdiction the mere fact of their purporting to be passed under the exempted sections would not bring them within those sections so as to debar the exercise of power by the High Court under s. 15 of the Charter Acts

REVISION—CRIMINAL CASES—*contd*

1 GENERAL RULES FOR EXERCISE OF POWER—*contd*

Abayeswari Debi v *Sidheswari Debi I L R 16 Calc 80 Ananda Chandra Bhuttacharjee* v *Stephen I L R 19 Calc. 127 Roop Lal Das* v *Manook 2 C W N 572* and *Queen Empress* v *Pratap Chunder Ghose I L R 25 Calc. 852* followed HURBULLUBH NARAIN SINGH v LUCHMESWAR PROSAD SINGH I L R 26 Calc 188
3 C W N 49

See LALDHARI SINGH v SUKDEONARAIN SINGH
4 C W N 613

18 ———— Rule to show cause—*Power of Court in dealing with evidence in rule—Criminal Procedure Code 1882 ss 429 439* Where a rule was issued by the High Court on a Magistrate to show cause ...

... the offence —*Held* that the rule ought to be read reasonably in favour of the accused and it should be read with the materials which were before the Court at the time it was granted and that the High Court had complete power to deal with it as a Court of revision and is not limited to the question whether there was what is described in England as any evidence to go to the jury RAKHAL NIKARI v QUEEN EMPRESS 2 C W N 81

19 ———— Power at hearing of rule to consider matter in respect of which rule was not granted—*Discretion of Court* The High Court in revision at the hearing of a rule has a discretion to consider and decide matters in respect to which the rule had been prayed for but not granted and need not confine itself only to the matters in respect of which the rule was granted DURGA DASS RUKHIT v QUEEN EMPRESS
I L R 27 Calc 820

20 ———— Accused not appealing—*Criminal Precedure Code (Act V of 1898) ss 423 439—High Court power of to deal with accused person not appealing—Conviction setting aside of of accused not appealing while dealing with an appeal on behalf of persons appealing* The High Court has power under s 439 of the Code of Criminal Procedure in a proper case to deal with the case of accused persons not appealing against their conviction while considering and trying the appeal preferred by some other persons and sub s (5) of the section does not in any way affect the jurisdiction vested in the High Court to deal with their case BROJA RAKHAL MOZUMDAR v EMPRESS (1900) 5 C W N 330

21 ———— Criminal Procedure Code Ch XII (Disputes as to immoveable property)—*Statute 24 & 25 Vic cap 104 s 15—Criminal Procedure Code ss 145 435 429—Order of Magistrate in case of a dispute relating to immoveable property—High Court s powers of revision* *Held* that the High Court cannot exercise revisional powers in respect of proceedings under Ch XII of the Code of Criminal Procedure unless in a case where the Magistrate has acted without jurisdiction ...

22 ———— Party having no right to present possession—*Criminal Procedure Code s 145—No decision come to by Magistrate as to party in possession—Application for revision at instance of party who could not in his own right be entitled to immediate possession—Practice* *Held* that where a Magistrate after entertaining proceedings under s 145 of the Code of Criminal Procedure had declined to make any order declaring ... possession ...

being have no possible right on his own behalf to present possession *Laldhari Singh* v *Sukhdeo Narain Singh I L R 27 Calc 892* and *Anesh Mollah* v *Ejaharuddi Mollah I L R 28 Calc 446* distinguished *In the matter of the petition of* BEHARI LAL (1902) I L R 24 All. 443

23 ———— Discretionary power—*Penal Code (Act XLV of 1860) s 192—Criminal Procedure Code (Act V of 1898) ss 435 439—Perjury—Con* ... power of the ... ust ... of

each particular case anxious attention being given to the said circumstances which vary greatly This discretion ought not to be crystallized as it would become in course of time by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion which the Legislature has committed to them This discretion like all other judicial discretions ought, as far as practicable to be left untrammelled and free so as to be fairly exercised according to the exigencies of each case EMPEROR v BANKATRAM LACHIRAM (1904) I L R 28 Bom. 533

24. ———————— Revision—Practice—*Discretion of Court as to entertainment of application in revision* *Held* that it is not the practice of the High Court to entertain an application for revision on the criminal side where there exists a lower Court having concurrent revisional jurisdiction ... application has first been made ... and ... ed.

... I L R ... 16

25 ———— Restoration of immoveable property—*High Court revisional jurisdiction over immoveable property—Duty of Magistrate to pass orders under ss 17 and 522 in favour of a party forcibly dispossessed—Criminal Procedure Code (Act V of 1898) ss 423 (1) (d) 439 517 and 522* Under s. 423 (1) (d) of the Criminal Procedure Code the High Court has power as a Court of Revision to

REVISION—CRIMINAL CASES—*contd*

1 GENERAL RULES FOR EXERCISE OF POWER—*concld*

interfere with an order passed by a Magistrate under s 522 of the Code *Manki* v *Bhagwanti* *I L R 27 All 415* followed *Ram Chandra Mitry* v *Nobin Mirdha* *I L R 25 Calc 630* referred to Where a party was found to have been assaulted and dispossessed of a bungalow and its contents by ... equence con ... *Held* that it ... have passed orders under s 522 and 517 directing restoration of the bungalow and its contents to the party thus forcibly dispossessed. AHMED ALI *v* KEENOO KHAN (1908) I L R 36 Calc 45

2 DELAY

1. ——— Necessity of immediate ... an application by a party who had in proceedings under s 318 of the Code been found not to be in possession to set aside the proceedings on account of the great delay that had taken place in making it Such applications ought to be made at once GOGUN PRAMANICK *v* SURNOMOYEE 19 W R Cr 39

2. ——— Irregular summary rejection of appeal—*Rejection without giving reasons* Where a Sessions Judge rejected an appeal summarily under s 421 of the Criminal Procedure Code 1882 by an order consisting merely of the words Appeal rejected and an application for ...

3 ——— Application to revise order of acquittal. Where an application was made by the Local Government to the High Court for revision of an order of acquittal under s 439 of the Criminal Procedure Code 1882 nearly ten months after the Sessions trial and upwards of twelve months after the commission of the alleged crime and where there was upon the face of the Judge's judgment no error in law and no appeal had been preferred upon a question of fact —*Held* that under such circumstances the Court did not feel called upon to enter into the case at large upon the merits under a petition for revision QUEEN EMPRESS *v* ALA BAKHSH I L R 6 All 484

3 QUESTION OF FACT

Under the former Code of 1872 the Court had power to deal on revision with questions of law not with questions of fact MUNGLO *v* DURGA NARAIN NAG 25 W R Cr 74

In the matter of the petition of DEBI CHURN BISWAS 20 W R Cr 40

EMPRESS *v* DONNELLY *In the matter of the petition of* DONNELLY I L R 2 Calc 405

1 ——— Power to go into facts—*Discretion of Court—Criminal Procedure Code (Act X of 1882) s 435* Under s. 435 of the Criminal Procedure Code the High Court has power to go into questions of fact but it will only exercise this power in cases in which it finds that it will be in the interests of justice to do so NOBIN KRISHNA MOOKERJEE *v* PASSICK LALL LAHA I L R 10 Calc 1047

2 ——— *Power of High Court in revisional cases—Criminal Procedure Code 1882 s 439* Under s 439 of the Code of Criminal Procedure 1882 the High Court has power to consider the facts of a case in revision RAM BRAHMA SIRCAR *v* CHANDRA KANTA SHAH I L R 21 Calc 931

3 ——— *Criminal Procedure Code 1882 s 439* The interference of the High Court in revision is not limited to matters of law it is fully competent to the High Court to enter into matters of fact if it thinks fit But the mere ... to induce the High Court to think that the evidence ought to be examined in order to see that there has been no failure of justice But no hard and fast rule can be laid down each case will have to be dealt with according to its own circumstances KESHAB CHUNDER ROY *v* AKHIL METEY I L R 22 Calc 998

4. ——— *Criminal Procedure Code 1882 ss 435 439—High Court's powers of revision in criminal cases* Under ss 435 and 439 ... ceptional grounds for its interference in the interests of justice *Per* JARDINE *J*—As a rule the Court refuses to interfere (i) where the Legislature ...

5 ——— *Criminal Procedure Code (Act X of 188) s 439* Although it is not usual for the High Court to interfere in revision with the decision of the lower Courts when it is based on a consideration of the evidence yet where

REVISION—CRIMINAL CASES—*contd*

3 QUESTION OF FACT—*concld*

the lower Courts have not considered the evidence from the point of view that the witnesses were accomplices and where hearsay evidence has been improperly admitted on important points the Court will go into the facts of the case ROJONI KANT BOSE v ASAN MULLICK 2 C W N 672

4 EVIDENCE AND WITNESSES

1 ——— Conviction inconsistent with evidence—*Criminal Procedure Code (Act X of 188?) ss 439 and 4?3—Court of Appeal—Appellate powers—Discretion* In cases in which the law allows no appeal the High Court as a Court of revision will not except on very exceptional grounds exercise the powers of an Appellate Court but where such exceptional grounds exist as where the conviction is not in any degree supported by the evidence the High Court will exercise its discretion under s 439 of the Code of Criminal Procedure and reverse the conviction and sentence EMPRESS v BADRUDIN I. L R. 8 Bom. 197

Also where there is no evidence to support the conviction *In the matter of the petition of* RAM JOY KURMOKAR 25 W R Cr 10

In the matter of KRISHNANAND BHUTTACHARJEE 3 B L. R A. Cr 50

S C *In the matter of* KISHEN SOONDUR BHUTTACHARJEE 12 W R Cr 47

EMPRESS v NAROTAM DAS I L R 6 All 98

REG v GANU BIN KRISHNA GURAV 4 Bom Cr 25

2 ——— Laxity in weighing and testing evidence Under the former Code the Court would interfere in the case of great laxity in weighing and testing evidence EMPRESS OF INDIA v MURLI I L R 2 All 336

But not on a mere error in the appreciation of evidence REG v SAKHARAM MANOHAR 11 Bom 125

In the matter of AUROKIAM I. L R 2 Mad 38

ANONYMOUS CASE 5 Mad Ap 10

3 ——— Case depending on consideration and appreciation of evidence—*Abatement of appeal* Two persons *M* and *N* were [illegible]

[illegible]

N's appeal the High Court passed an order acquitting him and reversing his conviction and sentence Thereupon one of the relatives of the deceased *N* applied to the High Court to set aside the conviction and sentence passed in his case and order the fine to be refunded *Held* that on *N*'s death his appeal abated under s 431 of the Code of [illegible]

[illegible]

REVISION—CRIMINAL CASES—*contd.*

4 EVIDENCE AND WITNESSES—*contd*

referring the legal representatives of the deceased to the Governor in Council for redress *In re* NABI SHAH I L R 19 Bom 714

4 ——— Improper estimate of evidence by the Magistrate The High Court would only interfere on revision if it came to the conclusion that the Magistrate had illegally and improperly underrated the value of the evidence LACHMAN v JAULA I L R 5 All. 161

5 ——— Decision that evidence is insufficient—*Refusal of Magistrate to proceed further in revision case* As a Court of revision the High Court will not enter upon a consideration of the value of the evidence on which the Magistrate decided not to proceed further in a case under s 521 Criminal Procedure Code 187? SHONAI PORAMANICK v JOGENDRO SHAHA 1 C L. R. 486

6 ——— Questions depending on [illegible]

[illegible]

it are not cases for revision *In the matter of the petition of* DEBI CHURN BISWAS 20 W R. Cr 40

See BHARUT CHUNDER BOSE v DWARKANATH CHOWDRY 15 W R Cr 86

7 ——— Conflict of opinion on evidence—*Ground for exercise of power of revision—Difference of opinion between Magistrates* The difference of opinion on a question of proof between a Magistrate who did and another who did not hear the witnesses is not a ground on which the High Court will be disposed to exercise its powers of revision NUNDO KISHORE HALDER v ANUNDO CHUNDER CHATTERJEE 23 W R. Cr 64

Nor are questions of the credibility of evidence *In the matter of the petition of* HURI PERSHAD 24 W R Cr 60

S C. on further hearing *In the matter of the petition of* HURRI PROSAD DUTTA 25 W R Cr 61

GOVERNMENT OF BENGAL v KAZIMUDDIN 18 W R. Cr 3

8 ——— Omission to take material evidence—*Decision on discrepant evidence* Omission to take very material evidence proffered by the accused was *held* to have prejudiced him and to afford ground for the High Court's interference under the Code of Criminal Procedure 1872 s ?9 *In the matter of the petition of* HUR PERSHAD 24 W Cr 60

[illegible] Omission to give available [illegible]

[illegible]

REVISION—CRIMINAL CASES—*contd*

4 EVIDENCE AND WITNESSES—*contd*

High Court could not set aside findings of fact except in case of an appeal from a conviction *In the matter of* AUROKIAM I L R 2 Mad 38

10 ———— **Irregularity in dealing with evidence**—*Withholding admissible statement of witness from the jury* Where a statement by a witness for the defence that a witness for the prosecution was at a particular place at a particular time and consequently could not then have been at another place where the latter states he was and saw the accused person after being admitted was withheld from the jury the High Court ordered a new trial REG v SAKHARAM MUKUNDJI 11 Bom. 166

11. ———— *Criminal Procedure Code 1861 ss 426 439—Misconception of evidence* Misconception of evidence was a defect or irregularity within the meaning of ss. 426 and 439 of the Code of Criminal Procedure 1861 QUEEN v BEHAREE DOSADH 7 W R Cr 7

12. ———— *Criminal Procedure Code 1861 s 426—Admission of illegal evidence —Act II of 1855 s 5 —New trial* The Appellate Court where it finds that illegal evidence has been admitted should consider whether it is such as is likely to have exercised prejudicial influence on the minds of the jury and if the Court be of opinion that it is so it will treat the case as if it had been tried by a Sessions Judge with the aid of assessors. If the evidence (after omitting that portion of it which should not have been admitted) is sufficient to sustain the verdict the conviction will be upheld In exceptional cases where the evidence is of such a character as to suggest the consideration that its [illegible]

13 ———— *Discretion of Sessions Judge —Power of Appellate Court* The exercise of [illegible] had un[illegible] 1872 [illegible] before [illegible] are to [illegible] sions Court was open to review by the High Court on appeal. REG v ARJUN MEGHA 11 Bom 281

14 ———— *Improper admission in evidence of examination of prisoner* When the examination of the prisoner by the Magis[illegible]

REG v PEVADI BIN BASSAPPA 2 Bom 421 2nd Ed 397

REG v VITHAJI 2 Bom 422 2nd Ed 398

REG v GANU BAPU 2 Bom 422 2nd Ed. 398

15 ———— **Error in mode of recording evidence** Where the evidence was taken down by the Magistrate in English and no memorandum was attached to it (as required by s 199 Code of Criminal Procedure 1861) stating that the evidence was read over to the witness in a language which he understood it was *held* that the accused was materially prejudiced and the Court interfered on revision QUEEN v ISSUR RAUT 8 W R. Cr 63

16 ———— *Criminal Procedure Code 1872 s 29 —Evidence in dispute regarding land* In a case of a dispute regarding land commenced under the Code of Criminal Procedure 1861 but continued under the Code of 1872 where the evidence was not recorded in the manner provided for by s 334 and the following sections of the Code the Court set the order aside on revision KHETTROMONY DASI v SREENATH SIRCAR 24 W R Cr 14

17 ———— *Criminal Procedure Code 1861 ss 426 439—Irregularity not prejudicing prisoner—Madras Police Act 1859 s 44* A police constable was tried and convicted by the Assistant Agent of Vizagapatam under s 44 of Act XXIV of 1859 and sentenced to fine and imprisonment On appeal the agent reversed the conviction and sentence on the ground that there had been irregularity of procedure on the part of his assistant in not recording evidence for the prosecution and in only taking down the substance of the prisoner s statement and not the full statement as made *Held* that the question was whether there had been such error and irregularity on the part of the Assistant Agent as to prejudice the accused and to occasion a failure of justice that if not the order reversing the conviction was rendered bad in law by ss 426 and 439 of the Criminal Procedure Code that the accused did not appear to have been prejudiced consequently the order of the Appellate Court was set aside and a re hearing directed ANONYMOUS 6 Ap Mad 45

18 ———— **Irregularities concerning witnesses**—*Irregularity in taking evidence of witnesses* The High Court refused to interfere where a witness for the prosecution was examined after the defence was over where the prisoner had notice of the evidence to be given by the witness and therefore was not prejudiced by it in his defence QUEEN v SHAM KISHORE HOLDAR 13 W R Cr 36

But *see* QUEEN v ASSANOOLLAH 13 W R. Cr 15

19 ———— *Omission to examine and reduce to writing evidence of complainant* The not examining a complainant and not reducing his examination into writing is not such an

REVISION—CRIMINAL CASES—contd

4 EVIDENCE AND WITNESSES—contd

irregularity as to require the interference of the High Court in a trivial case unless it appears probable (of which there was no suggestion in the present case) that a fresh investigation would produce a different result KABIL NUSYO v BAHARULLAH 17 W R Cr 37

20 ——— *Omission to examine witnesses* Where a Magistrate omitted to examine all the complainant's witnesses before declaring the accused not guilty the Court dealt on revision with the omission SREENATH MUNDLE v SREERAM RAJPUT 24 W R Cr 62

SANTOO MUNDLE v ABDOOL BISWAS 13 W R Cr 35

21. ——— *Omission to give opportunity to produce witenesses—Error or defect in trial—Criminal Procedure Code 1861 s 426* Where the accused had not his witnesses in attendance and did not apply to the Magistrate to summon them (ss 352 and 353 Code of Criminal Procedure) the omission of the Magistrate to require him to produce his witnesses was *held* not to prejudice the accused or so as to call for interference on revision. QUEEN v TOTARAM 11 W R Cr 15

22 ——— *Power of High Court—Criminal Procedure Code (Act XXV of 1861) s 366—Examination of accused—Postponement of trial for summoning a witness—Discretion of Judge.* A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity Some of the prisoners had confessed before the Deputy Magistrate but he failed to record the examination of the prisoners or to attest it as required by s. 205 of the Code of Criminal Procedure The Sessions Judge therefore refused to admit the examination of the [illegible]

within the discretion of the Judge under s 366 to say whether or not he should postpone the trial or summon any witness to give his evidence the High Court as a Court of revision would not interfere or order a new trial. QUEEN v RADHA JANA 3 B L R A Cr 59 12 W R Cr 44

23 ——— *Criminal Procedure Code 1861 ss 4?6 439* Where the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo* the High Court declined to interfere as the irregularity of procedure was one by which the prisoners were not prejudiced. PURMESSUR SINGH v SOROOP AUDHIKAREE 13 W R. Cr 40

24. ——— *Refusal to allow witnesses to be cross examined by accused* The refusal of the Judge to allow to be cross examined, by the accused witnesses whose depositions have been taken by the Magistrate but whose evidence is dispensed with at the trial, was *held* not to be a matter for revision REG v FATTECHAND VASTACHAND 5 Bom. Cr 85

25 ——— *Order of Magistrate refusing to recall witnesses for prosecution for cross examination* An order of the Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross examination is one which can be immediately corrected by the High Court under its general powers of superintendence and revision *In the matter of the petition of* BELILIOS BELILIOS v QUEEN 19 W R. Cr 53

26 ——— *Power of High Court—Penal Code ss 2?3 291—Evidence not taken on oath* In exercise of its powers as a Court [illegible]

peared that the complainants statement was not made on oath or before a Magistrate and in which there was no statement of charge or evidence of any kind. *In the matter of* MOHESH CHUNDER 20 W R Cr 55

5 ACQUITTALS

1 ——— **Acquittal from which Government may appeal**—*Criminal Procedure Code 1872 s 297* It is not the practice of the High Court to interfere by way of revision under s. [illegible] of the Code of Criminal Procedure 1872 with an acquittal against which the Government may appeal. EMPRESS v CHEDI RAI 7 C L R 142

2 ——— **Improper acquittal**—*Acquittal on erroneous ground* Where the senior As[illegible] acquitted the pro[illegible] [illegible]ged false [illegible] the trial [illegible] reversed the order of acquittal and directed the trial to be proceeded with REG v DAMODHAR RAM CHANDRA 5 Bom. Cr 68

3 ——— *Trial on evidence taken in another case* The Court set aside an order of acquittal passed by a Deputy Magistrate in a case which he tried not on evidence taken before himself in the case but entirely on evidence in another case before another officer (the Joint Magistrate) TUKHEYA RAI v TUPSEE KOOER 15 W R. Cr 23

4. ——— **Order for detention of accused pending appeal from acquittal**—*Power of High Court on revision* Where an appeal having been preferred to the High Court against a judg[illegible] [illegible] made an order on [illegible]

REVISION—CRIMINAL CASES—*contd*

5 ACQUITTALS—*contd*

O C J and PEARSON *J* (SPANKIE and OLDFIELD *J J* dissenting) that the High Court had no power as a Court of revision to interfere with the order QUEEN *v* GHOLAM ISMAIL I L R 1 All 1

5 ——— **Order by High Court for re trial after acquittal on appeal**—*Criminal Procedure Code ss 4 3 (a) 439—High Court's powers of revision* The High Court has power under s 439 of the Criminal Procedure Code to revise an order of acquittal though not to convert a finding of acquittal into one of conviction In reference to orders of acquittal passed by a Court of Session in appeal the High Court may under s 439 reverse such order and direct a re trial of the appeal the proper tribunal to conduct which is the Sessions Court of appeal or such other Court of equal jurisdiction as the High Court may entrust under s 526 of the Code with the trial of the appeal QUEEN EMPRESS *v* BALWANT I L R 9 All 134

6 ——— **Petition to revise a judgment of acquittal**—*Criminal Procedure Code ss. 435 439 440* An appeal against an acquittal by way of revision is not contemplated by the Code and it should on public grounds be discouraged THANDAVAN *v* PERIANNA I L R 14 Mad 363

7 ——— **High Court's power of re** . . .

. . .

ordinarily it does not interfere with such an order in the exercise of its revisional jurisdiction because an appeal can always be made by the Local Government under s 417 of the Code HEERABAI *v* FRAMJI BHIKAJI I L R 15 Bom 349

8 ——— **Acquittal of accused effect of with regard to others similarly charged**—*Revival of proceedings against absent accused—Indian Penal Code (Act XLV of 1860) ss 147 341 379* Petitioners were charged along with two others with having committed certain offences under ss 379 341 and 147 Indian Penal Code the latter who were sent up by the police were . . .

. . .

9 ——— *District Magistrate's discretion to move Local Government against acquittal—Effect of order of acquittal on other persons charged but not sent up for trial—Criminal Procedure Code (Act V of 1898) s 258* A charge had been preferred against the petitioners and several other persons under ss 143 342 and 323 Indian Penal Code The police did not send up the petitioners for trial as they thought the evidence against them was weaker than that against the others and they sent up these but they were acquitted by the trying Magistrate who entered the case as doubtful false Subsequently the District Magistrate called for the records and issued notices against all the accused persons to show cause why further proceedings should not be taken against them After hearing them he disagreed with the decision of the trying Magistrate But not considering the case as of sufficient importance to move the Local Government he ordered the petitioners only who had not been tried to be placed on their trial *Held* that the District Magistrate should in the proper exercise of his discretion have moved the Local Government against the order of acquittal which he disapproved. *Held* further . . . the peti . . . judgmer . . . set asid . . . (1902) . . .

6 COMMITMENTS

1 ——— **Power to quash commitments**—*Power of revision by High Court—Criminal Procedure Code 1872 s 47?* *Held per* STUART *C J* (SPANKIE *J* doubting) that the High Court was competent . . .

. . . SINGH I L R 2 All 398

But *see* QUEEN *v* SHAMA SUNKER BISWAS 10 W R Cr 25

and QUEEN *v* SHEETARAM CHOWDHRY 2 W R Cr 44

2 ——— **Power of High Court in revision to order person convicted and sentenced to be committed for trial**—*Penal Code (Act XLV of 1860) s 326—Grievous hurt—Inadequate sentence—Presidency Magistrate duty of—Criminal Procedure Code ss 423 439* The accused was tried by a Presidency Magistrate on a charge of voluntarily causing grievous hurt with an instrument for cutting He was convicted and sentenced under s 326 of the Penal Code to rigorous imprisonment for two years The Local Government being of opinion that the sentence was . . .

. . . Court of Session the High Court had no power under s 423 (b) of the Code to order the accused to be committed for trial *Held* dissenting from

REVISION—CRIMINAL CASES—*contd*

6 COMMITMENTS—*concld*

Queen Empress v *Sukha I L R 8 All 14* that s 423 (*b*) gives to an Appellate Court the power to order an accused person to be committed for trial when it con iders that that is the procedure that should have been adopted by the Magistrate in the case *Held* also that the offence of which the prisoner was convicted being one punishable under s 326 of the Penal Code with transportation for life or rigorous imprisonment for ten years and fine the Presidency Magistrate ought to have com mitted the accused for trial to the High Court QUEEN EMPRESS v ABDUL RAHIMAN

I L R 16 Bom. 580

3 ———————— *Criminal Procedure Code (Act V of 1898) ss 209 213 215 436—Order of discharge—Subsequent order of commitment—Revisional power of High Court* Where a Sessions Judge under s 436 ordered the commitment of an accused who had previously been discharged under s 209 Criminal Procedure Code by the Deputy Magistrate on evidence which was unreliable and insufficient —*Held* that the High Court had authority to set aside the order of commitment on the merits of the case and that the order was bad and should be set aside The High Court in the exercise of its powers of revision can on the merits of a case set aside an order of commitment passed by a District Magistrate or Sessions Judge under s 436 Criminal Procedure Code where such order of commitment setting aside a previous order of discharge is made on insufficient or unreliable evidence PIRTHI CHAND LAL v SAMPATIA (1903) **7 C W N 327**

7 DISCHARGE OF ACCUSED

1 ———————— **Improper discharge**—*High Court s powers of revision—Criminal Procedure Code 1882 s 439—Power to order commitment—Revival of prosecution* The High Court has power under s 439 of the Criminal Procedure Code 1882 if it considers that an accused person has been improperly discharged to order him to be committed for trial EMPRESS v RAM LAL SINGH

I L R 6 All 40

This was also the case under the former Act *In the matter of the petition of* PROSUNNO COOMAR GHOSE **19 W R Cr 56**

EMPRESS v GOWDAPA **I L R 2 Bom 534**

In the matter of the petition of MOHESH MISTREE **I L R 1 Calc 282 25 W R Cr 30 67**

EMPRESS v DONNELLY *In the matter of the petition of* DONNELLY **I L R 2 Calc 405**

EMPRESS v HARY DOYAL KARMOKAR **I L R 4 Calc. 16**

S C ISHEN CHUNDER KURMOKAR v HURRY DOYAL KURMOKAR **3 C L R 263**

In the matter of TROYLOKHYANATH MITTER **1 C L R. 83**

REVISION—CRIMINAL CASES—*contd*

7 DISCHARGE OF ACCUSED—*contd*

2 ———————— **Dismissal of charge against accused**—*Dismissal of case of breach of contract on the ground that Act XIII of 1859 did not apply* The High Court declined to exercise their extra ordinary powers of revision in a case in which the Joint Magistrate dismissed a complaint of breach of contract under Act XIII of 1859 on the ground that that Act did not apply to the contract which was a contract to work at a certain factory LYALL & Co v RAM CHUNDER BAGDEE **18 W R Cr 53**

3 ———————— **Improper discharge**—*Criminal Procedure Code (Act V of 1898) ss 436 410 209—Preliminary inquiry—Order for further inquiry or subsequent commitment to Sessions—Consideration of evidence on record* At a preliminary inquiry a Magistrate before committing an accused person to the Sessions Court under s 210 of the Code of Criminal Pro edure should have sufficient grounds for doing so and among such grounds may properly be placed a consideration as to whether on the evidence before him a conviction will be arrived at A Sessions Judge or District Magistrate in considering whether an accused person has been improperly discharged within the terms of s 436 of the Criminal Procedure Code is bound to consider all the grounds upon which such order of discharge has been passed including a consideration of the evidence which has not been believed or held to be sufficient to establish a *primâ facie* ca e before ordering the commitment of the accused person or directing a further inquiry Where an accused had been discharged under s 209 of the Code of Criminal Procedure and subsequently the Sessions Judge directed the accused to be committed to the Sessions under s 436 of the Code of Criminal Procedure without considering the evidence on the record which he thought he could not do without "pre judging the case thus making it difficult for him to hear it with a jury —*Held* that the Sessions Judge s order directing the commitment of the accused was bad inasmuch as it had not been made on full consideration of the merits of the ca e as disclosed by the evidence before the Magistrate HARBANS SINGH v FAKIR DAS (190) **7 C W N 77**

4 ———————— *Jurisdiction—Revisional jurisdiction of High Court—Criminal Procedure Code (Act V of 1898) ss 423 439—Presidency Magistrate—Discharge of accused person under s 209 of Criminal Procedure Code (Act V of 1898)—Order of discharge set aside by High Court and committed* [illegible] *the accused and committed* [illegible] *t—Practice* [illegible] the Crim [illegible] furnish tha [illegible] d by a Pre [illegible] necessary [illegible] discharged [illegible] h commit [illegible] 439 of the [illegible] 1898), the Criminal Procedure Code (Act [illegible]

REVISION—CRIMINAL CASES—*contd*

7 DISCHARGE OF ACCUSED—*concld*

High Court in its revisional jurisdiction may exercise all the powers given to it as a Court of Appeal (by s 423) except (see paragraph 4) the power of converting a finding of acquittal into one of conviction seems to point to the conclusion that all other powers not expressly excluded may be exercised by the High Court as a Court of Revision EMPEROR v VARJIVANDAS (1902)
I L R 27 Bom 84

8 REVIVAL OF COMPLAINT AND RE TRIAL

1 ———— Power of High Court to revise order reviving a complaint after discharge—*High Court Charter Act (24 & 25 Vict c 104) s 15—Criminal Procedure Code 188S s 439* The High Court has ample powers under the Charter Act if not under the Code to revise an order reviving a complaint after discharge by a Presidency Magistrate In this particular case it was *held* that the Presidency Magistrate has exercised a proper discretion in reviving the complaint OROORBA KUMAR SETT v PROBODH KUMARY DASSI
1 C W N 49

See CHAPOOBALA DABEE *v* BAPENDRA NATH MAJOOMDAR I L R 27 Calc 126
3 C W N 601

2 ———— Power of High Court to re try case after setting aside a conviction on ground of misdirection to jury *Quære* Whether in setting aside a conviction on the ground of misdirection to the jury the High Court has any power to re try the case having regard to s 423 of the Criminal Procedure Code SADREE SHEIKH v EMPRESS 4 C W N 576

3 ———— Power to order re trial—*Power of High Court as Court of Revision and Appeal —Act XI of 1874 s 28* The High Court has full power as a court of revision to order a re trial when ... as the like ... es tried with ... of LUCKHY ... R Cr 24

4 ———— Ground for re trial—*Improper discharge of accused Per* MARKBY *J*—When the discharge has been improper the only proper ...

... LY *In the matter of the petition of* DONNELLY
I L R 2 Calc 405

5 ———— *Improper discharge of accused* As the case was one of improper discharge and came before the Magistrate under s 295 of the Criminal Procedure Code 1872 the proper and only course for him was to report it for orders to the High Court which if of opinion that the accused were improperly discharged might under s 297 have directed a re trial. The case of *Sidya bin Satya* (Unreported) differed from *In the matter of the petition of* MOHESH MISTREE
I L R 1 Calc 282 25 W R Cr 30 67

REVISION—CRIMINAL CASES—*contd*

8 REVIVAL OF COMPLAINT AND RE TRIAL —*concld*

6 ———— Sentence almost undergone —*Ground for not ordering re trial* Where a rule was issued to show cause why the conviction should not be set aside and a re trial ordered and it appeared that the accused had already suffered the whole imprisonment less one day the Court in setting aside the conviction did not direct a re trial. ABDUL BISWAS v KHATER MONDAL
3 C W N 332

9 JUDGMENTS DEFECTS IN

1 ———— Judgment without giving reasons—*Criminal Procedure Code 1882 s 421 —Appeal summary rejection of—Judgment of Criminal Appellate Court* The powers conferred by s 421 of the Criminal Procedure Code should be exercised sparingly and with great caution and ...

rejected and an application for revision of such order was made to the High Court after great delay —*Held* that the Judge was wrong in rejecting the appeal without assigning any reasons for so doing and if it had been taken within a reasonable time it would have been a valid objection. QUEEN EMPRESS v RAM NARAIN I L R 8 All 514

2 ———— Judgment not containing substance of evidence relied on—*Omission to comply with s 298 Criminal Procedure Code—Irregularity in proceedings—Error or defect* K was tried by a Magistrate in a summary way and convicted He appealed to the Court of Session which quashed his conviction on the ground merely that the substance of the evidence on which the conviction was had was not embodied in the Magistrate s judgment *Held* that the Court of Session should not have quashed the conviction merely by reason of such defect but if it found it impossible ...

if necessary re-examining the witnesses for that purpose or to have ordered a re trial with that view EMPRESS OF INDIA v KARAN SINGH
I L R 1 All 680

3 ———— Judgments not giving the best reasons for conviction. Where the record ...

4 ———— Omission to record reasons for conviction—*Omission to take notes of evidence in non-appealable case—Criminal Procedure*

REVISION—CRIMINAL CASES—contd

9 JUDGMENTS DEFECTS IN—concld

Code 1882 ss 370 537 In a case where the [illegible] legally [illegible] record [illegible] cl. (i) [illegible] by the [illegible] conviction and sentence must be set aside notwithstanding the provisions of s 537 of the Code of Criminal Procedure *In the matter of the petition of* YACOOB YACOOB v ADAMSON

I L R 13 Calc 272

10 SENTENCES

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES

1 ———— Case in which sentence has expired—*Criminal Procedure Code 1882 s 439—High Court s powers of revision—Revision of case in which term of imprisonment has been served* The High Court is competent in the exercise of its powers of revision under s 439 of the Criminal Procedure Code to interfere with a conviction even though in consequence of the expiry of the sentence it may not be possible to interfere with the latter QUEEN EMPRESS *v* SINHA I L R 7 All. 135

2 ———— Enhancement of sentence on appeal—*Criminal Procedure Code (Act X of 1882) ss 423 439* A head constable was convicted under s. 330 of the Penal Code and at a trial before [illegible] nths simple [illegible] The High [illegible] as a Court of revision that the sentence passed should be enhanced METHER ALI v QUEEN EMPRESS

I L R 11 Calc 530

See QUEEN v GORACHAND GOPE

B L R Sup Vol 443

3 ———— Enhancement of sentence so as to alter its nature—*Criminal Procedure Code 1882 s 439* The High Court in the exercise of its powers of revision can enhance a sentence so as to alter its nature QUEEN EMPRESS v RAM KURIA I L R 6 All 622

4 ————Setting aside conviction and sentence and directing trial on graver offence—*Power of High Court—Conviction of lesser offence by Court having no jurisdiction to convict of a graver one* When the evidence upon which a prisoner is convicted by a subordinate tribunal of an offence within its jurisdiction discloses an offence of a graver character beyond the jurisdiction of that tribunal the High Court may quash the conviction and sentence for the minor offence and direct a trial before the tribunal having jurisdiction for the graver offence Whether it will do so or not is a question not of law but of expediency on the facts of each particular case. ANONYMOUS

7 Mad. Ap 5

REVISION—CRIMINAL CASES—contd

10 SENTENCES—contd.

5 ———— Ground for enhancing sentence—*Sentence clearly inadequate—Charge improperly framed* In a case in which the Magistrate referred the proceedings to the High Court with a recommendation that they should be set aside because the sentence was inadequate it was *held* that it is not merely because circumstances occur to the Magistrate which would render necessary a more severe sentence or a different charge that the High Court should interfere There must be matter on the record of the case showing that a charge has been improperly framed or that the sentence passed is clearly inadequate to the offence QUEEN *v* HARNATH SINGH 20 W R Cr 22

6 ———— Ground for refusing to enhance sentence—*Reference by Commissioner having jurisdiction—Inadequate sentence.* The High Court refused to interfere on a reference made to it by a Deputy Commissioner in a case which was sent up for heavier punishment to the Deputy Commissioner under s 46 Code of Criminal Procedure 1861 by a Magistrate of the 2nd class as the Court was of opinion that the Deputy Commissioner instead of referring the case ought under that section to have tried the prisoners himself and convicted them of any offence which he thought was made out against them by the evidence SOBIL DASS *v* CHUNDRA DEB 20 W R. Cr 15

7 ———— Setting aside improper sentence—*Escape from illegal confinement* Where a party was sentenced by order of the Magistrate to ten months imprisonment for escaping from a confinement which he was undergoing without warrant of law and without having committed an offence the High Court in the exercise of its powers of interference set aside the order QUEEN v PROHOOBER SINGH 25 W R Cr 1

8 ———— Severity of sentence—*Criminal Procedure Code 1861 s 404* The severity of a sentence is not of itself a ground on which the High Court should call for the record of a trial or other judicial proceeding under the general power of revision. QUEEN v NARAPUREDDY 4 Mad. 243

See In the matter of KRISHNANAND BHUTTACHARJEE 3 B L R A Cr 50

s c *In the matter of* KISHEN SUNDUR BHUTTACHARJEE 12 W R. Cr 47

9 ———— Necessity for alteration of conviction from one section of Penal Code to another—*Preference to High Court* The necessity for altering a conviction from one section to another for cognate offences when the accused has not been prejudiced by any such error is no sufficient ground for a reference to the Court of revision. EMPRESS v ISHAN CHUNDRA DE

I. L R 9 Calc 847 12 C L R 451

10 ———— Conviction under repealed law—*Criminal Procedure Code 18[illegible]* Where a Magistrate convicted under certain repealed sections of law the High Court refused to set aside the conviction having regard to s 4[illegible] Code of Cri

REVISION—CRIMINAL CASES—contd

10 SENTENCES—contd

minal Procedure as the conviction and sentence might have been passed under sections of the Penal Code and no substantial injury had been done to the accused PUGHOONATH DASS v CHUCKERDHUN RAUT 15 W R Cr 49

11. ——— **Conviction under Penal Code of offence committed before Penal Code came into operation**—*Criminal Procedure Code 1861 s 4 6—Act XVII of 1862 s 4* In a case in which the accused was charged under the Penal Code with an offence which was committed before the Penal Code came into operation it was *held* that having regard to s 4 Act XVII of 1862 and s 426 of the Code of Criminal Procedure the error of procedure was not sufficient to vitiate the conviction so long as the punishment awarded as under the Penal Code did not exceed that which was a legal penalty for the offence before the Penal Code became law *In the matter of the petition of* MOHABEER SINGH 15 W R Cr 48

12. ——— **Conviction for separate offences**—*Penal Code (Act XLV of 1860) ss 380 456 457—New trial* The prisoner was convicted by the Magistrate of two separate offences under s 456 and 380 of the Penal Code and sentenced for both. On appeal, the Sessions Judge holding that the offence proved was under s 457 ordered a new trial for offences under ss 457 and 380 *Held* that there ought not to be a new trial but that the conviction and sentence under s 380 should be set aside QUEEN v PANCHANAN KAIRI

B L R Sup Vol 488 6 W R Cr 39

13 ——— **Sentence for different offence than that committed**—*Criminal Pro* [illegible]

[illegible] cheating by personation and the offence appeared to the High Court to be furnishing false information for which the punishment awarded was legal —*Held* that the Court under s 426 of the Criminal Procedure Code ought not to interfere with the conviction or sentence REG v PAGHOJI BIN KANOJI 3 Bom Cr 42

REG v BABAJI BIN BHAU 4 Bom Cr 16

14 ——— **Conviction without jurisdiction**—*Criminal Procedure Code 1861 ss 4 6 434—Return on by High Court* In a case referred [illegible]

2nd class Subordinate Magistrate had no jurisdiction to try and not under s 323 for causing hurt of which offence the accused had been convicted the Court passed no order as it did not think it right under the circumstances of the case to direct the re trial of the accused on the proper charge REG v AMBA KOM GIRSOJI 4 Bom Cr 1

REVISION—CRIMINAL CASES—contd

10 SENTENCES—contd

15 ——— *Offence not cognizable by Magistrate convicting* In a case referred by a District Magistrate under s 427 of the Criminal Procedure Code 1861 on the ground that [illegible]

s 323—the Court passed no order and remarked that the case should not have been referred under s 427 which applies only to the Court of Session acting on appeal from a Court subordinate to it REG v NAVAJI VALAD VITHOJI 4 Bom Cr 2

16 ——— **Trial on wrong charge**—*Criminal Procedure Code 1861 s 404* Where a person scourged another with nettles in order to extract property from the sufferer and the Magistrate [illegible]

interfere under s 404 Code of Criminal Procedure and direct a new trial being that substantial justice had been done in the case *In the matter of the petition of* TARINEE PROSAUD BANERJEE 18 W R Cr 8

In the matter of the petition of BUNKABEHAREE SEIN 18 W R Cr 23

In the matter of ROOPNARAIN DUTT 18 W R Cr 38

17 ——— **Trial under wrong charge**—*Conviction of non cognizable offence* In a case referred by a District Magistrate on the ground that the accused had been convicted under s 403 of the Penal Code of dishonest misappropriation of property whereas the charge should have been under s 406 of criminal breach of trust an offence not within the cognizance of the 2nd class Subordinate Magistrate who passed the sentence the Court annulled the conviction and sentence and directed the case to be tried before a proper Court REG v GANU VALAD RAMCHANDRA 4 Bom Cr 3

18 ———**Erroneous conviction under wrong section of Penal Code** Where a Magistrate erroneously holding that the offence committed was one under s 406 Penal Code over which he has jurisdiction instead of under s 409 which was cognizable only by the Court of Session tried and sentenced the accused it was *held* by the High Court as a Court of revision that his proceedings were contrary to law and he was directed to commit the case for trial by the Court of Session *In the matter of* I AM SOONDER PODDER 2 C L R 515

19 ——— **Sentence under special Act instead of Penal Code**—*Criminal Procedure Code 1872 s 297—Criminal Procedure Code 1861 s 426—Sentence under Post Office Act (XIV of 1866)* The accused being entrusted to put a [illegible]

10 SENTENCES—*concld*

Post Office Act (XIV of 1866) instead of under the Penal Code for criminal breach of trust As the accused had not been sentenced to a larger amount of punishment than could have been awarded for criminal breach of trust nor shown to have been prejudiced by the error of convicting him under the Post Office Act the High Court refused to reverse or alter the sentence pointing out at the same time that this was one of those cases in which it was a mistake to look at the smallness of the amount misappropriated rather than to the gravity of the offence *In the matter of* NOBIN CHUNDER DUTT
17 W R Cr 50

See In the matter of the petition of TARINEE PROSAUD BANERJEE 18 W R Cr 8

11 VERDICT OF JURY AND MISDIRECTION

1 ——— Ground for interference with verdict—*Power of High Court—Verdict of jury not manifestly erroneous* The Court will not interfere with the finding of a jury unless their verdict is shown to be manifestly erroneous A prisoner was charged under ss 302 and 304 of the Penal Code and the Judge at the trial added a further charge [illegible]

under s 325 [illegible]

[illegible] framed under s 304 but a majority of them found him guilty under the charge framed under s 325 The Judge disagreed with their finding as regarded the charge framed under s 304 and referred the case to the High Court under s 307 of the Criminal Procedure Code The High Court refused to interfere with the verdict on ground that the verdict could not be said to be manifestly erroneous the Judge having [illegible]

[illegible]

2 ——— Conviction on evidence not amounting to proof A jury may be satisfied with a minimum of proof and it is beyond the power of the High Court in such cases to interfere with its verdict but when there is nothing which can if believed amount to proof the case should not be put to the jury at all as a verdict of guilty cannot under such circumstances be sustained Under such circumstances the Court will set a conviction aside QUEEN *v* RUTTON DASS
16 W R Cr 19

3 ——— Finding of jury as to grave and sudden provocation—*Criminal Procedure Code 1872 s 297—Criminal Procedure Code 1861 s 426—Question of fact—Power of High Court* Under excep. 1 s. 300 of the Penal Code the finding of a jury as to whether the offence of murder was committed under grave and sudden

11 VERDICT OF JURY AND MISDIRECTION —*contd*

provocation sufficient to prevent the offence from amounting to murder is a question of fact with which the High Court cannot interfere QUEEN *v* SOHRAIE 13 W R Cr 33

4 ——— Omission to charge jury properly—*Power of High Court to set aside verdict* Omission to sum up properly to the jury is if the prisoner is thereby prejudiced an error in law such as to justify a Court of appeal in setting aside the verdict REG *v* FATTECHAND VASTACHAND 5 Bom. Cr 85

5 ——— Misdirection—*Trial by jury —Power to go into facts of case—Mode of dealing with directions of Judge to jury* In a case tried by jury the High Court has no power to go into the facts of the case in order to see whether or not the conviction was right that standing entirely upon the verdict of the jury The Court has only to consider the [illegible] whether the Judge [illegible]

[illegible] JEE [illegible]

6 ——— *Error in law—Prejudice to accused—New trial* Improper advice given by the Judge to the jury upon a question of fact or the omission of the Judge to give that advice which a Judge in the exercise of a sound judicial discretion ought to give the jury upon questions of fact amounts to such an error in law in summing [illegible] appeal or revision [illegible] of [illegible] or [illegible]

[illegible] cised by the High Court only when the Court is satisfied that the accused person has been prejudiced by the error or defect or that a failure of justice has been occasioned thereby QUEEN *v* ELAHI BUX B L R Sup Vol 459 5 W R Cr 80

7 ——— *Omission to leave* [illegible] was [illegible] the [illegible] ause

of death and the prisoner s connection with certain attempts at bribery as questions for the consideration of the jury QUEEN *v* KALI CHURN GANGOOLY
7 W R Cr 2

8 ——— *Prejudice to prisoner from erroneous summing up* Where there is a failure of justice or where the prisoner has been prejudiced by the defective summing up of the Judge the High Court can interfere either by discharging the prisoner if the evidence on the record is not sufficient to convict him supposing the trial to have taken place with the aid of assessors or to direct a fresh trial QUEEN *v* MUTHOORA SINGH 18 W R Cr 60

REVISION—CRIMINAL CASES—*contd*

11 VERDICT OF JURY AND MISDIRECTION—*contd*

9 ———— **Sessions Judge opinion of**—*Criminal Procedure Code s 30—High Court power of* In the exercise of its powers under s. 307 of the Code of Criminal Procedure the High Court will form and act upon its own view of what the evidence in its judgment proves but in doing so the opinion of the Sessions Judge no less than verdict of the jury is entitled to its proper weight *R g v Khanderav Baj ni I L R 1 Bom 10 Queen v Mukhan Kumar 1 C L R 245 Empress v Dhunum Kazee I L R 9 Calc 53 Queen Empress v Mania Dayal I L R 10 Bom 497 Queen v Ram Churn Ghose 0 W R Cr 33 Queen v Sham Bagdi 13 B L R Ap 19 0 W R Cr 73 Queen v Huro Manjhee 14 B L R Ap 9 21 W R Cr 4 Queen v Nuzir Mundal 25 W R Cr 25 Queen v Nobin Chunder Banerjee 13 B L R Ap 9 20 W R Cr 70* referred to QUEEN EMPRESS v ITWARI SAHO

I L R 15 Calc 269

10 **Verdict partial record of**—*Trial by jury—Procedure—Delivery of verdict—Criminal Procedure Code (Act V of 1898) ss 300 301 303—Prejudice—New trial* Where after the delivery of an unanimous verdict of the jury convicting the accused of the charge of rioting in connection with certain land and the crops thereon

in its terms and it was therefore unnecessary to hear anything further from them *Held* that it was undesirable to stop the jury at such a stage of the proceedings that the words the foreman attempted

EMPEROR (190) I L R 30 Calc 485

12 MISCELLANEOUS CASES

1 ———— **Order by Collector under Penal Code**—*Power of revision by High Court* A Collector as such not being subject to the revisional jurisdiction of the High Court in criminal

2 ———— **Order made under s 58 of the Forests Act (VII of 1878) for confiscation**—*Criminal Procedure Code 1872 s 297* The

REVISION—CRIMINAL CASES—*contd*

12 MISCELLANEOUS CASES—*contd*

of Act X of 1872 not being expressly taken away by s 58 of the Forests Act 1878 EMPRESS v NATHU KHAN I L R 4 All 417

3 ———— **Valid conviction in case improperly instituted**—*Reference to Local Government Per MACLEAN J*—The High Court has power without reference to the Local Government to set aside a conviction in a case improperly originated *In the matter of the petition of* NOBIN CHUNDRA BANIKYA EMPRESS v NOBIN CHUNDRA BANIKYA I L R 8 Calc 560

S C NOBIN CHUNDER BANIKYA v EMPRESS 10 C L R 369

4. ———— **Acting without proper discretion**—*Order for prosecution* That a Magistrate has acted without proper discretion in ordering a prosecution is no ground for reversing his order EMAM ALI v SUDDERUDDEEN 9 W R Cr 18

5 ———— **Order in bona fide exercise of discretion**—*Conviction under Municipal Act*

17 W R Cr 50

6 ———— **Order passed by Magistrate without jurisdiction** The High Court may interfere with and quash an order passed by a Magistrate when the order is one that was beyond the power and out of the jurisdiction of the Magistrate to make LALOO v ADAM SIRCAR. GOVERNMENT v SURJAKANT ACHARJIA. DENGOO SHAIKH v ADAM SIRCAR 17 W R Cr 37

EMPRESS OF INDIA v BERRILL I L R 4 All 141

7 ———— The Deputy Magistrate adjourned the case to the 21st on which day he ordered the case to be dismissed for non

an adjournment by reason of sickness. The Magis

QUEEN v RAM NARAIN GHOSE 8 W R Cr 5

8 ———— *Magistrate acting under section of Code under which he has no jurisdiction Held* that where a Magistrate professes to act under one section of the Criminal Procedure Code under which he has no jurisdiction, but it is found that he has jurisdiction under some other section of the Code the mistake is one which does not justify interference with the Magistrate s order if otherwise good and if the accused has not been prejudiced thereby QUEEN v PRANKISTO PAL 14 W R Cr 41

REVISION—CRIMINAL CASES—*contd*

12 MISCELLANEOUS CASES—*contd*

9 ——— **Order passed under s 146 on proceedings taken under s 145 Criminal Procedure Code**—*Criminal Procedure Code (Act X of 1882) s 145—Power of Court on revision—Evidence on revision* Where a Magistrate has passed an order under s 145 of the Criminal Procedure Code whereas the proper order in the case should have been one under s 146 the High Court on revision will make the order which the lower Court ought to have made Case in which the High Court on revision entered into the whole of the evidence in the case *Para Baboo* v *Muddun Mohun Lall I L R 14 Calc 169* explained REID v RICHARDSON I. L R 14 Calc 361

10 ——— **Unreasonable order for security to keep the peace**—*Power of revision of High Court—Material error* In a case of apprehended breach of the peace the Magistrate bound over the parties in sums of money aggregating on the whole to R60 000 or upward The High Court quashed the order holding that it was altogether unreasonable *In the matter of* JUGGUT CHUNDER CHUCKERBUTTY I L R 2 Calc 110

11 ——— **Alteration of conviction**—*Setting aside proceeding—Trial by jury where case was not so tried* The High Court will not alter a conviction by a Sessions Court aided by a jury on a charge only triable by a jury to one of a nature not triable by such a tribunal but will annul the proceedings and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised REG v NARO GOPAL 5 Bom. Cr 56

12 ——— **Conviction in case where no appeal is given by Act on point of repeal**—*New Act giving appeal—Criminal Procedure Code 1882 ss 408 and 439—Jurisdiction of High Court* On the 9th December 1882 a person was convicted under ss 457 and 109 of the Penal Code and sentenced to three years rigorous imprisonment by a Deputy Magistrate in Assam exercising special powers under s 36 of the old Code of Criminal Procedure (Act X of 1872) The new Code came into force on the 1st January 1883 The prisoner presented an appeal to the High Court from the conviction and sentence abovementioned on the 23rd January 1883 *Held* that there was no appeal the case being governed by s. 408 of the new Code but that the case was a fit one for the exercise of the High Court s revisional jurisdiction and should be dealt with under the powers conferred on the High Court by virtue of that jurisdiction PONGAI v EMPRESS I L R 9 Calc 513 s c *In the matter of* PANGAI 12 C L R 500

13 ——— **Defect in form of summons to persons to show cause why they should not give security for keeping the peace**—*Defect not prejudicing persons required to show cause* Certain persons were convicted by a Magistrate of the 1st class of assault an offence punishable under s. 352 of Act X of 1877 The case was brought to the knowledge of the High Court by the complainant preferring a petition to it together with a copy of the Magistrate s order This petition was laid before STRAIGHT J who observing that the case was one in which the Magistrate should have taken security from such persons for keeping the peace as provided by s 489 of Act X of 1872 directed the Magistrate to summon such persons to show cause why they should not be required under s 491 of that Act to enter into a bond to keep the peace The Magistrate accordingly summoned such persons as directed the summonses setting forth that they were issued under the orders of the High Court The Magistrate took evidence on behalf of such persons and eventually made an order requiring such persons to enter into a bond to keep the peace Such persons were fully aware of the order made by STRAIGHT J Such persons applied to the High Court to set aside the order requiring them to enter into a bond to keep the peace on the ground that the Magistrate had not proceeded of his own motion but under the order of STRAIGHT J which was made without jurisdiction and on the ground that the summonses had not set forth the report or information on which they were issued *Held* by STUART C J that inasmuch as STRAIGHT J when he made his order represented the full authority and jurisdiction of the High Court, such order was final and the application could not be entertained *Held* by PEARSON J SPANKIE J and OLDFIELD J (SPANKIE, J doubting whether such order could be questioned) that the order of STRAIGHT J was one which he was competent to make as a Court of revision under s 297 of Act X of 1872 *Held* by PEARSON J and SPANKIE, J that inasmuch as such persons had not been in the slightest degree prejudiced by the defect in the summonses which were issued to them such defect was not a ground on which to set aside the Magistrate s order requiring them to enter into a bond to keep the peace EMPRESS v MUHAMMAD JAFIR I. L. R. 3 All 545

14 ——— **Order confirming order for security for good behaviour**—*Criminal Procedure Code 1861 ss 404 408* An order of a Sessions Judge confirming an order directing security for good behaviour made by the Magistrate was *held* to be open to revision *In re* JESWUNT SINGH 1 Ind Jur N S 301 6 W R. Cr 13

Also an order for maintenance REG v THAKURBIN IRA 5 Bom. Cr 61

15 ——— **Order rejecting appeal without calling for record and proceedings**—*Criminal Procedure Code 1872 ss 278 28[illegible]—Order under s 278* An order under s. 278 of the Code of Criminal Procedure by the Appellate Court rejecting an appeal on a perusal of the petition of appeal and the copy of the judgment or order appealed against and without calling for the record and proceedings of the case is a final order falling within the scope of s. 28[illegible] and is not subject to revision. EMPRESS v MAHOMED YAHIYA I. L. R. 4 Bom 101

REVISION—CRIMINAL CASES—*contd*

12. MISCELLANEOUS CASES—*contd*

4 6 The High Court is competent in the exercise of its revisional powers to interfere with an order of a subordinate Court whether made under s 195 or under s. 476 of the Criminal Procedure Code directing the prosecution of any person for offences referred to in those sections. The High Court under s. 439 has the powers conferred on a Court of appeal by s 423 to alter or reverse any such order *In the matter of the petition of* KHEPU NATH SIKDAR KHEPU NATH SIKDAR v GRISH CHUNDER MUKERJI I. L R 16 Calc 730

17 ———— Order directing prosecution—*Criminal Procedure Code 188 ss 195 4 9 and 4 6* Under the general revisional powers conferred by s 439 of the Code of Criminal Procedure a High Court has power to consider the propriety of an order which purports to be passed under s. 476 of the Code *Queen Empress v Rachappa I L R 13 Bom 109* dissented from *In the matter of the petition of* MATHURA DAS I. L. R 16 All 80

18 ———— Jurisdiction of High Court to quash orders under s 476 of the Criminal Procedure Code—*Criminal Procedure Code ss 195 476—Sanction to prosecution—Preliminary inquiry* The High Court has jurisdiction to interpose in the case of an order made by a Court under s. 476 of the Criminal Procedure Code and has also the power to determine whether the discretion given by that section has or has not been properly exercised *In the matter of the petition of Khepu Nath Sikdar v Girish Chunder Mukerjee I L R 16 Calc 730* relied on CHAUDHARI MAHOMED IZHARUL HUQ v QUEEN EMPRESS I. L. R 20 Calc 349

19 ———— Power of High Court in revision to revoke an order of a subordinate Court under ss 195 476 Code of ...

to revoke an order made by a subordinate Court under s 476 of the Code of Criminal Procedure QUEEN EMPRESS v SRINIVASALU NAIDU I L. R 21 Mad 124

20 ———— Power of High Court to revise an order as to sanction under s 197 of the Criminal Procedure Code—*Criminal Procedure Code (Act V of 1898) s 197 and s 439 —Charter Act (24 & 25 Vict c 104) s 15* A ...

minal Procedure Code that the High Court has no authority to interfere with an order made by a subordinate Court granting or refusing sanction under s 197 of the Code but it has sufficient ...

21. ———— Order under s 144 of the Criminal Procedure Code—*Criminal Procedure Code 1882 s 435—Disputed possession of temple—Magistrate jurisdiction of* The District Temple Committee dismissed the trustees of a certain temple and appointed others The dismissed trustees retained possession A breach of the peace having become imminent in the opinion of a Deputy Magistrate he made an order under the Criminal Procedure Code s 144 directing the newly appointed trustees not to interfere with the temple or it management *Held* that the Magistrate had jurisdiction to make the order and therefore the High Court had no power to interfere in revision under the Criminal Procedure Code s 435 PALANIAPPA CHETTI v DORASAMI AYYAR I L R 18 Mad 402

22 ———— High Court s criminal revisional jurisdiction—*Criminal Procedure Code (Act V of 1898) ss 144 145 435 and 139—Dispute about right to perform service in a public temple.* The High Court ordinarily has no jurisdiction to interfere with an order under Ch XII of the Criminal Procedure Code (Act V of 1898) which is not a proceeding within the meaning of s 435 of the Code but when the Magistrate exceeds his jurisdiction under s 144 or 145 the High Court has power to interfere under its revisional jurisdiction (s 439) *In re* PANDURANG GOVIND I L R. 24 Bom 527

23 ———— Power to revise Presidency Magistrate s proceedings ...

the power to revise the proceedings of a Presidency Magistrate and order a further inquiry to be made It has the same power under cl. 28 of the Letters Patent of 1865 COLVILLE v KRISTO KISHORE BOSE I. L R 26 Calc 746
3 C W N 598

24. ———— High Court s power of revision—*Presidency Magistrate proceedings of —Order for further inquiry—Criminal Procedure Code (Act V of 1898) ss 423 435 439—Charter Act (24 & 25 Vict c 104) s 15—Letters Patent High Court 1865 cl 28* The High Court has powers of revision in respect of an order of discharge passed by a Presidency Magistrate by reason not of s 28 of the Letters Patent 1865 but of s. Charter Act (24 & 25 V c 104). T has always been ... a very meaning so as to ... of

dence that is to say powers of revision over pro ceedings of subordinate Courts But the High Court has no power under the Code of Criminal Pro cedure to interfere in revision with an order of dis missal or discharge passed by a Presidency Magis trate *Colville v Kristo Kishore Bose I L R 26 Calc 746* dissented from *Opoorba Kumar Sett v Probod Kumary Dassi 1 C W N 49* referred to A Presidency Magistrate acting under s. 203 of the Criminal Procedure Code dismissed a complaint on [illegible]

Act ordered a further inquiry to be made into the matter of the complaint CHAROOBALA DABEE v BARENDRA NATH MOZUMDAR I L R 26 Calc 6

CHAROBALA DABEE v EMPRESS
3 C W N 601

25 ——— **Act XIII of 1859 ss 2 and 3**—*Breach of contract by workmen—Procedure —Criminal Procedure Code (Act V of 1898) s 370* In the trial of a case under the Workman s Breach of Contract Act (XIII of 1859) a Presidency Magis trate is not bound to frame his record in accordance with the provisions of s 370 of the Criminal Pro cedure Code It is doubtful whether a proceeding under the first clause of s 2 and under s 3 of Act XIII of 1859 is a criminal proceeding There is no offence committed and there is no accused The provisions of s 370 of the Criminal Procedure Code are therefore inapplicable to a case of this nature and the High Court will not interfere in revision with the Presidency Magistrate s proceedings on the ground that he has not followed the provisions of that section AVERAM DAS MOCHI v ABDUL RAHIM I L R 27 Calc 131
4 C W N 201

26 ——— **Contempt of Court**—*Criminal Procedure Code ss 439 476—Power of High Court to revise an order under s 476—Circumstances under which such power should or should not be exercised* The High Court has power in revision to set aside an order passed by a Civil Criminal or Revenue Court under s 476 of the Code of Criminal Procedure but such power should not be exercised where the Court below has arrived at a judicial opinion on evidence that there is ground for inquiring into an offence referred to in s. 195 merely because the High Court disagrees with that opinion *In the matter of the petition of* ALAMDAR HUSAIN (1901) I L R 23 All 249

27 ——— *Criminal Procedure Code (Act V of 1898) ss 439 476—Jurisdiction of High Court to interfere when a Court has taken action under s 476 of the Criminal Procedure Code* Where a Court has taken action under s. 476 of the Code of Criminal Procedure the High Court as a Court of Revision has no power to interfere under s 439 The reasons for the decision in *Queen Empress v Srinivasulu Naidu I L R 21 Mad 124* are not applicable to the amended Code FRANKOLI ATHAN v KING EMPEROR (1902)
I L R 26 Mad 98

28 ——— **Dispute as to possession of immovable property**—*Criminal Procedure Code ss 145 (5) and 435 (3)—Order of Magistrate on dispute as to possession of immovable property —Jurisdiction of High Court* The order to which finality is given under ss 145 (5) and 435 (3) of the Code of Criminal Procedure must be an order which not only purports to be but is in reality an order under s 145 and has been passed with jurisdiction Where the Court has exceeded its jurisdiction in making the order it is null and void and the High Court in the exercise of its revisional powers is competent to interfere with it *Hur bullubh Narain Singh v Luchmeswar Prosad Singh I L R 26 Calc 188 In re Pandurang Govind I L R 24 Bom 527* and *Agra Bank v Leish man I L R 18 All 41* referred to Where a Magistrate under circumstances which would apparently have justified his taking action under s. 145 of the Code of Criminal Procedure took action in fact under s 107 and having passed an order seemingly under s. 118 added, as it were as an appendix to this order — Bisu [illegible] put in possession under s 145 Code of Criminal Procedure —it was *held* that this order passed without any of the procedure prescribed by s. 145 being adopted was more than an irregularity and was an order passed without jurisdiction and liable to revision by the High Court *Mohesh Sowar v Narain Baj I L R 27 Calc 981* and *Sakor Dusadh v Ram Purgash Singh 7 C W N 174* referred to MAHADEO KUNWAR v BISU (1903)
I. L R. 25 All. 537

29 ——— **Notice to accused**—*Criminal Procedure Code (Act V of 1898) ss 435 437—Petition by complainant for re trial of accused after discharge—No notice to accused—Order by Sessions Judge directing further inquiry—Revision petition to High Court—Jurisdiction—Necessity for notice before order passed to prejudice of accused* A person charged with having committed criminal breach of trust was discharged whereupon the complainant petitioned the Session Judge under s 435 of the Code of Criminal Procedure to direct a re trial of the case Notice of the application was no given to the accused The Sessions Judge acting under s 437 ordered a further inquiry to be made. On a criminal revision petition being preferred by the accused in the High Court against that order — *Held* that it was competent to the High Court to revise the order and that without laying down a general rule that the omission to give notice of such [illegible] order under the section [illegible] d not been [illegible] ulty in [illegible] n why the [illegible], an order [illegible] e without [illegible] rd. ALL

REVISION—CRIMINAL CASES—*concld*

12 MISCELLANEOUS CASES—*concld*

GIRISAMY NAIDU *v* BALAKRISHNASAMI MUDALIAR (1902) I L R 26 Mad 41

30 ———— Sanction for prosecution—*Practice—Criminal Procedure Code s 195—Sanction to prosecute—Application for sanction refused by Magistrate—Independent application subsequently made to the Sessions Judge* Certain persons who had been discharged after a complaint against them of the offences of kidnapping and extortion applied to the Magistrate who had discharged them for sanction to prosecute the complainants This application was refused by the Magistrate The applicants then instead of appealing or applying in revision to the Sessions Judge against the order of the Magistrate made a fresh and independent application to the Sessions Judge for sanction to prosecute the complainants The Sessions Judge declined to entertain this application On application under s 195 of the Code of Criminal Procedure being made to the High Court against both the orders above referred to the High Court refused to interfere on the ground that the applicants had not pursued their proper remedy in the Court below HARBANS RAI *v* CHUNNI LAL (1902) I L R 25 All 126

31. ———————— *Practice—Procedure—Sanction to prosecute—Stay of criminal proceedings pending disposal of civil suit—High Court—Criminal Procedure Code (Act V of 1898) ss 195 439 476* The High Court is competent in the exercise of its revisional power under s 439 of the Criminal Procedure Code (Act V of 1898) to interfere with an order made by a subordinate Court and r s 476 of the Criminal Procedure Code (Act V of 1898) directing the prosecution of any person for the offences referred to in that section The High Court in this case refused to stay criminal proceedings directed by a subordinate Court under s 476 of the Criminal Procedure Code (Act V of 1898) until an appeal in the civil suit in connection with which the criminal charges were made had been decided *In re* BAL GANGADHAR TILAK (1902) I L R 26 Bom. 785

32 ———————— *Criminal Procedure Code (Act V of 1898) ss 195 435 439—Jurisdiction of High Court under Criminal Procedure Code to revise order according sanction which has been granted by a Civil Court* The High Court has no jurisdiction under ss 435 and 439 of the Code of Criminal Procedure to revise an order passed by any Court other than a Criminal Court under cl (*b*) or (*c*) of sub s (*1*) of s 195 of the Code of Criminal Procedure according sanction to institute a prosecution or an order passed under sub s. (*6*) of s 195 revoking or refusing to revoke a sanction which has been given or granting a sanction which has been refused It may be open to the High Court under s 622 of the Code of Civil Procedure to revise such proceedings of a Civil Court in cases which come within the terms of that section *In re* CHENNANAGOUD (1902) I. L. R 26 Mad. 139

REVIVAL

See REVIVOR.

———— of complaint—

See CRIMINAL PROCEDURE CODE s 203 13 C W N 193

———— of criminal case—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

See DISCHARGE OF ACCUSED—REVIVAL OF PROCEEDINGS

See POSSESSION ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS 6 C W N 923

———— of suit—

See CIVIL PROCEDURE CODE 1882 s 371 9 C W N 369

REVIVOR

See LIMITATION ACT 1877 SCH II ART 180 I L R 30 Calc 979
I L R 20 Calc 551
I L R 22 Calc 921
I L R 24 Calc 244

See PRIVY COUNCIL PRACTICE OF—REVIVOR OF APPEAL
I L R 21 Calc 997
L R. 21 I A 163

———— of judgment—

See LIMITATION ACT XV OF 1877 SCH II ART 180 I L R 36 Calc 543

———— substitution of parties as—

See PRIVY COUNCIL PRACTICE OF—DEATH OF PARTY ON RECORD
I L R 16 Calc 184

REVOCATION

See WILL I L R 29 All. 82

See WILL—REVOCATION

———— of probate—

See ADMINISTRATOR.
I L R 35 Calc 955 12 C W N 802

See PROBATE AND ADMINISTRATION ACT (V OF 1881) s. 50 12 C W N 6

See WILL—REVOCATION

———— of sanction—

See SANCTION FOR PROSECUTION—REVOCATION OF SANCTION

of Will—

See HINDU LAW—WILL—REVOCATION OF WILL.

RIGHT OF APPEAL.

See APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON

See ASSIGNMENT OF CHOSE IN ACTION

RIGHT OF APPEAL—*contd*

See CIVIL PROCEDURE CODE 1882 s 3
I L R 4 Calc 825

See CIVIL PROCEDURE CODE 1882 s 244 —PARTIES TO SUIT 2 C L R 545

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES
I L R 3 Calc 371

See NAWAB NAZIM OF BENGAL DEBTS ACT
21 W R 59

See PRACTICE—CIVIL CASES—APPEAL
I L R 3 Calc 228
I L R 9 Calc 738
I L R 18 Bom 520

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—MESNE PROFITS
I L R 25 Bom 85

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622
I L R 8 Mad 192
I L R 18 Bom 445

———— deprivation of—

See CRIMINAL PROCEEDINGS
I L R 4 Calc 18

1. ———— **Appeal from favourable decision** There is nothing in strict law to prevent a party acting for himself or through his guardian from appealing against a decision in his favour STEPHENSON v UNNODA DOSSEE
6 W R Mis 18

2. ———— **Appeal by defendant from decision as dismissing suit on wrong ground** —*Civil Procedure Code 1859 ss 332 334 337 —Decree—Decision* Although s 332 of Act VIII of 1859 provides that an appeal shall lie from the decrees of the Courts of original jurisdiction ss 334 and 337 show not less clearly that the decisions of the Court may be impugned in the appeal and considered by the Appellate Court Where a suit was dismissed therefore the defendant was *held* entitled to appeal from the decision though the decree was in his favour as he contended it had been dismissed on a wrong ground SHEO GHOLAM SINGH v NURSINGH
4 N W 120

(*Contra*) CHOWDHRY MAHOMED MOMIN v LUTAFUT HOSSEIN
13 W R 239

(*Contra*) SHAMA SOONDUREE DEBIA v DIGAMBUREE DEBIA
13 W R 1

3 ———— **Change of jurisdiction during suit**—*Munsif with powers of Small Cause Court —Effect of change on right of appeal—Bengal Civil Courts Act (VI of 1871) s 29* The investiture of a Munsif with the powers of a Small Cause Court under s 29 Act VI of 1871 does not deprive parties to pending suits of any right of appeal which they might have had the general rule being that the law as it existed when the action commenced must decide the rights of the parties unless the legislative authority expresses a clear intention to vary those rights GHOTAE MUNDLE v KAJFOO
16 W R 227

4 ———— **Right of new relators to appeal** As to the terms on which new relators will be allowed to come in after decree to prosecute an appeal ADVOCATE GENERAL v MUHAMMAD HUSEIN HUSENI
4 Bom O C 203

5 ———— **Appeal by party struck out of suit in lower Court** A person was once made a party to a suit but the decree was set aside the suit as against him dismissed and the case remanded for trial From this last decision he appealed The Court ordered the appeal to be struck off as made by a party no longer a party to the suit GOKOOL PERSHAD DISCHEET v BROJO MOYEE DEBIA
24 W R 259

6 ———— **Appeal after intervenor had appealed and his name taken off record of suit**—*Re opening of case on remand* A suit having been decided by the first Court after an intervenor had been made a party under s 73 Code of Civil Procedure 1859 it was remanded on the appeal of the intervenor whose name was ordered to be expunged from the record The suit was decided again in favour of the plaintiff but the decision was reversed on appeal *Held* that the fact of the defendant having in the first instance allowed the intervenc[illegible]
the case [illegible]
in his ow[illegible]
BEO[illegible]

7 ———— **Right of pro formâ defendant to appeal** A *pro formâ* defendant a[illegible] whom no judgment has been given has no right to appeal even if another party has been found to be [illegible]

[illegible] 36

8 ———— **Right of party opposing will in case of application for certificate under Act XXVII of 1860**—*Party not opposing* [illegible] widow s allegation that the deceased made a will The Judge upon this went into the evidence found in favour of the will and granted the certificate applied for Against this order the brother appealed to the High Court *Held* that the appellant had no *locus standi* as the appeal contemplated in s [illegible] was limited to persons in conflict with the original petitioner as claimant [illegible] LALL MOOKERJEE v KOMOLA KAMINEE DEBEE
24 W R 93

9 ———— **Appeal brought by principal in suit where agents have sued** The plaintiffs karindas of the appellant having brought a suit in their own name the suit was dismissed on the merits and appeals preferred by the appellant

RIGHT OF APPEAL—*contd*

in his own name to the Judge and to the High Court. *Held* that the procedure was illegal and the decrees of the lower Courts must be set aside FYAZ OOD DEEN *v* PUDMEE 4 N W 68

10 ——— Right of appeal by heirs—*Appeal against joint heirs—Civil Procedure Code 1859 s 102—Continuance.* S 102 Act VIII of 1859 does not bar the right of heirs to proceed with an appeal as against joint heirs. LUTEEFOONISSA BIBEE *v* FAJAOOR RUHMAN 8 W R 84

11 ——— Want of interest in subject of appeal—*Appeal by sons of Hindu widow after finding adverse to her right* Where a Hindu widow jointly with her sons sued for confirmation of title and both the Courts below found adversely to her title to hold the land in dispute as separate property it was *held* that her sons who had no interest in the result of the suit were not competent without her to prefer a special appeal DOORGA PERSHAD MOHAPATTUR *v* PADHAMOHUN MYTEE 15 W R 536

12 ——— Right of co mortgagor to appeal—*Sale of equity of redemption.* One of several co mortgagors cannot appeal against a foreclosure decree when the equity of redemption has been sold before the institution of the suit KOTTALE UPPI *v* KALLIHATT PANOLI KUNHI KUTTI 1 Mad 7

13 ——— Right of appeal as to costs—*Disclaimer of interest in subject matter of suit* The fact of a defendant having in the Court of first instance disclaimed any right or interest in the land in a suit does not deprive him of the right to appeal if a judgment is given against him with costs NUND COOMAR SINGH *v* GUNGA PERSHAD NARAIN SINGH 10 W R 94

14 ——— Right of purchaser to appeal on death of assignor—*Assignment of interest in subject matter of suit* A sued B in the Court of first instance and obtained a decree declaring A's right to a house The District Court on appeal reversed this decree and rejected A's claim The High Court reversed the decree of the District Court and remanded the appeal The District Court on remand made a decree confirming the original decree of the Court of first instance in A's favour Subsequently to the last mentioned decree of the District Court B sold the house to C B then preferred a special appeal to the High Court but died before it was heard *Held* under Act VIII of 1859 that C could not carry on the special appeal after B's death MOTESHWAR BAPUJI PHATAK *v* KUSHIBAI SHAHEOJI I L R 2 Bom 248

15 ——— Appeal from order prior to decree—*Civil Procedure Code 1859 s 363* Objections having been successfully raised under s 246 Act VIII of 1859 against a decree holder's attachment of a tenure as the property of his judgment debtor he brought a regular suit and obtained a

[illegible]

tion The collector meantime appealed to the Privy Council and having obtained a decree reversing the declaratory decree took out execution against the opposite party for costs and wasilat The opposite party objected but the Judge allowed the execution to proceed and deputed an Ameen to ascertain the amount of mesne profits collected *Held* that the

[illegible]

12 W R 411

16 ——— Right of party to suit not of party to compromise to appeal from order made in execution of decree on compromise—*Civil Procedure Code 1882 s 244—Resistance to execution—Procedure* In a suit for partition a compromise was entered into by all the parties except S and a decree obtained on the terms thereof In execution S was dispossessed and presented a petition to the Court objecting that the decree was not binding on her The petition was rejected *Held* that the objection raised by S ought to have been investigated under s 245 of the Code of Civil Procedure and that S was entitled to appeal against the order rejecting the petition SANKARANARAYANA *v* KUDAPA SANYA I L R 8 Mad 473

17 ——— Appeal from original decision after review granted illegally has been set aside Where a suit under the rent law was dismissed and the Munsif granted a review of judgment on fresh evidence without satisfying himself that it had been out of plaintiff's power to produce such evidence at first —*Held* that the Munsif had acted illegally and without jurisdiction and that the Subordinate Judge was right in reversing his judgment after the re hearing but that the decision did not prejudice plaintiff's liberty to appeal from the original decision BETIS *v* BONSI MUNDUL 25 W R 343

18 ——— Second appeal—*Rent suit—Beng Act VIII of 1869 s 1—Bengal Tenancy Act (VIII of 1885) s 153—General Clauses Act (I of 1868) s 6* The word "proceedings" in s 6 of Act I of 1868 as applied to a suit means the suit as an entirety that is down to the final decree A second appeal therefore to the High Court on a question of the amount due as rent will not lie when the suit was instituted previous to the passing of Act VIII of 1885 although the judgment in the suit was delivered and the first appeal therefrom heard subsequently to the passing of that Act *Hurro Sundari Debi v Bhojohari Das Manji I L R 13 Calc 86* approved SATGHURI *v* MUJIDAN I L R 15 Calc 107

19 ——— Surety in execution proceedings A surety against whom a decree is sought to be enforced under s 253 of the Code of Civil Procedure (Act XIV of 1882) has the right of appealing against an order made in the execution proceedings SULEMAN *v* SHIVRAM BHIKAJI I L R 12 Bom 71

20 ———— **Death of one of several appellants pending appeal**—*Death of one of several respondents pending appeal—Civil Procedure Code (Act XIV of 1882) ss 366 368 544 and 582* Any plaintiff or defendant has a right to appeal without the concurrence of any of the parties to the suit The mere fact of the death of one of several appellants cannot affect the right of the

rejected for the same reason When the appeal came on for hearing it was dismissed as defective for want of parties *Held* that the proper course for the Appeal Court was to order that the appeal had abated so far as the deceased appellant (defendant) was concerned and to proceed with the hearing so far as the remaining appellants were concerned *Held* also with reference to the death of the respondent (plaintiff) that the Appeal Court ought to have proceeded under the provisions of s 368 of the Civil Procedure Code (Act XIV of 1882) and to have either declared that the appeal had abated as to him and proceeded against the rest of the respondents under s 544 of the Civil Procedure Code or else to have directed that the legal representatives of the deceased respondent should be placed upon the record CHANDARSANG VEPSABHAI v KHIMABHAI RAGHABHAI **I L R 22 Bom 718**

See HEM KUNWAR v AMBA PRASAD **I L R 22 All 430**

21 ———— **Death of plaintiff appellant**—*Rival applicants for substitution—Order under Civil Procedure Code ss 367 582 substituting one of two applicants—No appeal from such order—Unsuccessful applicants attempting to appeal from*

two persons separately applied to be substituted as the deceased s representative The Court applying ss 367 and 582 of the Civil Procedure Code decided in favour of one of the applicants and ... No appeal was made ...pplicant ... appeal ...equent ... by a ...s legal representative and that her opponent was not

having decided that she was not entitled to be a party to the proceedings of the lower Appellate Court she was not entitled to maintain the appeal to the High Court and s 591 of the Civil Procedure

Code was not applicable to the case *Har Narain v Kharag Singh I L R 9 All 447* distinguished Where an order under the group of sections in the Civil Procedure Code relating to representatives has been made excluding a person from the record that person must seek his remedy by an appeal against

Code means error defect or irregularity in procedure or in law and not in matters of fact In the present case there was no error defect or irregularity within the meaning of the section and even if there were it did not affect the decision of the case in appeal below SANKALI v MURLIDHAR **I L R 12 All 200**

22 ———— **Plaint amendment of**—*Adding a defendant in a suit where leave to sue under cl 12 of the Letters Patent 1865 was necessary—Alternative liability—Order to add new defendant—Appeal against such order by original defendant* The plaintiff filed this suit against the defendant F alleging that she had a firm and carried on business at Sihore in the territory of Bhopal Before the suit was filed leave was duly obtained under cl 12 of the Letters Patent 1865 In her written statement F denied that she was the owner of the

in Samvat 1943 leaving a daughter named G a minor who was still living The plaintiff then obtained a summons calling on the defendant F to show cause why the plaint and proceedings should not be amended by adding the name of G as a party defendant The summons was made absolute ...

could take the objection The defendant ... not take it for her The case of *Rampurtab* ... did not apply In that case ...

objection to the form of the suit ... That question was true G and not F was liable ... would be decided at the trial FOOLIBAI v FAN PRATAB SAMBATRAI **I L R 17 Bom 466**

23 ———— **Appeal by defendants against whom specifically no decree was made but whose defence to the suit was necessarily disposed of by the decree**—Certain plaintiffs sued as second assignees of a d bt

RIGHT OF APPEAL—*contd*

to recover the debt and made defendants to the suit their assignors the original debtors and certain persons whom they alleged to have been prior assignees of the debt but whose assignment according to them had become void through non fulfilment of the conditions upon which it was made The Court of first instance gave a decree to the plaintiffs against the original debtors An appeal by the first assignees was dismissed by the lower Appellate Court on the ground that there being no decree against the appellants their appeal would not lie On second appeal it was *held* that the appeal would lie inasmuch as the decree though not a decree against the appellants by name necessarily implied a finding that the assignment to the appellants upon the basis of which they resisted the plaintiff s claim had become void JAMNA DAS *v* UDEY RAM **I L R 21 All 117**

RIGHT OF NON OCCUPANCY RAIYAT WHETHER HERITABLE

See NON OCCUPANCY RAIYAT
I L R 34 Calc 516

RIGHT OF OCCUPANCY

See LANDLORD AND TENANT—MIRASIDARS
1 Mad 264
I L R 1 Mad 205

See LANDLORD AND TENANT—NATURE OF TENANCY **I L R 16 Mad 131**
I L R 30 Mad 155

See LANDLORD AND TENANT—TRANSFER
I L R 33 Calc 531

See OCCUPANCY HOLDING
I L R 34 Calc 199

See OCCUPANCY RIGHT

See OCCUPANCY TENANT

See RES JUDICATA—MATTERS IN ISSUE
I L R 18 Calc 647

See SALE FOR ARREARS OF RENT—INCUMBRANCES **5 B L R Ap 18 20**
19 W R 106
22 W R 133

See SERVICE TENURE **11 C W N 46**

———— **acquisition of—**

See LANDLORD AND TENANT—EJECTMENT —NOTICE TO QUIT **6 C W N 199**

RIGHT OF OCCUPANCY—*contd*

——— **devolution of—**

See LANDLORD AND TENANT—TRANSFER BY TENANT **I L R 15 All 219 231**
I L R 18 All 354

See ONUS OF PROOF—LANDLORD AND TENANT **I L R 11 Mad 77**
I L R 15 Mad 95
I L R 16 Mad 271

See RIGHT OF SUIT—ACCRUAL OF RIGHT
I L R 15 All 399

———— **limitation of suit to recover possession—**

See BENGAL TENANCY ACT 1885 SCH III ART 3

———— **transfer of—**

See EJECTMENT **I L R 13 All 403**

See POSSESSION—SUITS FOR POSSESSION
7 C W N 607

1 ACQUISITION OF RIGHT

(a) PERSONS BY WHOM RIGHT MAY BE ACQUIRED

1.———— **Cultivating raiyats at fixed rates**—*Act X of 1859 s 6—Raiyats holding since permanent settlement at varying rates of rent* Act X of 1859 provided for two classes of raiyats only viz those who have held and cultivated the land for a period of twelve years and those who have held at fixed rates from the time of the permanent settlement It made no provision for raiyats who have held since the time of the permanent settlement at varying rates Such a raiyat acquired no right of occupancy on that ground DINOBUNDHOO DEY *v* RAMDHONE ROY **9 W R 522**

2 ———— **Cultivating raiyats**—*Act X of 1859 s 6—Sub lessors to actual cultivators* Only those tenants who cultivate their lands or sub let them to actual cultivators of the soil were entitled to rights of occupancy under s 6 Act X of 1859 BINDRABUN CHUNDER CHOWDHRY *v* ISSUR CHUNDER BISWAS **W R 1864 Act X, 1**

3 ———————— *Act X of 1859 s 6—Actual cultivators—Raiyats deriving profits directly from produce* The benefits of s 6 of Act X of 1859 are not restricted to the ... [illegible]

[illegible]

SINGH *v* AMEEROODDEEN **9 W R 579**

4 ———— **Permanent cultivator**—*Paracudi* The defendant s ancestors or predecessors in title were the cultivating tenants of the lands of a certain temple from a date not later than 1827 in which year they were so described in the paimaish accounts In 1830 they executed a muchalka to the Collector who then managed the temple whereby they agreed among other things to pay certain dues They were described in the muchalka as

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(a) PERSONS BY WHOM RIGHT MAY BE ACQUIRED—*contd*

paracudis In 1857 the plaintiff s predecessors took over the management of the temple from and executed a muchalka to the Collector whereby he [illegible]

defendants *Held* that there was nothing to show that the defendants were more than tenants from year to year and they had not acquired a right of occupancy *Chockalinga Pillai* v *Vythealinga Pundara Sunnady 6 Mad 164* and *Krishnasami* v *Varadaraja I L R 5 Mad 345* discussed and distinguished THIAGARAJA v GIYANA SAMBANDHA PANDARA SANNADHI I L R 11 Mad 77

5 ———— Holders of land—*Act X of 1859 s 6—Land cultivated by other than raiyat* S 6 of Act X of 1859 applied to land held as well as to land cultivated and although a tenant may not have presonally cultivated but may have made over the land to another to cultivate (assuming that by custom he has such power) he still may gain a right of occupancy if he continues to be recognized by the zamindar as the holder of the land BUTABEE BEGUM v KHOOSHAL 2 N W 24

6 ———— Possessors of raiyati tenure —*Test of raiyati interest as distinguished from mere right to collect rent* *Per* FIELD J —The only test of a raiyati interest is to see in what condition the land was when the tenancy was created If raiyats were already in possession of the land when the interest was created and the interest was a right not to the actual physical possession of the land but to collect the rents from the raiyats the interest is not raiyati If on the other hand the land was jungle or uncultivated or unoccupied and the tenant was let into physical possession of the land the interest would be raiyati and the nature of that interest would not be altered by the fact of the tenant subsequently subletting to under tenants. DURGA PROSUNNO GHOSE v KALI DAS DUTT 9 C L R 449

7 ———— Holder of raiyati jote—*Act X of 1859 s 6—Right against purchaser of patni talukh* The holder of a raiyati jote was protected by s 6 Act X of 1859 and had a clear right of occupancy against the purchaser of the patni talukh fourteen years after his purchase WOOMANATH ROY CHOWDHRY v ROGHOONATH MITTER 5 W R Act X, 63

8 ———— Persons not holding as raiyats or middlemen—*Act X of 1859 s 6* Persons who are not shown to have held possession of lands of which they complain they have been illegally dispossessed as raiyats or in any other sense than as middlemen receiving rents from the actual cultivators did not come under s 6 Act X of 1859 and cannot acquire any rights of occupancy GOPEE MOHUN ROY v SIB CHUNDER SEN 1 W R 68

9 ———— Tenant holding a term under a farming lease—*Act X of 1859 s 6* A tenant holding a term under a farming lease of land which he might sub let is not a raiyat and therefore did not by twelve years occupation acquire a right of occupancy under Act X of 1859 s 6 HURRISH CHUNDER KONDOO v ALEXANDER Marsh 479

10 ———— Middleman—*Party sub letting —Act X of 1859 s 6* The mere fact of a party sub letting did not make him a middleman excluded from the privileges of s 6 Act X of 1859 The real question for trial is whether he was or was not a raiyat or one who held land under cultivation by himself or others who took for him under his supervision as a superior cultivator or whether he was a middleman because he really did not cultivate in the sense of s 6 but was a general lease holder or a speculator in land rent RAM MUNGUL GHOSE v LAKHEE NARAIN SHAHA 1 W R 71

11 ———— Sub tenant of cultivating raiyat A sub tenant of a cultivating raiyat can not acquire a right of occupancy KEPAL GAIN v NADUR MISTREE 6 W R 183

[illegible]

1859 GILMORE v SURBESSUREE DOSSEE W R 1864 Act X, 73

NIL KOMUL SEIN v DANESH SHAIKH 15 W R 489

UNNOPOORNA DOSSEE v RADHA MOHUN PATTRO 19 W R 95

HARAN CHUNDRA PAL v MUKTA SUNDARI CHOWDHRAIN I B L R A C 81 10 W R 113

(*Contra*) ABDOOL JUBBAR v KALEE CHURN DUTT 7 W R 81

RAMOHUN KHAN v HARADHAN PARAMANICK 9 B L R 107 note 12 W R 431

13 ———— Raiyat brought on zerait land by lessee right of on expiry of lease—*Bengal Tenancy Act (VIII of 1885) s 116—Trespasser—Right of occupancy—Liability to ejectment* S 116 of the Bengal Tenancy Act applies even in a case where a person is brought on the malik s zerait land as a raiyat by a lessee for a term of years therefore such a person cannot acquire any right of occupancy or non occupancy on the said land and he being a trespasser only on the expiry of the lease of the lessee is liable to ejectment. *Henderson* v *Squire L R 4 Q B 170*

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(a) PERSONS BY WHOM RIGHT MAY BE ACQUIRED—*contd*

Oomatara Debia v *Peeri B bee* 2 W R 155 and *Hurs Chunder Roy Chowdhry* v *Sree Kalee Mooker jee*, 9 W R 2 4 referred to *Binad Lal Lakrash* v *Kalu Pramanil* I L R 20 Calc 708 distinguished SHEO NANDAN ROY v AJODH ROY I L R 26 Calc 546 3 C W N 336

14. ——— Raiyat holding over after sub-lease—*Act X of 1859* s 6 A right of occupancy under s. 6 Act X of 1859 could not be acquired by a raiyat holding over for more than twelve years after the expiration of a sub lease for a term by a raiyat having a right of occupancy JUMMEBUTTUNNISSA v NOOR MAHOMED W R 1864 Act X, 77

15 ——— Ticcadar—*Obligation on ticcadar to restore tenure.* A ticcadar is bound to restore

16 ——— Purchasers from neem howladars—*Neem howlas nature of—Transfer all tenures* Neem howlas (even though they may not comprise the right of holding at a fixed rent) and all other such rights of occupancy established by the ancient prescription and custom of the country are transferable tenure Purchasers from neem howladars are consequently entitled to rights of occupancy JUGGUT CHUNDER ROY v RAMNARAIN BHUTTACHARJEE 1 W R 126

17 ——— Tenants of temple lands at a specified rent so long as they hold—*Occupancy rights proof of—Tenancy from year to year—Fifty years tenure—Purakudi* In a suit

therein styled purakudis (a term which does

GARAJA v GNANASAMBANTHA SABRAMANYA v GNANASAMBANTHA I L R 7 Mad. 374

18 ——— Government raiyat in Assam—*Act X of 1859* s 6 A Government raiyat can acquire a right of occupancy in respect of lands cultivated by him under the rent law in force in Assam KONARAM GAONBURAH v DHATOARAM THAKOOR I L R 6 Calc 196 7 C L R 47

But *see* PRASIDHA NARAYAN KOER v MANKOCH I L R 9 Calc 330 11 C L R 554

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(a) PERSONS BY WHOM RIGHT MAY BE ACQUIRED *contd*

19 ——— Right of occupancy in Assam—*Pykes their rights and privileges* The plaintiff who held land in Assam under a settlement from Government sued to eject the defendant from certain lands within his holding It was

and that the defendant had his house and gardens on the land for a long time and had paid rent for many years at Government rates. *Held* that the defendant was not liable to ejectment The rights of such *tenants explained and discussed* DIVABUNDHU SURMA v BODIA KOCH I L R 15 Calc 100

20 ——— Farmer of revenue or proprietary right A mere farmer of revenue or proprietary right cannot acquire a permanent right of occupancy KRISHNASAMI PILLAI v VARADARAJA. VARADARAJA v VENKATACHALA PILLAI I L R 5 Mad. 345

21. ——— Zamindar occupying his own lands—*Transfer of zamindari* A zamindar occupying his own lands as nij jote cannot when the zamindari passes in to other hands lay claim to them on the ground that he is a raiyat with rights of occupancy REED v SREE KISHEN SINGH 15 W R 430

22 ——— Occupant of land rent free—*Beng Act VIII of 1869 ss 6 and 22* A party who has been in the occupancy of land without paying *any rent is not entitled to the protection of* Bengal Act VIII of 1869 s 6 or of s 22 even on the ground of right to hold the land rent free KALEE KRISHNA DEB v SHASHONEE DASEE 25 W R 42

23 ——— Assignee of zamindar—*Act X of 1859* s 6 A person occupying land

DUN TEWAREE 19 W R 177

24 ——— Person holding as raiyat

have acquired an occupancy right. Where a raiyati interest co exists with a farming lease the raiyati interest remains unchanged in character during the currency of the lease NAVI v PUNCHANUN ROY 25 W R 503

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(a) PERSONS BY WHOM RIGHT MAY BE ACQUIRED—*contd*

25 ———— Possession as servant—*Act X of 1859 s 6—Possession without payment of rent* Mere possession for twelve years in the capacity of a servant did not create a right of occupancy under s. 6 Act X of 1859 rent must be shown to have been paid so as to make the occupier a raiyat WOOMA MOYEE BURMONYA *v* BOKOO BEHARA 13 W R 333

26 ———— Heir to tenant at-will. A person cannot claim a right of occupancy as heir of a tenant at will. BUSHEEROODDEEN *v* DAL CHUND 3 Agra 236

27 ———— Firm members of—*Transmission of rights in firm to changing members of it* A firm of capitalists taking a lease of lands from a zamindar and transmitting their rights to the changing members of the firm cannot by any length of occupation acquire occupancy rights under s 6 of Act X of 1859 or Bengal Act VIII of 1869 RAI KOMUL DOSSEE *v* LAIDLEY I L R 4 Calc 957

28 ———— Indigo concern—*Power to acquire right of occupancy—Corporation* An Indigo Concern or Firm has no corporate or legal existence so far as the question of a right of occupancy is concerned which can only be recognized in particular individuals CANNAN *v* KYLASH CHUNDER POY CHOWDHRY 25 W R 117

29 ———— *Partnership holding a cultivating lease—Indigo concern as a cultivating raiyat—Beng Act VIII of 1869 s 6* A firm owning an indigo concern and carrying on the manufacture of indigo took in the collective names of Robert Watson & Co a cultivating lease of certain lands which they held continuously for more than twelve years cultivation of these lands being carried out by the servants of the firm and also by sub tenants *Held* that the lease must be taken to be a lease to the individuals who were at the time of [illegible]

occupation or after acquiring a right of occupancy or if it could be obtained whether such right could according to the custom of the locality be transferred to persons subsequently admitted as members of the firm. The test of a raiyati lease is whether the lease has been originally granted for the purpose of cultivation and if it has been so granted it is none the less a raiyati lease though the lessee may happen subsequently to sub let LAIDLEY *v* GOUR GOBIND SARKAR I. L. R 11 Calc 501

30 ———— Liability to assessment of rent—*Chur land—Jungleburi tenure.* *R* a Hindu widow granted a jungleburi tenure to certain tenants in respect of a chur belonging to her husband s estate An amalnama was granted to the tenants signed by a karpardaz of *R* in respect of the tenure *R* died in January 1861 and was succeeded by *J* and *P* two daughters the last of whom died on the 31st December 1880 On her death her grandsons succeeded to the estate On *R* s death *J* and *P* got possession of all estate paper and amongst them a dowl granted by the tenants in return for the amalnama In 1865 proceedings were taken by the tenants to obtain kabuliats on the footing of those documents which proceedings came to an end in 1868 [illegible]

tenant [illegible]

geries [illegible]

them [illegible]

not bind them In these suits it was found that [illegible]

years from *R* s death to raise the question. In 1884 *D* a receiver instituted a suit in the names of the grandsons to eject the tenants on amongst other grounds that the grandson reversioners were not bound by *R* s acts and that the jungleburi tenure was not binding on them that the tenants were middlemen and had no right of occupancy *that at all events the plaintiffs were entitled to rent on the* [illegible]

[illegible] for other grounds [illegible]

DROBOMOYI GUPTA *v* DAVIS I L R 14 Calc 323

30 (a) ———— Agreement made before Bengal Tenancy Act—*Acquisition of right of occupancy—Contract barring acquisition of right in perpetuity—Bengal Act VIII of 1869 s 7—Bengal Tenancy Act (VIII of 1885) ss 178 (1) cl. (a)—178 (3) cl (a)* An agreement made before the passing of the Bengal Tenancy Act between a landlord and his tenant which bars the acquisition of the right of occupancy during the lifetime of the tenant does not come within the prohibitory terms of s. 178 (3) cl (a) of the Act nor does it come within the terms of s. 178 (1) cl. (a) of that Act. Where before the passing of the Bengal Tenancy Act a landlord entered into an agreement with his tenant and the defendant that the former would hold certain lands under him for her life and that after her death the landlord would take *khas* possession of them and that her heirs, that is, the defendant or her heirs would never raise any objection or prefer any sort of claim to them *Held* that it was a valid contract under s. 7 Bengal Act VIII of 1869 that the tenant during her lifetime

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(a) PERSONS BY WHOM RIGHT MAY BE ACQUIRED—*concld*

I. L. R 33 Calc 138
s c 10 C W N 533

(b) SUBJECTS OF ACQUISITION

31. ———— **Land to which addition has been made**—*Addition creating fresh tenure of whole.* Land which is held as one tenure is either subject to a right of occupancy as a whole or it is not subject to any right of occupancy as to any part of it. If the whole land has been held for more than twelve years, then the tenant has a right of occupancy but *if within twelve years the tenant has* been allowed to take possession of fresh lands and such addition was intended to create a fresh tenure then as regards the whole a right of occupancy has not been acquired although a portion *has been held for more than twelve years.* AMAR CHAND LAHATA *v* BUKSHU PYEKAR 22 W R 228

32. ———— **Land of which cultivation is changed**—*Nature of right of occupancy—Enhancement liability to—landlord and tenant* The statutory right of occupancy under Bengal Act VIII of 1869 cannot be extended so as to make it include complete dominion over the land subject only to the payment of a rent liable to enhancement The landlord is still entitled to insist that the land shall be used for the purposes for which it was

I. L. R 3 Calc 781 2 C L. R 294

33 ———— **Land held for agricultural purposes**—*Act X of 1859 s 6—Dwelling house—Occupation of land for* The occupation intended to be protected by s 6 Act X of 1859 was occupation of land subject to agricultural or horticultural cultivation and used for purposes incidental thereto and *did not include* occupation the main object of which is the dwelling house itself and where the cultivation of the soil if any there be is entirely subordinate thereto KALEE KISHEN BISWAS *v* JANKEE 8 W R 250

34 ———— **Land used for habitation and cultivation**—*Act X of 1859 s 6—Beng Act VIII of 1869 s 6* The right of occupancy acquired by a cultivator under Act X of 1859 or Bengal Act VIII of 1869 was as applicable to that portion of the land which *is used for his habitation* as for that portion which is cultivated MOHESH CHUNDER GUNGOPADHYA *v* BISHONATH DOSS 24 W R 402

35 ———— **Land occupied by buildings**—*Beng Act VIII of 1869 s 6* The words cultivated or held in Bengal Act VIII of 1869 s 6 have the effect of excluding lands occupied exclusively by buildings from the right of occupancy there declared MOHUR ALI KHAN *v* RAM PUTTUN SEIN 21 W R 400

36 ———— **Waste land brought under cultivation**—*Shikmi cultivation. Held* that land newly broken and bought under cultivation by a *raiyat cannot be received as zamindar s sir land* nor can the former be held to be a mere shikmi cultivator incapable of acquiring right of occupancy in the land JHUGRO *v* LAUTOO PANDEY 1 Agra Rev 32

37 ———— **Nij jote land**—*Act X of 1859 s 6* A cultivator of nij jote land could acquire a right of occupancy under s 6 Act X of 1859 when it had not been let under a lease for a term of years or year by year GAURHARI SINGH *v* BEHARI RAUT 3 B L R Ap 138 12 W R 277

38 ———— *Beng Act VIII of 1869 s 6* The nij jote land referred to in Bengal Act VIII of 1869 s 6 as land in which a right of occupancy could not be acquired is land which is the nij jote of the zamindar and not that which is merely the nij jote of a sarbarakar holding under the zamindars OBHOY CHURN MOHAPATTUR *v* KANYE PAWUT 1 C L R 394

39 ———— **Khamar land**—*Land in possession of zamindar* Land in the possession of the zamindar whether cultivated or uncultivated is khamar land and a right of occupancy cannot be acquired upon it by a raiyat except under some special arrangement HURISH CHUNDER DAM *v* GUNGA DHUR BHUDDRO 25 W R 161

40 ———— *Beng Act VIII of 1869 s 6* Where a raiyat proves possession for ... of his land ... the right of ... right within ... 69 s 6 it ... lease for a term or year by year ASHRUF *v* RAM KISHORE GHOSE 23 W R 288

41 ———— **Khamat land**—*Land on expiration of lease* Where khamat land is let by a zamindar for a term of years and upon the expiration of that term tacitly let to the same tenant from year to year for a long period the tenant does not thereby acquire a right of occupancy BHUGWAN BHAGUT *v* JUG MOHUN ROY 20 W R 308

42 ———— **Sir land**—*N W P Ren Act (XII of 1881) s 8—Act X of 1859 s 6—Occupancy tenure* Where land originally the *sir* of a proprietor has been transferred to a mortgagee and has in his hands lost its character of *sir* and has been leased to a tenant on the usual conditions of a tenancy which otherwise do not bar the acquisition of a right of occupancy in the land such a right will be acquired by twelve years occupancy under

RIGHT OF OCCUPANCY—contd

1 ACQUISITION OF RIGHT—contd

(b) Subjects of Acquisition—contd

s. 8 of the Rent Act In 1846 *B* mortgaged a share in a village together with certain land which was recorded as his *sir* and which was so de cribed in the deed of mortgage *After the mortgage it ceased to be recorded as his* ...

mortgage and subsequently brought a suit again t *H to establish that the land was his sir and for* possession of it *Held* by the Full Bench that there being nothing in terms of the mortgage deed to indicate that the land was transferred to the mortgagee to be held as *sir* and the land having ceased to be recorded as the *sir* of the proprietor and not having been leased as the *sir* of the le or it had not retained its character as *sir* when the defendant s tenancy commenced o as to prevent him from acquiring a right of occupancy therein under the provisions of 8 of the Rent Act *Per* Mahmood J that there is nothing in the law to prevent a zamindar from relinquishing his rights in *sir* land and converting it into land held by ordinary tenants that the mortgage deed of 1846 showed that the *sir* right in the land in suit had been relinqui hed by the mortgagor and that the *sir* land once relinquished by the zamindar cea es to have that character and cannot prevent the accrual of the occupancy right within the meaning either of s. 6 of Act X of 1859 or of s. 8 of Act XII of 1881 Harpal Singh v Bal Gobind I L R 7 All 586

43 ———— **Holding commenced under a mortgagee**—*Act X of 1859 s 6* Holdings which have commenced or continued under a mortgagee in pos ession were not within any exception to ...

2 N W 129 s c Agra F B Ed 1874 204

44 ———— **Land held as a grove**—*Act X of 1859 s 6—Kashtkari land* Land held as a grove upon the terms which have been heretofore customary in this country was not subject to the provisions of s. 6 of Act X of 1859 By an occupancy thereof for twelve years no right of occupancy can accrue The provi ions of 6 of Act X of 1859 were intended to apply to kashtakari lands. Pirtum Koormy v Bhikaree 2 N W 364

45 ———— **Holding of trees under lease of their produce**—*Act X of 1859 s 6* The pos ession of twelve years of the trees in a bag under a lease which only entitled the lessees to the produce of the trees, and not to cultivate the land would not be a holding of the land within the meaning of s. 6 Act X of 1859 so as to confer upon the le ees a right of occupancy in the land. Rookmin Kooer v Bukshee 5 N W 155

46 ———— **Bunkar tenure**—*Act X of 1859 s 6* *Held* that plaintiffs, as holders of a lease from the proprietor which gave them the right of *cutting grass and other spontaneous* produce of the lands did not merely by reason of lengthened enjoyment acquire any right of occupancy in respect to such holding that the tenure under which they claimed to hold was not a holding of land ...

tenants at will holding year by year at the pleasure of the landlord Goor Dial v Ramdutt Agra F B 15 Ed. 1874 11

47 ———— **Land let for grazing cattle** *Semble* A right of occupancy can be gained in land let for the purpo es of grazing cattle or horses. Fitzpatrick v Wallace 2 B L R A C 317 11 W R 231

48 ———— **Tank producing water nuts**—*Growth of plant not spontaneous but from* ...

49 ———— **Tank not appurtenant to land**—*Beng Reg XIX of 1793* A right of occupancy in land includes the same right in re pect of a tank appurtenant to the land but a right of occupancy cannot be acquired in a tank with only so much land as is necessary for the banks, and the lea e of such tank is terminable on the sale of the lessee s tenure for arrears of rent, the purchaser under Regulation XIX of 1793 receiving the tenure free of encumbrances. Nidhi Krishna Bose v Ram Dass Sein 20 W R 341

50 ———— *Act X of 1859 s 6* The provisions of Act X of 1859 with respect to acquiring a right of occupancy did not apply to a tank which was not shown to form part of any grant of land nor to be appurtenant to any land. Sibt Jelya v Gopal Chandra Chowdhry 13 B L R 423 note 19 W R 200

51. ———— **Right of fishery**—*Julkur not appurtenant to jote.* Where a jotedar had exercised rights of fi hery over two julkurs for more than twelve years, not as the owner of the jote (with which the julkurs were not connected) but as a tenant under a landlord —*Held* that such possession did not confer upon him a right of occupancy Sham Narain Chowdhry v Court of Wards 23 W R 433

52 ———— *Julkur* The right of occupancy which accrues to tenants who ...

out by ijardars under the landlord and may be enjoyed under them so long as their ijara continues,

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(*b*) SUBJECTS OF ACQUISITION—*contd*

but is liable to be determined at the expiration of the ijara. JUGGOBUNDHOO SHAHA *v* PROMOTHONATH ROY I L R 4 Calc 767

The lessee of a julkur cannot acquire any right of occupancy BOLLYE SATEE *v* AKRAM ALLY I L R 4 Calc 961

WOOMAKANT SIRCAR *v* GOPAL SINGH 2 W R Act X, 19

53 ——— **Lands held on service tenure** *Semble* No rights of occupancy accrue in lands held under a service tenure HURROGOBIND PAHA *v* RAMRUTNO DEY I L R 4 Calc 67

54 ——— **Land in Assam**—*Act X of 1859—Ejectment suit for Per* MITTER and WHITE *JJ* (MACPHERSON *J* dissenting)—Act X of 1859 *does not apply to lands situate in the Assam* Valley District In a suit brought to eject a tenant of certain land situated in Assam on the ground that he was a trespasser where it was shown that he had held the land direct from the Government for a considerable time and that the land had been made over during his tenancy to the plaintiff in exchange for certain other lands made over to the Government and where the tenant claimed to have acquired a right of occupancy under Act X of 1859 and not to be liable to ejectment in the manner sought for —*Held per* MITTER and WHITE *JJ* that as that Act did not apply to lands situated in Assam no such right could be claimed and the suit being properly framed the plaintiff was entitled to the relief he asked for PRASIDHA NARAYAN KOER *v* MAN KOCH

I L R 9 Calc 330 11 C L R 554

But *see* KONARAM GAONBURAH *v* DHATOARAM THAKOOR I L R 6 Calc 196 7 C L R 47

55 ——— **Suburban lands let for building purposes** There is no authority for the proposition that there may be rights of occupancy in suburban lands let for purposes of building though these rights may be cognizable under a law intended only for agricultural landlords and tenants *Gungadhur Shikdar v Ameeruddin Shah Biswas I L R 8 Calc 960* explained *Ramdhun Khan v Haradhun Paramanick 12 W R 404 9 B L P 107 note* relied on PARHAL DASS ADDY *v* DINOMOYI DEBI

I L R 18 Calc 652

55 (*a*) ——— **Chowkidari chakran land**—*Right of occupancy—Ejectment—Tenant at will—Act X of 1859 s 6* A right of occupancy may be acquired by a tenant even in Chowkidari chakran land under s 6 of Act X of 1859 *Thakoorani Dassee v Bisheshur Mookerjee B L P Sup 21 3 W R (Act X) 29 Hyder Buksh v Bhupendra Deb Coomer 15 W R 231 Hurry Ram v Kurshing Lal I L R 21 Calc 129* and *Adhore Chunder Bahadur v Kishto Churn 6 Leg Comp 15* referred to RAM KUMAR BHATTACHARJEE *v* RAM NEWAJ RAJGURU (1904) I L R 31 Calc 1021

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(*b*) SUBJECTS OF ACQUISITION—*concld*

55 (*b*) ——— **Ghatwali tenures**—*Acquisition of right of occupancy—Bengal Tenancy Act (VIII of 1885) s 181* Occupancy rights cannot be acquired in ghatwali lands *Mohesh Majhi v Prar Krishna Mondal 1 C L J 1348* referred to UPENDRA NATH HAZRA *v* RAM NATH CHOWDHRY (1906) I L R 33 Calc 630

(*c*) MODE OF ACQUISITION

56 ——— **Nature of right**—*Right independent of wish of zamindar or mortgagee—Acquisition under usufructuary mortgage* The right of occupancy conferred by the Legislature upon cultivators of more than twelve years standing is a right wholly independent of the wishes either of the zamindar of his mortgagee in possession and when a [illegible]

[illegible] mortgage cannot disturb the possession of such occupancy tenants on the ground that when he mortgaged the zamindari it was free of such occupancy tenures *Heeroo v Dhore 9 N W 129* referred to HARPAL SINGH *v* BAL GOBIND

I L R 7 All 586

57 ——— **Conditions necessary for acquisition**—*Non payment of rent—Beng Act VIII of 1869 ss 6 and 52* Two conditions only are necessary for the acquiring of a right of occupancy —*viz* (1) the cultivation or holding of [illegible]

payment of rent that only being a condition necessary for the maintaining of the right when created In a suit brought to evict a tenant who had been in possession of certain land for a longer period than twelve years when it was shown that rent had not been paid and notice to quit had been given —*Held* that a right of occupancy had been acquired and that the raiyat had the power to prevent forfeiture under the provisions of s 52 Bengal Act VIII of 1869 NARAIN ROY *v* OPNIT MISSER

I L R 9 Calc 304 11 C L R 417

58 ——— **Holding and cultivating for twelve years**—*Acquisition previous to Rent Act 1859* After the permanent settlement and before Act X of 1859 a right of occupancy was not acquired by a raiyat merely by holding or cultivating land for a period of twelve year When there is no contract and the statute of limitation does not apply the raiyat cannot by occupying and cultivating become the proprietor of the soil neither can he by occupying with the consent of the zamindar and paying rent for the land to him become entitled to the proprietorship of the soil, even though he should

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(c) Mode of Acquisition—*contd*

acquire a right of occupancy by virtue of Act X of 1859 Ishore Ghose v Hills
W R F B 148

59 ———— **Holding for twelve years partly before and partly after Rent Act**—*Act X of 1859 s 6—Raiyat* A holding for twelve years whether wholly before or wholly after or partly before and partly after the passing of the Re[illegible]
un[illegible]
[illegible]

60 ———— **Suits pending at time Act came into force**—*Bengal Tenancy Act (VIII of 1885) ss 20 21—Suit for ejectment* S 21 of the Bengal Tenancy Act applies to suits pending at the time the Act came into force [illegible] 1st November 1885 which had not then resulted in a decree In a suit instituted on 8th October 1885 to eject the defendants after notice to quit it was *held* that although the defendant had held the land from which it was sought to eject him for less than twelve years and therefore would not if the Bengal Rent A t VII of 1869 had been applicable have acquired a right of occupancy yet the effect of ss 20 and 21 of the Bengal Tenancy Act was to give him a right of occupancy and therefore he could not be ejected Jogessur Das v Aisani Koyburto
I L R 14 Calc 553

61 ———— **Holding under purchaser of permanent transferable interest in land**—*Peservation of rent—Relinquishment* Any raiyat holding under any purchaser of a permanent transferable interest in land can acquire a right of occupancy if he fulfil the other conditions required by the law and the mere fact that a certain rent is reserved year by year does not interfere with his right unless omething in his pottah is fatal to it But the right may be extinguished by a relinquishment of the land Rughoonath Sonar v Mokoond Doss
25 W R 213

62 ———— **Possession for twenty years under mirasi lease**—*Act X of 1859 s 6* When posse sion for twenty years as on a mirasi lea e is found the right of occupancy is inherent under the lea e and un ler s 6 Act X of 1859 Gouree Kant Banerjee v Goluck Chunder
4 W R Act X 49

63 ———— **Occupation for twelve years under lease**—*Suit for abatement of rent* A right of occupancy may be acquired by a raiyat holding lands for more than twelve years under a pottah and he is therefore entitled to sue for abatement of rent Sham Lall Sahoo v Hady Bunjara
2 Hay 522

64 ———— **Occupation by virtue of lease for term of years**—*Act X of 1859 s 6* A right of occupancy could not be acquired by occupation for twelve years under s 6 Act X of 1859 when such occupation has been by virtue of a lease granting a term of years and during the whole or part of such occupation the term had not expired. Hurrish Chunder Koondoo v Alexander
Marsh. 479

65 ———— **Occupation under lease for fixed term**—*Act X of 1859 s 6* While land is held under a pottah which defines the period for which the land is to be held no right of occupancy can accrue although such a right may accrue under s. 6 in certain cases. Shadhoo Jha v Bhugwan Chunder Opadhia
1 Ind. Jur N S 75 5 W R Act X 17

66 ———— **Holding on after expired farming lease**—*Act X of 1859 s 6* A right of [illegible]
[illegible] W R [illegible]

67 ———— **Holding under customary right**—*Farmer of revenue—Duration of tenancy how regulated* The principle laid down in *Chockalinga Pillai v Vythealinga Pundarasannadj 6 Mad 164* is that where a tenancy rests on contract only the duration of the tenancy is regulated by the terms of the contract expressed or implied and neither the Rent Act nor the Regulations operate to extend its duration That decision does not derogate from any customary right Krishnasami Pillai v Varadaraja. Varadaraja v Venkatachala Pillai
I L R 5 Mad. 345

68 ————**Holding as ijaradars during lease**—*Contract for renewal of lease—Beng Act VIII of 1869 and Act X of 1859 s 6* By the terms of an ijara (186[illegible]) the defendants were entitled at the end of a term of five years to a renewal of [illegible] at a rent to be [illegible] id to be [illegible] ners of [illegible] of the [illegible]
said term a notice was served on the defendants to come to a new settlement with the plaintiff and in 1874 the plaintiff ued to recover po ession. The defendants claimed a right of occupancy acquired [illegible] under Act X of [illegible]
[illegible]
right to a renewal not exceeding five [illegible] but that ing to the stipulations in the agreement it was too late to rely upon their title to a renewal which if it had been granted would now have

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(c) MODE OF ACQUISITION—*contd*

expired. JARDINE SKINNER & Co *v* SARUT SOONDARI DEBI

L. R. 5 I. A 164 3 C L R 140

69 ———— **Holding on payment of rent in kind**—*Goozasta tenure.* A bhaun tenure may be a goozasta tenure and a raiyat who pays rent in kind and is in possession of or cultivate land for a period of twelve years has a right of occupancy in the land so held or cultivated by him so long as he pays the rent in kind for the same JUTTO MOAR *v* BASMUTTEE KOOER **15 W R 479**

70 ———— **Holding as bhagdari tenure**—*Act X of 1859 s 6* Ordinarily a holding under a bhagdari tenure (*i e.* upon a rent consisting of a portion of the produce) would establish a right of occupancy under s. 6 Act X of 1859 HUREE HUR MOOKERJEE *v* BIRE SUR BANERJEE

6 W R Act X 17

71 ———— **Holding for long period**—*Payment of rent to one of several proprietors—Act X of 1859 s 6* A holding for twelve years under one of several proprietors gave a right of occupancy under s. 6 Act X of 1859 provided the tenant had paid the rent which payment he may in the absence of fraud make to any one of the co proprietors whom he chooses MOOKTAKI HER DOSSEE *v* KOYLASH CHUNDER MITTER **7 W R 493**

72 ———— **Holding under permissive possession**—*Bengal Rent Act 1869 s 6* Mere possession of a premissive character and without any right cannot confer a right of occupancy MOHUR ALI KHAN *v* RAM PUTTUN SEIN **21 W R 400**

73 ———— — — *Act X of 1859 s 6* During the plaintiff s absence on imprisonment and transportation the defendant took pos

74 ———— **Possession as intruder**—*Right of intruder to hold house of absconding raiyat* *Held* that the defendant having failed to prove his right of possession to the house of an absconding raiyat either by sale or mortgage was an intruder upon the holding of such raiyat and did not by making additions or alterations acquire any right against the zamindar who was not shown to have assented to such additions or alterations. KUNDHYEE *v* ZUMAN KHAN **1 Agra 9**

75 ———— **Possession obtained by fraud**—*Act X of 1859 s 6* Possession obtained and continued by fraud was not possession within the meaning of Act X of 1859 s. 6 so as to give a right of occupancy BHOOBUNJOY ACHARJEE *v* RAM NARAIN CHOWDHRY **9 W R 449**

76 ———— **Possession and payment of rent to party without title**—*Act X of 1859 s 6* The mere fact that the person to whom he for

77 ———— **Occupying and cultivating land under person without title**—*Nature of raiyat s right* A raiyat occupying and cultivating land for more than twelve years under a landlord who has no title to the land nevertheless acquires

upwards and paying rent due thereon ZOOLTUN BIBEE *v* RADHICA PROSONNO CHUNDER

I L R 3 Calc 560 1 C L R 388

78 ———— **Necessity of continuous possession** To enable a tenant to acquire a right of occupancy the twelve years possession must be continuous. DEBIA *v* BRIJ LAL **3 N W 50**

79 ———— **Possession under lease containing proviso for re entry**—*Beng Act VIII of 1869 s 7—Stipulation to negative right* Where a lease contained a provision to the effect that at the expiration of the term the landlord should be at liberty to enter into a settlement with any one he

thing in the stipulation itself which operated to negative or destroy the tenant s right of occupancy EBADUTOOLLAH *v* MAHOMED ALI **25 W R 114**

80 ———— *Beng Act VIII of 1869 s 6—Effect of such proviso on acquisition of right* The mere fact of a lease being granted for a particular term even where there is an express provision for re entry by the lessor does not prevent the accrual of an occupancy right under s 6 of Bengal Act VIII of 1869 to a raiyat continuously occupies for more than twelve years nor is a right of occupancy already acquired destroyed by a grant of such lease MUKHTAR BAHADUR *v* BROJRAJ SINGH CHOWDHRY **9 C L R 143**

81 ———— **Computation of time necessary for right**—*Period during which land is held under lease* Ordinarily the period during which lands are held under a pottah or lease is not to be excluded from the computation of the time necessary to give to the raiyat a right of occupancy HOORA KHAN *v* MUNSUB ALI **3 N W 37**

82 ———— *N W P Rent Act (XVIII of 1873) s 8—Holding under a lease—Deduction of time after expiry of lease* In a suit in which the matter in dispute was whether the plaintiff was entitled to eject the defendants from their

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(c) MODE OF ACQUISITION—*contd*

holding on the ground of their not holding a right of occupancy and having retained possession of the *holding wrongfully after the expiry of the terms of* a lease granted to their father the lower Courts were bound at the time of deciding the case by the provisions of s 8 of the N W P Rent Act and should have excluded from the calculation of the period necessary for acquiring a right of occupancy the term of the lease under which the occupancy commenced RADHAPARSAD SINGH *v* BALMUKAND OJHA 7 N W 318

83 —— *Jotedari right under expired ijara—Act X of 1859 ss 6 and 7—Express stipulation* Per MITTER J—The expiration of the lease of the ijaradar under whom the *raiyat s possession under jotedari right commenced* cannot affect the application of s 6 of Act X of 1859 A tacit understanding that the ijaradar should give up possession on the expiry of his lease is not an express stipulation within the meaning of s. 7 *Quære* Whether such an understanding between the zamindar s predecessors and the ijaradar can affect the raiyat GOLAM PANJA *v* HURRISH CHUNDER GHOSE 17 W R 552

84 —— *Cultivating raiyat under several leases each for a specific term—Act X of 1859 ss 6 and 7—Beng Act VIII of 1869 ss 6 and 7* A raiyat who has held or cultivated a piece of land continuously for more than twelve years but under several written leases or pottahs each for a specific term of years is entitled to claim a right of occupancy in that land unless there is in the pottah an express stipulation contrary thereto SHEO PROKASH MISSER *v* RAM SAHOY SINGH
8 B L R F B 165 17 W R 62

KHAJURANNISSA BEGUM *v* AHMED REZA
8 B L R 166 note 11 W R 88

NARAIN SINGH *v* MUNSUR RAOOT
25 W R 155

(*Contra*) DAMUNULLA SIRKAR *v* MAMUDI NASHIO
3 B L R A C 178 11 W R 556

KEBUL MAHTON *v* SUNNOO
5 W R Act X 80

85 —— *Bengal Rent Act (X of 1859) ss 6 and 7—Bengal Rent Act (Beng Act VIII of 1869) ss 6 and 7—Mostajiri lease—Cultivating possession—Onus probandi* Under Bengal Act VIII of 1869 ss. 6 and 7 as well as previously under the similar ss 6 and 7 of the Rent Act (X of 1859) a raiyat paying rent for and cultivating land continuously for a period of twelve years had a right of occupancy whether he held under a pottah or not In reference to this it was held that a lessee of land continuously in cultivating *possession for a period of twelve years under several* written leases or pottahs which were for specified terms of years but in which there was no express stipulation for the landlord s re-entry on their expiration had a right of occupancy The mere existence of a term in a lease was not an express stipulation to the contrary within the meaning *of s. 7 so as to exclude the right of occupancy* The decision of the Full Bench in *Sheo Prokash Misser v Ram Sahai Singh 8 B L R 165* approved and held applicable In a suit for the recovery of possession with mesne profits of land brought by a lessor against the tenant holding over the defence was as to part of the land that the tenant had a right of occupancy his cultivating possession having lasted for more than twelve years The right was established but the burden of proving to which part of the land it attached was upon the tenant and for proof as to this the suit was remanded CHANDRABATI KOERI *v* HARRINGTON
I L R 18 Calc 349
L R 18 I A 27

86 —— *Holding under leases—Act X of 1859 s 6—Beng Act VIII of 1869 s 6—Cultivating raiyat* From 1824 to 1831 the defendant held certain lands as cultivator from that year to 1839 he obtained a lease from the zamindar of the village in which the lands were situate from 1839 to 1843 he continued to hold these lands as cultivator from that time to 1862 he again obtained a lease of the village retaining these lands in his own cultivation and after the expiry of the lease he continued to cultivate the land In a suit by the zamindar for possession on the ground that the defendant was holding over after the expiry of his lease —*Held* that the defendant had acquired a right of occupancy under s. 6 Act X of 1859 MUKANDI LAL DUBEI *v* CROWDY
8 B L R Ap 95

S C MOKOONDY LALL DOOBEY *v* CROWDY
17 W R 274

87 —— *Act X of 1859 s 6—Setting aside pottah as void* Even if a raiyat s pottah be declared by a Court to be null and void his title to the occupancy right laid down in s 6 Act X of 1859 was not affected provided he had *held or cultivated continuously for a period of* twelve years. SHIB NATH ROY *v* WATSON & Co.
8 W R 374

88 —— *Occupation or cultivation by trespasser* Occupation as a trespasser or cultivation by a trespasser could not confer ... be taken [illegible]

BUX *v* MEAHJAN [illegible]

GHOLAM HYDER *v* POORNO CHUNDER ROY
3 W R Act X 147

89 —— *Confiscation of zamindar s rights—Interruption of growth of right* Confiscation of the zamindar s rights under Act XXV of 1857 will not operate to interrupt the growth of a right of occupancy claimed by a tenant SHEORAJ SINGH *v* LEGGE 3 Agra 293

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(c) Mode of Acquisition—*contd*

90 ——— *Interruption of possession during acquisition of right* In a suit by a zamindar for ejectment where the raiyat pleads continuous occupancy for twelve years and it is

Mahomed Gazee Chowdhry v Noor Mahomed
24 W R 324

Reversing decision of Birch J in s c
24 W R 324 note

91 ——— *Application for ejectment time when pending—Act X of 1859 s 25* An application under s. 25 Act X of 1859 for the assistance of the Collector in ejecting a raiyat was not of the nature of a suit so as to cause a term of occupancy to cease to run and if the raiyat in spite of the zamindar s efforts to eject him nevertheless continued in cultivatory possession and paid rent he was entitled to count the time towards the twelve years required to found a right of occupancy Mahomed Shah v Usgur Hossein 5 N W 151

92 ——— *Exclusion of period when tenure is in dispute.* In computing the period of twelve years holding which creates a right of occupancy all such time during which the land was subject to litigation should be excluded Naipal Singh v Ram Narain 2 Agra 93

93 ——— *Act X of 1859 s 6—Change of farmers* A right of occupancy under s. 6 Act X of 1859 was not affected by a mere change in the farmers Sheo Churn Singh v Gora Chand Ghose 3 W R Act X 125

94 ——— *Continuous occupation—Alluvial land—N W P Rent Act XVIII of 1873 s 8—Occupancy tenant* A tenant who has occupied or cultivated alluvial land whenever such land was capable of occupation or cultivation for twelve years acquires by such occupation or cultivation a right of occupancy in such land Lachman Prasad v Bal Singh
I L R 4 All 157

95 ——— *Custom of district—Utbandi tenures—Effect of non payment of rent for time when land not culturable* Where by the custom of a particular locality rent was not payable when the land was not culturable and the raiyat paid rent only for the period that he could cultivate he would still come within the meaning of the provision of the law which declares that a raiyat who holds or occupies land for a period of twelve years has a right to occupy the land so long as he pays the rent due thereupon Premanund Ghose v Shoorendronath Roy 20 W R 329

96 ——— *Bengal Tenancy Act s 180— Utbandi holding* Case in which the question as to what is an utbandi tenure is discussed Where the plaintiff who had been dispossessed from certain land claimed a right of occupancy in such land on the ground that he had held it for twelve years continuously —*Held* that if the land formed a separate holding which he had from time to time cultivated on the utbandi system during a period which had covered more than twelve years cultivation at various times and under

more than twelve years before the alleged dispossession Beni Madhub Chuckerbutty v Bhubun Mohun Biswas I L R 17 Calc 393

97 ——— **Occupancy by inheritance** —*Successive occupant* —*Act X of 1859 s 6* Under s 6 Act X of 1859 it is only when occupancy is inherited that the occupancy of the predecessor is considered as the occupancy of the tenant in possession Watson & Co v Shirut Soonduree Debia 7 W R 395

Kherode Chunder Roy v Gordon
23 W R 237

98 ——— *Successive occupants—Act X of 1859 s 6—Occupancy by inheritance* A holding by a raiyat and his father before him for many years constitutes a right of occupancy which will prevent ejectment by the zamindar except in due course of law Nim Chand Borooah v Moorabree Mundul 8 W R 127

99 ——— *Occupancy by inheritance—Occupation by raiyat as malik—Rent Act (Beng Act VIII of 1869) s 6* It is only the holding of the father or other person from whom a raiyat inherits that can be deemed to be the holding of the raiyat within the meaning of s 6 of the Rent Act Occupation by the predecessor in title is not such an occupation as will create in the holder

be acquired against some body and cannot be acquired by a man against himself Lal Bahadoor Singh v Solano
I L R 10 Calc 45 12 C L R 539

100 ——— *Occupancy by inheritance—Succession to occupancy right—Acquisition of right by continuing holding* Where the

pation being presumed to have been regarded as a continuation of the right of occupancy already acquired Brijbhookun v Bhyrow Dutt
3 Agra 240

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(c) MODE OF ACQUISITION—*contd*

101 ———————— *Raiyat succeeding by inheritance though not entitled—Permissive holding for twelve years* Where the plaintiff a

ance yet he must be taken to have succeeded to the holding by the consent of the zamindar and to have acquired a right of occupancy HUKEEM OON NISA *v* BHOORIA 5 N W 23

102 ———— Occupancy by purchase or transfer Unless the tenant hold a transferable tenure the sale by him of his jote to another party without the consent of his landlord does not transfer to the purchaser any right of occupancy which the latter may have possessed or enable the present occupant to plead that the period of his own possession joined to that of the former tenant gives him a presumptive right of occupancy WATSON & Co *v* SHURUT SOONDUREE DEBIA 7 W R 395

103 ———— *Transfer of tenure by consent—Continuous possession* Where the zamindar consents to the transfer of a tenure from one raiyat to another the possession of both must be considered to be continuous and the right of occupancy to date from the time of the first holder HURO CHUNDER GOHO *v* DUNN 5 W R, Act X 55

104. ———————— *Receipt of rent by zamindar—Purchaser from tenant* A zamindar does not by the mere receipt of rent from a purchaser from the tenant having a right of occupancy sanction the sale to the purchaser so as to give him a right of occupancy GAUR LAL SIRKAR *v* RAMESWAR BHUMIK 6 B L R Ap 92

105 ———————— *Transfer of right—Possession of transferor—Act X of 1859 s 6* The possession of the vendor could not be added to the possession of the purchasers so as to give the latter a right of occupancy under s 6 Act X of 1859 HYDER BUKSH *v* BHUBINDRO DEB COWAR 13 B L R 276 note 17 W R 179

TARAPRASAD ROY *v* SURJOKANTO ACHARJEE CHOWDHRY 13 B L R 281 note 15 W R 152

106 ———— Joint and afterwards sole possession—*Beng Act VIII of 1869 s 6* The continuous possession for twelve years which is the subject of s. 6 of the rent law of 1869 must be a possession under one and the same right This right may be in its Inception joint with other persons, and by the death of co sharers ultimately become a sole right without its continuous nature being affected. FORBES *v* RAM LALL BISWAS 22 W R 51

RIGHT OF OCCUPANCY—*contd*

1 ACQUISITION OF RIGHT—*contd*

(c) MODE OF ACQUISITION—*contd*

107 ———————— *Beng Act VIII of 1869 s 6* *A* and *B* jointly obtained a pottah of a piece of land from the zamindar for a period of five years Afterwards *A* alone obtained a pottah for another period of five years Upon the expiry of this period *A* held on for two years longer when he was dispossessed by the zamindar In a suit by *A* for recovery of possession on the ground that he had acquired a right of occupancy —*Held* that he had not acquired a right of occupancy MAHOMED CHAMAN *v* RAMPRASAD BHAGAT 8 B L R 338 22 W R 52 note

108 ———— Collateral relative—*N W P Rent Act (XII of 1881) s 9—Succession to occupancy tenant—Onus of proof—Sharer in cultivation* Where a collateral relative claims to be entitled to succeed to an occupancy holding on the death of the occupancy tenant without direct heirs it is incumbent on him to prove both that he is the heir according to the law to which he is subject and

to succeed in preference to a nearer collateral who did not so share in the cultivation *Badri Das v Debi Das All Weekly Notes (1888) 200* referred to SHANKAR LAL *v* DALIP SINGH I L R 17 All 33

109 ———— Agreement restricting right of occupancy—*Bengal Tenancy Act (VIII of 1885) s 178 applicability of to suits pending when Act came into force* S 178 of the

October 1885 and where it was found that at date of the solenamah the tenant had acquired a right of occupancy with respect to the lands in suit —*Held* that the tenant was not entitled to the benefits conferred by s 178 cl 1 sub cl (*b*) of the Bengal Tenancy Act but was liable to be ejected. SHEOBA MOHESHWAR PERSHAD NARAIN SINGH *v* SHEOBARAN MAHTO MOHESHWAR PERSHAD NARAIN SINGH *v* DURSUN RAUT I L R 14 Calc 621

110 ———————— *Bengal Tenancy Act (VIII of 1885) s 5 cls 25 and 178—Definition of raiyati holding—Lessees who are not raiyats within the Act—Zur i peshgi lease—Stipulation contrary to right to acquire occupancy rights—Act X of 1859 s 7* A tenant holding under a lease assigned to him in 1890 by the original lessee who since 1867 had continuously occupied the land under successive leases claimed in virtue of the

RIGHT OF OCCUPANCY—*contd.*

1 ACQUISITION OF RIGHT—*contd.*

(c) MODE OF ACQUISITION—*contd*

occupancy for more than twelve years to be a raiyat within the Bengal Tenancy Act 1885 either with *occupancy or with non occupancy rights* *Held* that this tenant s holding was excluded from the operation of that Act by the effect of s 5 sub s. 5 on account of the extent of the area of the land leased, which was more than one hundred standard bighas A zur i peshgi lease is not a mere contract for the cultivation of the land at a rent but is a security to the tenant for his money advanced. Two of the leases were *zur i peshgi* or made on money advanced by the lessee to the lessor The tenant s possession in this case was in part at least that of a creditor operating payment to himself and was no foundation for a claim for occupancy rights As to the effect of written stipulations contrary to the latter s. 7 of the Bengal Rent Law Act X of 1859 is superseded if not wholly repealed by s 178 *of the Bengal Tenancy Act* 1885 BENGAL INDIGO Co *v* POCHORUR DAS I. L. R 24 Calc 272 L R. 23 I A 158 1 C W N 83

See RAM KHELAWAN SINGH *v* SAMBOO ROY 2 C W N 758

111. ———— Purchase by tenant of fractional share of proprietary interest effect of on acquisition of right of occupancy—*Beng A t VIII of 1869 s 6* A tenant who had commenced to occupy his holding on the 13th April 1871 acquired by purchase in the year 1878 a fractional share of the proprietary interest and continued to occupy the holding as *raiyat* till the 13th May 1885 when he was dispossessed. On the 10th March 1886 he instituted a suit to recover possession alleging that he had acquired a right of occupancy It was contended that owing to the purchase of the *share of the proprietary interest he could not* have acquired such right *Held* that under Bengal Act VIII of 1869 there was nothing to

[illegible]

proprietors on the other and if the period for which he so held extended for twelve years from the date of the commencement of his holding GUR BUKSH ROY *alias* GUR BUKSH SINGH *v* JEOLAL ROY I L R 16 Calc 127

See MASEYK *v* BHAGABATI BARMANYA I L R 18 Calc 121

112 ———— Presumption that right of occupancy exists The mere fact of plaintiff

[illegible]

(c) MODE OF ACQUISITION—*concld*

113 ———— Effect of acquisition of right—*Right to hold at fixed rates* A right to hold at fixed rates does not necessarily follow a right of occupancy RAMNARAIN SINGH *v* HURONATH ROY W R 1864 Act X 92

114. ———— *Interest in land —Proprietorship of the soil* A raiyat having a mere right of occupancy and not a right to hold at a fixed rate of rent has not such an interest in the [illegible] He [illegible] ence [illegible] and [illegible] m in [illegible] s as can be done in a suit by a raiyat having a right of occupancy for the delivery of a pottah HILLS *v* ISHORE GHOSE W R F B 131

2 LOSS OR FORFEITURE OF RIGHT

1 ———— Statutory right effect on of repeal of Act which gives it—*Bengal Tenancy Act (VIII of 1885) s 19* Where a right of occupancy had been acquired under the old Tenancy Act (VIII of 1869) which h s repealed by the Bengal Tenancy Act (VIII of 1885) —*Held* that apart from the provisions of s 19 of the latter Act such right of occupancy was not forfeited by

[illegible]

2 ———— Effect upon acquisition of right of occupancy of raiyat being jointly interested in land of ijaradar—*Bengal Tenancy Act (VIII of 1885) s 22 sub s (3)* Both under s 22 sub s (3) of the Bengal Tenancy Act (VIII of 1885) and under the previous law a person jointly interested in land as ijaradar does not thereby lose his occupancy rights and *a fortior* his entire *rights as a tenant in land held and cultivated by* him as a raiyat *Gur Buksh Roy* v *Jeolal Roy I L R 16 Calc 127* referred to MASEYK *v* BHAGABATI BARMANYA I L R. 18 Calc 121

3 ———— Sub letting effect of—*Right of sub lessee of occupancy raiyat* A raiyat with a right of occupancy does not by sub letting his land lose his right but the sub lessee thereby gains no right KALEE KISHORE CHATTERJEE *v* RAM CHURN SHAH 9 W R 344

JAMIR GAZI *v* GONEYE MUNDUL 13 B L R 278 note 12 W R 110

GORA CHAND MUSTAFI *v* MADAN MOHAN SIKDAR 13 B L R 279 note 11 W R 94

DWARKANATH MISREE *v* KANHAYE SIRDAR 16 W R 110

4 ———— Arrangement to pay certain rent for fixed term—*Surrender of rights by raiyat for enlarged holding* A tenant with a

RIGHT OF OCCUPANCY—*contd*

2 LOSS OR FORFEITUPE OF RIGHT—*contd*

right of occupancy does not lose that right merely by making an arrangement to pay a certain rent for his holding for a certain number of years but if he surrenders his rights in return for an enlarged holding his occupancy right will be destroyed. DIRGANJ SINGH v FOORSUT

1 N W 99 Ed. 1873 144

5 ——— Abandonment of land—*Khodkast raiyat* The right of occupancy given in s 6 Act X of 1859 was a right to occupy and hold the land When a raiyat leaves his home he cease to be a khodkast raiyat and if he refuses to come back and cultivate the land when called upon the zamindar is at liberty to settle the land with others HARO DASS v GOBIND BHUTTACHARJEE

3 B L R. Ap 123

s c HURO DOSS v GOBIND BHUTTACHARJEE

12 W R. 304

RAM CHUNDER ROY CHOWDHRY v BHOLANATH LUSHKUP 22 W R 200

MAHOMED TUMEEZOODDEEN MUNDUL v LUKKEE NARAIN DEY SIRCAR 25 W R. 104

6 ——— *Ceasing to hold or cultivate land* A mokurari miras pottah was granted in 1838 to *A* who was found to have held thereunder as a raiyat till 1859 when his right title and interest were sold in execution of a decree and purchased by *B* and the latter was accepted as tenant by and paid rent to the zamindar for nearly twelve years. The zamindari being sold in 1871 for arrears of Government revenue was purchased by [illegible] nd on his [illegible] that by [illegible] it might [illegible] right or that the right had ceased. No right therefore remained in *A* or his heirs such as would prevent the plaintiff from ejecting *B* NARENDRA NARAIN ROY CHOWDHRY v ISHAN CHANDRA SEN

13 B L R F B 274 22 W R 22

See HYES v MONEEROODDEEN AHUNG

24 W R 6

and BONOMALEE BAZADAR v KYLASH CHUNDER MOJOOMDAR 24 W R 72

See HUREEHUR MOOKERJEE v JODOONATH GHOSE 7 W R 114

7 ——— *Landlord and tenant—Occupancy tenant—Non payment of rent—Abandonment of tenancy* Mere non payment of rent by an occupancy raiyat does not extinguish or constitute an abandonment of the tenancy *Hem Chandra Chowdhri v Chand Akund I L R 12 Calc 115* distinguished *Hemnath Dutt v Ashgur Sindar I L R 4 Calc 894 Golam Ali Mundul v Golap Sundery Dasi I L R 8 Calc 612 Manirullah v Pamjan Ali 1 C L R 293* explained OBHOYA CHARAN BHOOIA v KOILASH CHUNDER DEY OBHOYA CHARAN BHOOIA v GOPINATH DEY

I L R 14 Calc. 751

RIGHT OF OCCUPANCY—*contd*

2 LOSS OR FORFEITURE OF RIGHT—*contd*

8 ——— *Non-payment of rent—Relinquishment evidence of* Mere non payment of rent does not extinguish or amount to a relinquishment of the right of occupancy *Hem Chandra Chowdhari v Chand Akund I L R 12 Calc 115* explained NILMONEE DASSY v SONATUN DOSHAYI I. L R 15 Calc 17

9 ——— Failure to pay rent—Non payment of rent for long period. Where a [illegible]

10 ——— *Ejectment—Abandonment of holding—Beng Act VIII of 1869 ss 6 and 22* When a tenant having a right of occupancy abandons his holding and ceases to pay rent for five years it is not a right construction of s 22 of Bengal Act VIII of 1869 to say that the landlord may not put another tenant into possession without the formality of a suit S 6 of Bengal *Act VIII of 1869 expressly limits* duration of occupancy right by the words so long as he pays the rent payable on account of the same and distinct abandonment and cessation to pay rent disentitle the tenant from enforcing the rights which he may have previously enjoyed GOLAM ALI MUNDUL v GOLAP SOONDERY DOSSEE

I L R 8 Calc 612 10 C L R. 499

11 ——— Land submerged for long period. Where land held by tenants with rights of occupancy was completely submerged for a number of years and during the period of such submersion no rent was paid by the tenants —*Held* that the tenants had by non payment of rent during the period of submersion forfeited their rights of occupancy HEMNATH DUTT v ASHGUR SINDAR I L R 4 Calc 894

12 ——— Dispossession—*Beng Act VIII of 1869 s 6—Suit for possession of land* Where a raiyat had been in possession of land but had been dispossessed and for some years previous to suit had failed to pay rent —*Held* that at the time of the institution of a suit for recovery of possession he had no subsisting title and consequently his suit must fail. HEM CHUNDRA CHOWDHARI v CHAND AKUND I L R. 12 Calc. 115

13 ——— Acquisition of raiyat s holding by zamindar effect of—*Wrongful eviction—Benami purchase* The right of occupancy is a [illegible] continuing only so long as the [illegible] then [illegible] still, when [illegible] have and [illegible] time of a [illegible] takes possession even in the [illegible] third party seeing that he cannot pay rent to himself the right is gone and cannot subsequently be revived RADHA GOBIND KOER v PAKHIL DAS MUKERJEE I L R. 12 Calc. 83

RIGHT OF OCCUPANCY—*contd*

2. LOSS OF FORFEITURE OF RIGHT—*contd*

14. ——— Setting up adverse title— *Forfeiture of right of occupancy—Denial of title. Quære* Under what circumstances may a person having a right of occupancy forfeit it by setting up an adverse title? UNNOPOORNA DOSSEE *v* RADHA MOHUN PATTRO 19 W R 95

15 ——— *Effect of denial of title on tenant's rights* The setting up of a bo tile title against the zamindar by a tenant under a pottah found to be fraudulent amounts to a disclaimer and forfeiture of all rights of occupancy to which the tenant might have been entitled had he set up his title under s 6 Act X of 1859 NADIR BEG *v* MUDDURAM 2 W R Act X 2

16 ——— Assertion of transferable right—*Ejectment—Transfer—Effect of asserting a right to transfer land by a raiyat having a right of occupancy who remains in possession.* A raiyat having a right of occupancy is not liable to ejectment by his superior landlord merely because he has asserted a transferable right in the land and sold that right to a stranger without giving up possession of the land *Narendra Narain Roy Choudhry* v *Ishan Chandra Sen 13 B L R 274* and *Ram Chandra Roy Choudhry* v *Bholanath Lu hkhur 22 W R 200* distinguished *Dwarka Nath Misser* v *Hurrish Chunder I L R 4 Calc 925* referred to SRI HTEEDHUR BISWAS *v* MUDAN SIRDAR I L R 9 Calc 648

17 ——— Surrender to landlord— *Pottahdar in Madras Presidency—Transfer by tenant* The tenancy of an ordinary pottahdar in the Madras Presidency when properly created entitles the tenant to the right of occupancy for the purpose of cultivation until default in the payment of the stipulated rent or surrender to the landlord in writing and the right of the tenant is assignable as a mortgage security A verbal surrender by the tenant to the landlord after the assignment was known to the landlord cannot be relied on as rendering the assignment void VENKATARAMANIER *v* ANANDA CHETTI 5 Mad 120

18 ——— Delay in applying for pottah from Government—*Occupancy raiyat in Assam* An occupancy raiyat in Assam does not [illegible]

RABHA [illegible]

19 ——— Default in paying assessment of revenue—*Bombay Land Revenue Act (Bom Act V of 1879) ss 81 and 153—Payment of assessment by another—Effect of order of Collector transferring lands into name of person paying* [illegible]

had paid the assessment does not by itself amount to forfeiture of *A's* interest in the lands. BHAU *v* HARI I L R 20 Bom. 747

RIGHT OF OCCUPANCY—*contd*

2 LOSS OR FORFEITURE OF RIGHT—*contd*.

20 ——— Khoti tenure—*Mortgage by registered occupant—Sale in execution of decree on mortgage—Suit for possession by assignee of purchaser at such sale—Bombay Land Revenue Act ss 86 153* One *B* the registered occupant of certain lands situate in a khoti village mortgaged the lands to one *J* who got a decree on the mortgage In execution of the decree the lands were sold to *P* who assigned them to the plaintiff In January 1878 the defendant as khot took possession of the land alleging that *B* had no right to mortgage that he had left the village and forfeited his occupancy that he (the defendant) had thereupon rightfully taken possession of the land in 1878 and that the occupancy had been declared forfeited by the revenue authorities in August 1887 under ss 86 and 153 of the Bombay Land Revenue Code (Bombay Act V of 1879) In 1888 the plaintiff brought this suit to recover the land The lower Court held that the defendant by accepting rent from the mortgagee was proved to have consented to the mortgage and its necessary consequences On appeal to the High Court —*Held* reversing the decree of lower Court that the plaintiff on the strength of his purchase from *P* in 1887 had no right to eject the defendant PURUSHOTTAM VAMAN SOMAN *v* KASHIDAS JEYCHANDSHET

I L R 17 Bom 677

3 TRANSFER OF RIGHT

1 ——— Nature of right as to transferability—*Consent of zamindar to transfer* A right of occupancy is not transferable irrespective of the consent or otherwise of the zamindar BUTI SINGH *v* MURAT SINGH 13 B L R 284 note

s c BOOTEE SINGH *v* MOOFUT SINGH

20 W R 478

2 ——— Right of transferee against zamindar—*Consent of zamindar* A transfer of a mere right of occupancy gives no title to the transferee against the zamindar DURGA SUNDARI *v* BRINDABUN CHUNDRA SIRCAR CHOWDRY

2 B L R Ap 37 11 W R 162

3 ——— Power of transfer—*Consent of landlord—Act X of 1859 s 6—Transferable tenure* A tenure not originally transferable without the consent of the landlord does not become so merely because the tenant has obtained a right of occupancy under s. 6 Act X of 1859 *Quære* Per PEACOCK C J —Whether a right of occupancy gained under s 6 Act X of 1859 is necessarily heritable AJOODHIA PERSAD *v* FUSHMBANDI BEGUM B L R Sup Vol. 725

2 Ind. Jur N S 192 7 W R 528

4 ——— *Right of zamindar as against transferee—Mesne profits* A right of occupancy which is not transferable is merely a right on the part of the person entitled to it to occupy and till the soil, either by himself or by persons dependent on or subordinate to him *e g* his

RIGHT OF OCCUPANCY—*contd*

3 TRANSFER OF RIGHT—*contd*

servants lessees or licensees. Therefore where a

also entitled to r cover as damages so much of the zamindar s rents and profits as the defendant had while in possession been the means of preventing the zamindar from receiving SOHODWA v SMITH 12 B L R 82 20 W R 139

5 ———— *Right of heir of per on with right of occupancy* The heir of a person with a restricted right of occupancy though not competent to transfer that right out and out by sale may make for sale such arrangements as he thinks fit for the cultivation and management of the tenure. MOHANUND BANERJEE v SHUSHEF SHEKHUR CHATTERJEE 20 W R 132

6 ———— *Beng Act VIII of 1869 s 6 occupancy right under—Sale in execution of decree—Gift* The right of occupancy acquired by a cultivating raiyat under s 6 of Bengal Act VIII of 1869 cannot be transferred either by a voluntary sale or gift or by a ale in execution of a decree DWARKA NATH MISSER v HURRISH CHUNDER I L R 4 Calc 925 4 C L R 130

7 ———— Right of transferee—*Purchaser at sale in execution of decree.* The sale of a jote in execution of a decree against the jotedar does not prove it to be transferable nor does the purchaser acquire a right of occupancy by his purcha e where the right is not dependent on cu tom but is a mere creature of the rent law KRIPA NATH CHAKEE v DYAL CHAND PAI 22 W R 169

8 ———— Customary right of transfer—*Tenure of khodkast raiyat* There is nothing unreasonable in the custom by which the tenure of a khodkast raiyat who has built a pucca house on his land and has acquired a right of occupancy under s. 6 Act X of 1859 is transferable CHUNDEE COOMAR ROY v KADERMONEE DOSSEE 7 W R 247

9 ———— Custom or usage nature of evidence to prove—*Bengal Tenancy Act (VIII of 1885) s 183 III (1)* In suits by a landlord for ejectment of purcha ers from raiyats having only a right of occupancy on the ground that the holdings of such raiyats were not transferable without the landlord s consent the defendants pleaded custom or usage in support of the transfers. Questions arose as to the character of the usage required to be proved in such cases and the nature of the evidence required to prove the usage In second appeal the High Court (i) upon a review of the previous law on the subject *held* that however the law may have been previously declared as it is now expressed in the Bengal Tenancy Act s. 183 Ill. 1 a transfer in accordance with usage is valid even without the consent of the landlord (ii) After applying the principles laid down by the Privy Council as regards evidence of mercantile usages in the case of *Juggomohun Ghose v Manick Chand 7 Moo I A 263* —*Held* that it would be necessary in these cases either to prove the existence of the usage on the landlord s estate or

10 ———— Custom or usage—*Bengal Tenancy Act (VIII of 1885) ss 183 and 178 sub s (3) cl (d)—Local usage—Evidence to prove usage—Evidence Act (I of 1872) ss 42 and 48—Judgment as to transferability of tenures in adjoining villages* In a suit by the landlords to avoid the sale of an occupancy holding in their mouzah and eject the purcha er thereof one of the questions was as to the existence of a custom or usage under which the raiyat was entitled to sell such a holding *Held* with reference to the expressions cu tom or usage in s 183 and local usage in cl. (d) sub s. (3) of s. 178 of the Bengal Tenancy Act (VIII of 1885) that (i) The word usage would include what the people are now or recently in the habit of doing in a particular place (ii) In deciding on the evidence of such a custom or usage regard should be had to s 48 of the Indian Evidence Act (I of 18). (iii) A judgment of the High Court as to the transferability of similar tenures in an adjoining vill of the same pergunnah is admissible as evid nce of such usage under s. 42 of the Evidence Act. DALGLISH v GUZUFFER HASSAIN I L R 23 Calc 427

In the same case after remand it was *held* that to establish that occupancy holdings are transferable in accordance with local usage it is necessary to adduce evidence of purchases or transfer by persons other than the landlords made with the knowledge but without the consent of the latter and to which no objection was made by the latter The words custom and usage are not ... the same kind of evid nce ... is not nece ... al usage is ... must elapse ... transf rability ... but this is ... wth of usage ... to which in respect of the matter The usage ... is not restricted to a ss. 178 and 183 refer is not restricted to usage existing at the time of the passin of the Act but it includes usage which may have subsequently grown up. DALGLIESH v COLAFFER HOSSEIN 3 C W N 21

11. ———— *Transferability of right—Bengal Tenancy Act (VIII of 1885), ss 65 and 73* In the absence of custom or local usage to the contrary a raiyati holding in which the raiyat has only a right of occupancy is not saleable at the instance of the occupancy raiyat or any cre-

RIGHT OF OCCUPANCY—contd.

3 TRANSFER OF RIGHT—contd

ditor of his other than his landlord seeking to

12. ———— *Bengal Tenancy Act (VIII of 1885) ss 178 183—Evidence Act (I of 1872) s 48—Admissibility of opinion as to existence of custom or usage* In this suit the plaintiffs by virtue of patni settlements sought to obtain khas possession of certain jote lands which purported to have been conveyed by the jotedar the first set of defendants to the second set of

not necessary to require proof of its existence for any length of time *Held* also that the statement made by persons who were in a position to know of the existence of a custom or usage in their locality were admissible under s 48 of the Evidence Act. *Dalglish v Guzuffer Hossain I L R 23 Calc 427* followed SARIATULLAH SARKAR v PRAN NATH NANDI I L R 26 Calc 184

13 ———— *Sale of an occupancy holding not transferable by custom in execution of a decree for arrears of rent obtained by some of several co sharers landlords—Effect of such a sale—Bengal Tenancy Act (VIII of 1885) ss 65 and 188* A decree for rent obtained by some of certain co sharer landlords and not by the whole body of them is not a decree under the Bengal Tenancy Act *Prem Chand Nuskar v Mokshoda Debi I L R 14 Calc 201* and *Jugobundhu Pattuck v Jadu Ghose Alkushi I L R 15 Calc 47* referred to An occupancy holding which is not transferable by custom as also the interest of the judgment debtor in the said holding are not saleable in execution of such a decree *Biram Ali Shail Shikdar v Gopi Kanth Shaha I L R 24 Calc 355* referred to DURGA CHARAN MANDAL v KALI PRASANNA SARKAR I L R 26 Calc 727 3 C W N 586

14 ———— Sale of occupancy holding

judgment-debtor—Rights of purchaser The Bengal Tenancy Act does not contemplate or provide for the sale of a holding at the instance of one only of several joint landlords who has obtained a decree for the share of the rent separately due to him such a sale *must be under the provisions of the* Civil Procedure Code and would not carry with it *the special incidents attaching to a sale under*

RIGHT OF OCCUPANCY—contd

3 TRANSFER OF RIGHT—contd

the Bengal Tenancy Act. When therefore an *occupancy holding not transferable by custom or* local usage is sold in execution of a decree obtained by one of several joint landlords for the share of the rent separately due to him the purchaser acquires nothing by his purchase the judgment debtor having no saleable interest in the holding *Beni Madhab Roy v Jaod Ali Sircar I L R 17 Calc 390* followed *Jaunadul Huq v Ram Das Saha I L R 24 Calc 143* distinguished. *Bhiram Ali Shaik Shikdar v Gopi Kanth Shaha I L R 24 Calc 355* and *Hari Charan Bose v Punjit Singh I L R 25 Calc 917 note* referred to SADAGAR SIRCAR v KRISHNA CHANDRA NATH I L R 26 Calc 937 3 C W N 742

15 ———— **Non transferable occupancy holding whether saleable at the instance of one of several joint landlords**—*Bengal Tenancy Act (VIII of 1885) ss 65 188* A fractional shareholder selling a non transferable

ferred to in s. 65 of the Bengal Tenancy Act is a decree obtained by all the landlords or at all events a decree obtained by some of the landlords for the entire rent in the presence of all JARIF v RAM KUMAR DE 3 C W N 74

16 ———— **Non transferable occupancy holding whether saleable**—*Decree for arrears of rent by fractional co sharer* An occupancy holding which is not transferable by custom

Kali Prasanna Sircar I L R 6 Calc 27 and *Majed Hossein v Raghubar Chowdhry I L R 27 Calc 18* relied on SITA NATH CHATTERJEE v ATMARAM KAR 4 C W N 571

17 ———— **Transfer to mokurari tenant**—*Dispossession by landlord—Trespass* A raiyat having a right of occupancy can create a mokurari lease but the terms of a lease granted by him to a third party can only be binding as

18 ———— **Proof of transferability**—*Custom—Special stipulation.* In order to make a right of occupancy transferable it must be shown that it is so transferable according to the custom of that part of the country in which the tenure is situated. Where no mention is made in a dowl of any right *to transfer* the existence of the power to transfer cannot be presumed. UNNOPOORNA DOSSIA v OOMACHURN DOSS 18 W R 55

RIGHT OF OCCUPANCY—*contd*

3 TRANSFER OF RIGHT—*contd*

19 ———— *Suit by transferee against zemindar for registration of name* The purchaser of a right of occupancy in certain land suing a zamindar who has refused to register his name in the zamindari sherista for the amount of land claimed and at a specified rent is bound to show that the tenure was one which could be transferred and that the sale did not involve any redistribution of the rent SHUNKURPUTTEE THAKOORAIN v SAIF OOLLAH KHAN 18 W R 507

20 ———— **Obligation of zamindar to register a transfer**—*Act X of 1859 s 27* A right of occupancy is a transferable tenure but the zamindar was not bound to register the transfer under s 27 Act X of 1859 TARAMONEE DOSSEE v BIRRESSUR MOZOOMDAR 1 W R 86

21. ———— **Finding as to transferability**—*Right of tenant with right of occupancy to transfer* Although it is the general rule in the N W P that a tenant s holding is not transferable without the zamindar s consent yet the exceptions are so far from rare that it is necessary in each case to come to a distinct finding on this point and decree accordingly HADAYET ALLY v LALL SING 1 N W Pt II p 38 Ed 1873 98

22 ———— **Transfer by raiyat holding land for agricultural purposes**—*Transfer for conversion to other purposes* Raiyats having a right of occupancy for agricultural purposes may by custom have the right to transfer it to any person to hold for the same purpose but that does not necessarily imply that the transferee may convert the land into a dwelling house and appurtenances JUGGUT CHUNDER ROY CHOWDHRY v ESHAN CHUNDER BANERJEE 24 W R 220

23 ———— **Effect of transfer—Sub letting**—*Right of ejectment—Sub tenant* A tenant having a right of occupancy does not determine it by sub letting the land therefore whether the lessees are ejected by the zamindar they are entitled to recover possession under the terms of their leases JAMIR GAZI v GONEYE MUNDUL 13 B L R 278 note 12 W R 110

24 ———— *Right of zamindar against transferee* If a raiyat having a right of occupancy transfer his right to another his right is not thereby forfeited and the zamindar has no right to eject the transferee GORACHAND MUSTAFI v MADAN MOHAN SIKDAR 13 B L R 279 note

s c. GORACHAND MOOSTAFEE v BURODA PERSHAD MOOSTAFEE 11 W R 194

DWARKANATH MISREE v KANAYE SIRDAR 16 W R. 111

25 ———— *Sub letting tenure—Right of sub lessee* A right of occupancy under s. 6 Act X of 1859 may be acquired by a tenant of land sub let by a raiyat but not unless the raiyat sub-letting has himself a right of occupancy The acquiring the right was confined to the special cases in Act X of 1859 Where that Act was held not to apply there was no equitable principle on which [illegible]

26 ———— *Sub letting—Act X of 1859 s 6* A sued for a declaration of right of occupancy founded on a pottah and long possession and alleged that he had under let to raiyats the land devised by the pottah but that B had obtained a decree against them for rent The lower Court on appeal held that A had determined his tenancy by quitting the land *Held* that A did not by sub letting transfer the right of occupancy Decree reversed and case remanded for trial on the merits HARAN CHUNDER PAL v MUKTA SUNDARI CHOWDHRAIN 1 B L R A C 81 10 W R 113

27 ———— **Relinquishment of tenancy**—*N W P Rent Act (XVIII of 1873) s 9*— [illegible]

LALJI v NURAN I L R 5 All [illegible]

28 ———— **Mortgage**—*Act XII of 1881 s 9—Landholder and Tenant—Usufructuary mortgage by occupancy tenant— Transfer* A mortgage with possession by an occupancy tenant of his cultivatory holding is a transfer within the prohibition of s. 9 of the N W P Rent Act 1881 GANGA DIN v DHURANDHAR SINGH I L R 5 All. 495

29 ———— *Act XII of 1881 (N W P Rent Act) s 9—Landlord and Tenant—Right of occupancy—Meaning of transfer Held* by the Full Bench (MAHMOOD J dissenting) that an hypothecation by an occupancy tenant of his right of occupancy was not a transfer within the meaning of s 9 of the N W P Rent Act, 1873 GOPAL PANDEY v PARSOTAM DAS BADRI NATH v PARBAT I L R 5 All. 121

30 ———— **Sale in execution of decree**—*Act XVIII of 1873 s 9—Restriction on sale Held* (by a majority of the Full Bench) that the right of an occupancy tenant is transferable by sale in execution of decree but only as between persons who have become by inheritance co sharers in such right. *Per* STUART *C J*—That such right is transferable by sale in execution of decree without any restriction. ABLAKH RAI v UDIT NARAIN RAI I L R 1 All. 353

31 ———— *Act XVIII of 1873 s 9* S 9 of Act XVIII of 1873 does not prevent a landholder from causing the sale in execution of his own decree of the occupancy right of his own judgment-debtor in land belonging to himself *Ablakh Rai v Udit Narain Rai I L R 1 All 353* distinguished. UMRAO BEGUM v LAND MORTGAGE BANK OF INDIA I L R. 1 All. 547

RIGHT OF OCCUPANCY—*contd*

3 TRANSFER OF RIGHT—*contd*

Affirmed by the Full B nch (SPANKIE J dissent ing) UMRAO BEGAM v LAND MORTGAGE BANK OF INDIA I L R 2 All 451

32. ———— Rights of tenants at a fixed rate—*Act XVIII of 18 3 s 9—Ex proprietary tenant—Occupancy t nant—Inheritance to rights of occupancy* *Held* that the provi o to the last clause of s. 9 of Act XVIII of 18 3 refers only to the holdings of ex proprietary tenants and occupancy tenants and no to tenan s at fixed rates. BHAGWANTI v I UDR MAN TEWARI I L R 2 All 145

33 ———— Transfer of portion of tenure—*Zamindar right of—Ejectm nt* The exi t ence of a custom in a particular district by which rights of oc upan y in such district are transferable will not justify the holder of such a right of occu pancy in sub dividing h s tenure and transferring different parts of it to different per ons and in case of such transfer the zamindar is entitled to treat the tran ferees as trespassers and eject them TIRTHANUND THAKOOR v MUTTY LALL MISSER I L R 3 Calc 474

34 ———— Transfer of a portion of occupancy holding—*B ngal Tenancy Act (VIII of 1885) s 88—Custom—Ejectment—Pos es ion* The transfer of a portion of an occupancy holding is contrary to the spirit if not the letter of s 88 of the Bengal Tenancy A t VIII of 188 and the

ARBUTHNOT & Co I L R 26 Calc 615 4 C W N 738

See CHANDRA MOHAN MOOKHOPADHAYA *v* BIRESSWAR CHATTERJEE 1 C W N 158

DURGA PROSAD SEN v DOULA GAZEE 1 C W N 160

KABIL SIRDAR *v* CHUNDRA NATH NAG CHOWDHRY I L R 20 Calc 590

GOZAFFER HOSSEIN v BABLISH 1 C W N 162

and KALLI NATH CHAKRAVARTI v UPENDRA CHANDRA CHOWDHRY I L R 24 Calc 212 1 C W N 163

35 ———— Transfer of proprietary rights—*Poss ssion by conditional mortgagees—Sir land—Act XVIII of 1873—Pur hase of pro prietary righ s by mortg ees* The possessi n of sir land by conditional mortgagees must be treated as the possession of the mortgagors *Held* accord ingly that where the mortgagees of certain proprie

within the meaning of s 7 of Act XVIII of 1873 and that after the sale in virtue of the provision of that section they became entitled to a right of occupancy in the sir lan l DAKKAL RAM v WAZIR ALI I L R 1 All 448

36 ———— *Mortgage—Ex proprietary tenant—Act XVIII of 1873 s 7—Transf r of rights* Where a person mortgaged his pro prietary rights in a mehal which rights consisted of certain lands occupied by him covenanting to give

could not resist a claim on the part of the mort

a mere temporary transfer of proprietary rights BHAGWAN SINGH v MURLI SINGH I L R 1 All 459

37 ———— *Act XVIII of 18 3 ss 7 9—Ex propri tary tenant* The right of occupancy which a person losing or parting with the proprietary rights in a mehal acquires under s 7 of Act XVIII of 1873 in the land held by him as sir in such mehal at the date of such lo s or part ing is a saleable interest *Held* where such a right was sold by private sale that it was transferable s 9 of A t XVIII of 1873 notwithstanding *Umrao B gam v Land Mortgag Bank of India I L R 2 All 451* followed A deed executed by a village proprietor purporting to transfer his share in the v llage in lu ling his sir land and ex proprietary right divests such proprietor of the ex proprietary right conferred by s 7 of Act XVIII of 1873 MARKUNDI DIAL *v* RAM BARAN RAI I L R 2 All 735

38 ———— Transfer of raiyat s interest —*Abandonment—Forfe ture—B ng Act VIII of 1869 s* A mokurari mirasi pattah was granted in 1818 to *A* who was found to have held there under as a raiyat till 1859 when his right title an l inter st were old in exe ution of a decree and purchased by *B* and the latter was accepted as t nant by and pai l rent to the zamindar for near ly twelve year The zamindari being old in 1871 for arrears of Government revenue was purchased by the plaint his refusal t *Held* that th quire l under time of the RENDRA NARAYAN ROY CHOWDHRY v I HAN CHUNDRA SEN 13 B L R F B 274 22 W R 22

See WILSON v RADHA DULARI GOPE 2 C W N 63

39 ———— *Abandonment—*

RIGHT OF OCCUPANCY—*contd*

3 TRANSFER OF RIGHT—*contd*

quits possession makes over his interests and gives over the land to a third person he may be treated as having abandoned all rights formerly possessed by him in the land When a purchaser takes possession of a non transferable tenure and interposes himself between the zamindar and the raiyats on the land he thereby commits a wrong and the zamindar may sue to declare that no interest is vested in such purchaser or to restrain him from interfering with the collection of rent HURPEEHUR MOOKERJEE v JODOONATH GHOSE

7 W R 114

40 ———— *Recognition of transfer by zamindar* The conduct and acts of a zamindar may be such as to take a case out of the purview of the Full Bench decision in *Narendra Narayan Roy v Ishan Chundra Sen 13 B L R 274 22 W R 22* which declares that the right of occupancy is not transferable e g where a za

41 ———— *N W P Rent Act (XVIII of 1873) s 9—Sale of occupancy rights with zamindar s consent—Acceptance of rent by zamindar from vendees—Contract Act ss 2 23—Estoppel—Evidence Act ss 115 116* Under a deed dated in 1879 the occupancy tenants of land in a village sold their occupancy rights and the zamindars instituted a suit for a declaration that the sale deed was invalid under s 9 of Act XVIII of 1873 (the N W P Rent Act in force in 1879) and for ejectment of the vendees who had obtained possession of the land It was found that the zamindars had consented to the sale to the vendees

inasmuch as its object was the transfer of occu

under the rent law that the vendees were therefore not trespassers and that therefore the question as to ejectment did not fall within the jurisdiction of the Civil Court JHINGURI TEWARI v DURGA

I L R 7 All 878

Upholding the judgment of MAHMOOD J in DURGA v JHINGURI I L R 7 All 511

where OLDFIELD J and MAHMOOD J differed in opinion

42 ———— Transfer by one co sharer —*N W P Rent Act 1873 s 9—Suit by reversioner —Transferee by inheritance* The plaintiffs sued to set aside an usufructuary mortgage of a cultivatory holding by the defendant M to the other defendants on the averment that they held the same jointly with M s deceased husband and she had no right to make the mortgage The lower Appellate Court found that the land was held separately by M's

43 ———— Transfer of occupancy right and purchase by some of several co sharer landlords—*Bengal Tenancy Act (VIII of 1885) s 22 cl 2—Merger—Right of other co sharer landlords to rent* The acquisition of an occupancy right by a proprietor does not under sub s 2 of s 22 of the Bengal Tenancy Act affect the right of a co sharer landlord to receive his share of the rent of the tenancy The third person

44. ———— Co owner s purchase of occupancy right effect of—*Bengal Tenancy Act (VIII of 1885) s 22* There is no law which prevents one of several co proprietors from holding the status of a tenant under the other co proprietors of land which appertains to the common estate The effect of the purchase by one co-owner of land of the occupancy right is not that the holding ceases to exist but only the occupancy right which is an incident of the holding *Sitanath Panda v Pelaram Tripati, I L R 21 Calc 869* referred to JAWADUL HUQ v RAMDAS SAHA

I L R 24 Calc 143
1 C W N 166

45 ———— Effect of purchase by talukhdar of raiyat s holding—*Bengal Tenancy Act (VIII of 1885) s 22 cl (1)* If a talukhdar at a sale in execution of a decree obtained by him against a raiyat purchase the raiyat s interest such purchase does not extinguish the holding but merely divests it of the right of occupancy (if any) attached to it *Jawadul Huq v Ram Das Saha I L R 24 Calc 143* followed MIAJAN v MINNAT ALI I L R 24 Calc 591

See RAM SARAN PODDAR v MAHOMED LALIF 3 C W N 63

46 ———— Occupancy Non transferable right of—*Bengal Tenancy Act (VIII of 1885) s 22—Effect of purchase of non transferable ... of ... landlord.*

to occupancy ... the case of a ... the h ...

non transferable ... itself as apart from the right of occupancy can be sold so as to give the transferee a right to retain possession of it *Jawadul Huq v Ram Das Saha I L R 24 Calc 143* explained and distinguished. KEDAR CHANDRA ... GRISH CHANDRA CHOWDHRY v ... ROY

I L R 27 Calc 413
4 C W N 563

RIGHT OF OCCUPANCY—*contd*

3 TRANSFER OF RIGHT—*contd*

47 ——— **Transfer by proprietor in mehal**—*Ex proprietary tenant—Act XII of 1881 (N W P Rent Act) ss 7 9* The words of s 7 of the N W P Rent Act hall have a right of

where a proprietor in a mehal holding ir land who is selling his proprietary right at the same time transfers all his ri hts actual vested or con tingent in such sir land such transf r is one of his right of occupancy in such ir land and as such is prohibited by s 9 of the N W P Rent Act GULAB ROY v INDAR SINGH I L R 6 All 54

48 ——— **Right of mortgagees from tenant**—*Mortgagees rights of in suit for eject m nt of tenants* If a zamindar obtains a decree in the *Revenue Court for the ejectment of tenants* with a right of occupancy who have mortgaged portions of their holding it does not necessarily follow that the interests of the mortgagees deter mine with the rights of the original tenants. Where certain tenants with a right of occupancy mort gaged portions of their holdings and the zamindar assented to the substitution of the mortgagees for the original tenants in respect of those portions of the holding of which they had respectively ob tained pos ession it was *held* that the zamindar could not d stroy the interest of the mortgagees in possession by obtaining a decree from the Revenue Court ousting only the original tenants GOBERDHUN v GOKAL CHAND 7 N W 31

49 ——— **Validity of transfer**—*Rights of mortgagees from tenant—Lease— Zur i peshgi lease—Act XII of 1881 (N W P Rent Act) ss 8 9* The occupancy tenants of certain land executed a zur i peshgi l a e in favour of cer tain person by which in consideration of a sum of money it was agreed that the latter should have *the right of occupying and cultivating the occu pancy* holding as tenants for a term of years at a nominal rent In pursuance of this agreement those persons obtained posses ion The zamindar

was therefore invalid. *Per* PETHERAM *C J*—A right of occupancy means nothing but the right to live on and cultivate land as one s own *Per* STRAIGHT *J*—The last sentence of s. 8 of the Rent Act should not be read as declaring that any occu pancy tenant may sub let his land but that the

JURAWAN LAL I L R 7 All 888

RIGHT OF OCCUPANCY—*contd*

3 TRANSFER OF RIGHT—*contd*

50 ——— *Suit for eject ment—Act by tenant inconsistent with purpose for which land was let—Mortgage of occupancy holding —Cancelment of mortgage before suit for ejectment— Act XII of 1881 (N W P Rent Act) ss 9 93 (b) 149* An occupancy tenant made an usufruct uary mortgage of his holding and afterwards had the land and the mort age deed returned to him and the mortgage was cancelled Subsequently the landlord instituted a suit for ejectment on the ground that by the mortgage the tenant had com mitted an act inconsistent with the purpose for which the land was let within the meaning of Act XII of 1881 (N W P Rent Act) s 93 (b) *Held* by OLDFIELD *J* that apart from the question whether executing a mortgage of his holding was an act within the meaning of s 93 (b) of the Rent Act the mortgage having been cancelled there was no cause of action left and the penalty should not be enforced with reference to s 149 *Held* by MAHMOOD *J* that the occupancy tenure could not be brought to an end except on grounds clearly *provided by the law and the execution of the mort gage* though illegal and void was not any act or omission detrimental to the land or inconsist ent with the purpose for which the land was let within the meaning of s 93 (b) of the Rent Act *and furnished no ground for ejectment Gopal Panday* v *Parsotam Das I L R 5 All 121* and *Naik Ram Singh* v *Murli Dhar I L R 4 All 371* referred to Also *per* MAHMOOD *J*—The terms of s 93 (b) of the N W P Rent Act apply *exempli gratia to cases in whi h land is given to a tenant for* purposes of cultivation and is used by him for building or other purposes DEBI PRASAD v HAR DAYAL I L R 7 All 691

51 ——— N W P Rent *Act (XII of 1881) s 93 (b)—Mortgag by ex pro priet r y tenant— Act inconsistent with the purpos for which land was let —Act XII of 1881 ss 9 56* The policy of th framers of the N W P Rent Act (XII of 1881) was *not to protect the interest of the* purchaser of proprietary rights but that of the per son whose proprietary rights have been sold and who has become an ex proprietary tenant It would be straining the law as laid down in 93 (b) *of the Act to hold that a mortgage of his holding,* granted by an ex proprietary tenant was an act inconsi tent with the purpose for whi h the land was let within the meaning of that provision The words quoted have reference to something *which may alter the character of the land or cause* injury to the land and thus to the landholder

in respect of which the arrear arises. *Debi Prasad v Har Dayal I L R 7 All 691 followed*

RIGHT OF OCCUPANCY—*contd*

3 TRANSFER OF RIGHT—*contd*

Wajiha Bibi v *Abhman Singh All Weekly Notes (1883) 166* referred to FATIMA BEGAM v HANSI
I L R 9 All 244

52 ——————— *N W P Rent Act (XII of 1881) ss 7 9—Sir land—Sale of sir land by co sharer—Ex proprietary tenant* Held by PETHERAM C J and STRAIGHT OLDFIELD and BRODHURST JJ that the question whether the proprietary right of a co sharer in the *sir* of a mehal are distinct and separate from the proprietary rights in the mehal itself so as to enable the owner of one share to sell and give possession of his *sir* alone as against his co sharers must be determined with reference to the tenure and conditions under which land is held in the mehal by the co parceners to be ascertained in each case *Per* PETHERAM C J and STRAIGHT and OLDFIELD JJ —In zamindari tenures in which the whole land is held and managed in common a co sharer cannot convey his right of occupancy in the *sir* as something distinct from his proprietary rights in the mehal. In puttidari tenures in which the lands are divided and held in severalty each proprietor managing his own lands there may be lands which come within the classification of *sir* given in the Rent Act but they would not seem to be on a different footing from any other land held in severalty by a proprietor *Per* BRODHURST J —So long as a person is the sole proprietor of a mehal he is not restrained by any law from effecting a sale of his proprietary rights in his *sir* land even though he retains possession of the whole of the other lands of the mehal. *Per* MAHMOOD J —That the proprietary rights of a joint co sharer in his *sir* land form an essential part of his rights in the mehal that such proprietary rights in the *sir* land may be sold but that the purchaser under such a sale could not obtain any such possession as would operate indefeasance of the ex proprietary right in such sir land conferred by s 7 and secured by s 9 of the Rent Act *Sahib Ram* v *Kishen Singh All Weekly Notes (1882) 19* *Hazari Lal* v *Ugrah Pai All Weekly Notes (1884) 103* *Gulab Rai* v *Indra Singh I L R 6 All 54* and *Tirmal Singh* v *Bhola Singh All Weekly Notes (1884) 109* referred to SITAPAL PRASAD v AMTUL BIBI
I L R 7 All 633

53 ——————— *Mortgage by conditional sale of occupancy rights to zamindar—Act XVIII of 1873 (N W P Rent Act) s 9—Act XII of 1881 (N W P Rent Act) ss 2 9* The occupancy tenant of certain land before the N W P Rent Act (XII of 1881) came into force mortgaged his right to his zamindars by a deed of conditional sale The zamindars sued the heirs of the conditional vendee for foreclosure and possession of the mortgaged property *Held* by the Full Bench that the terms of the judgment of the Full Bench in *Nail Ram Singh* v *Murli Dhar I L R 4 All 3 1* were directly applicable to the case and that the transaction of mortgage which was subsequently to become a sale was not a transaction to which s. 2 of the Rent Act applied because the sale would not have effect till after the Act came into operation. MURLI PAI v LEDRI
I L R 7 All 851

54 ——————— *Effect of transfer on occupancy right—Transfer of trees—Act XII of 1881 s 9* The presumption of law and the general rule is that property in timber on a tenant s holding rests in the landlord in the same way as and to no less an extent than the property in the soil itself *Faqueer Sonar* v *Khuderun 9 W R 251* *Ajudhia Nath* v *Sital I L R 3 All 567* *Abdool Pohomon* v *Dataram Bashee, W R 1864 367* *Ruttonji Edulji Shet* v *Collector of Tanna 11 Moo I A 295* referred to *Held* therefore where an occupancy tenant transferred his holding that the transfer was not only invalid [illegible] of the [illegible] ant [illegible] ized [illegible] the tenant and his vendee to set aside the transfer as contrary to law and for possession of the holding — *Held* that the transfer could not be treated as a relinquishment by the tenant of the holding to the landholder and that the proper decree to make was that the transfer should be cancelled that the plaintiff was entitled to eject the vendee from the land but the plaintiff was not entitled to take the holding from the vendor KASIM MIAN v BANDA HUSAIN
I L R 5 All 616

55 ——————— *Inquiry as to validity* When a raiyat alleges a mukurari right by purchase the nature of his vendor s title ought to be inquired into and whether it was or was not transferable GOBIND CHUNDER MOZUMDAR v BISSUMBHURREE DOSSEE 2 W R Act X, 4
RAM CHUNDER MITTER v RAMZANEE BEBEE

BANEE MADHUB BANERJEE v JOY KISHEN MOOKERJEE 4 W R Act X 16

56 ——————— *Transfer of te[illegible]* [illegible] Where a tenure has [illegible] found that [illegible] is entitled [illegible] former tenant for his rent SUDDIE [illegible] PUPIRA 12 B L R 84 note 15 W R 261

57 ——————— *Suit for registration of name in landlord's sherishta—Right of suit—Notice—Bengal Tenancy Act (VIII of 1885) s 73* Under the Bengal Tenancy Act (VIII of 1885) the transferee of a holding of a raiyat with right of occupancy transferable by custom cannot maintain a suit for registration of his own name in the landlord s sherishta by expunging that of the vendor A declaration that the transferee and not the old tenant is responsible for the rent of the holding cannot be obtained without service of notice as prescribed by s 73 of the Act [illegible] LERSHAD v CHOWDHRI KESHRI SAHU
I L R 24 Cal 645

RIGHT OF OCCUPANCY—*contd*

3 TRANSFER OF RIGHT—*contd*

See KULHIP SINGH *v* GILLANDERS ARBUTHNOT & Co and MOTILAL SINGH *v* OMARALI
I L R 26 Calc 615
3 C W N 19

and (*contra*) ANANDA KUMAR NASKAR *v* HARI DASS HALDAR I L R 27 Calc 545

58 ———— Landlord s consent—*Sale of occupancy holding in execution of money decree—Landlord s consent effect of* A sale in execution of a money decree of an occupancy holding not transferabl by local custom or usage is valid and effectual if the sale is held with the consent of the landlord In principle there is no difference be tween the case of a voluntary sale made by the *raiyat* and an involuntary sale had by the Court if such sale is consented to by the landlord ANANDA DAS *v* RUTNAKAR PANDA (1903)
7 C W N 572

59 ———— Proof of local usage—*Occupancy holding—Local usage to transfer* Where the

the locality and the *kobalas* filed in this case sup port this fact *Held* that this did not amount to a finding of a local usage DINO NATH GHOSE *v* NOBIN CHUNDER GHOSE (1900) 6 C W N 181

60 ———— *Occupancy holding—Transferability—Local usage proof of* A

RIGHT OF PRIVATE DEFENCE

See PRIVATE DEFENCE RIGHT OF

See RIOTING
I L R 36 Calc 296 827 865

RIGHT OF REPLY

See CRIMINAL PROCEDURE CODE ss 289 292 I L R 30 Bom 421

1 ———— Witnesses not called for de fence Where defendant s counsel did not go into evidence but had no intimated his intention to call witnesses the plaintiff s counsel has a right to reply VIRASVAMI CHETTI *v* APPASVAMI CHETTI
1 Mad. 375

RIGHT OF REPLY—*contd*

2 ———— Decision on appellant s arguments after hearing respondent Where an appellant had been heard at length and the respondent heard partly in answer and the Court came to a conclusion after research into the record without any new matter being brought forward by the respondent it was considered unneces sary to hear the appellant in reply ROUSSEAU *v* NUBOO KISHORE BHUDRO 12 W R 302

3 ———— Giving no opportunity for reply—*Ground for special appeal* Where an appeal was dismissed by the lower Appellate Court after hearing the respondent s pleader without giving the appellant s pleader an opportunity to reply the High Court on that objection being made a ground of special appeal from an order of the Judge refusing to grant a review on that ground set aside the order and sent the case back for re trial JARDINE *v* TARINI MOHAN SEN
8 B L R Ap 44

Distinguished in RAM KOOMAR KYBURTO DASS *v* SONATUN DASS PORAMANICK 3 C L R 23

which was a case where after some explanation from the appellant s vakil the Judge said he did not think the Munsif s judgment erroneous where upon the vakil said he was not desirous of arguing the case further and the Judge began writing his judgment and refused to hear another vakil in structed by the appellant who came in and asked permission to argue the case

4 ———— Hearing of rule nisi —*Practice* On the hearing of a rule *nisi* after cause had been shown against the rule it was objected on counsel rising to support it that there was no right of reply no affidavit having been used in showing cause The objection was overruled and a reply allowed RAMASUNDARI DASI *v* RAMNARAYAN MITTER 7 B L R Ap 57

5 ———— Question of law—*Construction of will—Evidence not called for defendants* In a suit for the construction of a will a reply was al lowed although the defendants called no evidence the suit being of the nature of a special case JUDAH *v* JUDAH 5 B L R 439

6 ———— Crown s right of reply—*Trial for prisoners charged with distinct offences in*

7 ———— *Use of docu-*

RIGHT OF REPLY—*contd*

accused says that he does not QUEEN EMPRESS v GREES CHUNDER BANERJEE
I L R 10 Calc 1024

8 ——————— *Practice—Evidence—Witness called by Court—Tendering witnesses for cross examination—Criminal Procedure Code (Act X of 1882) ss 289 540* The giving of any documentary evidence by an accused person during the cross examination of the witnesses for the prosecution and before he is asked under s 289 if he means to adduce evidence does not give a right of reply to the prosecution *Queen Empress* v *Grees Chunder Banerjee I L R 10 Calc 1024* followed EMPRESS OF INDIA v KALIPROSONNO DOSS I L R 14 Calc 245

9 ——————— *Criminal Procedure Code s 289* Where documentary evidence was put in by the accused during the case for the Crown and before examination of the accused —*Held* that under s 289 of the Code of Criminal Procedure that the Crown had the right of reply *Queen Empress* v *Grees Chunder Banerjee I L R 10 Calc 1024* dissented from QUEEN EMPRESS v VENKATAPATHI I L R 11 Mad 339

10 ——————— *Practice—Criminal Procedure Code (Act X of 1882) s 289* The putting in as evidence on his behalf of any docu

v *Vencatapattu I L R 11 Mad 339* dissented from QUEEN EMPRESS v SOLOMON
I L R 17 Calc 930

11 ——————— *Witnesses not called for defence—Reply by prosecutor—Criminal Procedure Code (Act X of 1882) ss 289 292* At the close of the evidence for the prosecution the attorney for the defence in answer to the Judge

Procedure Code would warrant this course it was never meant by the Legislature that the prosecutor should have a reply when no witnesses are called for the defence the object of the law being evidently to let each side have an opportunity of commenting on the evidence of the other and not to give an additional advantage to the prosecutor in such a case as the present HURRY CHURN CHUCKERBUTTY v EMPRESS
I L R 10 Calc 140 13 C L R 358

12 ——————— *Documents put in evidence on behalf of accused during cross examination of witnesses for prosecution No witnesses called for defence—Criminal Procedure Code (Act X of 1882) s 292—Practice* The fact that during

RIGHT OF REPLY—*contd*

the cross examination of witnesses for the prosecution documents are put in evidence on behalf of the accused does not give the prosecution the right of reply if no witnesses are called for the defence QUEEN EMPRESS v KRISHNAJI BABURAV BULELL I L R 14 Bom 436

13 ——————— *Criminal Procedure Code ss 289 292—Adducing evidence for the defence—Documents produced for cross examination of Crown witness—Practice* In a trial before a High Court or a Court of Session evidence for the defence cannot be adduced until the close of the case for the prosecution but counsel for the defence may while a witness for the Crown is under cross examination put documents to him and if in so doing counsel reads or causes to be read to the Court such documents he thereby impliedly undertakes to put those documents in as evidence at the proper time When such documents as aforesaid are filed in Court as evidence or any other documentary evidence is put in by the defence the defence has adduced evidence within the meaning of ss 289 et seq of the

and
and
the
arked

evidence for the pro-
and filed During the cross examination of the next witness a similar course was pursued and after the cross-examination had continued for some time counsel for the defence applied to the Court for a ruling as to whether the fact of documents having been used during cross-examination in the manner above stated would under s 292 of the Code of Criminal Procedure entitle the Crown to a reply in the event of the accused not calling witnesses *Held* that although as a matter of order such a question would be better raised either when the first document intended to be used in this way was put to a witness or when the accused was asked if he meant to adduce evidence yet there was nothing in the Code of Criminal Procedure to prevent the Court from deciding the question at any other stage and that under the special circumstances of the case it might be considered then *Held* also that the use of the documents in the manner above stated gave the prosecution a right of reply *Queen Empress* v *Grees Chunder Banerjee I L R 10 Calc 1024* *Empress of India* v *Kaliprosonno Doss I L R 14 Calc 245* *Queen Empress* v *Solomon I L R 17 Calc 930* and *Queen Empress* v *Krishnaji Baburav Bulell I L R 14 Bom 436* dissented from QUEEN EMPRESS v HAYFIELD I L R 14 All 212

14 ——————— *Several persons tried jointly—Right of reply where one of several accused calls witnesses and the others do not—Cr.*

RIGHT OF REPLY—*concld*

minal Procedure Code 1882 ss 289 290 and 292 Where one of several accused persons tried jointly calls witnesses at the trial but the other accused call no witnesses they must under s. 290 of the Criminal Procedure Code all follow one another in their defence and the prosecution has under s. 292 the right of reply on the whole case QUEEN EMPRESS v SADANAND NARAYAN I L R 18 Bom. 364

15 ——————— *Tender of document to witness for Crown in cross examination—Criminal Procedure Code 1882 s 292* The action of the defence during the cross-examination *of a witness for the Crown in tendering a document* to such witness and using the same as evidence for the defence was held to entitle the Crown to reply under s. 292 *of the Code of Criminal Procedure* QUEEN EMPRESS v MOSS I L R 16 All 88

RIGHT OF SUIT

RIGHT OF SUIT—*contd*

See ACCOUNT I L R 35 Calc 298
12 C W N 28
13 C W N 898

See ACT IX OF 1847 15 B L R 49
I L R 4 Calc 103

See ACT XIII OF 1859 2 Mad 427

See ACT XX OF 1863 2 N W 420
4 N W 155
I L R 2 Mad 197
I L R 7 Calc 767
I L R 9 Calc 133
I L R 19 Mad 396

See ACT—1863—XX, s 18
I L R 24 Mad 219

See ASSIGNMENT OF CHOSE IN ACTION
I L R 26 Mad 264

See BENAMI TRANSACTION—CERTIFIED PURCHASERS

CERTIFIED PURCHASERS—CIVIL PROCEDURE CODE 1882 s 317

See BENAMI TRANSACTION—GENERAL CASES 25 W R 532
3 C L R 9
I L R 21 Mad 30 231
I L R 22 Bom 820
I L R 18 Mad 469
I L R 23 Calc 460 962 962 note
I L R 27 Calc 231

GENERAL CASES—SUIT TO RECOVER POSSESSION OF PROPERTY
I L R 30 Calc 265

See BENGAL TENANCY ACT 1885 s 171
13 C W N 1175

See BENGAL TENANCY ACT 1885 s. 188
9 C W N 34
10 C W N 787
I L R 35 Calc 331
12 C W N 249

See BENGAL REGULATION VIII OF 1819 s. 9 7 C W N 111

See BOND ALTERATION OF
I L R 33 Calc 812
10 C W N 788

See CALCUTTA MUNICIPAL ACT (BENG III OF 1899) 13 C W N 740

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

See CIVIL PROCEDURE CODE 1882 s. 13
10 C W N 115

RIGHT OF SUIT—*contd*

See CIVIL PROCEDURE CODE 1882.
s 244
s 257A I L R 25 Bom. 252

See CIVIL PROCEDURE CODE 1882 s 311
10 C W N 274 505 866

See CIVIL PROCEDURE CODE 1882 s 315
13 C W N 1080

See COMPROMISE—

CONSTRUCTION ETC OF DEEDS OF COMPROMISE 7 C W N 159

REMEDY ON NON PERFORMANCE OF COMPROMISE 5 C W N 386

See CONSENT DECREE
13 C W N 1197

See CONTRACT ACT (IX OF 1872) s. 74.
I L R 31 Mad. 54

See CONTRIBUTION SUIT FOR—

PAYMENT OF JOINT DEBT BY ONE DEBTOR I L R 26 Mad. 373

JOINT WRONG DOERS 5 C W N 393

See CO SHARERS I L R 35 Calc 331

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT 7 C W N 108

See DECLARATORY DECREE SUIT FOR—ADOPTION I L R 30 Calc 613

See ENDOWMENT I L R 3 Calc 563
2 C L R 128
3 C L R 112
I L R 9 Bom. 169
I L R 14 Mad 1

See EVIDENCE 13 C W N 531

See FISHERY RIGHT OF I L R 2 Bom. 19

See HINDU LAW—

ALIENATION—ALIENATION BY WIDOW—SETTING ASIDE ALIENATIONS AND WASTE 5 C W N 445
9 C W N 25

REVERSIONERS I L R 29 Calc 260

See HINDU LAW—REVERSIONERS—POWERS OF REVERSIONERS ETC—RIGHT MAY SUE

See INSOLVENCY 9 C W N 953

See JURISDICTION I L R 35 Cal 777

See JURISDICTION OF CIVIL COURT

See LIMITATION ACT (XV OF 1877) s 3
I L R. 35 Calc 209

See MADRAS RENT RECOVERY ACT ss 15, 17 AND 18 I L R 25 Mad. 503

See MAHOMEDAN LAW—DOWER
13 C W N 84

See MAINTENANCE. I L R 32 Calc. 479

See MALICIOUS PROSECUTION

RIGHT OF SUIT—*contd*

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS I L R 24 All. 361

See MORTGAGE—POWER OF SALE I L R 25 Mad. 108

See PARTIES—

PARTIES TO SUITS—MORTGAGES SUITS CONCERNING 5 C W N 423

SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

See PARTITION 9 C W N 699

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS I L R 30 Calc 207

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT 5 C W N 383

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880) I L R 29 Calc 73

See PUBLIC DEMANDS RECOVERY ACT 7 10 C W N 130

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880) s 19 I L R 29 Calc 94

See RAILWAY COMPANY I L R 27 Bom. 344

See RAILWAYS ACT ss. 7 10 AND 11 I L R 25 Mad. 632

See RELINQUISHMENT OF OR OMISSION TO *SUE FOR PORTION OF CLAIM*

See RENT SUIT FOR 7 C W N 720

See RESTITUTION OF CONJUGAL RIGHTS I. L R 28 Calc 37

See SALE FOR ARREARS OF RENT—SURPLUS *PROCEEDS OF SALE* 7 C W N 552

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—PARTIES 7 C W N 377

See SALE IN EXECUTION OF DECREE—*SETTING ASIDE SALE—RIGHTS OF PURCHASERS*—RECOVERY OF PURCHASE MONEY 5 C W N 240

See SALE OF GOODS I L R 25 Mad 580

See SLANDER 9 C W N 847

See SPECIFIC RELIEF ACT s. 9 6 C W N 616

See TRADE MARK 13 C W N 82

——— after conviction of defendant—

See DAMAGES—SUITS FOR DAMAGES—TORT 6 C W N 915

——— against witness—

See DEFAMATION I L R. 28 Calc 794

——— by co sharer landlord—

See CO SHARERS—SUITS BY CO SHARERS WITH RESPECT TO THE JOINT PROPERTY —KABULIYATS 7 C W N 670

——— by creditor—

See RECEIVER I L R 30 Calc 937

——— certificate of sale—

See SALE 13 C W N 710

——— for compensation—

See LAND ACQUISITION ACT (I OF 1894) ss II 18 31 AND 33 7 C W N 538

——— for maintenance—

See HINDU LAW 13 C W N 150

——— for setting aside scheme of management—Mauritius

See MAHOMEDAN LAW 13 C W N 26

——— road and other cesses sale for arrears of—

See PUBLIC DEMANDS RECOVERY ACT (BENG I OF 1895) ss 10 17 21 I L R 28 Calc 913

——— to compel registration—

See REGISTRATION ACT (III OF 1877) ss 73 TO 77 I L R 24 All 402

——— to enforce agreement in satisfaction of judgment debt—

See CIVIL PROCEDURE CODE 1882 s 257A. 6 C W N 27

——— to perform religious ceremonies—

See EXECUTOR 13 C W N 557

——— to recover cess illegally levied—

See MADRAS LOCAL BOARDS ACT ss. 57 64 AND 149 I L R 24 Mad. 114

——— to set aside decree and order absolute—

See MORTGAGE 13 C W N 300

——— to set aside sale in execution of certificate—

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT I OF 1895) I L R 30 Calc 619

1 ACCRUAL OF RIGHT

1. ——— Cause of action—*Limitation—Misapprehension of legal rights* A judgment of a Court altering a pure legal misapprehension as to the rights and status and passed in a suit to which *A* was not a party cannot confer any fresh

RIGHT OF SUIT—*contd*

1 ACCRUAL OF RIGHT—*contd*

cause of action as against A by the party who previously misapprehended his correct legal claim LOTF ALI KHAN *v* AFZUIOONISSA BEGUM
3 W R 113

2 ———— *Right of unborn son—Hindu Law—Limitation* The texts of Hindu ...

... SINGH *v* GOUR DIAL SINGH 1 W R 285

3 ———— *Suit by zamindar to recover possession of occupancy holding against occupancy tenant and his alleged transferee in possession—Death of occupancy tenant after filing of suit but before notice—N W P Rent Act s 9* A plaintiff is not entitled to ... by ... lows ... tled ... One R C a zamindar sued in a Court of revenue to recover an occupany holding from one B S his occupancy tenant and that tenant s transferee G S to whom by a transfer which was inoperative under s 9 of Act XII of 1881 B S had purported to make over his occupancy holding The occupancy tenant died after the suit was filed but before he had received notice of it and the transferee being in sole possession of the occupancy holding defended the suit *Held* under the above circumstances that the zamindar s suit must fail inasmuch as at the time when it was filed he was not entitled to immediate possession of the occupancy holding GULZAR SINGH *v* KALYAN CHAND I L R 15 All 399

4 ———— *Suit for pre emption—Mortgage* A pre emptor may sue any time before the expiry of a year from the date of transfer of possession A mortgagee s absolute right and his claim to pre emption arise from the time the sale becomes absolute JANKEE KOOER *v* LEKRANEE KOOER W R 1864 285

5 ———— *Suit for pre emption—Conditional sale.* *Held per* PEARSON J and STRAIGHT J (SPANKIE J dissenting) that the cause of action of a person claiming the right of pre emption in the case of a conditional sale arises when the conditional sale takes place and not when it becomes absolute and therefore where a conditional sale took place in 1867 and after it had become absolute a person sued to enforce his right of pre emption in respect of the property sold basing his claim upon a special agreement made in the interval between the date of the conditional and the date that it became absolute and alleging that his cause of action arose on the latter date that the suit was not maintainable the plaintiff having no right of pre emption at the time of the conditional sale LACHMAN PRASAD *v* BAHADUR SINGH I L R 2 All. 884

6 ———— *Suit for pre emption—Mortgage—Conditional sale* The cause of action of a person claiming a right of pre emption in respect of a mortgage by way of conditional sale arises on foreclosure of such mortgage that is to say on the expiration of the year of grace without payment by the mortgagor of the mortgage money inasmuch as on the expiration of such period the mortgagee acquires a proprietary title to the mortgaged property Such person can therefore sue to enforce his right of pre emption on the expiration of such period and need not wait to do so until the mortgagee has obtained proprietary possession of the mortgaged property HAZARI RAM *v* SHANKAR DIAL I. L R 3 All. 770

7 ———— *Conditional sale—Pre emption—Wajib ul urz* On the 19th May 1871 B mortgaged by way of conditional sale a share of a village to A a stranger Such mortgage having been foreclosed A ... B for possession of ... 1st September 1879 S a co sharer sued A and B to enforce his right of pre emption in respect of such share founding his suit upon the following clause in the administration paper of the village

When a share holder desires to transfer his share a near relative shall have the first right next the shareholders of the other pattis if these refuse to take the vendor shall have power to sell and mortgage etc to whomsoever he likes. *Held* (PEARSON J dissenting) having regard to the terms of the administration paper that a cause of action accrued to S when such mortgage was foreclosed. *Per* SPANKIE J OLDFIELD J and STRAIGHT J (STUART C J dissenting) that a cause of action also accrued to S when such share was mortgaged by way of conditional sale to A ALU PRASAD *v* SUKHAN I L R 3 All. 610

8 ———— *Suit for pre emption—Mortgage by conditional sale.* The wajib-ul urz of a village provided that the right of pre ... ... of a mortgage by conditional sale which has become absolute is bound to pay as the price of the property the entire amount due on such mortgage at the time it became absolute ASHIK ALI *v* MATHURA KANDU I L R. 5 All. 187

9 ———— *First and second mortgagees—Dispossession of second mortgagee—Limitation—Interest* Z being indebted to A executed in his favour a written mortgage of certain lands in which it was agreed that if the debt was not repaid within a fixed time A should be put in to possession of the lands. Subsequently Z executed in favour of P to whom also he owed money a second mortgage of the same land subject to the

RIGHT OF SUIT—*contd*

1 ACCRUAL OF RIGHT—*contd*

same condition. *P* not receiving payment within the stipulated time sued Z on the mortgage and *obtained a decree for possession of the lands* under which he was put into pos e sion in the year 1846 After *P* had obtained his decree *A* whose debt had likewise remained unpaid, brought a suit as first mortgagee against *Z* and *P* for the posses ion of the lands and obtaining a decree recovered pos session in the year 1847 disposses ing *P* In the year 18"0 *the heirs of Z having paid off the debt* due to *A* resumed pos e ion whereupon the heirs of *P* applied to be restored to posses ion in execution of the decree obtained by *P* in 1846 This appli cation having be n rejected on the ground that that decree had been fully executed when *P* ob tained pos e sion under it the heirs of *P* instituted a *suit against the heirs of Z to recover po session and* for interest during the time they were dispo essed *Held* by their Lordships of the Judicial Committee reversing the decision of the High Court that the heirs of *P* were entitled to po se sion on *A* s mort gage being paid off and that their cause of action accrued and limitation ran against them from the t me *when the heirs of Z re umed po session* *Held* also that they were not entitled to a decree for the intere t accruing during the time they were dis pos essed. NARAIN SINGH v SHIBHOO SINGH

I L R 1 All 325
L R 4 I A 15

10 ———————— *Suit by pur chaser for possession—Sale for arrears of revenue—Limitation.* In suits instituted by a purchaser to re over pos ssion of an estate sold for arrears of Government revenue due in respect of such estate the period of limitation cannot be cal ulated under any circumstances from a day anterior to the date of purchase NARAIN CHUNDER v TAYLER

I L R 4 Calc 103 3 C L R 151

11 ———————— *Suit to recover compensation for land taken for public purposes and paid by Government to wrong party* In a suit to recover money paid by Government to the defend ant as compensation for land taken for public pur poses which the plaintiff alleged to belong to *him,* and not to the defendant —*Held* that the plainti ff s right of action against the defendant accrued *at the time when the defendant first took the money* from Gover ment ... the defendant AZHOAL SINGH v LALLA GOPEE NATH 8 W R 23

12 ———————— *Possession of lands not capable of occupation—Khal* When lands which are not ... *if any one to whom it does not belong takes actual* possession of it a cause of action accrues to the per ... tillable or cultivated. SUNNUD ALI v KURIMOON ISSA 9 W R 124

13 ———————— *Promise to pay when I am able* In a written promise to pay when I am able those words are not to be treat ed as mere surplusage but as a binding part of the contract The promisee s cause of action does not accrue until the promisee is in circumstances to pay WALTON & Co v BLECHYNDEN 1 W R 368

14. ———————— *Suit for lost pro perty discovered—Jurisdiction* Where property lost in one district is found in another in the pos *session of a party who refuses to restore it* the owner s cause of action arises from the date of such refusal and a suit to recover possession of the property must be instituted in the district in which it is found RAM PERTAB SINGH v BHOLABUTTY KOONWAR 9 W R 586

15 ———————— *Service watan land—Successive life tenants* Where land belong ing to a service watan held on a tenure of successive *life estates had passed out of the possession of the* watandars it was *held* that a cause of action to recover such land accrued to each successive life tenant upon the death of his predecessor KURI BIN HANMIA v GURURAV 9 Bom 28

16 ———————— *Redemption —Constructive payment* Where an assignee of land covenants with his assignors to repay all the moneys which they have at any time actually or *constructively* paid to Government for redemption a suit against him where money has not been ac tually paid is premature unle s there is some defi nite agreement with Government as to the amount which Government can enforce WOODROW v SCHILLER 1 Ind Jur N S 90

17 ———————— *Repudiation by tenant of landlord s title* The repudiation of a tenant s title by his landlord can only form one cause of action howev r often that repudiation is repeated NUND KISHORE SINGH v HUREE PERSHAD MUNDUL 13 W R 64

2 ACTS DONE IN EXERCISE OF SOVEREIGN POWERS

1 ———— **Suit for damages for refusal of licen e by excise authorities**—*Liability of Government—21 & 22 Vict c 106—Matter of revenue—11 Geo III c 0 s 8* The plaintiff for some years before and up to 31st March 1864 car ried on the business of a retail dealer in ganja and sidhi in Calcutta and occupied for that purpo e certain shops and godowns duly licensed under the Government regulat ...

RIGHT OF SUIT—*contd*

2 ACTS DONE IN EXERCISE OF SOVEREIGN POWERS—*contd*

March 1874 while the pl ... business ... put the r ... commenc ... competition which was the usual way of distributing the yearly licenses The sale notification contained a list of the shops with the localities where they were situated but the right was reserved in case of combination or for other cause to transfer before settlement any shop from the locality specified to some locality in the neighbourhood and the conditions of sale were stated to be that the Collector does not bind himself to accept the highest bid that the settlement with the accepted auction purchasers will be contingent on the approval by the police authorities of the proposed locality of the shop and the character of the applicant for license that the person accepted as the auction purchaser shall deposit at once a sum equal to the license fee payable for two months and shall at the same time state in writing in what building his shop will be opened *it being understood that the* above deposit will be returned to any person whose license is subsequently refused for police reason At the sale the plaintiff was the highest bidder for the licenses for five shops for the sale of ganja and sidhi and his bids were recorded and he also paid the deposit due in respect of the licenses amounting to R968 Subsequently the excise authorities refused licenses to the plaintiff for the five shops and failed to return the deposit made in respect thereof In a suit brought by the plaintiff against the Secretary of State in Council for India in which he alleged that the Government had accepted his bid and thereby contracted with him to give him the licenses and allow him to carry on his trade in ganja and sidhi and that by their not giving him licenses and so forcing him to close his godowns and shops they had committed a breach of contract for which he was entitled to damages —*Held* on the evidence *per* PHEAR J that there was no contract between the plaintiff and the Government *Held* also both in the Court below and on appeal even assuming there was a contract that the suit was not maintainable being in respect of acts done by the Government in the exercise of sovereign powers Suits such as might previous to the passing of 21 & 22 Vict c 106 have been brought against the East India Company and subsequently against the Secretary of State in Council are limited to suits for acts done in the conduct of undertakings which might be carried on by private individuals without sovereign powers NOBIN CHUNDER DEY *v* SECRETARY OF STATE FOR INDIA I L R 1 Calc 11 24 W R 309

RIGHT OF SUIT—*contd*

2 ACTS DONE IN EXERCISE OF SOVEREIGN POWERS—*contd*

under cl B s 6 of the Tariff Act the Governor General in Council had exempted salt which paid the excise duty at Bombay from liability to pay more than the difference between what was so paid ...

the Collector's acts to be illegal a suit to recover the amount so levied would lie against the Secretary of State for India in Council *Held* also that the payment at Bombay was not a payment of import duty by anticipation and that the plaintiff was not excused by the notification of the Governor ...

on appeal that the acts of State of which the Municipal Courts of British India are debarred from taking cognizance are acts done in the exercise of sovereign powers which do not profess to be justified by municipal law Where an act complained of is professedly done under the sanction of municipal law and in the exercise of powers conferred by that law the fact that it is done by the sovereign power and is not an act which could possibly be done by a private individual does not oust the jurisdiction of the Civil Courts HARI BHANJI *v* SECRETARY OF STATE FOR INDIA I L R 4 Mad 344

s c on appeal SECRETARY OF STATE FOR INDIA *v* HARI BHANJI I L R 5 Mad 273

3 ———— Suit for breach of contract by Government to grant proprietary rights in land—*Contract entered into or acts done in the exercise of sovereign powers* The plaintiff in the suit alleging that the Government had granted him a lease of certain land with the rights of a proprietor promising to confer on him the proprietary rights in such land if he did certain things that he had done such things that the Government had conferred ...

ment and such person proprietary ... such land *Held per* SPANKIE, J that assuming that the Government had entered into such a contract with the plaintiff as alleged the suit would not lie inasmuch as such contract was entered into ... Government to confer the ... tiff and ... were ... *Held* ... acts done in the exercise of so... *per* STUART C J that the Government had entered into the contract alleged by the plaintiff that the suit would lie as the Government *had not entered* into such contract in the exercise of sovereign

RIGHT OF SUIT—*contd.*

2. ACTS DONE IN EXERCISE OF SOVEREIGN POWERS—*concld*

powers but in the capacity of a private owner but that the plaintiff's case failed as he had not performed his part of such contract KISHEN CHAND *v* SECRETARY OF STATE FOR INDIA

I L R 3 All. 829

3. ATTACHMENT SUIT TO SET ASIDE

1 ——— Suit by mortgagee—*Mortgagee not claiming through judgment debtor* A mortgagee claiming title otherwise than from the execution-debtor is competent on behalf of himself and his mortgagor to sue to raise an attachment on the property of which he is mortgagee WAIGANKAR *v* WADEKAR 5 Bom. A C 194

2 ——— *Mortgagor and mortgagee.* *A* and *B* borrowed money from *D* with *C* as their surety mortgaging their house to *C* to secure him from loss The same house having been previously given to *D* *C* had to pay the debt to *D* but the house was attached by *E* in execution of a decree against *A* and *B* *C* sued *D* and *E* to raise the attachment *Held* that the action did not lie SHIVLALL BIN KHUBCHAND *v* BALVANT RAV VINAYAK 2 Bom 75 2nd Ed. 70

3 ——— Suit for attached property—*Property collusively attached by one defendant against another—Cause of action* In a suit to establish a claim to property which had been attached in exe [illegible]

4. AWARDS SUITS CONCERNING

1 ——— Suit on award made ultra vires A suit on an award made in which the arbitrators have exceeded their powers is not maintainable DURJAN SINGH *v* SIBIA 7 N W 329

2 ——— Suit to enforce private award—*Refusal of Court to file award under s 3 Act VIII of 1859* A suit lies to enforce an award made without the intervention of a Court of justice where an application has been made to file it as an award and has been refused KOTA SEETAMMA *v* KOLLIPURLA SOOBBIAH 8 Mad 81

PALANIPPA CHETTY *v* RAYAPPA CHETTY 4 Mad 119

3 ——— *Suit on award*— [illegible]

I L R 1[illegible] Mad [illegible]

RIGHT OF SUIT—*contd*

4. AWARDS SUITS CONCERNING—*contd*

4 ——— *Suit to enforce award—Civil Procedure Code 1882 s 525* Disputes between the members of a Hindu family were referred to arbitrators who made an award as to how the whole of the property should be divided In pursuance of the award part of the moveable property was divided Subsequently one of the members of the family died The plaintiff another member of the family now sued to enforce the award or in the alternative for partition *Held that the provisions of the Civil Procedure Code* s 525 did not preclude the plaintiff from suing to enforce the award *Gopi Reddi v Mahanandi Reddi I L R 15 Mad 99* followed SUBBARAYA CHETTI *v* SADASIVA CHETTI

I L R 20 Mad 490

5 ——— *Award made on submission by person professing to represent community in religious matters* The Courts will not interfere to enforce performance of an award made under a submission to arbitration entered into by a few persons without the consent of the entire community in respect of religious quarrel relating to a state of things which has been in force at a mosque for fifty years by the common consent of all the worshippers having an interest therein ZAHID *v* PEEREE 3 N W 92

See also MUZHUR ALI *v* GANESH KOOER 3 N W 46

6 ——— *Suit for compensation awarded by punchayet in accordance with caste custom* The plaintiff sued the defendants his wife and her father (first and second defendants) to recover damages for the non performance of a contract whereby the defendants agreed to deliver to the plaintiff a specified quantity of grain The plaintiff and the first defendant appeared before a punchayet composed of members of their caste and the first defendant having refused to live any longer with the plaintiff the punchayet awarded the compensation claimed and the defendants promised to deliver the grain It was found that the award of the punchayet was in accordance with the custom of the caste in cases in which the wife refused to live with the husband *Held* that the plaintiff was entitled to maintain the suit SOOBBA TEVAN *v* MOOTHOOKOODY 6 Mad. 40

7 ——— Suit to set aside award—*Beng Reg IX of 1833 ss 6 7 and 9—Consent to arbitration* *Held* that a suit for cancelment of an award made under ss 6 and 7 Regulation IX of 1833 where it was not alleged that the proceedings were contrary to law but that the plaintiff did not consent to it was not maintainable under s 9 of the said enactment the consent of the parties not being necessary under the provisions of those sections IKRAMOOLLAH *v* SHEO PERSHAD 2 Agra 340

8 ——— *Award as to settlement—Beng Reg IX of 1833 s 9—Necessity to set aside award* It was held that a suit to obtain

RIGHT OF SUIT—*contd*

4. AWARDS SUITS CONCERNING—*concld*

possession of a moiety of certain lands by establishment of the title of the plaintiffs as purchasers and the cancelment of an award of arbitrators was not barred by s 9 of Regulation IX of 1833 The award was brought about not under the Regulation but owing to an application of the plaintiff for a partition of the share under Regulation VII of 1822 which application was rejected in reference to the award declaring the plaintiff s vendors were not in possession at the time of the sale It was not necessary that the award should be set aside prior to an adjudication on the claim as it determined no question of title If the dispossession of the vendors did not take place at a period more remote than twelve years before the commencement of the suit the plaintiffs were entitled to a decree for possession on establishment of their right even if there was no sufficient reason to set aside the award GUNGA BAKSH *v* WALI BAKSH

7 N W 169

5 BOUNDARIES

——— **Suit to compel neighbouring landholders to fix boundary**—*Absence of hostile act* A proprietor of land has no right to bring a suit to compel his neighbours to agree to a particular line of boundary being marked out between his lands and their where he does not venture to say that they have by any overt act transgressed that boundary AMEEROONNISSA BEGUM *v* GOPAL SAHOO 22 W R 134

6 BUILDING SUIT TO RESTRAIN

1 ——— **Suit to restrain owner of land from building**—*Interference with easement or right* A suit will not lie to restrain an owner of land from erecting buildings on his land unless by doing so he is interfering with some easement acquired by the owner of the neighbouring land or interfering with the free enjoyment of his land RAM ROOCH CHOWDREE *v* DEOKEE NUNDUN

2 N W 169

KASIM ALI KHAN *v* BIRJ KISHORE

2 N W 182

JOOGUL LALL *v* JASODA BEBEE 3 N W 311

2 ——— **Erection of buildings by owners of adjoining sites under agreements with Government**—*Government surveyor made arbiter in case of dispute—Party wall liability of owners for costs of—Suit before obtaining Government surveyor s certificate* Under separate agreements made by them respectively with Government the plaintiff and defendant held adjoining plots of land for building The agreements contained the same terms and stipulations among which were the following (*a*) The buildings to be continuous with party walls common to both adjoining houses (*b*) All disputes regarding the cost

RIGHT OF SUIT—*contd*

6 BUILDING SUIT TO RESTRAIN—*contd*

and maintenance of party walls to be decided by the Government surveyor whose decision shall be binding on both parties The plaintiff employed a contractor to erect a house upon his plot of land. The house was completed in 1870 the north wall of which was built as a party wall in pursuance of the condition contained in the agreement with Government Disputes subsequently arose between the plaintiff and his contractor which were not settled until the 26th August 1878 on which date the plaintiff paid the contractor a sum of R20 515 4 11 which included the cost of the party wall After the plaintiff s house had been completed the defendant built his house upon the adjoining land and in so doing he used a large portion of the party wall as the southern wall of his house He paid the plaintiff half the cost of the portion so used by him The rear portion of ... the defendant as

payment of half the cost of that part of the ... not used by the defendants but the defendants refused to pay The plaintiff then claimed that part of the wall as his own property and proceeded to open windows in it The defendants objected The plaintiff subsequently filed the present suit claiming from the defendants payment of half the cost of the said portion of the wall not used by the defendants and in the event of such payment not being awarded he prayed for a declaration that he was the sole owner of the said portion of the wall and for an injunction restraining the defendants from disturbing him in the sole enjoyment thereof Both the defendants pleaded ... to pay any part

this payment against the claim ... At the original hearing SCOTT *J* held that the part of the wall in dispute although not used by the defendants was a party wall having regard to the terms of the agreement under which the said wall was erected and that the suit was not barred but that there was no right of action for the cost of the party wall independently of the award of the Government surveyor in whose decision lay all disputes as to such cost and that until his decision was given there was no complete cause of action SCOTT *J* accordingly on 11th December 1882 decreed that the defendants were severally liable to pay the half of whatever sum the Government surveyor might certify to be due for the cost of the disputed part of the said wall and that the defendants were entitled to set off in the calculation of what was due from them the cost of any work or materials which the Government surveyor might find had been contributed by the first defendant The case was thereupon adjourned in order that the certificate of the Government sur

RIGHT OF SUIT—*contd*

6 BUILDING SUIT TO RESTRAIN—*concld*

veyor might be obtained The Government surveyor subsequently gave his certificate as to the cost of the unused portion of the said wall, but stated that on the evidence before him he was unable to decide as to the ownership of the foundations etc of the wall The case came on again before SCOTT J who decided to take evidence on the points left undetermined by the Government surveyor Witnesses were accordingly examined and on 11th December 1883 the Court disallowed the defendant s claim of set off and gave judgment for the plaintiff for half the sum certified by the Gov

-off or the other points raised by the pleadings These were *matters to be decided by the Government surveyor* whose certificate was a condition precedent to the plaintiff s right to sue and upon which the Court might give judgment COVERJI LUDDHA v MORARJI PUNJA I. L. R 9 Bom 183

3 ———— **Suit for removal of obstruction in building**—*Alteration in building* The alteration of any building does not give the

away any frontage right from him KOODRUT ALI v GHOLAM ALI 3 Agra 71

4 ———— **Suit for removal of encroachment**—*Fear of acquiescence* A suit for the removal of an encroachment is maintainable without actual damage having occurred or the immediate prospect of damage if it can be shown that some damage may arise from the encroachment hereafter when from the plaintiff s right

arty ould LICK 73

S C after remand JUDOONATH MULLICK v KALEE KRISTO TAGORE 25 W R 524

7 CASTE QUESTIONS

1 ———— **Suit for damages for withholding a customary present from a member of a caste**—*Omission from distribution of funeral presents* The plaintiff complained that on the occasion of the distribution of certain funeral presents by the defendant s father in which as a member of the caste the plaintiff was entitled to share he had been omitted and had received nothing He sued the defendants to recover damages for the injury to his character and reputation caused by such omission *Held* that there *was no legal right in the plaintiff to the funeral*

RIGHT OF SUIT—*contd*

7 CASTE QUESTIONS—*contd*

presents and the slight which the omission to *give such presents to the plaintiff might imply* was to be regarded as the result of a breach of social etiquette with which the caste was exclusively competent to deal MAYASHANKAR v HARI SHANKAR I L R 10 Bom 661

2 ———— **Claim to be chalvadi of Lingayet caste**—*Intrusion in office—Office to which no fees are appurtenant* Plaintiff was the hereditary holder of the office of chalvadi or bearer on public occasions of the insignia or symbols of the Lingayet caste at Bagalkot in the district of Belgaum no fees as of right were appurtenant to that office but voluntary gratuities might be given to the chalvadi In an action brought by plaintiff against defendant as an intruder upon his (the plaintiff s) office —*Held* that the plaintiff s claim to be chalvadi of the Lingayet caste at Bagalkot was a caste question within the meaning *of the unrepealed portion of cl 1 s 21 of* Bombay Regulation II of 1827 SHANKARA v HANMA I L R 2 Bom 470

3 ———— **Custom—Caste usage**—*Expulsion of member of caste under mistake of fact and without notice* In a suit relating to the management of the common property of the members of a Hindu caste the plaintiff s right to sue was denied on the ground that having violated the rules of the caste he had been expelled from it *Held* (i) that it was open to the Court to determine whether or not the alleged expulsion from caste was valid (ii) that if the plaintiff had not *in fact violated the rules of the caste but was expelled* under the *bona fide* but mistaken belief that he had committed a caste offence the expulsion was illegal and could not affect his rights *Per* KERNAN J

a member opportunit custom

4 ———— **Dispute as right to office of khatib**—*Mahomedan Law—Bom Reg II of 1827 s 21* S 21 of Regulation II of 1827 has no application to suits between Mahomedans A *dispute as to the right to an office such as the* office of khatib (or preacher) is said to be among Mahomedans is not a caste question within the meaning of the term as used in the section a suit will therefore lie to establish such a right HASHIM SAHEB VALAD AHMED SAHEB v HUSEIN SHA VALAD KARIMSHA FAKIR I L R 13 Bom 429

5 ———— **Custom of caste**—*Funeral ceremonies—Right to assistance of fellow members of caste—Refusal to assist—Cause of action* The plaintiff a Hindu and Kharva by caste alleged in his plaint that pursuant to a usage of his caste he on the occasion of his child s death called upon the defendants who were his caste fellows to assist him in removing the dead body and performing caste ceremonies incidental there

RIGHT OF SUIT—*contd*

7 CASTE QUESTIONS—*concld*

to that the defendants refused to do so and induced other members of the caste to refuse also that in consequence thereof the plaintiff was injured in his caste status and he prayed for a declaration that the defendant s acts were unlawful and that he was lawfully entitled to exercise and enjoy all his customary caste rights and privileges and also for damages and for an injunction restraining the defendants from preventing other members of the caste from recognizing him and treating him as a member of the caste *Held* that the plaint disclosed no cause of action and must be rejected KANJI BAVLA *v* ARJUN SHAMJI

I L R 18 Bom. 115

8 CESS

9 CHARITIES AND TRUSTS

1 ———— Suit to recover trust property—*Advocate General—Dedication of lands for charitable use—Illegal sale—Suit to set aside sale and recover trust property—Code of Civil Procedure 1882 s 539* The plaintiff s grandfather dedicated certain lands in a village of which he was the jaghirdar to the expense of celebrating an annual fair in honour of a saint and of lighting a lamp at his shrine He reserved the paramount authority over and management of the said lands to his family of which the plaintiff was the representative The land were sold illegally as alleged by the plaintiff to the defendant at an auction in execution of a decree obtained against one *N* who with his predecessors had as was alleged been employed to worship at the shrine The plaintiff accordingly ought to have the sale set aside and to be put into po session of the land *Held* that the object of the suit being merely to recover the trust property from out siders did not fall within s 539 of the Code of Civil Procedure and it could be proceeded with without making the Advocate General a party to it LAKSHMANDAS *v* GANPATRAV

I L R 8 Bom 365

2 ———— Suit for declaration that property is wakf—*Act XV of 18[illegible] ss 14 15 1[illegible]—Civil Procedure Code s 539—Specific Relief Act (I of 1877) s 4[illegible]* A Mahomedan brought

[illegible]

medan He stated as his cause of action that the defendant had in a former suit between the same parties filed a written statement in which he denied that the property now in question was wakf. *Held* that unless it could be shown that the suit was maintainable under some statutory provision it could not

[illegible]

further that the suit was not maintainable under the provisions of s 42 of Act I of 1877 (Specific Relief Act) *Held* therefore that the suit was not maintainable WAJID ALI SHAH *v* DIANAT ULLAH BEG

I L R 8 All. 31

3 ———— Suit to set aside alienation of wakf property made to a stranger—*Civil Procedure Code 1882 s 539* When a suit is brought to set aside an alienation made to a stranger such a suit by the worshipper at a mosque or [illegible] does not fall within section is [illegible] breach of [illegible] religious purpose and the direction of the Court is necessary for the administration of the trust. As against strangers s 539 does not apply HASSAN *v* SADUN BALKRISHNA

I L R 24 Bom. 170

4 ———— Suit by worshipper for breach of trust of funds dedicated to idol—*Civil Procedure Code (Act X of 1877) s 539* Worshippers or devotees of an idol are entitled to bring a suit complaining of a breach of trust with reference to the funds or property belonging to the [illegible] *Quære* Whether [illegible] Civil Procedure [illegible] s. 539 of [illegible] devotees than of an idol or temple dedicated merely to the purposes of such idol or temple RADHABAI KOM CHIMNAJI SALI *v* CHIMNAJI BIN RAMJI SALI

I L R 3 Bom. 27

5 ———— Suit to set aside mortgage of endowed property—*Wakf property—Suit relating to public charity—Civil Procedure Code s 539—Religious institution—Act XX of 1871 s 24—Mahomedan law—Endowment* Certain Mahomedans sued to set aside a mortgage of endowed property belonging to a mosque the decree enforcing the mortgage and the sale of the [illegible] that decree and [illegible] buildings connected with the endowment could maintain the suit and s. 539 of the Civil Procedure Code had no application to the case the endowment being a religious institution within the meaning of s. 24 of Act XX of 1871 and therefore governed by Mahomedan law ZAFARYAB ALI *v* BAKHTAWAR SINGH

I L R 5 All 497

6 ———— Suit on account of interference with right of devotion in mosque—*Religious endowment—Form of suit—Civil Procedure*

RIGHT OF SUIT—*contd*

9 *CHARITIES AND TRUSTS*—*contd*

Code 1882 ss 30 539 Every Mahomedan who has a right to use a mosque for pu po es of devotion is entitled to exercise such right without hindrance

interes ed in obtaining relief and not to ca es in which an individual right has been violated *Zafaryab Ali v Baktawar Singh I L R 5 All 497* referred to *Jan Ali v Ram Nath Mundul I L R 8 Calc 32* di sented from JAWAHRA v AKBAR HUSAIN **I L R 7 All 178**

7 ———— **Worshipper s suit to recover land**—*Trustee not a plaintiff* An individual wor

entitled (irrespective of s 30 of the Code of Civil Procedure) to u e for the recovery of land belonging to the in titution *Zafaryab Ali v Bakhtawar Singh I L R 5 All 49* considered KAMARAJU v ASANAII SHERIFF **I L R 23 Mad 99**
SUBBAPAYADU v ASANAII SHERIFF
I L R 23 Mad 100 note

8 ———— **Suit by members of a caste and worshippers at caste temple against trustees of caste and temple property**—*Civil Procedure Code (Act X of 1877) ss 30 and 539 —Right to manage caste and temple funds—Public charity—Private charity—Parties—Trustees—Negligence—Wilful default—Acquiescence of majority of caste in unauthorised u e of tru t fund —Rights of minority* In or about the year 1899 a temple to the god Shri Anonmathji was erected in Bombay by the Do a Oswall Bania caste the religion of which caste is the Jain religion A large portion of the funds required for building the temple was advanced by one N N at that time the leading man in the ca te the rest was obtain d from the caste *by subscription The firm of N N acted a the* bankers to the ca te and to the temple received all the gifts and offerings made by the worshippers and for many years administered all th affairs of the temple The sums advanced by N N were gradually but entirely repaid to him out of the gifts and offerings There were three separate funds of which separate accounts were kept in the books (i) the lara a fund which was devoted to the temple purposes such as maintenance of priests repairs etc and gifts to poorer temples (ii) the sadaran fund which was more extended in its object but still limited to religious and charitable purpo es such as payments to poor devotees irrespective of their ca te etc and (iii) the mahajan fund which was devoted to caste purpo es such as purchase of ca te uten ils etc All three funds were collective at the temple Gifts and offerings were made by all worshippers at the temple whether *members of the caste or not Subscriptions were*

RIGHT OF SUIT—*contd*

9 *CHARITIES AND TRUSTS*—*contd*

executed whereby *H K and G* (defendants Nos 1 2 and 3) together with three others who were dead at the time of this uit —*viz J R T W* and *M T* —were appointed trustees of all the immoveable property belonging to the temple The deed set forth the objects to which the income of the property should be appli d and provided that the surplus should be invested in Government securities in corporation shares or in landed property but in no other shares of any description what oever If also authorized the trustees to invest surplus moneys in the firm of *V N & Co* It was admitted that subsequently to June 1869 the trustees managed the temple and *not only the immoveable* property but all the fund A debt of R9 40 000 was due from the firm of *V N & Co* to the temple and caste when the trustees took over the management In 1870 the firm of *V N & Co* became insolvent and in their schedule the trustees were entered as creditors in respect of darasa account R1 57 649 on mahajan account R68 017 on sadaran acount R92 597 *It was admitted that the trustees knew* of this entry in the said schedule They however received no dividend although other creditors including *K* (defendant No 2) were paid two annas in the rupee The sum of R9 40 000 due to the temple was wholly lost In April 1867 R15 000 of the temple funds were inv ted—it did not appear by whom—in the name of *G* (defendant No 3) and *in Augu t 1868 a um of R15 000 was advanc d to* one *J P* In 1869 a sum of R10 000 was advanced by the truste s to *N K & Co* which was never repaid nor was any interest received upon it I was lost on the failure of that firm in 1879 The principal partner of that firm (*N K*) was th only on of *K* (def ndant No) who also ha l an interest in it In 18 8 various loans were made by the tru tees to three mills in which one or more of the trustees was intere te l Of R55 000 lent to the mills and to *N K & Co* R42 000 were lost Half a lakh of outstandin gifts to the temple rema ned uncollected owin to the negligence of the trustee Two suits brou ht by another caste against the tru tees were defended out of the temple funds. All the defendants (tru tees) with the exception of *K* were in needy circum tances In 1880 a hundred members of the caste protested against the management of caste and temple affairs by the defendants. *The plaintiffs six in number took*

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

and pleaded that the suit was not properly constituted not having been brought under s 30 or 539 of the Civil Procedure Code of 1877 and that it was in contravention of Regulation II of 1827 Ch II s 21 They relied upon the fact that the caste had approved of their conduct and had allowed them to defend this suit at the expense of the caste They contended that under these circumstances the plaintiffs were not entitled to maintain the suit and that the Court would not interfere with or control the decision of the majority of the caste in matters relating to the internal management of its affairs *Held* that s. 30 of the Civil Procedure Code (Act X of 1877) did not apply If the plaintiffs had any right of action it was a complete right of action vested in each of them and not a mere joint right shared with others and incomplete unless they

right and in their own name without permission of the Court or notice to other parties interested *Held* also (following *Thanga Karuppa v Arumuga Nadan I L R 5 Mad 383*), that s. 539 of Act X of 1877 did not apply The three funds administered by the defendants were different in character The mahajan fund was a purely secular fund the other two funds were religious and charitable fund Even if the case came under the Civil Procedure Code (Act XIV of 1882) s 539 would not apply that section being permissive or directory and not mandatory Any person interested in the proper observance of a religious endowment may sue in his own name to have the trust properly administered. The section does not prohibit a private suit and does not make the sanction of the Advocate General a condition precedent The gifts to the temple comprised in the darasa and sadaran funds were irrevocably dedicated to a public charity and therefore the approval by the caste of the conduct of the trustees was no bar to the suit They were also dedicated to the idol who was a public not a mere private household divinity The ideal personality of such an idol is well recognized and in case of misappropriation of the property he is entitled to the protection of the public authorities on the ground that it has been devoted to public religious purposes and must not be wasted even by the donors. The management of the temple belonged to the Dossa Oswall

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd.*

Bania caste and not to the whole Jain community Although the donation were irrevocably dedicated to public purposes the donors had never lost the right which was attached to the caste from the beginning of managing the temple which they had founded and their management could only be interfered with as a public charitable trust on proof of maladministration. On the evidence —*Held* that the defendants were not liable for losses prior to 1867 It was not clearly proved that they were managers of the temple funds before that date *Held* also that the defendants were liable for the losses incurred subsequently to 1867 They assumed the management on the execution of the trust deed in that year and ought to have taken steps to recover the moneys which had been improperly advanced on loan or otherwise negligently invested. Not having done so they were guilty of wilful neglect and were liable to refund the moneys which had been lost The liability was however confined to the first three defendants it not being proved that the remaining defendants had ever acted as trustees The negligence of the trustees in not taking steps to recover the R2 40 000 due from the firm of V V & Co was a clear breach of trust. The evidence showed that although the whole sum could not have been recovered at any time during the trusteeship of the defendants yet that some portion of the money might have been obtained if due diligence had been used and that other creditors of the firm had actually been paid 2 annas in the rupee The first three defendants were therefore liable to refund 2 annas in the rupee of such portion of the R2 40 000 as belonged to the darasa and sadaran funds As to the mahajan fund it belonged to the caste and the caste had condoned its misapplication which it had power to do The defendants were also held liable to refund such other sums as had come into their hands and had been lost in consequence of their negligence. The Court removed the defendants from the trusteeship and ordered a scheme to be settled. THAKERSEY DEVRAJ v HURBHUM NARSEY I L R 8 Bom. 432

9 ——— Suit for possession of endowed property—*Religious trust—Charitable trust—Civil Procedure Code (Act XIV of 1882*

that the profits were applied ... wayfarers and travellers to lighting the mosque and shrine in the evening and to meeting the expenses of repeating prayers on the occasion of Id and Bakhrid and that the said profits were never spent for personal purposes. The plaintiff based her right to sue upon the fact that her deceased husband had been mutwalli and she prayed that the property in suit might be declared wakf and that certain alienations made by her step-son since her husband s death might be set aside *Held* that the trust to which the suit related was one partly for

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

charitable and partly for religious purposes. As far as it related to the former it was governed by s. 539 of the Civil Procedure Code and if viewed in the light of the latter by Act XX of 1863 and that the suit not b ing properly framed in com pl ance with the provisions of either of those enact ment was not maintainable *Held* further that

face of the plaint that she was not alone interested in the subject matter of the suit and therefore that *she could only sue on behalf of all who were so in* terested having first obtained the leave of the Court *and otherwise compl ied with the provision* of s 30 of the Civil Procedure Code LUTIFUNISSA BIBI v NAZIRUN BIBI I L R 11 Calc 33

10 ——— **Suit in respect of religious endowment**—*Civil Procedure Code (Act X of (1877) s 30 539—B nr Reg XIX of 1810—Act XX of 1863* In a suit by two of the worshippers at a certain mosque instituted after having obtain ed the sanction of the Advocate General under s 539 of the Civil Procedure Code against the mut walli of the mosque an l two other persons to whom the mutwalli had mortgaged part of th endowed property to secure the repayment of a loan it appeared that one of the mortgagees had sold some of the wakf property in execution of a decree which he had obtained upon his mortgage and the pro perty *had been purchased by the other mortgagee* The plai tiffs prayed that the property purchased might be declared to be wakf that the sale in execution might be declare l to be invalid that a mutwalli might be ap pointed by the Court and that the costs of doing the acts of the work might be defrayed from the profits of the property be longing to the endowm nt *Held* that so far as regarded that portion of the prayer which fell with in the provisio s of s 539 of the Code the plaintiffs were *not e titled to sue as they were not pers ns having a direct interest in the trust* withi the meani g of the section and that the sui should have been instituted under s 14 of Act XX of 1863 after sa ction obtained under s 18 *Held* also that though the plaintiffs might possibly have obtai ed leave to sue under s 30 of the Code on behalf of themselves and the other perso s attending the mo que they not having obtained such leave were not entitled to institute the suit for the purpose of obtaining the relief asked for in the other prayers of the plaint JAN ALI v RAM NATH MUNDUL I L R 8 Calc 32

s c JAN ALI v ATAWUR RUHMUN
9 C L R 433

See SRINIVASA CHARIAR v RAGHAVA CHARIAR
I L R 23 Mad 28

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

11 ——— **Suit to restrain use of pro perty for other than purposes of endow ment**—*Injunction—Property dedicated to religious purposes* The plaintiff s ancestor built a temple a bathing ghat a room called Gu gajatri ghur and a ghat close to it to which persons on the point of d ath were removed and certain ceremonies were performed The defendants used the last mentioned ghat for the purpose of landing goods *H ld* that if when the plaintiff s ancestor erected the buildings he intended to grant to the Hindu community merely a right of easement over the property and not to transfer the own rship therein to the community the plaintiff was e titled to *maintain a suit to restrain defendants from using* the ghat for trading purposes JAGGAMONI DASI v NILMONI GHOSAL
I L R 9 Calc 75 11 C L R 502

12 ——— **Leave to sue**—*Civil Proce dure Cod (1882) s 539—Power of Court to grant relief outside the sanction* When sanction is given to the institution of a suit under s 539 of the Code *of Civil Procedure (Ac XIV of 1882) the suit must* It is of led

COLLECTOR OF KAIRA I L R 21 Bom 257

13 ——— **Sanction granted to two persons separately to institute suit in re spect of breach of charitable trust**—*Civil Procedure Code s 539 R* instituted a suit with the Collector s sanction to comp l the performance of a charitable trust *D* was subsequently joined as plaintiff having also obtained the Collector s sanc tion to institute the suit *Held* that the sanction obtained by *D* relat d back to the institution of the sui RAMAYYANGAR v KRISHNAYYANGAR
I L R 10 Mad 185

14 ——— **Religious institution suit concerning management of**—*Sanction of Ad vocate General necessity of—Civ l Procedure Code 1877 and 1882 s 539* In a suit brought in 1881 with no written consent of the Advocate General by the head of an adhinam for declarations that a muth was subject to his control that he was en

perties of the muth to a nominee of the plaintiff the claim extended al o to religious establishments *at Benares a l elsewhere connected with the muth* —*Held* that the consent of the Advocate General to

15 ——— **Public charity** *Trust—Pub lic charitable or religious trust—Offerings made to*

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

an idol—Liability of persons in possession of an idol s property—Account—Jurisdiction of Civil Courts in cases relating to public charities—Civil Procedure Code (Act X of 1877) s 539— Direct interest meaning of 1 A trust for a Hindu idol and temple is to be regarded in India as one created for public charitable purposes within the meaning of s 539 of the Code of Civil Procedure (Act X of 1877) 2 The Hindu law recognizes not only corporate bodies with rights of property ve ted in the corporation apart from its individual members but al o the judicial persons or subjects called foundations A Hindu who wishes to establish a religious or charitable institution may according to his law express his purpose and endow it and the ruler will give effect to the bounty or at least protect it A trust is not required for this purpose as it is by English law 3 Those who take charge of gifts made to a religious or charitable institution whether such gifts consist of cash jewels or land—incur thereby a responsibility for their due application to the purposes of the institution They are answerable as trustees would be even though they have not consciously accepted a trust and a remedy may b ought against them for maladministration by suit open to any one interested as under the Roman system in a like case by means of a *popularis actio* The plaintiffs as relators filed this suit under s 539 of the Code of Civil Procedure (Act X of 1877) against the defendants as trustees of the temple of Shri Ranchhod Raiji at Dakor The plaintiffs were five in number The first plaintiff was the hereditary manager of the temple and its appendant villages The other plaintiffs were priests residing at Dakor who ordinarily took charge of pilgrims visiting the shrine and performed worship of the idol on their behalf The defendants were the shevaks or ministers of the idol—about one hundred and fifty in number—who took office by hereditary descent They remained in constant attendance on the idol performed the daily services at the temple collected all the offerings made at the shrine and kept them in a bhandar or store room The god Shri Ranchhod Raiji was held in great veneration by the followers of the Vaishnava religion throughout Western India Every full moon thousands of pilgrim resorted to the hrine and made offerings to the deity of ca h ornaments clothes and other articles amounting in value to about a lakh of rupees in the course of a year Besides the e offering the temple enjoyed a grant in perpetuity of the revenues of several inam villages of which Dakor and Kangri yielded the largest income The plaintiffs sued as persons interested in the maintenance of this public religious and charitable in titution and prayed that the [illegible]

appointment of a receiver for the removal of the shevaks from their office and for the settlement of a scheme of future management The defendants answered (*inter alia*) that the plaintiffs had not such a direct interest in the institution as to entitle them to sue under s 539 of Act X of 1877 that they themselves were owners of the idol and of the idol s property and that as such they were not liable to render an account of the offerings they had collected at the shrine They also contended that they were not liable to be removed from their offices which they and their ancestors had held for several centuries past The District Judge dismissed the suit on the preliminary ground that except the first plaintiff who was a hereditary mana er of the temple the other plaintiffs had not such a direct interest in the charity as to entitle them to sue under s 539 of the Code of Civil Procedure (Act X of 1877) *Held* reversing the decision of the District Judge that plaintiffs Nos 2—5 as priests residing at Dakor and taking part in the worship of the idol were directly interested in its due performance and its maintenance Thou h they might not be trustees they were clearly *among those who in practice benefited* by the execution of the trust. They had thus an undeniable *locus s andi* as relators and the suit could proceed at heir instance *Held* further that the shevaks were not the owners of the offerings made to the idol As recipients of tho e offerings they were responsible for their due application to the purposes of the foundation They were liable as trustees to render an account of their mana em nt The Court accordingly directed the District Judge (i) to take [illegible] receiver or otherwise

[illegible] property appropriated by the shevaks and (iii) to draw up a scheme for the future management of the temple and its funds re ard bein had to the established practice of the institution and to the position of the shevaks and of other persons connected with it The jurisdiction of the Civil Courts in matters of this kind discussed. MANOHAR GANESH TAMBEKAR *v* LAKHMIRAM GOVINDRAM I L R 12 Bom 247

[illegible] affirming this decision [illegible]

[illegible] I L R [illegible]
BEKAR
L R 26 I A 199 4 C W N 23

See MANOHAR *v* KESHAVRAM
I L R 12 Bom 267 note

16 ———— Suit by worshipper of Hindu temple relating to trust—*Trust for public religious purposes—Private trust—Civil Procedure Code, ss. 30 539—Act XX of 1863—Hindu*

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

Law The defendants made a gift of land to a Hindu temple for the purpose of defraying the expenses appertaining to the idol. The temple was built and the gift made in 1870 The defendants obtained from the revenue authorities mutation of names in the idol s favour and an acknowledgment of the person whom they nominated as agent or manager The plaintiff alleging that they had subsequently rep s e ed themselves of the land and the profits accruing therefrom and that he was in cree ed as a *Hindu in worshipp ng* at the temple and professing to sue on behalf of the entire body of the worshippers thereat sued for declaration that the land was wakf and the idol en itled to hold it in his own name that the defendants should be directed to apply the income of the property to the purposes of the temple and that the Court should give such orders and instructions as might be nece sary and prop r for the future management of the temple and payment of income No sanction to the institution of the suit was obtained under s. 539 of the Civil Procedure Code *Held* by the Full Bench that the *gift made by the defendants con tituted a trust for* the purposes of the temple *Per* EDGE *C J* and TYRRELL, *J* that the defendants before the Court d d not constit ite themselves ...

t r ... under the Hindu Law that the trust was one for public religious purposes that such a suit in which the plaintiff asked to have the trust administered by the Court could not be maintain l without the sanction required by s 539 of the Co le that assuming s. 539 to be inapplicable an Act XX of 1863 to apply the suit could not be maintained without the sanction required by that Act and that with ref rence to s 30 of the Code no cause of action had accrued to plaintiff alone on which he could maintain the suit *Per* EDGE *C J* and TYRRELL *J* that if the trust were one for publ c religious purpose the suit as against the defendants before the Court must fail for non compliance with the provisions of s 539 of the Code and if for private or *quasi* private religious purposes it must also fail, since there was no principle on which the plaintiff as one of th public worshippin, in the temple could maintain it against those defend ants who were not trustees but (if they had wrong fully taken possession) trespassers that A t XX of 1863 could not apply and that with reference to s. 30 of the Code the plaintiff could not maintain the suit alone on his own behalf or on behalf of himself and others against those defend ants. *Jawahra* v *Akbar Husain I L R 7 All 178* distinguished *Manohar Ganesh Tam ekar* v *Lakhmiram Gobindram I L R 12 Bom 24* *Lutifunissa Bibi* v *Nu irun Bibi I L R 11 Calc 33* and *Hira Lal* v *Bhairon I L R 5 All 602* referred to *Wajid Ali Shah* v *Dinatullah Beg I L R 8 All 31* approved. RAGHUBAR DIAL v KESHO RAMANUJ DAS I L R 11 All. 18

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

17 — **Suit to remove a trustee**—*Civil Procedure Code s 539—Interest necessary to* ...

further interested in its administration is Brahmans entitled under certain circumstances to share in the benefits of the charity sued under s 539 of the Code of Civil Procedure to remove defendant from the trusteeship of the charity on the ground of fraudulent mismanagement *Held* that the plaintiffs interest did not support the suit *Quære* Whether a suit for the removal of a trustee will lie und r the above section NARASIMHA v AYYAN CHETTI I L R 12 Mad 157

18 ——— *Civil Procedure Code 1882 s 539—Stat 52 Geo III c 101* A suit to remove a trustee of a charitable tru t does not lie under s 539 of the Code of Civil Pro cedure *Narasimha* v *Ayyan Chetti I L R 12 Mad 157* followed *Per* SHEPHARD *J*—The lan guage of s. 539 is in part borrowed from 52 Geo III c 101 (Sir Samuel Romilly s Act) and the decisions upon that Statute are in a measur reproduced in the ...

19 ——— *Civil Procedure Code 1882 s 539—Suit for removal of trust es of a public charit, and for account—Juris liction of Dis tri t Judg —Juris liction of Subordinate Judge.* A suit to remove the trustees of a public charity and to compel them to account and to make goo l the losses sustained by the charity in consequence of their default is a suit which falls within the s ope of s. 539 of the Code of Civil Proced ire (Act XIV of 1882) and must th refore be in titu ed in a Dis trict Court and not in a Subordinate Judge s Court HUSSEINMIAN v COLLECTOR OF KAIRA I L R 21 Bom 48

20 ——— *Civil Procedure Code s 539—Jurisdi tion of District Court* In a suit under the Civil Procedure Code s 539 in the District Court to remove the hereditary trustee of a public trust for breach of trust the District Judge held that the suit could not be maintained. The ...

... RAYYA v KRISHNA I L R 14 Mad. 188

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

21. ———————— *Civil Procedure Code (1882) s 539—Suit to remove a trustee and to recover possession of trust property in the hands of a third party—Limitation Act (XV of 1877) Sch II Art 134—Stat 52 Geo III c 101—Civil Procedure Code Amendment Act (VII of 1888)—Act XX of 1863 s 14—Duty of Collector in sanctioning suit—Irregularity not affecting merits of suit—Civil Procedure Code s 578* A suit for the dismissal of a trustee and for the recovery of trust property from the hands of a third party to whom the same has been improperly alienated is within the scope of s 539 of the Civil Procedure Code *Subbayya* v *Krishna I L R 11 Mad 186* followed. *Lakshman das Parashram* v *Ganpatrai Krishna I L R 8* ...

out Persons having a right to worship in a temple are within the scope of s 539 Under that section as originally enacted the words were having a direct interest in the trust and the word direct has been taken out by Act VII of 1888 The inference is that the Legislature intended to allow persons having the same sort of interest that is sufficient under s 14 of Act XX of 1863 to maintain a suit under s. 539 The Collector in giving his consent to the institution of a suit under s 539 has to exercise his judgment in the matter and see not only whether the persons suing are persons having an interest in the trust but also whether the trust is a public trust of the kind contemplated by the section and whether there are *prima facie* grounds for thinking that there has been a breach of trust But where the form of the permission showed that he had omitted to exercise his judgment in the matter of the interest of the plaintiffs in the trust such omission was held to be a mere irregularity and within the scope of s. 578 of the Civil Procedure Code SAJEDUR RAJA CHOWDHURI v GOUR MOHUN DAS BAISHNAV

I L R 24 Calc 418

22 ———————— *Charitable endowments—Interest sufficient to support a suit relating to charity* A Hindu shortly before his death, directed his wife and mother to employ part of his property for the maintenance and upkeep of charitable institution being a choultry where Japta Brah ...

his death the widow and mother executed a document relating to the property to give effect to the wishes of the deceased for the benefit of Brahmans and three years later the widow took in adoption a boy whose father acquiesced in the deceased man s dispositions. The charitable trust having been neglected and the adoptive son having taken possession in his own right of the lands constituting the endowment two Brahman residents in the neighbourhood who had obtained leave under s. 30 Civil Procedure Code instituted a suit as representing the Brahman community at large to remove the widow from the office of trustees to have the adopted son declared ineligible for that office and for ...

PATI AYYAN v SAVITHRI AMMAL

I L R 21 Mad. 10

23 ———————— *Civil Procedure Code 1882 s 239—Trust* A suit may properly ...

Rangasami Naickan v *Varadappa Naickan I L R 17 Mad 462* *Chintaman Bajaji Dev* v *Dhondo Ganesh Dev I L R 15 Bom 612* *Tricumdass Mulji* v *Khimji Vullabhadass I L R 16 Bom. 626* *Hussain Mian* v *Collector of Kaira I L R 19 Bom 48* *Sajedur Raja* v *Baidyanath Dev I L R 20 Calc 397* *Mohiud din* v *Syad ud-din I L R 20 Calc 810* and *Sajedur Raja Chowdhuri* v *Gour Mohun Das Baishnav I L R 24 Calc 418* referred to *Subbayya* v *Krishna I L R 14 Mad 186* followed. HUSENI BEGAM v COLLECTOR OF MORADABAD

I L R. 20 All 46

24 ———————— *Civil Procedure Code 1882 s 539—Suit to remove trustees and for appointment of new trustees* A suit for the removal of an old trustee who has committed a breach of trust and for the appointment of new trustees may properly be brought under s 539 of the Code of Civil Procedure *Huseni Begam* v *Collector of Moradabad I L R 20 All 46* approved *Rangasami Naickan* v *Varadappa Naickan I L R 17 Mad 462* dissented from GIRDHARI LAL v RAM LAL

I. L. R. 21 All. 200

25 ———————— *Civil Procedure* ...

tain trustees might be declared incompetent removed that others might be appointed in their place that the properties belonging to the endowments of the temple might be vested in them and that a scheme might be settled for the management ...

that the suit was maintainable NARAYANA ... v KUMARASAMI MUDALIAR

I L. R. 23 Mad. 537

26 ———————— *Civil Procedure Code (Act XIV of 1882) ss 30 539—Religious endowments—Removal of sajjadanashin—Con...*

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

and non contentious cases S 539 of the Code of Civil Procedure applies both to contentious and

ing one and not a mere contingency the mere possibility of an interest or the mere possibility of succession to the management of the properties concerning which the suit is brought is not sufficient to give a right to sue The right of worship of each worshipper in a Mahomedan mosque or religious endowment is an independent right wholly irrespective of the right of the other worshippers, and therefore non compliance by a worshipper with the provisions of *s 30 of the Code of Civil Procedure* does not affect a suit for the removal of a trustee of Mahomedan endowment *Jan Ali v Ram Nath Mundul I L R 8 Calc 3_ Jawahra v Akbar Husain I L R 7 All 178 Lutifunnissa Bibi v Nazirun Bibi I L R 11 Calc ..* and *Zafaryab Ali v Bakhtawar Singh I L R 5 All 497* referred to MOHIUDDIN v SAYIDUDDIN *alias* NAWAB MEAN I. L. R. 20 Calc 810

27 ———Public charitable trust—*Civil Procedure Code 1882 ss 539 15—District Court jurisdiction of* A church at Palayur and the property appertaining to it were in the possession of certain of the yogakars or parishioners who had been elected kaikars or church wardens but whose *election had since been superseded in favour of three* other persons who now sued to recover possession The plaintiffs were Roman Catholics and with the three persons above referred to were joined as plaintiffs the Vicar Apostolic the Vicar appointed to the church by him and two other persons representing the Roman Catholic yogakars The defendants were Syro Chaldean Christians and with the two persons above referred to were joined the Chor Episcopal the Vicar appointed to the church by him and four persons representing the other yogakars The plaint was framed under the Civil Procedure Code s 539 and contained besides a prayer for possession prayers for declaration that the church etc was held on trust for worship according to the faith and

holding that the church etc was dedicated to the trust above stated although it had been diverted *from the purpose of that trust for a time Held* (i) that the suit not being one brought by beneficiaries against trustees or for any of the purposes mentioned *in the Civil Procedure Code s 539* that section had no application (ii) that although the suit should accordingly have been brought in the Subordinate Court *the District Judge had jurisdiction* to try it (iii) that the decree was right on its appearing that the church etc had been held on the above trust from 1599 to 1887 with a doubtful interruption for one year although the original trust may have been different AUGUSTINE v MEDLYCOTT I L R 15 Mad. 241

28 ——— Suit by trustees to eject persons in wrongful possession of trust property—*Civil Procedure Code (Act XIV of 1882) ss 539 622—District Judge jurisdiction of—Subordinate Judge jurisdiction of—Superintendence of High Court* S 539 of the Code of Civil Procedure (Act XIV of 1882) has no application to a suit brought by the trustees of a religious endowment to eject persons in wrongful possession of the trust property The plaintiffs sued as trustees of a temple to recover certain trust property from defendants who were alleged to be in wrongful possession The defendants pleaded that they were owners of the property in dispute and applied the income thereof for the purposes of the temple they disputed the plaintiffs title to the management or possession of the same The Subordinate Judge who tried the case in the first instance held that the defendants were trustees with respect to the property in their possession and that the suit was one of the nature contemplated by s 539 of the Code of Civil Procedure He therefore returned the plaint for presentation to the District Judge This order was confirmed on appeal *Held* that the Subordinate Judge had jurisdiction to entertain the suit *Held* also that the High Court had power under s 622 of the Code of Civil Procedure to interfere in this case the Subordinate Judge having failed to exercise a juris

I L R 18 Bom 148

29 ——— Suit by trustees to eject a trespasser from trust property—*Civil Procedure Code 1882 s 539 D was the manager of* a religious endowment called the Chinchvad Sansthan On his death in 1892 disputes arose between *C and G regarding the management of the sansthan* each claiming to be the heir and successor of *D*

and *C* was left in charge of the rest of the

moved from his office and the plaintiffs were appointed trustees in his place In 1889 the plaint

30 ——— Public charitable and religious trust—*Civil Procedure Code (Act XIV of*

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

1882) s 539—Property set apart for religious and charitable uses—Trustee—Repudiation of the trust effect of—Persons having a direct interest in the trust The plaintiffs sued as relators under s 539 of the Code of Civil Procedure (Act XIV of 1882) to have

deity Shri Mangal Murti He dedicated a temple to the deity at the village of Chinchvad and established an annachhatra and sadavart for feeding the poor and the destitute He buried himself alive and over his tomb a temple was built to perpetuate his memory The Raja of Satara conferred on his descendants from time to time grants of lands villages and varshasans for the maintenance of the shrine and of the charities connected with it Votaries of the god Shri Mangal Murti visited the shrine in large numbers and took part in the annual festivals and celebrations held in honour of the founder of the savasthan In course of time the Chinchvad savasthan became one of the most popular sacerdotal institutions of the Deccan In 1744 the Peshwa made a tahanama (or award) by which he set apart

to the date of this award fresh grants were made to the manager of the savasthan by the ruling authorities of the day In 1774 and 1776 A D the new acquisitions were divided on the principal adopted in the Peshwa's award —one half being reserved exclusively for the savasthan the other half distributed among the heirs of the grantee In 1874 the defendant 1 succeeded to the office of manager and trustee of the savasthan Within a few years after entering upon his office the defendant 1 in conjunction with his son defendant 2 incurred heavy debts mortgaged several villages belonging to the savasthan and dealt with the savasthan income as if it was his own absolute property The plaintiffs filed the present suit with the consent of the Advocate General in 1883 The defendants pleaded (*inter alia*) that the property in suit was not burdened with a public religious or charitable trust that they were not trustees but owners of the savasthan and that the plaintiffs had not such direct interest in the property as to entitle them to sue under s 539 of the Code of Civil Procedure The District Judge who tried the case found that the savasthan was a public religious and charitable institution that the defendants were trustees in charge of the savasthan property and that they were guilty of such gross misconduct as to make them unfit to act as trustees in future He there

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

fore passed a decree directing the defendants to be removed from their office as trustees appointed a new trustee in their place and framed a scheme for the future management of the savasthan *Held* on the evidence that the management of the Chinchvad savasthan—consisting of the sacred shrines at the villages of Chinchvad Moregav Theur and Sidhatek with their endowments—constituted a public religious and charitable trust within the contemplation of s 539 of the Code of Civil Procedure *Held* also

to sue under s 539 of the Code of Civil Procedure *Held* further that the defendants assertion of their right to treat the trust property as their private estate and to apply the trust funds to their private purposes was sufficient to justify their removal from the trust *Held* further upon the construction of the Peshwa's tahanama (or award) that it was the

and that in setting apart a moiety of the property the object was to provide a fund for the savasthan the object was to provide a fund for the support of the four shrines and the expenses of the customary festivals as well as of the annachhatra established at Chinchvad CHINTAMAN BAJAJI DEV *v* DHONDO GANESH DEV

I L R 15 Bom 612

31 ———— **Cash allowance allowed to worship of idol**—*Personal grant—Civil Procedure Code (Act XIV of 1882) s 319* A plaintiff claimed to be a co trustee of certain dargas and

I L R . 496

32 ———— **Public charitable trust**—*Civil Procedure Code, 1882 s 539—Consent of Advocate General* Two out of five trustees appointed by a will to administer a public charitable trust brought this suit against the remaining three

person appointed in his stead and (ii) for such other or further relief as the nature of the case might require The consent in writing of the Advocate General to the institution of the suit under s. 539 of the Civil Procedure Code (XIV of 1882) had not been obtained. *Held* that the suit

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

was one which fell within the purview of s. 539 and *con equently in the absence of such con ent* was not maintainable TRICUMDAS MULJI v KHIMJI VULLABHDAS I L R 16 Bom 626

33 ——— Suit to eject one claiming to be the jheer of a muth—*Civil Procedure Code, s 539* Three di ciples of a muth brought a suit with the con ent of the Advocate General under s. 539 of the Code of Civil Procedure alleging that the defendant was in po se ion of the muth under a false claim of title a the succe or to the late jheer and praying that it be declared that he was *not the duly appointed successor* to the late jheer and that an appointment to the vacant offi e of jheer be made by the Court *Held* that the Civil Procedure Code s. 539 was inapplicable to the uit. STRINIVASA AYYANGAR v STRINIVASA SWAMI I L R 16 Mad 31

34 ——— Suit to remove a mohunt—*Civil Procedure Code s 539—Trust for public re ligious purposes* Two plaintiffs instituted a suit on behalf of themselves and 42 other per ons named in a schedule to the plaint against a mohunt of an

ing to the worship and expen es of it but it was clearly e tablished by the evidence that any Hindu who chose was at liberty to give puja or render

The suit was one to which the provision of s 539

35 ——— Suit to trustee—*Civil Procedure Code (Act XIV of 1882) ss 0 539—Public charity* The trustee of a temple sued to recover from the representatives of the tru tee of a fund constituted for special purpo es in connection with

s. 30 but no sanction had been obtained under s 539 *Held* that the suit was maintainable S 539

RIGHT OF SUIT—*contd*

9 CHARITIES AND TRUSTS—*contd*

36 ——— Suit for a declaration that a certain piece of land is a grave yard—*Civil Procedure Code 1882 s 539 Held* that a suit for a declaration that a certain piece of land was a *grave yard dedicated to the use of such persons as* had no grave yards of their own and asking the Court to appoint a mutawalli and settle a scheme for the management of the grave yard was not such a suit as fell within the purview of s 539 of the Code of Civil Procedure *Lakshmandas Parashram v Ganpatrav Krishna I L R 8 Bom 365* and *Strinivasa Ayyangar v Strinivasa Swami I L R 16 Mad 31* referred to MUHAMMAD ABDULLAH KHAN v KALLU I L R 21 All 187

37 ——— Suit for ejectment of a jeer of religious institution as being illegally appointed—*Prayer for appointment of a new jeer—Elective office.* The jeer of a muth died in 1888 and the def ndant as umed offi e as his su ces sor The plaintiffs who were di ciples of the muth asserting in the plaint that the office of the jeer was elective but without having held an election brought a suit to eject the defendants and to have a new jeer el cted or appointed by the Court and placed in posse si n of the properties of the inst tu tion It was alleged both that the defendant had not been duly appointed to be jeer and al o that he was di qualified for that office by immorality and otherwise *Held* that the suit was not main tainable SRINIVASA SWAMI v RAMANUJA CHARIAR I L R 22 Mad 117

38 ——— Public religious and charitable trust—*Civil Procedure Code (Act XIV of 1882) s 539—Hindu templ with a dhar mashala and sadavart attached to it—Liability of con struct ive trustee—Suit to remove trustee—Limitation* A Hindu built a t mple in honour of the deity Shri Pandurang to which were attached a dhar mashala and a sadavart for feeding travellers and giving alms to the poor For the maintenance of the temple and the charities conn cted with it he dedi cated certain property by a d ed of gift under which

take charge but his son (the defendant) assumed the management The temple was op n to the Hindu community In 1894 the pujari of the temple and five other worshippers of the idol filed this suit under s 539 of the Code of Civil Procedure with the sanc ion of the Advocate General, for removing *the defendant from the management of the temple* on the ground of his mi condu t and mismanage ment of the tru t property The defendant pleaded (*inter alia*) that the property was not a public reli gious and charitable trust that he was not a trustee that the plaintiffs had no right to sue and that the suit was time barred. *Held* (i) that having regard to *the fact that a certain number of the public had al* ways u ed the temple that there was attached to it a dharmashala and that the surplus funds not required for the service of the temple were to be applied to

RIGHT OF SUIT—contd

9 CHARITIES AND TRUSTS—concld

feeding travellers and maintaining a sadavart the intention of the founder was to devote the property to public religious and charitable purposes (ii) that although the defendant was not appointed a trustee yet by taking charge of the endowment and purporting to manage it as temple property he made himself a constructive trustee and was liable as such to the beneficiaries (iii) that the plaintiffs were entitled to maintain the suit under s 53 of the Code of Civil Procedure (iv) that the suit was not time barred as with every fresh breach of the constructive trust or whenever the direction of the Court was deemed necessary a fresh cause of action arose JUGAL KISHORE v LAKSHMAN DAS RAGHUNATHDAS I L R 23 Bom 659

39 ——————— *Civil Procedure Code s 539—Suit for a declaration that certain property is endowed property* S 539 of the Code of Civil Procedure presupposes the existence of a trust for the administration of which it is necessary to make provision That section cannot apply to a suit in which the object of the plaintiff is to obtain a declaration that certain property is endowed property the fact of endowment being denied on the other side JAMAL UDDIN v MUJTABA HUSAIN (1903) I L R 25 All 631

10 CLAIM TO ATTACHED PROPERTY

1 ——— **Suit without bringing claim under s 278**—*Civil Procedure Code 1882 ss 278 and 283—Suit to have property declared not liable in execution* The provisions of s 278 of the Code of Civil Procedure and the sections immediately succeeding are not exclusive of the remedy provided by s 283 of the Code *Man Kuar v Tara Singh I L R 7 All 553* considered SUNDAR SINGH v GHASI I L R 16 All 410

2. ——— **Effect on right of suit of temporary cessation of execution proceedings**—*Civil Procedure Code 1882 s 283—Order partly releasing attachment* Where a decree has not been adjusted or otherwise satisfied and is still operative a temporary cessation of the execution [illegible]

attachment and to have it declared that such part or some fraction of such part is liable to attachment BALAJI SHAMJI NAIK v MOROBA NAIK I L R 21 Bom 58

11 COMPENSATION

1 ——— **Suit for compensation for expenses of releasing cattle**—*Cattle seized under Cattle Trespass Act 1871* A suit for compensation for expenses incurred in releasing cattle which were wrongfully impounded by the defendant will not lie in a Civil Court The Legislature when establishing pounds by Act I of 1871 gave a special remedy in cases of illegal seizure and that is the only one available ASLEM v KALLA DURZI 2 C L R 344

2 ——— **Suit for compensation for wrongful seizure of cattle**—*Cattle Trespass Act (I of 1871)* A suit for compensation for wrongful seizure of cattle will lie in a Civil Court the provisions of Act I of 1871 being no bar to such a suit *Roma Mollah v Lall Mohan Tagadgeer 15 W R 279* approved of *Aslem v Kalla Durzi 2 C L R 344* dissented from SHUTTRUGHON DAS COOMAR v HOKNA SHOWTAI I L R 16 Calc 159

12 CONTRACTS AND AGREEMENTS

1 ——— **Special agreement under which one party has received benefit**—*Implied contract* Where there is a special agreement [illegible]

sue him either upon the special agreement or upon what has been called the implied contract which arises out of the receipt of the benefit OOMASUTTI v PURESHNATH PANDEY 12 W R 521

2 ——— **Suit to recover difference of exchange against assignee of shipping order** An action will lie for the recovery of the difference in the rate of exchange against the assignee of a shipping order under which part of the freight was to be paid on delivery at specified rates of exchange GLADSTONE v JOAKIM Cor 148

3 ——— **Suit for damages for omission to certify payments to Court**—*Fraud* A suit will lie in the Civil Court to recover damages for breach of contract by defendant to certify or [illegible] fraudulently [illegible] was seized.

6 W R Civ Ref 29

4 ——— **Suit for a receipt for goods** [illegible] goods—*Suit for d[illegible]* [illegible]

goods A trading concern was opened according [illegible]

[illegible] declaration that the goods were partnership goods and to obtain a receipt for them as such *Held* that there was no cause of action and a suit for a receipt did not lie In the absence of books and accounts or any other evidence the suit could not be converted into one for dissolution of partnership ELIJAH v ARATOON BROTHERS 14 W R 47

RIGHT OF SUIT—*contd*

12. CONTRACTS AND AGREEMENTS—*contd.*

5 ——— **Suit on agreement to take over decrees**—*Subsequent compromise by payment of fixed sum.* Plaintiff took a patni from defendants and as a part of the consideration of the lease agreed to be responsible for certain decrees outstanding at the time against the defendant. Thereupon was executed a second contract between the parties by which that particular responsibility of paying the decrees was compromised and got rid of by plaintiff paying down a certain sum of money. Subsequently the defendants successfully contested payment of one of the decrees after which plaintiff sued to recover the money of which payment had been thus withheld. *Held* that as the second contract had absolved plaintiff from all responsibility as regards the decrees he was not entitled to recover the money claimed in the suit. SREENATH CHOWDHRY *v.* GREY 13 W R 114

6 ——— **Suit to set aside patni granted in breach of agreement.** Where the proprietors of a mehal had agreed with an ijaradar that in the event of their granting a patni to anybody he should have the refusal and notwithstanding their agreement gave a patni to another ijaradar —*Held* that the latter having been no party to the stipulation was not bound thereby and that a suit would not lie by the first ijaradar to set aside the patni granted to the second. KOMUL LOCHUN DASS *v.* DWARKANATH CHOWDHRY 10 W R 254

Held however on review that where *A* taking a

notice of the agreement with *B*. DWARKANATH CHOWDHRY *v.* KOMUL LOCHUN DASS 10 W R 414

7 ——— **Suit on agreement not to**

by an award that if the plaintiff or *N* desired to mortgage or sell their respective shares they should in the first instance mortgage or sell to one another and if one party declined to take on mortgage or purchase that the other should be at liberty to alienate elsewhere that *N* had however executed a bond in favour of *R* in which he

of a deed of sale and had been executed with an intent to defraud him he sued to obtain possession of the property and a declaration of his title thereto as purchaser. The lower Courts decreed the

plaintiff's claim. *R* on special appeal pleaded that the plaintiff had no cause of action the property not having been sold. *Held* by PEARSON and SPANKIE JJ that the mere hypothecation of the property did not give the plaintiff a title to it as purchaser and that the suit as brought must be dismissed. *Held* by STUART C J that as the plaint stated matter sufficient to enable the Court to consider the validity of the claim made by the suit and on the facts and merits to do justice between the parties to the award the objection to the form of the suit ought not to stand in the way of the plaintiff being decreed his rights under the award. PIRTHEE SINGH *v.* DYA KISHUN

5 N W 226 Agra F B Ed 1874 278

8 ——— **Suit to recover loan for Government revenue due from zamindari** —*Suit against zamindar for debt—Beng Regs of 1781 and 1787.* When money was borrowed to pay the revenue due from a zamindari and paid to the Government on that account the bond given by the vakils and managers of the zamindari to the trustee

right under the law prevailing among the natives in matters of contract to sue the zamindari in the Courts of the mofussil. *Held* also that the laws of 1781 and 1787 were repealed by the laws of 1793

... W R P C 12

9 ——— **Transfer of Property Act (IV of 1882) ss 10 11**—*Contemporaneous ikrarnamah —Condition restraining alienation— Restriction repugnant to interest created—Lambardar and co sharer—Collection of rents by co sharer—Suit by lambardar for money had and received.* *M* a co sharer in a village transferred to *A* another co sharer a 2 annas share by deed of sale. Upon the same date *A* executed an ikrarnamah in which he agreed that he would not collect the rents of the 2 annas transferred to him that he would not ever demand partition of that share and that he would not alienate or mortgage it or otherwise exercise proprietary rights over it. It was further provided that in the event of *A* committing any breach of covenant the sale should be avoided and the proprietary rights in the 2 annas share should revert in *M*. A suit was subsequently brought by *M*

RIGHT OF SUIT—*contd*

12 CONTRACTS AND AGREEMENTS—*contd*

upon the alle . . . of the agreements of the ikarna . . share that . . ing the rent . . sue the tenants that in these suits the tenants exhibited receipts given by *A* on the basis of which the suits were dismissed and that he had been subjected to various costs and expenses He therefore claimed by way of damages from *A* certain sums of money realized by *A* as rent from the tenant and further by reason of the ikrarnamah to avoid the sale deed which preceded it *Held* that provisions of this kind which absolutely debar the person to whom the proprietary rights have passed from . . .

disable the vendee from either alienating or enjoying the interest conveyed to him is not only contrary to public policy but in violation of the principle of ss 10 and 11 of the Transfer of Property Act and that therefore as the agreement on the basis of which the plaintiff asked for relief was one which no Court should assist him in enforcing the suit must fail *Holman* v *Johnson 1 Cowp 513 Anantha Tirtha Chariar* v *Nagamuthu Ambalagaren I L R 4 Mad 200 Bradley* v *Peixoto Tudor's L C R P 968* and *Aminuddaula Muhammad Kakya Hussain* v *Kateri Srinivasa Charlu 6 Mad 356* referred to *Balaji J Rahalkar* v *Narayanbhat 3 Bom A C 63* distinguished *Held* by MAHMOOD J with reference to the sum realized by the defendant as rent that whatever may be the rights of a lambardar in reference to the collection of rents the defendants being a co sharer in the village and having though perhaps irregularly realized sums of money from the tenants could not in a Civil Court and in a suit of this nature be made to repay the lambardar and the latter's only remedy was to deduct the items when the bujharat or rendition of accounts between the co sharers and himself took place MAHRAM DAS v AJUDHIA

I L R 8 All 452

10 ———— **Suit for value of goods covered by bill of exchange**—*Payee for honour* A payee for honour though entitled to the same remedies upon the bill as the party for whom payment was made is not entitled to bring a suit in his own name and in his own behalf for the value of the goods for which the bill was drawn CARMICHAEL v BROJONATH MULLICK 1 Hyde 274

11. ———— **Promissory note or bond executed in foreign State**—*Lex loci contractus —Suit upon consideration for the document—Lex fori —Procedure—Practice—Plaint form of—Issue* Where according to the *lex loci contractus* a promissory note or bond cannot in the absence of registration . . .

the *lex fori* and in British India such a claim must either be stated in the plaint as an independent ground of claim or treated as such and an issue taken at the first hearing *Valiappa* v *Mahommed Kasim I L R 5 Mad 166* cited and followed. PALANIAPPA CHETTI v PERIAKARUPPAN CHETTI

I L R 17 Mad 260

12 ———— **Suit on a bond passed to a minor**—*Contract Act (IX of 1872) ss 10 and 11* A money bond taken by a minor is good in law and may be sued on HANMANT LAKSHMAN v JAYARAO NARSINHA I L R 13 Bom 50

13 ———— **Suit by the heir of the deceased against surety**—*Act XXVII of 1860 s 5—Security bond—Assignment of security bond* On the issue to defendant 1 of a certificate under Act XXVII of 1860 defendant 2 executed to the District Court a security bond The plaintiff who had established his right to the moneys collected under the certificate then brought his suit on the security bond to recover the amount so collected. *Held* that the plaintiff not having obtained an assignment of the indemnity bond from the District Court was not entitled to sue the surety MAYAN v CHATHAPPAN I L R 14 Mad 473

14 ———— **Suit by assignee of contract for damages for non delivery**—*Assignment of contract—Plea that assignment of contract was a sham—Sham assignment—Fraud—Right of third party to question bona fides of assignment—Assignment by deed—Demand for delivery—Contract Act (IX of 1872) s 93* On the 20th December 1886 the defendant contracted to deliver to the . . . bales of . . . February . . . to one *A* . . . th March 1887 he became insolvent In his schedule there was no mention of this contract or its assignment or of the receipt of any consideration for the assignment *A* as the beneficial assignee of the contract subsequently called on the defendant to give delivery of the goods and offered payment of the price but the defendant who was then aware of the plaintiff's insolvency refused on the ground that *A* was not a *bona fide* assignee of the contract for value and that the assignment was a sham and was not intended to pass the beneficial interest in the contract A suit was then brought against the defendant by *K* claiming damages for breach of the contract This suit was dismissed on the ground that the assignment of the contract was fraudulent The plaintiff knew of the dismissal of *K*'s suit in 1887 but had never himself made any demand on the defendant for the performance of the contract On the 6th November 1889 the plaintiff's petition in insolvency was dismissed for non prosecution and on the 18th November 1889 *K* re assigned the contract to the plaintiff The plaintiff then sued the defendant to recover damages for breach of the contract He contended that his assignment to *K* though in fraud of the

RIGHT OF SUIT—*contd*

12. CONTRACTS AND AGREEMENTS—*contd*

Official Assignee and the creditors of the insolvency was not in fraud of the defendant and that by the dismissal of his petition the parties as to their rights and liabilities under the contract had been relegated to the position which they occupied prior to the plaintiff's insolvency *Held* that the plaintiff was not entitled to recover damages from the defendant There had been no demand for delivery by the plaintiff or on his account as required by s. 93 of the Contract Act *K* had a ked for delivery as beneficial owner but the property had not passed to him by the assignment and although the defendant would be bound to recognize an assignee who could establish his title of full ownership in the contract he was under no obligation to recognize *K* when as a fact the beneficial interest in the contract still remained in the plaintiff with whom the defendant had originally contracted In England where there has been an assignment by deed the assigned property passes by force of the deed and it cannot be impeached at law by the assignor or by third parties other than creditors on the ground of its not being a real transaction but where the assignment is not by deed the true nature of it as a sham may be proved. In India it is in all cases open to third parties to show that such was the case MULJI GOVINDJI *v* NATHUBHAI HIRACHAND

I L R 15 Bom 1

15 ———— Suit by assignee—*Assignment of contract—Novation of contract—Contract Act s 62—Contract for forward delivery* The defendant was sued by the plaintiffs as assignees of one *S* for differences on certain contracts of purchase and sale of cotton and seeds The defendants contended that the contrats in question were not assignable without his consent which had never been asked for nor given and that the plaintiffs could not therefore maintain the action *Held* that the objection was a good one An assignment of a contract (as distinguished from a debt or other chose in action) to be effectual must amount to a novation and requires the assent of the other party to the contract (s 62 Contract Act IX of 1872) The defect however was allowed to be cured by adding *S* as a plaintiff The legal effect of the endorsement and handing over of such contracts considered TOD *v* LAKHMIDAS PURSHOTAMDAS

I L R 16 Bom 441

16 ———— Compromise of decree effect of—*Mode of enforcing agreement of compromise—Reciprocal promises—Form of decree—Contract Act (IX of 1872) s 51* A decree for partition having been compromised by an agreement made by the parties and communicated to the Court which passed the decree —*Held* that the effect of the decree was extinguished by the agreement which could only be enforced by a fresh suit and not by an application for execution of the former decree An agreement consisting of reciprocal promises to be performed by the plaintiffs and the defendant can be sued upon by the plaintiffs when they have not refused to carry out their promises [illegible]

ask for the performance of the part of the contract in which they are interested and the defendant claims execution of the whole to which the plaintiffs do not object the Court ought to pass a decree directing execution of the whole contract instead of rejecting the claim HARI RAGHUNATH JOSHI *v* KRISHNAJI ANANT JOSHI

I L R 19 Bom 546

13 CO SHARERS

1 ———— Suit by one co sharer for value of personal property alienated by another If a co sharer of personal property sells the property without the consent and authority of the other owner that other owner may sue the purchaser for the price of his share RADHANATH SHAHA *v* KAMINEE SOONDEREE DOSSEE

2 W R 37

2. ———— Suit by one co sharer for value of wood removed—*Tenancy in common—Co owners of a forest—Mortgage by one co tenant—Mortgagee in possession—Licensees from mortgagor and co tenant—Cutting and removing produce—Rights of licensees—Remedy of mortgagee—Damages—Account* The first defendants *G* and *A* were co owners of a forest *G* mortgaged his interest in the forest to the plaintiff and put him into possession The mortgage was registered Subsequently *G* and *A* joined in a license to the second and third defendants to cut and take wood in the forest which the latter accordingly did The plaintiff sued *G* and the other two defendants to recover as damages the value of the wood removed and for an injunction restraining the defendants from removing more wood *Held* that the claim would not lie neither for the whole of the damages claimed nor for such part of them as was equivalent to *G*'s interest in the value of the wood removed —the only remedy open to the plaintiff being a suit against *A* his co tenant for an account Though *G* being out of possession to the knowledge of the licensees could convey to them no right yet *A* could and a license from *A* gave a right to cut wood in the whole of the forest since a co tenant may lawfully enjoy the whole property in any way not destructive of its substance so as to amount to an ouster of the other co tenants and whatever a co tenant may do himself he may license another to do The licenses therefore did no [illegible]

RIGHT OF SUIT—contd

13 CO SHARERS—concld

obtained by assuming falsely a position and rights belonging to the plaintiff BALVANTRAV OZE v GANPATRAV JADHAV I L R 7 Bom. 336

3 ——— **Suit by one co parcener against the others for declaration of right to Government allowance forming part of joint estate** One member of an undivided family cannot sue his co parceners for a declaration that he is entitled to recover the whole of a family varshasan The only mode in which as between the members of the joint family a declaration of right to the varshasan can be properly obtained is by one of the co parceners bringing a suit for partition of the whole of the family estate including the varshasan and for a declaration of the shares of the respective co parceners TRIMBAK DIXIT v NARAYAN DIXIT 11 Bom 69

4 ——— **Suit to recover share of produce**—*Property left undivided at partition—Amendment of plaint—Suit for partition—Variance between pleading and proof* A claim to a share of the produce of the property left undivided at a partition does not lie because such a claim is based on the right to a particular share in the property itself which has no existence in the case of an undivided family A suit for a share of the produce of the property left undivided at partition cannot be amended by making it a suit for partition without entirely changing its character GAVRISHANKAR PARABHURAM v ATMARAM RAJARAM I. L R 18 Bom 611

14 COSTS

1 ——— **Suit for costs incurred in resisting a claim to attached property**—*Civil Procedure Code 1859 s 246* A suit cannot [illegible] plaintiff in [illegible] nt under [illegible] ie greater [illegible] when the costs are made a part of the order and then by execution under it that a party can in such cases enforce the payment of costs ANONYMOUS 3 Mad 341

2 ——— **Suit for costs incurred in possessory suit**—*Bom Act V of 1864* No action lies for the [illegible] ant in [illegible] brought a [illegible] Bombay [illegible] JAVRA 8 Bom A C 29

3 ——— **Claim for costs incurred in another suit**—*Suit in Revenue Court—Damages* [illegible]

costs and expenses incurred in a suit brought by the defendant in the Revenue Court for partition of the share *Held* by MAHMOOD J with reference to the costs incurred by the plaintiff in the Revenue Court [illegible]

RIGHT OF SUIT—contd

14 COSTS—concld

[illegible] *Punja v Khoda Javra 8 Bom A C 29 Kabir v Mahalu I L R 2 Bom 360* and *Pranshankar Shivshankar v Govindhlal Parbhudas I L R 1 Bom 467* referred to MAHRAM DAS v AJUDHIA I L. R. 8 All 452

4 ——— **Suit to recover costs incurred in former proceedings in Court having jurisdiction.** An objection to the attachment and sale of a house which was advertised for sale in execution of a decree for enforcement of lien was allowed upon the ground that the objector had purchased the house from the mortgagor and his purchase was not subject to the decree to which he was not a party The decree holder then brought a suit against the objector claiming a declaration of his right to recover the amount due under his decree by enforcement of lien against the house and that the order releasing the property from attachment should be set aside and also to recover the costs incurred by him in the execution department on the defendant's objection. *Held* that inasmuch as where a Court having jurisdiction orders or refuses costs a separate action for such costs cannot be brought the plaintiff was not entitled to recover from the defendant the costs incurred by him in the execution department *Mahram Das v Ajudhia I L R 8 All 452* followed. KADIR BAKHSH v SALIGRAM I L. R. 9 All. 474

5 ——— **Suit by Commissioner for his costs**—*Civil Procedure Code 1859 s 180 182* Where a Commissioner was appointed by a Court under s. 180 of Act VIII of 1859 to take accounts at the request of the plaintiffs and his costs were not prepaid under s. 182 and the defendant was by the decree ordered to pay the costs of the suit but the costs of the Commissioner were not entered in the decree —*Held* in a suit by the Commissioner against the plaintiffs for remuneration for his labour that the plaintiffs were liable. GOPALARATNAMAYYAR v BUPALA NARASIMMA NAYUDU I L R 4 Mad 99

6 ——— **Suit for costs incurred in criminal case** As to recovery of costs of a criminal case in a subsequent civil action. RAM LAL v TULA RAM I. L. R. 4 All. 97

7 ——— **Damages suit for—Costs incurred in prosecuting case in Criminal Court.** *Held* that a suit will not lie to recover as damages the expenses incurred by the plaintiff in prosecuting the defendant in a Criminal Court. FAZAL IMAM v FAZAL RASUL I L R. 12 All. 166

See MAHOMED ALI v BYAMA I L R 14 Bom. 100

RIGHT OF SUIT—*contd*

14a CROPS RECOVERY OF

——— *Bengal Tenancy Act (VIII of 1885) ss 69 73 (a)—Order of Collector finality of* S 0 (5) of the Bengal Tenancy Act does not bar a suit by a tenant against a third party for recovery of crops awarded to the latter by the Coll ctor *Jaga Singh* v *Chooa Singh I L R 22 Calc 480* referred to CHHEDI v CHHEDAN (1905) I L R 32 Calc 42

15 CUSTOMARY RIGHTS

1. ——— Suit to restrain the use for tazias of land used for the purposes of the Holi—*Easement—Cause of action.* A a Mahomedan, purcha ed a house adjacent to a piece of

be re trained from improper interference and that the plaintiffs be put in posse sion by maintaining observance of the Holi rights according to the ancient usage on the land It was found that the plaintiffs had for a period of twenty years prior to the institution of the suit exerci ed the right of going on to *the land at the time of the Holi festival* without interruption or interference It was also proved that neither the plaintiffs nor the defendant

claim appeared to be a claim to a right by custom of the nature described in *Mounsey* v *Ismay 34 L J Ex* and *Abbot* v *Weekly 1 Lev 1 6* and could not stri tly be regarded as for an easement the

entitled to object to the defendant s use of the land at another period and that looking to the extent and nature of the said right and to the form in which the plaint was shaped the laying of a tazia upon the land at the Mohurram could not be held to be any interference with such right sufficient to afford a cau e of action on which to come into Court ASHRAF ALI v JAGAN NATH

I L R 6 All 487

2. ——— Custom of burial—*Local custom—Right claimed by certain section of Mahomedans to bury their dead in a certain locality—Right of burial* Where a certain section of the Mahomedan community had been for many years in the habit of burying their dead near a darga in plaint

RIGHT OF SUIT—*contd*

15 CUSTOMARY RIGHTS—*contd*

iff s land and the plaintiff sued for an injunction restraining them from exercising this right in future —*Held* that the right of burial claimed by the defendants was not an easement but a customary right which being confined to a limited class of ... ciently ... valid

I L R 23 Bom 666

3 ——— Suit to enforce payment of dues for performance of marriage ceremonies—*Cause of action.* No suit lies to enforce payment of murjada (respect money) alleged to be a customary payment by persons of the Kassary caste who have marriage ceremonies or shrads performed in their house to members of the community NOBEEN CHUNDER DUTT v MADHUB CHUNDER MUNDUL 5 W R 225

4 ——— Suit to recover fees for use of temple—*Custom* A suit to recover the amount of marriage fees which the defendant it was alleged became liable to pay for the use of a temple upon his marriage with a woman residing in the village where the temple was situated is not maintainable unless on proof of a well established custom to that effect MAADAN v ERLANDI 5 Mad 147

5 ——— Suit for right to use ghat for religious purpose—*Abstract right—Cause*

of interfering with the exercise of such right by bathing at the ghat He prayed for a declaration of the right and for a perpetual injunction to be issued to the Mahomedans generally forbidding them to resort to he ghat No act of trespass was charged against any of the defendants The defence was that the Mahomedans were entitled to use the place and that their use of it did not cause any inconvenience to the plaintiff *Held* that the suit was not maintainable since the Court had no power to pass a decree against persons who had never interfered with the property in dispute or to issue an injunction against the whole Mahomedan world but that inasmuch at the defendants had fought the case all along a if the suit were maintainable and upon a false issue both sides must pay their own costs. SHAH MUHAMMAD v KASI DAS

I L R 7 All 199

6 ——— Suit for right to use ghât for collecting religious offerings—*Right to land of ghât Cause of action* Certain Brahmans

RIGHT OF SUIT—*contd*

15 CUSTOMARY RIGHTS—*concld*

7 ——— **Right to occupy specific portion of ghât dedicated to the public not susceptible of acquisition by prescription** —*Gangaputras* Held that no exclusive right of ... ription in any ... use of which ... Ali v Matul ... ron v Smith ... ood Highway ... MUNICIPAL BOARD OF CAWNPORE v LALLU I. L. R. 20 All. 200

8 ——— **Suit for perquisites**—*Suit by mahar of village against other mahars to establish his right to share in mahar s perquisites* A suit by one of the mahars of a village against his fellow mahars to establish his right to share in the mahar s perquisites such as the carcasses of dead animal etc will lie though such a claim be not tenable against the raiyats who may have owned such animals when alive YELLAPA VALAD BHIMAPA v MANKIA 8 Bom A C 27

16 DEBTOR AND CREDITOR

1 ——— **Suit by debtor to compel creditor to accept money due**—*Suit on bond—Refusal to accept instalments on bond* A bond having been executed whereby it was stipulated that a debt should be paid by instalments subject to the condition that if any one instalment were not paid within a certain time after it became due the whole amount remaining due should become payable at once the creditor evaded the debtor s attempts to pay the instalments as they became due and the debtor brought a suit to compel the creditor to accept an instalment due *Held* that such a suit would not lie KRISTAYA v KASIPATI I L R 9 Mad 55

2 ——— *Agreement in subsequent deed to pay balance due on a prior document gives no fresh right of suit* ...

the defendant should pay any balance that may remain due after the decrees had been realized but ...

document conferred no fresh right of suit and that the plaintiff s suit brought after the expiry of the period of limitation for a suit on the promissory note was barred. *Barker s claim [1894] 3 Ch 290* referred to and applied. VENKATARAMIAH PANTULU v RAMAKRISHNA PANTULU (1906) I. L R 29 Mad. 295

RIGHT OF SUIT—*contd.*

16 DEBTOR AND CREDITOR—*concld*

3 ——— **Joint creditors**—*Succession Certificate Act (VII of 1887)—Pleading—Indian Contract Act (IX of 1872) s 45* It is open to one of two joint creditors to maintain an action for recovery of the debt if the other creditor is joined as a co defendant and if there is good ...

plaintiff her share of the debt) was made a party defendant *Held* that although no succession certificate to collect the debt of the deceased joint creditor was produced the suit was maintainable at any rate as to the share of the plaintiff The High Court in remanding the case directed that the successor of the deceased joint creditor who had not been properly served with notice of the suit should be so served and that on her expressing her desire to be joined as co plaintiff she should be so joined and opportunity given to her to produce a succession certificate and that on the production of the same a decree for the entire amount should be passed. SHITAL CHANDRA BAIRIGEE v MANIK CHANDRA HAZRA (1909) 13 C W N 508

17 DECREES

1 ——— **Suit to enforce execution of decree in another suit** A suit will not lie to enforce execution of a decree in another suit. TAREKNARAIN SINGH v PUNCHA SINGH W R. 1864 376

2 ——— **Suit to enforce execution of decree**—*Mode of enforcing right* The proper mode of enforcing a decree is that pointed out by the Code of Civil Procedure 1859 namely by execution and sale or by execution and attachment and the appointment of a receiver under s. 243 to collect the property Where the Legislature has prescribed a particular mode of enforcing a right created by a ... of that right is bound to follow ... MAHOMED ... W R 89

3 ——— **Suit on decree of High Court**—*Civil Procedure Code, 1877* There is nothing in Act X of 1877 which prevents a suit from being instituted on a decree of the High Court. ATTHERMONEY DOSSEE v HURRY DOSS DUTT I L. R 7 Calc 74 9 C L. R. 357

4 ——— *Suit on decree pending appeal.* *Quære* Whether a new suit will lie upon a decree pending an appeal. IMAMUN v HURDYAL SINGH 5 W R. 277

5 ——— **Suit for amount due on decree lost in Mutiny** A suit was held to lie for the amount of an unsatisfied claim adjudged by a decree which was destroyed during the Mutiny and the cause of action to date from the lost decree. EMAMUN v HURDYAL SINGH W R. 1864 301

RIGHT OF SUIT—*contd*

17 DECREES—*contd*

See (contra) NUZUR BANOO *v* HOSSEIN ALI KHAN W R 1864 378

6 ———— **Suit on decree where there were no means of enforcing it by execution.** A decree in a suit upon a bond against the heir of the deceased obligor awarded to the plaintiff the amount of the bond from the property of the obligee and directed that the defendant be released from the claim in this suit. An order for execution of the decree was set aside on the ground that the decree did not warrant the issue of an attachment since it was not against any person. *Held* that a suit was maintainable by the plaintiff upon the decree recovered in the former suit there being no other means of enforcing the former decree or recovering his debt. ANUND ROY *v* MUNORUT SINGH Marsh 611

7 ———— **Suit for balance after execution of decree for rent**—*Suit under Rent Act to recover sum due after sale in execution of decree under Beng Reg VII of 1799* A suit was held to be not maintainable under the Rent Act to recover a sum due under a decree for rent obtained under Regulation VIII of 1799 and remaining unsatisfied after sale of the tenure DHEERAJ MAHTAB CHAND *v* DENO NATH ROY Marsh 310 2 Hay 445

8 ———— **Suit on foreign judgment**—*Suit on judgment of Small Cause Court* A suit will not lie in the Courts of India upon the judgment of any Court in British India. The only exception to this rule is in the case of judgments of a Court of Small Causes on which suits are permitted to be brought in the High Court in order to obtain execution against immoveable property *Quære* Whether suits on foreign judgments are maintainable in the Civil Court of India BHAVANISHANKAR *v* PALSADRI I L R 6 Bom. 292

9 ———— *Native Court's decree* [illegible]
s 43 [illegible]
any [illegible]
Cour [illegible]
been a notification by the Governor General of India under s. 434 of the Civil Procedure Act (X of 1882) HIMMATLAL *v* SHIVAJIRAV I L R 8 Bom. 593

10 ———— *Suit on judgment of Court in Native States* A suit will be on a judgment of a Court in a Native State MAYARAN *v* RAVJI I L R 24 Bom 86

11 ———— **Suit on decree of Small Cause Court**—*Decree unsatisfied by execution* Where plaintiff had obtained a decree in the Small Cause Court and execution had been issued but defendant had not moveable property sufficient to satisfy the decree *Held* that a suit in the High Court on the decree of the Small Cause Court would lie for the balance but costs will not be given to the successful plaintiff in such a suit nor interest on the judgment be obtained in the High Court. MOHENDRONATH ASH *v* BEEDOBODUN DUTT 1 Ind. Jur N S 220

RIGHT OF SUIT—*contd*

17 DECREES—*contd*

12 ———— *Suit in High Court* A suit can be brought in the High Court on a decree of the Small Cause Court KHOBLALL BABOO *v* RAMCHUNDER BOSE I L R 2 Calc 434

13 ———— *Decree unsatisfied by execution* In a suit to recover R7 7 due on a decree of the Small Cause Court which decree had been obtained by the plaintiff against the defendant as executor of the estate of one P deceased the defendant had appeared in the Small Cause [illegible]

[illegible] out of which the decree could be satisfied. The plaint prayed that the defendant as executor might be ordered to pay the amount with interest and costs and if he should deny assets then for administration of the estate of the deceased. The defendant did not enter appearance The Court granted a decree for the amount with interest and costs No 1 in default of payment for six months from date of decree the estate to be administered in due course MODOOSOODUN PAUL *v* DOYAL CHAND MULLICK 10 B L R Ap 35

14 ———— *Stat 9 & 10 Vict c 95* No suit will lie in the High Court on a decree of the Small Cause Court *Mohendronath Ash v Beedobodun Dutt 1 Ind Jur N S 220 Madan Mohun Bose v Laurence 1 B L R O C 66* and *Khobla Baboo v Ramchunder Bose I L R 2 Calc 434* dissented from. GOLAM ARAB *v* CURREEMBOX SHAIKJEE I L R 5 Calc 294 4 C L R 477

15 ———— *Insufficiency of immoveable property to satisfy decree* A suit may be brought in the High Court of Bombay upon a [illegible]

[illegible] original jurisdiction of the High Court against which execution can be had FAKIRAPPA *v* PANDURANGAPA I L R 6 Bom 7

16 ———— *Suit in Small Cause Court* A suit will not lie in a Small Cause Court on a decree of that Court. SANDES *v* JOHN SHAIKH 9 W R 399

17 ———— *Suit in Small Cause Court—Presidency Small Cause Courts Act (XV of 1882) ss 1 4 91* A judgment creditor in

RIGHT OF SUIT—*contd*

17 DECREES—contd

the Court of Small Causes had not before the 1st July 1882 the right to sue in that Court on his judgment MERWANJI NOWROJI v ASHABAI

I L R 8 Bom 1

18 ———— **Suit on decree barred by limitation** *Quære* Whether a suit could be maintained on a decree that was held to be barred by lapse of time LAKSHMAMMA v VENKATARAGAVA CHARIAR 4 Mad 89

19 ———————— *Neglect to execute decree in suit for possession* Where a party brings a suit for possession and obtains a decree which he neglects to execute no subsequent suit on the same cause of action will lie GOPI MOHUN DASS v TINCOURI GUPTA 1 C L R 254

NUBO DOORGA v SEETAMONEE 23 W R 407

20 ———— ——— *Neglect to execute decree* Where persons by their own neglect have lost the remedy by process of execution to which they became entitled by an adjudication in a former suit they cannot be permitted to revert to the position which they held prior to the institution of that suit and to bring a fresh suit GOLAM HOSSEIN v ALLA RUKHEE BEEBEE

3 N W 62 Agra F B Ed. 1874 248

HOSSEIN BUKSH v MUSUND HOSSEIN

18 W R 260

NURSINGH DOSS v KUMROODDEEN

20 W R 412

21 ———————— *Neglect to execute decree—Effect of barred decree—Former suit relating to land* By SPANKIE and TURNBULL JJ —When the nature of a decree is such that it admits of execution the decree holder cannot after allowing the limitation period to elapse without issuing process of execution seek by a fresh suit to obtain the relief he should have sought by execution By TURNER *Offg C J* —Although by reason of the limitation law process of execution may be barred the decree is not altogether void. Its effect in ascertaining the rights of the parties is unaffected by any of the provisions of the limitation law In respect of landed property which has been the subject of a decree a plaintiff need not necessarily found his suit on the decree He may assert as his cause of action the continued trespass of the defendants subsequently to the decree which gives him a new cause of action RAM JUS RAE v RAM NARAIN

2 N W 382 Agra F B Ed. 1874 226

22 ———————— A suit will not lie upon a decree the execution of which is barred by the provisions of the Limitation Act FAKIRAPPA v PANDURANGAPA I L R 6 Bom. 7

23 ———————— *Omission to enforce decree by execution till barred* When a decree is merely declaratory and does not require to be carried into effect the process of execution the right thereby declared and ascertained exists independently of any process for enforcing it But when the nature of the decree requires that it should be executed a decree holder cannot after allowing the limitation period to elapse without issuing process of execution seek by a fresh suit on the decree to obtain that which he should have sought for by executing it DUBEE SINGH v JOWKEE RAM

3 Agra 391 Agra F B Ed. 1874, 172

YAKOOB ALI v UBDOOLRAHMAN 3 Agra 383

s c Agra F B Ed. 1874 172

JUGGURNATH v BALGOBIND

1 N W 105 Ed. 1873, 154

24. ———————— *Suit to enforce declaratory decree for maintenance* A decree holder having obtained in 1874 a decree entitlin her to a certain sum to be paid annually by the judgment-debtor applied for execution of the decree *on the 11th of* March 1875 but made no further application until July 188? *Held* that though the application was barred by lapse of [illegible]

25 ———— **Declaratory decree**—*Maintenance suit decr e in—Annual payment* A Hindu widow obtained a decree in 18,6 which provided that she should receive future maintenance *annually at a certain rate* but did not specify any date on which it should become due In 188 she filed the present suit claiming arrears of maintenance at the rate fixed in the decree of 1876 *Held* that the suit did not lie *Sabhanatha* v *Lakshmi I L R 7 Mad 80* distinguished VENKANNA v ATTAMMA I L R. 12 Mad. 183

26 ———— **Suit to set aside decree**—*Code of Civil Procedure (Act XIV of 188) ss 108 540 and 623—Amendment of plaint without notice to party* The only ways in which a decree may be set aside by a party thereto are by appeal by proceedings under s 108 Civil Procedure Code and [illegible] review [illegible]

been made in the pleading without not[illegible] who has not appeared does not nullify the decree subsequently made in the sui SIDHO MISSER v GOLAB SINGH 3 C W N 375

27 ———— **Suit to set aside decree**—*Civil Procedure Code (Act XIV of 1882) s 44—Jurisdiction—Separate suit to set aside decree and sale—Fraud—Evidence Act (I of 1872) s 44* A suit to set aside a decree and the sale in execution thereof and to recover the property sold is maintainable notwithstanding the provision of s 244 Civil Procedure Code and should be brought in the *Court* in the jurisdiction of which the property is situate although the decree sought to be *set aside* was passed by a Court in a different district. It may not be competent to the *Court to set aside* as fraudulent the decree passed by another Court.

RIGHT OF SUIT—*contd*

17 DECREES—*contd*

but it is competent to the Court to investigate the question as to the character and validity of the decree for the purpose of giving relief to the plaintiff in respect of the land which he lost by reason of the sale *Mewa Lall Thakoor* v *Bhujhun Jha* 22 W R 213 referred to *Abdul Majumdar* v *Mahomed Gazi* I L R 21 Calc 605 *Pran Nath Roy* v *Mohesh Chandra Moitra* I L R 24 Calc 546 and *Srimati Nistarini Dasi* v *Rai Nundo Lal Bose* 3 C W N 670 followed KEDAR NATH MUKERJEE *v* PROSONNA KUMAR CHATTERJEE (1901) 5 C W N 559

28 ———— *Decree ex parte—Execution sale—Fraud—Civil Procedure Code (Act XIV of 1882) s 108—Effect of order rejecting previous application to set aside the decree where the plaintiff had not appealed from such order* The defendants sued the plaintiff for arrears of rent and obtained an *ex parte* decree in execution of

the sale in execution on the ground that he had no interest in the land in respect of which the arrears of rent were alleged to be due and the decree and sale had been obtained by false returns of summons and of processes in execution and were fraudulent and void The defendant objected that the plaintiff having applied under s 108 without success and not having appealed from the order rejecting his application had no right of suit in the Civil Court *Held* that the suit was maintainable RADHA RAMAN SHAHA *v* PRAN NATH ROY (P C 1901) I L R 28 Calc 475

29 ———— Mistake in decree—*Separate*

8 C W N 4 3 referred to CHAND MEA *v* ASIMA BANU (1906) 10 C W N 1024

30 ———— Compromise decree—*Res judicata—Civil Procedure Code (Act XIV of 1882) s 13—Suit instituted before Munsif—Compromise decree on appeal before District Judge—Application for review to have compromise decree set aside—Decision if bars fresh suit before Subordinate Judge—Ground for setting aside compromise decree not raised in review—Fresh suit on such ground if lies—*

RIGHT OF SUIT—*contd*

17 DECREES—*concld*

Judge rejected the application on the ground that the pleader had the requisite authority The plaintiffs obtained rules from the High Court against this order but they were discharged

went outside the subject matter of the suit *Held* that in order to have the compromise decree set aside it was open to the plaintiffs to proceed either

the dure L R f the

discharge of the rules issued by the High Court was to leave the order of the District Judge undisturbed That the question regarding the pleader s authority to compromise was directly and substantially in issue in the proceeding for review and was heard and finally decided by the Court of the District Judge which was a Court of jurisdiction competent to try the present suit The suit in consequence is barred by the rules of *res judicata* *Koylash Chandra De* v *Tarrack Nath Mandal* I L R 25 Calc 571 *Bhagwanbuttee Choudhurain* v *A H Forbes* I L R 28 Calc 78 relied on An independent suit would not lie merely because a ground is alleged for setting aside the decree which was not

18 DIGNITIES

1 ———— Suit for declaration of right to receive marks of distinction A suit for a declaration of a right to receive marks of recognition and honour at idol festivals or for damages not cogni GHOSE *v*

10 W R 180

2 ———— Suit to establish right to mere dignity—*Dignity unconnected with emolument* Plaintiff sued for a declaration of his right to take a cupola to a certain temple and to place it upon the car of the idol and to take a nandicola (bamboo) with tom toms from his house to the temple and to offer the first cocoanut to the idol at the annual festival held in honour of a certain Dingayet saint *Held* that the suit was not maintainable as it was brought to vindicate plaintiff s right not to an office but to a mere dignity unconnected with any fees profits or emoluments SANGAPA BIN BASLINGAPA *v* GANGAPA BIN NIRANJAPA I L R 2 Bom 476

RIGHT OF SUIT—*contd*

18 DIGNITIES—*contd*

3 ——— **Suit to establish right to parade bullock on the Pola**—*Damages—Dignity* A suit does not lie in a Civil Court for a declaration that the plaintiffs have the right of parading their bullock on the Pola (the last day of the month of Shravan) of one year and the defendants on the Pola of the next for damages for the invasion of the plaintiffs right in a given year and for an injunction restraining the defendants from interfering with the said right PAMA v SHIVRAM
I L R 6 Bom 116

4 ——— **Suit claiming right to have palki carried crossways** *Quære* Whether a suit lies in the Civil Courts against the chief priest of the Lingayat by the swami or chief priest of the Smartava sect of Brahmins claiming by grant from the supreme power of the State the privilege of adavi palki of being carried on ceremonial occasions in a palanquin borne crossways so that the poles traverse the line of march. SUNKUR BHARTI SWAMI v SIDHA LINGAYAH CHARANTI
6 W R P C 39 3 Moo I A 198

5 ——— **Mans suit for right to**—*Perpetual injunction against invasion of these mans—Right to worship—Small gifts by presents of rice cocoanuts vida and venison attached to such mans how far considered as emoluments* The plaintiffs and the defendants as members of a family of Ganvkar claimed to be entitled to certain *mans* consisting of the right to be the first to worship the deity on certain occasions and to receive gifts of rice cocoanut and *vida* and venison made by the priest on certain religious ceremonies and other occasions The plaintiff being obstructed by the defendants in the enjoyment of the *mans* sought to obtain a perpetual injunction against the defendants. The Court of first instance dismissed the plaintiff s claim as being one for mere dignities unaccompanied with emoluments and as such not cognizable by a Civil Court The plaintiff thereupon appealed and the lower Appellate Court reserved the lower Court s decree and granted a perpetual injunction against the defendants prohibiting them from interference with the plaintiff s enjoyment On appeal by the defendants to the High Court —*Held* restoring the decree of the Court of first instance that the plaintiff s suit was not maintainable The *máns* were mere dignities to which no profits or emoluments were attached The trifling gifts made by the priest of rice a cocoanut and *vida* on the occasion of worshipping the deity and of a piece of venison on other occasions could not be regarded as emoluments being merely symbols of recognition and marks of respect of and to the holders of the *mans* *Rama* v *Shivram I L R 6 Bom 116* followed. NARAYAN VITHE PARAB v KRISHNAJI SADASHIV
I L R 10 Bom 233

6 ——— **Cause of action**—*Civil right—Precedence at religious festival* The plaintiff alleged that he and his ancestors had possessed for 300 years the privilege of receiving before others sacred ashes sandal, betel and nut flowers etc. at certain pagodas on festival and other days and that the defendants had disputed his claim to precedence and created a disturbance whereby the plaintiff was prevented from enjoying this pri[illegible]

KARUPPA GOUNDAN v KOLANTHAYAN
I L R 7 Mad 91

19 DOCTOR S FEES

——— **Suit for doctor s fees**—*Right of docter to recover fees* The fact of a doctor treating a patient before being paid is no bar to his suit to recover his fees in a court of law HURISH CHUNDER SURMAH v BROJONATH CHUCKERBUTTY
13 W R 98

20 DOCUMENTS LOSS OR DESTRUCTION OF

1 ——— **Suit on lost cheque**—*Cause of action—Civil Procedure Code 1877 s 61* The indorsees of a cheque sued the indorser stating in their plaint that the cheque had been lost and that the defendant refused to give them a duplicate of it, and claiming a duplicate of it or the refund of the money they had paid the defendant on the cheque *Held* that the plaint disclosed a cause of action against the defendant BALDEO PRASAD v GANGA CHANDRA BOSE
I L R 2 All 754

2 ——— **Suit to compel execution of another document where one has been destroyed before registration** A suit will lie to compel the defendant to execute another instrument of sale where the first one has been destroyed by fire soon after its execution and has on that account though compulsorily registrable become incapable of being registered NYVAKKA ROUTHER v VAVANA MAHOMED NAINA ROUTHER 5 Mad 193

3 ——— **Suit to compel execution and registration of fresh deed**—*Loss of sale deed* When a deed of sale of immoveable property for more than R100 is lost within the time allowed for the registration of the same the purchaser may bring a suit against the vendor to compel the execution and registration of a fresh deed NALLAPPA REDDI v RAMALINGACHI REDDI
I L R 20 Mad 250

21 EASEMENTS

1 ——— **Obstruction**—*Acquiescence—Suit for removal of obstruction—Decree for plaintiff qualified by declaring that parties retain rights exercised prior to obstruction.* In a suit for the removal of a building which the defendants had erected and which was an obstruction to the plaintiffs right to use a courtyard adjoining their residences, it appeared that the land on which the building stood

RIGHT OF SUIT—contd

21 EASEMENTS—concld

did not belong to either party but that all the inhabitants of the mohulla had from time immemorial exercised a right of way over it to and from their houses. [illegible] land there [illegible] used as a [illegible] mohulla. [illegible]

[illegible]

was maintainable without proof of special damage *Karim Baksh* v *Budha I L R 1 All. 249* *Gehanaji* v *Ganpati I L R 2 Bom 469* and *Uda Begam* v *Imam ud-din I L R 1 All 82* distinguished. *Held* also that there was no principle of acquiescence involved in the case inasmuch as there was no evidence that the plaintiffs had given their actual consent to the building and the only evidence of their acquiescence could be that they did not immediately protest and the defendants must have known that they were building upon a courtyard which their neighbours had a right to use *Uda Begam* v *Imam ud din I L R 1 All 82* and *Ramsden* v *Dyson L R 1 H L 129* referred to FATEHYAB KHAN v MUHAMMAD YUSUF MUHAMMAD YUSUF v FATEHYAB KHAN
I L R 9 All. 434

2 ——— **Privacy right of**—*Custom* A customary right of privacy under certain conditions exists in India and in the North Western Province and is not unreasonable but merely an application of the maxims *sic utere tuo ut alienum non laedas* and *aedificare in tuo pro prio solo non licet quod alteri noceat* A substantial interference with such a right where it exists if without the consent or acquiescence of the owner of the dominant tenement affords such owner a good cause of action GOKAL PRASAD v PADHO I L R 10 All. 358

22 ENDOWMENTS SUITS RELATING TO

1 ——— **Suit by a dharmakarta disaffirming the acts of his predecessor**—*Act XX of 1863 s 7—Mad Reg VII of 1817 s 12—Suit o se as le leas granted by former dharmakarta of temple—Limitation—Cause of action.* The plaintiff who had been appointed in 1886 by the Sub Collector to be dharmakarta of a Hindu temple for which no committee had been appointed under [illegible]

[illegible]

apart from that appointment. *Held* that assuming he had such right the plaintiff since he did not derive title through his predecessor in office (the grantor of the lease) would be entitled to disaffirm his acts and could maintain the suit. The cause of action arose and the period of limitation would therefore run not from the date of the lease but from the date of the accession of the plaintiff to his office MAHOMED v GANAPATI I L R 13 Mad 277

2 ——— **Suit by a trustee of a devasom** [illegible] June 1883 sued in 1887 to recover for the devasom [illegible]

[illegible] tain the suit for the purpose of recovering for the trusts of the devasom property improperly alienated by his predecessor *Suppammal* v *The Collector of Tanjore I L R 12 Mad 387* distinguished VEDAPURATTI v VALLABHA I L R 13 Mad 402

3 ——— **Suit by dharmakarta of temple to recover temple property**—*Religious Endowments Act (XX of 1863) s 12* The right to bring suits for the recovery of the property of a religious or charitable institution is vested in the trustee or manager of such institution unless he is precluded by any special law from exercising it. *There is no thing in the Religious Endowments Act to* take away such powers S 12 relates only to the rents of property transferred by Government to the committees of such institutions. SANKARA MUPTI MUDALIAR v CHIDAMBARA NADAN
I L R 17 Mad. 143

4 ——— **Suit to prevent Committee under Act XX of 1863 from illegal interference**—*Decision as to validity of testamentary paper* The khaleefa of an endowment having by a will or testam [illegible] given var [illegible] property [illegible] appointed [illegible] tion The Committee having thereupon expressed their opinion that the document was of no effect the khaleefa sued to prevent the Committee from illegal interference and to reverse the order respecting the will. *Held* that such a suit was not maintainable and that no legal cause of suit appeared. HISAM OOD DEEN KHAN v KHALEEFA UNWAR OOLLAH 2 N W 400

5 ——— **Alienation of wakf property—Suit to set aside such alienation**—*Mahomedan Law—Wakf—Mutawali—Civil Procedure Code (Act XIV of 1882) s 539* Plaintiffs sued to recover possession of certain lands alleging that they had been granted in wakf to their ancestor and his lineal descendants to defray the expenses for

RIGHT OF SUIT—contd

22 ENDOWMENTS SUITS RELATING TO—*concld*

or connected with the services of a certain mosque that their father (defendant No 3) and cousins (defendants Nos 4 and 5) who were mutwalis in charge of the said property had illegally alienated some of these lands and had also ceased to render any service to the mosque whereupon they (the plaintiffs) had been acting as mutwalis in their stead. They therefore claimed to be entitled as such to the management and enjoyment of the lands in dispute It was contended (*inter alia*) that the plaintiffs could not sue in the lifetime of their father (defendant No 3) he not having transferred his rights to them. *Held* that the plaintiffs were entitled to sue to have the alienation made by their father and cousins set aside and the wakf property restored to the service of the mosque They were not merely beneficiaries but members of the family of the mutwalis and were the persons on whom, on the death of the existing mutwali the office of mutwali would fall by descent if indeed it had not already fallen upon them as alleged in the plaint by abandonment and resignation. Wakf property cannot be alienated and any person interested in the endowment can sue to have alienations set aside and the property restored to the trust *Per* RANADE J—As a suit for posse sion the suit was defective in form and could not be maintained. It was a suit for partition of a moiety of the land and the owner of the other moiety was not a party The suit was however really a suit for a declaration that the lands were the inam property of the mosque and as such was not liable to alienation for the private debts of defendants Nos. 3 4 and 5 The plaintiffs were entitled to sue for such a declaration although they could not obtain actual possession. They were beneficiaries and had a right to sue under s 42 of the Specific Relief Act (I of 1877) When a suit is brought to set aside an alienation made to a stranger such a suit by the worshipper at a mosque or temple can be maintained and does not fall within s 539 of the Civil Procedure Code (Act XIV of 1882) That section is only applicable where there is an alleged breach of trust created for a public charitable or religious purpo e and the direction of the Court is nece sary for the administration of the trust As against strangers s. 539 does not apply HASSAN *v* SAGUN BALKRISHNA

I L R 24 Bom. 170

23 ENHANCEMENT NOTICE OF

———— **Suit to set aside notice of enhancement**—*Act X of 1859 ss 13 and 14* Where notice of enhancement of rent has been served under s. 13 Act X of 1859 upon a raiyat who has no right of occupancy and whose rent has not been fixed by agreement with his landlord such raiyat cannot maintain a suit to set aside the notice of enhancement His remedy in case the rent is excessive is under s. 14. MOHEEM *v* RAHEEMOOLLAH Marsh 341 2 Hay 433

RIGHT OF SUIT—contd

24. EXECUTION OF DECREE.

1. ———— **Suit after adverse order in execution**—*Civil Procedure Code 1877 s 283* S. 283 of Act X of 1877 enables a party against whom an order has been made in execution proceedings to bring a suit to establish his rights, whatever they may be but it says nothing as to the nature of the suit or the Court in which it is to be brought Whether the party is to sue in the Civil Court or in the Small Cause Court depends entirely upon the nature of the claim and the right which is sought to be enforced. A person whose goods are illegally sold under an execution does not lose his right to them though he may have claimed them unsuccessfully in the execution proceedings. He may follow them into the hands of the purchaser or of any other person and may sue for them or their value without reference to anything which has taken place in the execution proceedings. SHIBOO NARAIN SINGH *v* MUDDEN ALLY NATABAR NANDI *v* KALI DASS PALI

I. L. R. 7 Calc 608 9 C L R. 8

2 ———— *Order striking off objection to attachment—Suit for damages for wrongful attachment—Suit to establish right—Civil Procedure Code 1877 s 283* An order striking off an objection to the attachment of property attached in execution of a decree for default of prosecution [illegible] which the [illegible] claiming it as his own and his objection was struck off for default of prosecution that such person might sue for damages for the wrongful attachment of such property without suing to establish the right which he claimed thereto KALLU MAL *v* BROWN

I. L. R. 3 All 504

3 ———— *Objection to attachment by judgment-debtor on behalf of others—Order against decree holder—Civil Procedure Code (Act XIV of 1882) ss 244 278 279 280 281 282 283* Where a judgment debtor claims property which is the subject matter of attachment either on his own account as his own property under whatever right or as the representative of third parties, in which capacity he has been sued the question between him and the attaching creditor is properly one between the parties to the suit under s. 244 of the Code of Civil Procedure But where the judgment debtor raises the claim or objection on behalf of third parties who are not represented before the Court the order passed thereon must be regarded as an order under s. 280 of the Code and the only mode in which that order can be contested is in a regular suit as provided by s. 283 In execution of a decree against a judgment debtor in his private capacity the judgment creditor attached certain property Thereupon the judgment-debtor objected that the property attached had been dedicated by him some time previously as wakf under a registered wakfnamah and that he was only in possession as

RIGHT OF SUIT—*contd.*

24. EXECUTION OF DECREE—*contd*

mutwali under the deed. The lower Court found that the document created a valid wakf and allowed

the judgment creditor it was contended that the order was one under s. 244 and was thus appealable *Held* that the order was one under s. 280 and that no appeal lay the remedy of the judgment creditor being by way of regular suit as provided by s 283 ROOP LALL DASS *v* BEKANI MEAH MOHINEE MOHUN POY *v* BEKANI MEAH

I L R 15 Calc 437

See RAMANATHAN CHETTIAR *v* LEVVAI MARAKAYAR I L R 23 Mad. 195

4 ———————— *Civil Procedure Code (Act XIV of 1882) ss 280 283—Judgment debtor suit by to establish title to property the subject matter of claim in execution proceedings* A judg

matter of a claim in execution proceedings and in respect of which an order has been made under s 280 of the Code KEDAR NATH CHATTERJI *v* PARKHAI DASS CHATTERJI I. L. R. 15 Calc 674

5 ———————— *Money-decree against mortgagor—Sale of equity of redemption by mortgagor—Mortgaged land attached and sold in*

T obtained a money decree against *B* On 9th March 1872 the defendants bought from *B* his equity of redemption In July 1872 *M* and *T* attached the land in execution of their decree The defendants objected to the attachment under s. 246 of the Civil Procedure Code (Act VIII of 1859) but on investigation of their claim an order was made disallowing their claim on the 23rd December 1872 In June 1873 the defendants paid off the mortgage debt and were put into possession by the mortgagee In October 1873 *M* and *T* put up the land for sale in execution of their decree and the plaintiff became

RIGHT OF SUIT—*contd*

24 EXECUTION OF DECREE—*contd*

Codes of 1877 and 1882 an order has been passed

such suit within the prescribed time he is precluded from asserting his title against the auction purchaser whether as plaintiff or defendant In the present case an order had been passed against the defendant under s 246 of the Civil Procedure Code 1859 on the 23rd December 1872 and as they had brought no suit within a year from that date they could not now contest the plaintiff's title to the property The defendants however having since date of the said order paid off the mortgage —*Held* that it would be contrary to justice equity and good conscience for the Court to assist the plaintiff in obtaining possession unless he paid the defendants the amount paid by them to the mortgagee to free the property from the incumbrance NILO PANDURANG *v* RAMA PATLOJI I L R 9 Bom 35

Distinguished in JOY PROKASH SINGH *v* ABHAY KUMAR CHUND 1 C W N 701

6 ———————— *Decree against father—Family property attached—Objection by sons—Release of sons shares—Suit to contest order of release—Cause of action.* Certain land the property of an undivided Hindu family having been attached in execution of a decree against the father upon a bond whereby the said land was hypothecated to secure the repayment of the debt the sons intervened objecting to the attachment of their shares in the said land and their shares were released from attachment The decree holder then sued the sons to have it declared that their shares were liable to be sold in execution of the decree against the father *Held* overruling *Chockalinga* v *Subbaraya I L R 5 Mad 133* that the suit was maintainable RAMAKRISHNA *v* NAMASIVAYA

I L R 7 Mad. 295

7 ———————— *Civil Procedure Code (Act XIV of 1882) 283—Hindu law Alienation—Mitakshara—Mortgage by father—Liability of sons not made parties* The *L* Bank advanced money to *C* a Hindu governed by the Mitakshara school of law upon mortgage of ancestral property *S* who has stated to be *C's* only son joined in the mortgage. Subsequently the Bank obtained a decree against *C* and *S* for the amount due on the mortgage On attempting to sell the mortgaged property other sons of *C* objected. This objection

unreported distinguished. SITANATH KOER *v* LAND MORTGAGE BANK OF INDIA

I. L. R. 9 Calc. 888 12 C L R. 574

RIGHT OF SUIT—*contd*

24 EXECUTION OF DECREE—*contd*

8 ——— **Execution of decree suit for wrong done in**—*Suit for wrong done under colour of decree* The execution of an imperfect decree does not involve the doing of a wrong unless the decree is wrongly interpreted An action will lie in the Civil Court where a wrong is committed under colour of a decree of another Court DALMIAH *v* RADHA PERSHAD SINGH 19 W R 188

9 ——— **Suit to remove obstruction to execution of decree** A suit may be brought for the removal of an obstruction to the execution of a decree TAKHUROODDEEN MAHOMED ESHAN CHOWDHURY *v* KURIMBUX CHOWDHURY 3 W R 20

10 ——— **Suit to stay execution of decree**—*Suit to stay execution against certain property until judgment creditor had proceeded against other property*—*Res judicata*—*Suit for land*—*Jurisdiction*—*Letters Patent cl 12* One *K C* was entitled to a share in pergunnah Alumpore Before he obtained possession Government revenue on the whole estate fell due *K C* failed to pay his share and his co sharer *K* to save the estate mortgaged her share of the estate to one *H B* and with the amount so borrowed paid the whole sum due and subsequently sued *K C* for the amount eventually obtaining a decree Subsequently this decree became vested in one *R* and the pergunnah Alumpore came into the possession of one *K G* who in 1874 took an assignment of the mortgage executed by *K* in favour of *H B* The plaintiffs also alleged that since the execution proceedings had commenced they had discovered a secret arrangement made in 1877 between *K G R* and *H B* by which it was agreed that *R* should not execute the decree against Alumpore but would release *K G* from all liability in respect of the charge on that property and in consideration *K G* executed a patni lease to *H B* of a portion of Alumpore at a small rent *R* obtained an order for execution against the property of *K C* and having transferred his decree to the High Court proceeded to enforce the decree against the plaintiff the widow of *K C* and her son by attaching the family dwelling house in Calcutta The widow and son then brought this suit against *K G R* and *H B* to have the share of *K C* in Alumpore ascertained and praying for a decree

only be decided in execution proceedings that the mere existence of the agreement between *K G R* and *H B* did not entitle the plaintiff to join them as co-defendants in the suit and that as far as *K G* was concerned the suit brought against him could

11 ——— **Execution against a person not the legal representative**—*Deceased judgment debtor* The defendants along with *A* and

On the 12th June 1883 A died On the 30th April 1884 the defendants again applied to the Court at Peshawar treating their judgment-debtor as being *then alive for a fresh certificate to execute their* decree in the Moradabad district and obtained On the 20th of August 1885 they made an application to the *District Judge of Moradabad for execution* of their decree and in it it was stated that the application was for execution against *A* and after his death against *A L* the own *brother and D K* widow and *L P* and others sons of *A* residents of Kundarki and the said *A L* at present residing at

It was is dead of his

and his heirs are living and in possession of his estate and *A L* himself has realized R9 63 4 9 due to the deceased judgment debtor from the Commissariat and appropriated the

money belonging ... *liable to the extent of the sum so* ... *by him* The Subordinate Judge holding that *A L* was the brother of the deceased and had realized the amount from the Commissariat Office which he failed to prove that he paid to the deceased, ordered execution to proceed against him *A L* then instituted this suit to set aside the order of the Subordinate Judge It was contended first that the suit was in effect a suit under s of the Code of Civil Procedure and therefore barred as not having been brought within a year

RIGHT OF SUIT—contd

24 EXECUTION OF DECREE—contd

from the order of the Subordinate Judge and secondly that the proceedings of the Subordinate Judge were held under s 244 of the Code and therefore no separate suit would lie *Held* that the first contention must fail inasmuch as an essential condition precedent to a suit under s 283 of the Code is the making of an attachment of some property of objection being taken to such attachment of investigation being made into such objection and lastly of its being allowed or disallowed and the e did not exist in this ca The second contention al o must fail as the Subordinate Judge never treated the proceedings in execution against A I upon the footing that he was the legal representative of the deceased judgment debtor *Mahom I Aga Ali Khan* v *Bohoulaund I L R 3 I A 241* *Nadir Hosain* v *B pin Chund Ba sarat 3 C L R 436* were referred to ANGAN LAL v GUDAR MAL I L R 10 All 479

25 FERRY SUIT RELATING TO

——— **Suit to prevent establishment of ferry**—*Infringement of ferry rights—Right to restrain person starting a second ferry* A the owner of a ferry granted him under a Government settlement brought a suit to restrain B from running another ferry over the same spot where A s ferry plied for hire It appeared on the evidence that B levied no tolls on his ferry but it was not shown that it was used only for the conveyance of his own servants and raiyats *Held* that such suit was maintainable LUCHMESSUR SINGH v LEELANUND SINGH

I L R 4 Calc 599 3 C L R 427

26 FRAUD

1. ——— **Suit to set aside decree and sale in execution on the ground of fraud**—*Decree obtained by fraud—Civil Procedure Code 1882 s 108 and 44* A suit will lie to set aside a decree and a sale held in execution of such decree when both the sale and the decree are impeached on the ground of fraud *Mohendro Narain Chaturaj* v *Gopal Mundul I L R 17 Calc 769* and *Jagan Nath Gorai* v *Watson I L R 19 Calc 341* distinguished ABDUL MAJUMDAR v MAHOMED GAZI CHOWDHRY I L R 21 Calc 605

See BHUBAN MOHAN RAI v NUNDO LAL DEY I L R 26 Calc 324

and MOTI LAL CHAKRABUTTY v RUSSICK CHANDRA BAIRAGI I L R 28 Calc 326 note

Also PROSONNO KUMAR SANYAL v KALI DASS SANYAL I L R 19 Calc 683 L R 19 I A 166

2 ——— **Suit to set aside ex parte decree and sale in execution thereof on the ground of fraud**—*Res judicata—Effect of not appealing against an appealable order—*

RIGHT OF SUIT—contd

26 FRAUD—contd

Civil Procedure Code 1882 ss 13 108 244 and 311 The plaintiff having applied unsuccessfully under ss 108 and 311 of the Civil Procedure Code to set aside an *ex parte* decree against him and the sale of his property in execution thereof on the ground of fraud and without preferring an appeal against the order rejecting his application under s 108 of the Code instituted this suit praying for the same relief The Subordinate Judge dismissed the suit as not maintainable *Held* that such a suit was maintainable and that ss 13 and 244 of the Civil Procedure Code were no bar thereto The fact that his application under s 108 was unsuccessful and that he did not appeal against the order rejecting that application did not disentitle him from prosecuting his remedy by suit on the ground of fraud *Abdul Majumdar* v *Mohomed Gazi Choudhry I L R 21 Calc 605* approved *Held* also that when there is an appeal against a decision the effect of not appealing is that the decision holds good for what it is worth so far as concerns any other modes of relief available the person not appealing is in no worse position than if he had appealed and failed *Raj Kishen Mookerjee* v *Modhoo Soodun Mundle 17 W R 413* distinguished IRAN NATH ROY v MOHESH CHANDRA MOITRA

I L R 24 Calc 546

3 ——— **Suit in Recorder s Court to set aside for fraud decree obtained in Small Cause Court**—*Perjury* Where a decree has been obtained by a fraud practised on another by which that other has been prevented from placing his case before the tribunal which was called upon to adjudicate upon it in the way most to his advantage the decree is not binding upon him and may be set aside in a separate suit and not only by an application made in the suit in which the decree was passed to the Court by which it was passed But it is not the law that because a person against whom a decree has been passed alleges that it is wrong and that it was obtained by perjury committed by or at the instance of the other side (which is fraud of the worst description) that he can obtain a rehearing of the questions in dispute in a fresh suit by merely changing the form in which he places it before the Court and alleging in his plaint that the first decree was obtained by the perjury of the person in whose favour it was given In this case a suit brought in the Court of the Recorder of Rangoon to set aside a decree of the Court of Small Causes at Rangoon on the ground that it had been obtained by fraud was held under the circumstances of the case to be not maintainable MAHOMED GOLAB v MAHOMED SULLIMAN I L R 21 Calc 612

4 ——— **Suit to set aside a sale on the ground of fraud challenging the decree** [illegible] **summons**—*Sale in execution of ex parte decree—Civil Procedure Code (Act XIV of 1882) ss 108 and 244* An *ex parte* decree for rent was obtained

RIGHT OF SUIT—*contd*

26 FRAUD—*contd*

aside on the ground of non service of summons and the original suit was restored but that was dismissed for default as the then plaintiff did not proceed with it An application was then made by *A* to set aside the sale on the ground of fraud which was rejected because the auction purchaser was not made a party to the proceedings *A* then brought a suit for declaration of title to a portion of the land sold and for confirmation of possession challenging not only the sale but also the decree on the ground of fraud The defence

no decree to be actually set aside the plaintiff was entitled to show that the decree under which the sale ...
him
Abdu
I L
Chan
RAM NARAIN TEWARI *v* SHEW BHUNJAN ROY
I L R 27 Calc 197

5 ———— Suit to set aside ex parte decree—*Sale in execution of ex parte decree—Rejection of applications to set aside decree and sale in execution—Civil Procedure Code (Act XIV of 1882) ss 13 108 311—Subsequent suit to set aside decree and sale on ground of fraud—Omission to appeal from orders of rejection* In a suit to set aside an *ex parte* decree and a sale in execution of such decree as illegal fraudulent and collusive the allegations made in the plaint were clearly an attack not on the regularity or sufficiency of the service of summons or the proceedings but on the whole suit in which the *ex parte* decree was obtained as being a fraud from beginning to end *Held* that the suit was maintainable notwithstanding that the plaintiff had been unsuccessful in applications under s 108 and s 311 respectively of the Civil Procedure Code to set aside the *ex parte* decree and the sale in execution and had not appealed from the orders rejecting such applications the questions in the suit as a whole being such as could not have been determined on applications under those sections KHAGENDRA NATH MAHATA *v* PRAN NATH ROY (1902) I L R 29 Calc 395
s c 6 C W N 473
L R. 29 I A 99

6 ———— Power of High Court O O C J to try suit for setting aside decree of another Court—*Decree obtained by fraud setting aside of—Jurisdiction cause of action—Letters Patent High Courts 1865 cl 12—Civil Procedure Code (XIV of 1882) ss 11 17 44—Evidence Act (I of 1872) s 44* The Original Side of the High Court under cl 12 Letters Patent has jurisdiction to entertain a suit to set aside on the ground of fraud

RIGHT OF SUIT—*contd*

26 FRAUD—*concld*

a decree passed by any other Court of concurrent jurisdiction where the cause of action has arisen either wholly or in case the leave of the Court has been first obtained in part within the local limits of its Ordinary Original Civil jurisdiction *Allen v Macpherson 1 H L Cas 191* referred to The Original Side of the High Court is a Court within the meaning of s 11 of the Civil Procedure Code and there is no enactment barring its jurisdiction to entertain a suit to set aside on the ground of fraud a decree passed by another Court of concurrent jurisdiction if the suit complies with the provisions of s 17 of the Civil Procedure Code *Queen v Saddler s Co 10 H L Cas 404* and *Pajib Panda v Lakhan Singh Mahapatra 3 C W N 660* referred to Where a beneficiary brought an administration suit which sought incidentally to set aside certain leases which the executors

not a suit for land and that the Original Side of the High Court had jurisdiction to try it and further the defect if any would be cured if leave of the Court was previously obtained *Prosunno moyee Dassi v Kadambini Dassi 3 B L R O J 85* followed NUNDA LAL BOSE *v* NISTARINI DASSEE (1902) 7 C W N 353

27 FRESH SUITS

1 ———— Suit after dismissal of suit instituted in incompetent Court—*Act XXII of 1872 effect of—Decrees made before Act came into operation* No provision of Act XXII of 1872 sets aside decrees passed by Appellate Courts before the date on which it came into operation or restores decrees of the Court of first instance which had been annulled by the Appellate Court nor is there any provision which debars a plaintiff whose suit has

KUDHAIRA

2 ———— Suit for possession after failure to obtain it in execution—*Auction purchaser suit by for possession—Execution proceedings—Possession application for by auction purchaser—Civil Procedure Code (Act XIV of 1882) s 318* A suit by an auction purchaser to obtain possession of land the subject matter of his purchase will lie when it is shown that an attempt ...ution pro ...n unsuc ... *v Ishan* ... was not ...es would ... s provid ... op n to ... ts that ... ISWAR
section rather than to bring a fresh suit
PERSHAD GURGO *v* JAI NARAIN GIRI
I L R 12 Calc 169

RIGHT OF SUIT—*contd*

27 FRESH SUITS—*contd*

3 ——————— *Suit to obtain possession of land sold in execution of a decree—Possession application for by auction-purchaser—Execution proceedings—Subsequent suit for possession of land sold in execution of decree* In execution of a decree certain land belonging to the judgment debtor was sold subsequently the auction purchaser who had not got possession resold the land to a third party and give him the certificate The latter then applied to the Court to be put into possession but having failed in those proceedings owing to some irregularity in the description of the boundaries of the property he instituted

[illegible]

was maintainable SEPU MOHUN BANIA v BHAGOBAN DIN PANDEY I L R 9 Calc 602

4 ——————— *Obstruction to execution of decree—Merger of cause of action—Civil Procedure Code 1882 s 328* S A R and S B were members of an undivided Hindu family *S B* died leaving him surviving several sons Subsequently S P and *M* the eldest son of *S B* mortgaged the family house to the plaintiff In 1877 the plaintiff brought a suit on the mortgage against *S R* and *M* and obtained a decree for possession of the house until payment of the mortgage debt In execution of this decree he was obstructed by the widow and *B* and *L* other sons of *S B* but the Court on 14th January 1879 overruled their objections and directed possession to be given to the plaintiff On 28th January 1879 the plaintiff complained that he was prevented from obtaining possession of one of the rooms in the house *B* appeared and admitted that he had

[illegible]

iff s application was dismissed In 1882 the plaintiff brought a suit against *B* in which he prayed for a decree giving him possession of the room on the terms of the decree in 1877 By the defendant it was (*inter alia*) contended that the previous suit on the mortgage had exhausted the plaintiff s cause of action and that the plaintiff had no further right against the defendant *Held* that the decree in the former suit could not affect the defendant as he was not a party to it nor was he represented If he had been represented he could not have resisted the execution of the decree Not having been represented he could on principle be exempted from liability in the present suit only if the cause of action was merged in the judgment against his uncles and brother Here however there was no such merger The previous decree had awarded possession of the whole house to the plaintiff The existence of that decree could not be a reason for not awarding part of the same house when detained by the defendant He avowed himself a stranger to the defendants against whom the previous decree was obtained and his act might be regarded as constituting a separate cause of action *Held* also that s. 328 of the Civil Procedure Code 1882 does not make it obligatory on a decree holder who is obstructed in execution of the decree to pursue his remedy under that section Accordingly the omission of the plaintiff to avail himself of the remedy under that section did not prevent him from proceeding against the defendants by a regular suit BALVANT SANTARAM v BABAJI LIN SAMBHAPA

I L R 8 Bom 602

5 ——————— *Civil Procedure Code ss 318 335—Suit to recover possession of property sold in execution of decree* *S* attached certain land and a house in execution of a decree against *R* *M* put in a claim under s 278 of the Code of Civil Procedure alleging that he was in possession as purchaser from *R* The claim was rejected No suit was brought by *M* to contest this order *S* purchased the said land and house in execution and obtained a sale certificate In 1884 *S* sued *M* to recover possession of the land and house alleging that in execution proceedings in 1882 he had been put into possession of the land but not of the house which was found locked up by the Court amin and that *M* prevented him from enjoying both the land and house *M* pleaded that *S* had never been put into possession and again set up his title as purchaser from *R* and possession under such title The Munsif found that *S* had been put into formal or constructive possession of the land but not of the house and decreed the claim On appeal the District Judge held that *S* was bound to proceed according to the provisions of s 335 of the Code [illegible] and could [illegible] hether there [illegible] nt was not [illegible]

I L R. 10 Mad 53

28 GOVERNMENT SCHOOL SUIT FOR BENEFIT OF

——————— **Suit by secretary and manager of Government aided school**—*Improvement damages for removal of* In a suit by the secretary and manager of a Government aided school for damages against the owner of the school [illegible]

[illegible]

compensation for the improvements made by him

RIGHT OF SUIT—*contd*

28 GOVERNMENT SCHOOL SUIT FOP BENEFIT OF—*concld*

to the building and that there was no presumption of gift in the case SREEHURY ROY *v* HILLS
6 W R Civ Ref 21

29 IDOLS SUITS CONCERNING

1 ——— Suit to establish right to deal with Hindu idols—*Property—Juris diction of Civil Court* Hindu idols being property the right to deal with such property is a right cognizable by Civil Courts SUBBARAYA GURUKAL *v* CHELLAPPA MUDALI I L R 4 Mad 315

2 ——— Suit for damages on account of omission to offer food to idol—*Cause of*

holder of an inam allowance granted in considera tion of his daily offering to the idol some rice and cake and burning a lamp and that he had omitted to make such offering for one year The plaintiff

by some person claiming to have a right to insist that the worship of the idol should be properly performed DHADPHALE *v* GURAV
I L R 6 Bom 122

3 ——— Suit to establish right to remove idol for turn of worship When a plaintiff and defendant are jointly entitled to the profits from an idol in the defendant s temple and the plaintiff is obstructed by the defendant in the use and worship of the idol a suit will lie for a de claration that the plaintiff is entitled to have the idol removed to his own house during the period he is entitled to the profits of it DWARKANATH ROY *v* JANNOBEE CHOWDHRAIN 4 W R 79

30 INCOME TAX

——— Suit for refund of income tax—*Income Tax Act (XXXII of 1860) s 137* A person seeking a refund of income tax illegally assessed upon him may under s 137 Act XXXII of 1860 apply to the Commissioner *i e* it is lawful for him so to apply but there is no law that he must do so He may legally sue in a Civil Court to recover the illegal assessment COLLECTOR OF FURREEDPORE *v* GOROO DOSS ROY 11 W R 425

31 INJURIES BY REPRESENTATIVES OF DECEASED

1 ——— Suit for damages for de struction of life—*Son adopted by widow after death of deceased right of to sue—Damages* A son adopted by the widow of a deceased Hindu (in respect of whose estate no probate letters of

RIGHT OF SUIT—*contd*

31 INJURIES BY REPRESENTATIVES OF DECEASED—*concld*

administration or certificate of heirship has been granted) is the legal representative of the deceased, and as such was entitled to maintain a suit under Act XIII of 1855 for the benefit of the persons if any entitled to compensation for the injury occa sioned to them by the death of the deceased against those whose negligence caused that death Such an adopted son was not however entitled to have any portion of the damages awarded in the suit ... child of the deceased *Quære*

RAILWAY COMPANY

2 ——— Suit for wrong done by deceased person—*Act XII of 1855—Defama tion* A suit was maintainable under Act XII of 1855 against personal representatives for a wrong done by the deceased within a year of his death although such wrong be of a purely personal character—as for example defamation GOKUL CHUNDER *v* BUREEK BEGAM
Marsh 344 2 Hay 325

3 ——— *Act XII of 1855—Survival of cause of action* Act XII of 1855 did not apply to wrongs which do not survive to the representatives of a deceased person A widow who is the heir of her deceased husband is liable to make good the wrong committed by the husband The plaintiff s right of suit does not abate by the death of the husband but survives against his heir CHUNDER MONEE DASSEE *v* SANTO MONEE DASSEE 1 W R 251

4 ——— Suit against representa tive of agent of Official Assignee—*Act XII of 1855—Suit for money and for delivery of bonds and papers* Act XII of 1855 applied to suits for wrongs which according to the law then in force did not survive to or against executors or adminis trators A suit for recovery of moneys due by an agent of the Official Assignee of an insolvent debtor s estate and for delivery of certain papers and documents belonging to such insolvent estate will lie against the legal representative of such agent after his deceased and the right of action will not expire on his death NUJUF ALI *v* PITTERSON 2 N W 103

32 INJURY TO ENJOYMENT OF PROPERTY

1 ——— Suit for removal of trees—*Contingent damage—Cause of action* The plaint iff claimed removal of certain trees planted by the defendant on his own land on the ground that the trees had been planted so near his land that when they grew up they would injure his crops *Held* that until the plaintiff's enjoyment of his own land was directly and immediately inter fered with by the growth of the defendant's trees he had no right to ask for their removal and he

RIGHT OF SUIT—*contd*

32 INJURY TO ENJOYMENT OF PROPERTY—*contd*

had therefore no cause of action PAM LALL v DALGANJAN I L R 5 All 369

2 ——— **Burial ground**—*Land belonging in common to all the Mahomedan inhabitants of a village—Encroachment by some of the Mahomedans—Right of suit of some members of a community* Where certain Mahomedans of a

village for the purpose of a burial ground —*Held* that the defendants having erected the wall in dispute so as to exclude the plaintiffs from a part of the common land there was a violation of the plaintiff s right and that therefore the plaintiffs were entitled to bring the suit for the removal of the wall TAJUDIN v PANDU
I L R 18 Bom 699

3 ——— **Mortgage of two portions of a house with a common party wall to two separate mortgagees**—*Interference with common wall by one of the mortgagees—Transfer of Property Act (IV of 1882) s 76* The owner of a hou e having built up a door which gave communication between one half of the house and the other mortgaged each half separately to separate mortgagees One of such mortgagees re opened the door communicating with the other mortgagee s portion of the house *Held* that a good action would lie on behalf of the other mortgagee against the mortgagee who had opened the door to compel him to close it LACHMI NARAIN v JETHU MAL
I L R 16 All 386

4 ——— **Effect of an embankment erected by a superior riparian owner on the cultivation of lands lower down the stream**—*Cause of action* The defendants being owners of land on the banks of a jungle stream raised embankments which prevented their lands from being flooded but caused the stream to over flow the land of the plaintiff situated lower down the stream In an action by the plaintiff against the defendants for damages it appeared that it was no reasonably practicable for the defendants to defend their lands from inundation by any means other than those adopted which would not have caused damage to the plaintiff *Held* that no actionable wrong had been committed by the defendants and that the suit was consequently not maintainable GOPAL REDDI v CHENNA REDDI
I L R 18 Mad 158

5 ——— **Right to access of light and air**—*Suit by person who had not obtained an easement by prescription—Easement—Trespass* The owner of a house the light coming to which is obstructed by an erection made upon adjoining land by a person who *quâ* such adjoining land is a trespasser may possibly have an action against the person causing obstruction even though he has

RIGHT OF SUIT—*contd*

32 INJURY TO ENJOYMENT OF PROPERTY—*concld*

has acquired an easement *Jeffries* v *Williams* 20 *L J Ex 14* and *Jootoor Achanna* v *Vanamala* v *Venkamma 5 Mad L J 25* distinguished DRU MAN KHAN v MUHAMMAD KHAN
I L R 19 All 153

6 ——— **Tenants in common rights of against each other**—*Trespass—Exclusion from common property* Laying a drain in land and the incidental temporary interference with the soil necessary for that purpose cannot be regarded as an ouster or destruction or an act of waste and will not entitle a tenant in common of the land to maintain an action against another tenant in common MOHENCHAND NEMCHAND GUJAR v ISAF BHAI TANAJI (1900) I L R 25 Bom 248

33 INSOLVENCY

——— **Right of insolvent or his assignee to sue**—*After acquired property—Official Assignee—Parties* One *R* became possessed of certain propertie in 1872 and 1881 In 1866 *R* had presented a petition in insolvency and a vesting order had been duly made No final order of discharge was ever made and *R* died in 1883 The plaintiffs sued as the heirs of *R* for their share in

could maintain the action *Held* also that the

34 INSTIGATING PROCEEDINGS SUIT FOR

——— **Suit against party for instigating proceedings in false name**—*Form of suit* The plaintiffs sued for the reversal of a summary award and for restitution of the money they had paid under it alleging that the proceedings before the Collector had been promoted entirely by the defendant using the false name of *B* a person never in existence and obtained a decree in the lower

RIGHT OF SUIT—*contd*

34 INSTIGATING PROCEEDINGS SUIT FOR —*contd*

defendant for damages yet this being a mere matter of form the Court refused to interfere with the decision of the Courts below KHELARAM DOSS MISTREE v DHUPEE DOSS 1 Hay 4

35 INTEREST SUITS FOR

1 ——— **Suit for interest on money deposited under decree afterwards reversed** A suit will not lie for interest in respect of money deposited under a decree subsequently reversed on appeal ASHRUFFUNNISSA BEGUM v KHANUM JAUN 6 W R 285

2 ——— **Suit for interest on money for period defendant obstructed the plaintiff in his attempts to obtain it** Plaintiffs in execution of a decree against A attached certain money deposited in the Collectorate to which A was entitled but were opposed by B alleging that A s rights in the money had been transferred to him The plaintiffs finally succeeded in obtaining the money and then sued B for intere t upon it during the time he prevented them from obtaining it *Held* that the suit was maintainable and the plaintiff was entitled to recover PARBUTTY CHURN SOOR v PROMOTHONATH GHOSE W R 1864 174

36 INTEREST TO SUPPORT RIGHT

1 ——— **Party without right or interest in subject matter of suit** A party must show due right or interest in the subject matter of the suit to entitle him to complain of any acts injurious thereto and a mere stranger without interest cannot maintain any suit CHUNDUN v TALIB ALI 2 N W 41

BHEKDHAREE SINGH v KISHAN PERSHAD SINGH 15 W R 106

2 ——— **Want of interest in suit—** [illegible]

intere t in the suit that being a question which can more properly be raised in the suit or appeal itself *In the matter of the peti ion of* KHODEJOONISSA 7 W R 486

3 ——— **Right to expose fraud in Court**—*Evasion of order for guardians of minor to account* Where a gross fraud is being practised on a Court with the object of evading an order which the Court has made directing a minor s guardians to account any person who appears before the Court and exposes the fraud undertaking also to prove it has a *locus standi* in Court and has a right to be heard HOSSEIN ALI KHAN v BURKUT ALI 10 W R 372

4 ——— **Suit on covenant by purchaser** *Held* that the plaintiff had no right to

RIGHT OF SUIT—*contd*

36 INTEREST TO SUPPORT RIGHT—*contd*

sue for the enforcement of the promise made in favour of the person from whom she bought who did not convey to her the right to sue upon or otherwise enforce it KISHORE v JEI KISHORE DASS 3 Agra 48

5 ——— **Suit by male members of family**—*Insult to women* *Held* that male members of a family cannot sue for the injury or insult which they have sustained indirectly in consequence of ill treatment of certain female members of the family and that if there was any remedy by suit for such grievance or dishonour it was open to the women themselves and not to the plaintiffs ODDAI v BHOWANEE PERSHAD 1 Agra 264

6 ——— **Suit to have trust fund paid into Court**—*Suit quia timet—Want of title or interest in plaintiff* A suit the sole object of which [illegible]

of a fund for the relief of poor Armenian [illegible] had no interest except as a member of the Armenian [illegible] such title to part [illegible] *Held* also [illegible] trustees of [illegible] plaintiff would [illegible] To support a [illegible] a title in possession or expectancy and the property must be in danger SATOOR v SATOOR 2 Mad. 8

7 ——— **Interest sufficient to maintain suit**—*Suit by representative of testator to enforce charitable or religious trusts under will—Plaint allegations in* The representatives of a testator are entitled to sue for the enforcement of the due per [illegible] religious and [illegible]

state of circumstances which it prove[illegible] tute a distinct breach of trust BROJOMOHUN DOSS v HURRO LOLL DOSS 6 C L R 58

8 ——— *Suit by wife in absence of husband for his share of property under partition deed* Plaintiff brought a suit to procure delivery to her of a share of land purchased with money subject to the provisions of a deed of partition executed by her husband and the undivided members of his family Plaintiff s husband had [illegible] country *Held* [illegible] absent [illegible] for his [illegible] 365

9 ——— **Interest as Collector of revenue of Government**—*Suit for accretion* A chur B formed by gradual accretion to an estate (mouzah B) was resumed by Government who successively made temporary settlements for it with the patnidar of mouzah B and finally with the

RIGHT OF SUIT—*contd*

36. INTEREST TO SUPPORT RIGHT—*contd*

zamindar While the second settlement was in force another chur formed and a dispute arose be tween the patnidar of B and the patnidar of an ad joining mouzah D as to its ownership Three suits were brought by the latter claiming the second chur as an accretion to his estate in all which suits he was successful and in one of which Government was a party Government then sued to set aside the decrees in the two suits in which it was not a party and for po ses ion of the land in dispute and it was found in that suit that the land was continuous to chur B and not to mouzah D *Held* that Government having a right to revenue but not to actual posses ion could have no *locus standi* as plaintiff in such a suit MOOKTAKESHEE DEBEA v COLLECTOR OF BURDWAN 12 W R 204

10 ———— Interest of lambardar—*Suit for sums paid as nu erana before resumption* A certain sum was paid to Government as nuzzer anna during the existence of the maafi grant through a lambardar After the maafi was resumed and a Government jumma as essed upon it the nuzzerana continued to be paid until the intere t of

ment revenue paid by him *Held* that by such arrangement the Government did in effect convey to him (lambardar) as *trustee on behalf of Govern* ment such an intere t in the estate as would enable him to sue and enforce such claim ZAHOOR HOSSEIN v ASSUD ALI 2 Agra Pt II 178

11. ———— Interest under decree—*Suit for balance due on decree—Decree for money* The appellant having obtained a decree for money

accounts and the determination of the value of the

L R 3 I A 241 26 W R 82

12 ———— Right of remote heir—*Ex istence of near heir* During the existence of a near heir a more distant heir cannot sue BISRAM SINGH *alias* BISHEN SINGH v INDURJEET KOONWAR 6 W R 2

13 ———— Suit by widow to set aside sale of reversioner s interest A suit by a widow to s t aside the sale of a judgment-debtor s interest as reversioner is not maintainable SHIB KOONWAR v SADHO SINGH 2 Agra 255

RIGHT OF SUIT—*contd*

36 INTEREST TO SUPPORT RIGHT—*contd*

14. ———— Suit by widow as represent ing husband—*Hindu widow where sons are alive —Disclaimer by sons* A Hindu widow cannot sue as representative of her husband when her sons are alive nor will a petition filed by the sons in a suit brought by her as such representative (in which petit on the sons state that she has always been in possession of the property and is entitled to sue) cure the defect in her title *Held* also by MACPHER SON J that in the absence of proof that the widow was the next reversioner after the sons even a disclaimer by the sons prior to the institution of the suit if it did not amount to an absolute assignment to the widow would not entitle her to sue RAM KANNYE GOSSAMI v MEERNOMOYEE DOSSEE 2 W R 49

JANNOBEE CHOWDHRAIN v DWARKANATH ROY CHOWDHRY 7 W R 455

15 ———— Enhancement of rent suit for—*Right of a Hindu widow to sue for enhancement of rent as representing the estate of the deceased zamindar or as guardian of a minor son adopted to him by her* A Hindu widow representing a zamindari interest in a mehal sued for the rent upon a rent paying tenure at an enhanced rate She had *in former years adopted a son to her deceased* husband The defendant objected throughout that this son (dec
in 1881 wh
was not en
that right
disallowed
evidence to show that the adopted son had attained majority when this suit was brought and the plaint iff could sue either in her character as widow of the deceased or as guardian of the minor adopted son SURJA KANT ACHARYA v HEMANTA KUMARI I L R 20 Calc 498 L R 20 I A 25

16 ———— Interest of Government after grant—*Suit to recover surplus land from neighbouring grantees of Government who have en croached* Where a certain quantity of land was granted by Government to several grantees subject to the condition of re umption if the land were al lowed to remain uncultivated for certain years and it is sub equently found that several grantees were not in po session of the land corre ponding in quan tity with that originally granted to them —*Held* that the right of suit to recover posses ion of such surplus land was vested in the other grantees and *not in the Government who had no remaining* interest in it except that of resumption. GOVERN MENT v RAM CHARUN MISR 2 Agra 74

17 ———— Suit on behalf of deceased lunatic s estate—*Manager appointed by Court of Wards—Parties* One L in December 1867 undertook by a security bond to be answerable to the Court of Wards for any default in the payment of rent which might be made by S in performing the stipulation of a certain lease made to S M described

RIGHT OF SUIT—*contd*

36. INTEREST TO SUPPORT RIGHT—*contd*

as manager under the Court of Wards of the estate of *B* a lunatic deceased and brought a suit on the bond against *S* and his brother *Held* that the defendants were not liable The suit was not properly framed. The suit should have been brought as to arrears accruing due during the lifetime of *B* by his personal representative and as to arrears accruing due after *B*'s death by the successor of *B* *M* not being in either position was not entitled to sue MAHOMED ABDUL HYE *v.* LUNJEET SINGH

13 B L R. Ap 14 22 W R. 200

18 ———— Suit by vendor to set aside mortgage and decree as fraudulent—*Specific Relief Act s 39—Sale of immoveable property—Covenant by vendor of good title—Suit and decree on a previous decree against purchaser—Vendor and purchaser* A vendor of land who had covenanted with his vendees that he had a good title and who after the sale had no interest remaining in the property brought a suit in which he claimed to set aside as fraudulent a mortgage on which the defendant had obtained a decree against the vendees, and the decree itself He based his right to maintain the suit upon his liability under his covenant. The vendees were not parties to the suit. *Held* that as the defendant's mortgage had merged in his decree the suit could only be maintained if the plaintiff could show himself entitled to have the defendant's decree set aside and that he had shown no interest which would entitle him to maintain a suit for such a purpose JHUNNA *v.* BENI RAM　　**I. L. R 9 All. 439**

19 ———— Suit by junior members of tarwad—*Fraud—Collusion between senior members and alienee* A suit was brought by the junior members of a tarwad which consisted of three stanoms and three tavaries against the karnavan and others to whom he had alienated some tarward property for a declaration that the alienations in question were invalid. *Held* that the plaintiffs, though junior members of the tarwad were competent to maintain the suit if there was collusion between the senior anandravans and the alienees and the stani for the time being *Anund Koer v Court of Wards L. R. 8 I A 22* considered. MAHOMED *v.* KRISHNAN

I. L. R. 11 Mad 108

20 ———————— *Malabar law—Suit of declaration of invalidity of kanom* The junior members of a Malabar tarwad brought a suit against their karnavan and senior anandravan and certain persons claiming under a kanom granted by the former for a declaration that the kanom was invalid and for possession of the land demised with mesne profits. The suit was filed nearly twelve years after the execution of the kanom. *Held* that the suit was maintainable by the plaintiffs. ANANTAN *v.* SANKARAN　　**I. L. R 14 Mad 101**

21. ———— Re admission to caste—*Contract to procure admission to caste—Contract made by head of a caste in representative capacity not enforceable by him after he has ceased to hold office.* The defendant was the eldest of three brothers whose mother on her marriage had been put out of the Lovana caste for having married a man belonging to a different caste. The defendant was anxious that he and his brothers should be re-admitted to the caste and in 1864 he entered into an agreement with the plaintiff who was at that time one of the setias of the caste whereby the latter agreed to procure the admission of the plaintiff and his brothers and get them married to girls belonging to the caste In consideration of these services the defendant was to pay the plaintiff the sum of R5 000 which sum was to become due on the marriage of the defendant's youngest brother to a girl of the caste and to be expended in purchasing caste utensils, which were to be kept for the use of the caste. The plaintiff alleged that part of this money had been already paid to him and that on the marriage of the defendant's youngest brother in 1880 he had demanded payment of the balance (*viz.* R3 149), which the defendant had not paid. He now sued to recover this balance One of the witnesses at the hearing was the setia of the caste who had succeeded the plaintiff in that position. He stated that he and other leaders of the caste to whom he had spoken disapproved of this suit. *Held* that the suit was not maintainable The agreement was made with the plaintiff as one of the heads of the caste It was made with him in his representative not in his personal capacity and the benefit of the agreement accrued, not to him but to the caste It was therefore for the caste to say whether they wished to enforce the agreement The plaintiff however had lost his ... 1869 and ... entative ... Court that the leaders of the caste disapproved as he did himself of this suit. Under these circumstances, the suit was not maintainable. PITAMBER RATANSI *v.* JAGJIVAN HANSRAJ

I. L. R. 13 Bom. 131

22 ———— Suit by father in his own right for defamation of daughter—*Suit not maintainable.* A suit for defamation of his daughter cannot be maintained by a Hindu father suing in his own right and not as general attorney or on behalf of the daughter A suit for defamation can only be brought by the person actually defamed if the person is *sui juris* and if not *sui juris* then under the provisions of the Civil Procedure Code by his guardian or next friend. *Dures Singh v Mahip Singh I L. R. 10 All. 4 ... and Sarrathi v Mannar I L. R. 8 Mad. ...* distinguished. *Subbaiyar v Kristnaiyar I L. R. 1 Mad. 383* and *Luckumsey Rowji v Hurbun Nursey I L. R. 5 Bom 580* referred to DAYA *v.* ... SUKH　　**I. L. R. 11 All. 104**

23 ———— Maintainability of suit brought by widow—*Liability of ... brother of deceased Hindu to defray expenses of his niece's marriage—Improper refusal—Performance*

RIGHT OF SUIT—*contd*

36. INTEREST TO SUPPORT RIGHT—*contd*

by widow—Contract Act (IX of 1872) s 69—Person who is interested in the payment of money The defendant having improperly refused to perform the marriage ceremony of his niece the daughter of his undivided brother (deceased) the widow of the latter herself performed the ceremony *borrowing money for the purpo e* and sued her late husband s said brother (the defendant) to recover the amount expended on the marriage On its being contended that defendant was under no obligation to provide for the expenses of his brother s daughter s marriage —*Held* that defendant was liable the marriage having been properly performed *Held* further that the suit was maintainable though it had been brought by the mother of the bride and not by the bride herself *Semble* That the mother was within the meaning of s. 69 of the Indian Contract Act interested in making the payment which had given rise to the action It was not *necessary for her to prove* that she had been compelled to make it or that she had made it at the defendant s request VAIKUNTAM AMMANGAR *v.* KALLAPIRAN AYYANGAR I L R 23 Mad 512

24. ———— Suit to remove a trustee—*Civil Procedure Code s 539 interest necessary to support a suit under* The plaintiffs having an

and being further interested in its administration as Brahmans entitled under certain circumstanc s to

25 ———— Suit for cancellation of sale deed—*Assignment of interest* In a suit for cancellation of a sale deed by the person whose name appeared on it as executant it appeared that the plaintiff s int re t in the property to which the instrument related had been assigned by her to another by a conveyance which contained certain covenants by her with regard to the land. *Held* that the plaintiff was not entitled to maintain the suit. IYYAPPA *v.* RAMALAKSHMAMMA I L R 13 Mad. 549

26 ———— Suit to cancel a void or voidable instrument—*Reasonable apprehension of serious injury—Specific Relief Act (I of 1877)*

of serious injury whether that exists or not depends upon the circumstances of each case It cannot be laid down as a rule of law that in no case can a man who has parted with the property in respect of which a void or voidable instrument exists sue to have such instrument cancelled *Iyyappa v Ramalakshmamma I L R 13 Mad 549* referred to KOTRABASSAPPAYA *v.* CHENVIRAPPAYA I L R 23 Bom. 375

27 ———— Executor and residuary legatee power of—*Probate and Administration Act (V of 1881) s 90 sub s 4 as amended by Act VI of 1889— Person interested in the property meaning of* D residuary legatee under a will having obtained an order for grant of probate in his favour sold certain properties covered by the will to *J* In execution of a de ree passed against *D* in his personal capacity the properties were attached and *J* preferred a claim on the ground of his purchase The claim was allowed and the properties were released from attachment In a suit brought by the decree holder for a declaration that the properties were liable to be sold in execution of his decree it was *held* that the words person interested in the property in sub s (4) of s 90 of the Probate and Administration Act (V of 1881) as amended by s 14 of Act VI of 1889 must mean a person interested independently of the executor whose alienation is sought to be avoided The *plaintiff deriving his interest as creditor of D in* his personal capacity and not as creditor of the estate of the testator was not entitled to avoid the alienation under that section even had it been invalid JAGOBANDHU DEY PODDAR *v.* DWARIKA NATH ADDYA I L R 23 Calc 446

28 ———— Malabar law—*Denial of uralar s title by his co uralan—Suit by one of two uralans without consulting co uralan—Maintainability of suit co uralan being impleaded as defendant* One of two co u alans had for a considerable time denied the title of the other *uralan* The latter brought a suit to redeem a *kanom* without first consulting his *co uralan or asking him to join in* it He impleaded the co *uralan* as a defendant given as his reason that inasmuch as his co *uralan* had denied his title *it was unnecessary to consult* him as to the institution of the suit *Held* that the suit was not maintainable It is only when one perversely declines to co operate with the other after being invited to do so and when it is for the benefit of the institution that proceedings should be taken that one *uralan* can sue impleading the other as defendant SAVITRI ANTARJANAM *v.* PAMAN NAMBUDRI (1900) I. L R 24 Mad 296

37 INTESTACY

———— Suit by one executor de son tort against another—*Letters of administration—Succession Act (X of 1865) ss 190 and 2?6—Administration suit* D a Parsi died intestate in 1877 leaving him surviving a widow three daughters and two sons *A* and *F* On *D*s death his sons without taking out administration assumed the management of the estate and each received sums

RIGHT OF SUIT—contd

37 INTESTACY—concld

of money on account of it The widow and daughters of the deceased obtained letters of administration but limited to the extent of their interests in the estate In 1888 *A* brought a suit against his brother *F* and the other members of the family to recover out of the estate a certain sum of money advanced by him to *D* *Held* that the estate being unrepresented the suit could not be maintained (s 190 of Act X of 1865) The letters of administration issued to the widow and daughters of the deceased being limited only to the extent of their shares in the estate were not letters of administration such as are meant by s 190 of the Indian Succession Act (X of 1865) *Held* also that the only course open to the plaintiff was to take proceedings for the appointment of an administrator of the estate who would either administer it by the payment of the debts and the distribution of the surplus (if any) amongst the heirs after taking an account of all property already received out of it by the creditors or heirs or who could be compelled to do so by an administration suit FRAMJI DORABJI GHASWALA v ADARJI DORABJI GHASWALA

I L R 18 Bom 337

38 JOINT RIGHT

1 ——— Suit by one of several heirs against creditor for share of debt—*Contract—Joint obligation—Act XXVII of 1860—Contract Act ss 42 45* *Held* by the Full Bench (MAHMOOD J dissenting) that when upon the death of the obligee of a money bond, the right to realize the money has devolved in specific shares upon his heirs each of such heirs cannot maintain a separate suit for recovery of his share of the money due on the bond KANDHIYA LAL v CHANDAR

I L R 7 All 313

2 ——— *Suit by one member of an undivided family on contract in his name for the benefit of family not maintainable though the others acquiesce—Limitation Act 1877 Sch II Art 75—Waiver—Resolution of meeting not convened according to rules* [illegible]

count [illegible]

Secor [illegible]

to [illegible]

resol [illegible]

[illegible]

include an authority to make an acknowledgment or to enter into a fresh contract on behalf of all the members A resolution accepting accounts and agreeing to pay in instalments is a fresh contract [illegible]

RIGHT OF SUIT—contd

38 JOINT RIGHT—concld

family are necessary parties to a suit on the fresh contract A suit brought by the member in whose name the contract was made must be dismissed when the other members are joined as parties after [illegible]

[illegible]

326 not followed An appellant on second appeal ought to add as parties all those whom he had made parties in his appeal to the lower Appellate Court SESHAN PATTER v VEERA RAGHAVAN PATTER (1909) I L R 32 Mad 294

39 JUDICIAL OFFICERS SUITS AGAINST

1 ——— [illegible] Government for acts [illegible]

Gover [illegible]

under [illegible]

1861 BAGAISHREE DYAL v GOVERNMENT

2 Agra 81

2 ——— Suit to have land declared private property—*Criminal Procedure Code 1861 ss 308 311—Order of Magistrate declaring* [illegible] s 311

[illegible]

declared by the Magistrate to be pu[illegible] property LALJI UKHEDA v JOWBA DOWBA

8 Bom A C 94

3 ——— Suit against Judge for maliciously issuing illegal order—*Want of jurisdiction—Knowledge of want of jurisdiction* A plaint against a Judge averring that the Judge knowingly and maliciously issued an illegal order [illegible] suff[illegible] [illegible] ist not [illegible] on but [illegible] le cause [illegible] RAHLAD [illegible] m. 348

4 ——— Suit against Collector for illegal proceedings—*Entry of name in Collector s books—Improper action of Collector* The mere entry of the name of one parcener in immove[illegible] books as the occu[illegible] action [illegible] inasmuch [illegible] ses of [illegible] if the

RIGHT OF SUIT—*contd*

39 JUDICIAL OFFICERS SUITS AGAINST—*contd*

Collector improperly enjoin the plaintiff from taking or other parties from paying to the plaint iff his share of the rents or profit an action may be maintained against the Collector COLLECTOR OF POONA v BHAVANRAV BALKRISHNA 10 Bom 192

5 ———— *Entry of name in Collector s books—Bom Reg XVI of 1827 s 19* Although the entry by a Collector of a particular person s name as occupant affords however mistak[illegible] Collector [illegible] reasonable [illegible] from the Col[illegible] lector affirm[illegible] another by entering his name in the register of watans (compiled under Regulation XVI of 1827 s 19) or where damage to a person s right is likely to arise from the Collector s act—it is not improper to join the Collector as a party to a suit SANGAPA MALAPA v BHIMANGOWDA MAPIAPA 10 Bom 194

40 KING OF OUDH SUIT AGAINST

———— **Suit against King of Oudh before Act XIII of 1868**—*Consent of Governor General* A suit against the King of Oudh commenced without the consent of the Governor General in Council was held to be null and void even though it had been instituted and judgment had been given before the passing of Act XII of 1868 BEGUM BIBEE v KING OF OUDH 11 W R 116

41 LANDLORD AND TENANT SUITS CONCERNING

1 ———— **Suit for use and occupation**—*Suit by Receiver—Suit to recover money payable under agreement* A suit was brought by the plaintiff and Receiver of the Tanjore Estate to recover from the first defendant a farmer a sum of money alleged to be rent due to the Tanjore Estate under a written agreement executed in August 1876 by the first defendant to the second defendant who then claimed to be owner of the estate The Judge of the Court of Small Causes considered that the subject matter of the plaint did not constitute a cause of action to the plaintiff and dismissed the plaint subject to the opinion of the High Court *Held* that the suit was maintainable by the Receiver to recover the fair rent payable for the use and occupation of the land under the muchalka which was good evidence of what was the fair amount of rent *The second defendant having been held to possess* no title to the property could not afterwards maintain an action for the non payment of the rent of a portion of such property due according to the terms of the muchalka. *Held* also that the right of suit did not extend to recover anything as interest on the rent due MORRIS v MUTHUSAMI PILLAI 6 Mad. 363

RIGHT OF SUIT—*contd*

41 LANDLORD AND TENANT SUITS CONCERNING—*contd*

See MORRIS v SAMBAMURTHI RAYAR 6 Mad 122

2 ———— **Suit to recover arrears of rent paid to Government under certificate**—*Money payable to zamindar* At the time when a zamindari came under the khas management of a settlement officer arrears of rent were due by the plaintiff to the zamindar The settlement officer issued a certificate against the plaintiff under s 19 of Bengal Act VII of 1868 requiring him to pay these arrears The plaintiff at first objected but subsequently withdrew his objection and paid a portion of the money into Court and presented a [illegible] brought on the ground that that amount was really payable to the zamindar would not lie *Quære* Whether such a suit would lie if the plaintiff were compelled to pay again to the zamindar BEPIN BEHARI SINGH v GOVERNMENT I L R 5 Calc 325

3 ———— **Suit as to validity of rent free grant**—*Suit for arrears of rent—Suit for assessment* A suit for arrears of rent is not maintainable in order to raise the question as to the validity of an alleged rent free grant The question should be raised by a suit to assess the holding HUREE CHUND v BRIJ KOMAR SINGH 1 Agra Rev 35

4 ———— **Suit for excess payment**—*Omission to make deductions from rent* Where a person has a right to make deductions of rent payable to the surburakar under his kubuliat on account of rent due from raiyats or others and pays his full [illegible] 1 Ind Jur N S 146

5 ———— **Suit for excess payment of rent**—*Receipt by one landlord of rents that ought to have been paid to another* Where a landlord receives rents which exceed the rents properly payable to him elf the party to whom the excess is payable is entitled to recover it directly from him by a civil suit and need not sue the tenants who made the payment GOOROO CHURN NAG v GOBIND CHUNDER GOOHO 24 W R 352

6 ———— **Suit for rents collected by unauthorised person without title**—*Cause of action* Where *A* without title has collected rents due to *B* *B* may sue *A* for the recovery from him of the rents so received. RAM CHURN BANERJEE v MUDDUN MOHUN TEWAREE Marsh. 269 2 Hay 198

RIGHT OF SUIT contd

41 LANDLORD AND TENANT SUITS CONCERNING—concld

7 ———— **Suit complaining that defendants have dissuaded tenants from paying rent**—*Cause of action* It is not an actionable wrong to [illegible] his landlc [illegible] GLEISH v [illegible]

25 W R 250

8 ———— **Suit to enforce acceptance of pottah**—*Jurisdiction of Civil Courts* A regular suit in the Civil Courts to enforce the acceptance of a pottah is maintainable KARIM v MUHAMMAD KADAR I L R 2 Mad 89

9 ———— **Suit by lessor against person injuring land leased**—*Suit for damages* A lessor may sue a third party for damages for injury sustained by reason of excavations made by such party on lands leased out by the plaintiff to a lessee DHERMONEY DOSSEE v CROFT

3 W R S C C Ref 20

10 ———— **Remedy of tenant aggrieved by notice of attachment**—*Madras Rent Recovery Act VIII of 1865 ss 39 40 78—Civil Procedure Code s 11* A tenant having received a notice of attachment under s. 39 of the Rent Recovery Act sued in a District Munsif s Court to have the notice cancelled no specific damage being alleged *Held* that the suit did not lie MAHOMED v LAKSHMIPATI

I L R 10 Mad 368

11 ———— **Suit to determine which of two claimants of rent is landlord**—*Civil Procedure Code (Act XIV of 1882) s 28* A tenant has no right to bring a suit to have it determined which of two defendants both of whom claimed rent from him is his landlord KOYLASH CHANDRA DUTT v GOLUK CHANDER PODDAR 2 C W N 61

12 ———— **Suit for rent**—*Relationship of landlord and tenant must be shown to arise out of contract or privity of estate* Before a plaintiff can [illegible]

42 LOSS OF SERVICE

———— **Suit by Hindu father for compensation for the loss of his daughter s services in consequence of her abduction**—*Compensation for costs of prosecution* A Hindu [illegible]

[illegible]

that the suit by the father for compensation for the

RIGHT OF SUIT—contd

42 LOSS OF SERVICE—concld.

[illegible]

43 MAINTENANCE.

———— **Suit by Mahomedan woman against Hindu for maintenance of her illegitimate child** Where a suit was brought [illegible] who was a Mahomedan [illegible] maintenance of [illegible] ed the de[illegible] hat such a [illegible] fendant to be the father [illegible] suit would not lie ADDOYTO CHUNDER DASS v WOOJAN BEEBEE 4 C L R 154

44 MESNE PROFITS.

1 ———— **Suit for mesne profits** The party in possession is the only person legally competent to sue for mesne profits. KHETTER MONEY DOSSEE v GOPEEMOHUN ROY

1 Ind. Jur O S 83
1 Hay 178

2 ———— **Right to receive mesne profits, transferability of**—*Suit by assignee—Transfer of Property Act s 1* The right to recover mesne profits which are in the nature of damages is not transferable DURGA CHURN ROY v KOILAS CHUNDER ROY 2 C W N 43

3 ———— **Suit for mesne profits in respect of right to turn of worship** A suit for wasilat in respect of profits derived from a turn of worship which are in their nature uncertain and voluntary is not maintainable *Ramessur Mookerjee v Ishan Chunder Mookerjee 10 W R 457* followed. KASHI CHUNDER CHUCKERBUTTY v KOILASH CHUNDER BANDOPADHYA

I L R 28 Calc 355
3 C W N 278

45. MISREPRESENTATION

1 ———— **Suit for loss by misrepresentation**—*Bona fide communication.* Where defendants were asked to obtain information from a railway company as to the probable cost of carriage of coal which they were about to sell to plaintiff and they did so communicating in good faith to plaintiff the result no right of suit could arise against defendants although plaintiff was ultimately compelled to pay to the railway company a much larger sum than defendant had represented. BENGAL COAL COMPANY v ELGIN COTTON COMPANY 2 N W 13

2. ———— **Suit against an attesting witness to a security-bond for appearance**

RIGHT OF SUIT—*contd*

45 MISREPRESENTATION—*contd*

of an insolvent judgment-debtor The plaintiff held a money-decree against *M* who was arrested in execution of it. On being brou ht to the Court how ever *M* applied for his discharge as an insolvent under s. 273 of the Civil Procedure Code (Act VIII of 1859). He was relea ed on the security of *G* who executed a bond for the appearance of *M* at the inquiry into his insolvency The defendant attested the bond and wrote in the atte tation that *G* was a solvent person ...

decree and cost of execution on the ground of his representation in the attestation that *G* was in ol vent. The Subordinate Judge rejected but the *District Judge on appeal allowed* the plaintiff s claim. *Held* by the High Court on second appeal that the plaintiff had no cause of action against the defendant whether the suit was considered as brought upon a covenant or misrepresentation as the defendant was neither a co obligor in the security bond of *G* nor did he make any promi e *in the attestation of it to compensate the plaintiff* for the non appearance of *M* nor any representation to the plaintiff *Quære* Whether the nazir was liable to the plaintiff for negligence in not taking a proper surety? NAGO MAHADEV *v* NARAYAN RAMCHANDRA I L R 4 Bom. 465

3 ——————— *Loan obtained by guardian as such—Liability for such loan—Warranty by guardian of authority to borrow—Misrepresentation on point of l w—Contract Act (IX of 1872) s 235—Guardian s liability—Breach of warranty—Principal and agent* Plaintiff having lent a sum of money to one *P* as guardian of her minor son brought a suit against the minor re presented by his guardian to recover it In that suit a con ent decree was passed which directed the amount due to him *to be recovered out of the* minor s estate On the minor s coming of age he got the con ent decree set a ide and the plaintiff had to refund the sum which he had recovered under it. Thereupon the plaintiff sued *R* to recover ...

not recover there having been no such mi represen ...

was that the defendant repre ented that she was the agent of her son. But as the plaintiff knew that the son was an infant he must have been aware that any representation that defendant was her *infant son s duly authorized agent* was incorrect for an infant cannot appoint an agent and consequently no warranty such as would support a suit could ari e out of such a representation Even if it were conceded that there was a representation *by R* as to her power to bind the minor s estate it was one on a point of law and as such *it was incapable of supporting the suit* *Beattie v Ebury* *7 L R Ch 777* followed MANIBHAI PREMABHAI *v* BAI RUPALIBA

I L R 24 Bom 166

46 MONEY ADVANCED TO GUARDIAN FOR MINOR

——————— **Advance by plaintiff for costs of minor defendants**—*Contract Act (IX of 1872) ss 68 70—Civil Procedure Code (Act XIV of 1882) s 70—Practice—Costs of guardian ad litem—Right to recover amount advanced* Plaintiff having in a prior suit su l the *defendants who were minors and* their father for specific performance was ordered by the Court to advance money to the guardian *ad litem* of the minor (who was appointed by the Court) to enable him to conduct their defence Plaintiff succeeded but the Court refused to provide in its decree for the repayment to plaintiff of the amount so advanced. On the plaintiff bringing this suit to recover that amount —*Held per* SUBRAMANIA AYYAR *J* (i) that the Court in which the prior suit had been brought had power ...

matter of it was one for the Court to have dealt with in the previous suit (ii) that the circumstances of the ca e were not such as to render the amount recoverable under s 70 of the Contract Act inasmuch as the defendants could not be said to have enjoyed the benefit of the expenditure (iii) that payments or charge connected with *legal expen es* in which infants are concerned may in certain circumstances come under the head of necessaries within the meaning of s 68 of the Contract Act Di bursements properly made in defence of the suit by the guardian *ad litem* out of the plaintiff s advance might be allowable if it be all ged and prove l that there were *reasonable grounds for the* defence put forward though it proved unsuccessful. But that this ground coul l not now be relied upon on second appeal inasmuch as it had not been put forward in the Court below when an i ue relating to it could have been framed *Per* DAVIES *J* that a matter of this nature can and should be *settled in the suit in whi h it arise* and that where a plaintiff is succe ful a upplementary i sue should be framed and tried as to the amount due to him on account of advances made by him to the guardian *ad litem* for conducting the defence and a decree passed in his favour for the total amount of costs found to have been properly in curred *in the case by the guardian out of such ad* vances. VENKATA VIJAYA GOPALARAJU *v* TIMMAYYA PANTULU I L R. 22 Mad. 314

RIGHT OF SUIT—*contd*

47 MONEY HAD AND RECEIVED

——— **Suit for pay received and not given**—*Madras Police Act (XXIV of 1859) s 53* The plaintiff a head constable of police sued the defendant an inspector of police for money had and received to the plaintiff's use The defendant had received the pay of the plaintiff but failed to give it to the plaintiff *Held* that the right of suit was not taken away by *s 53 of Act XXIV of 1859* (Madras Police Act) and that the plaintiff was entitled to recover the amount sued for GUNDAM VENKATASAMI *v* CHINNAM PURUSHOTTAMA

5 Mad 466

48 MONEY LENT

——— **Insufficiently stamped document**—*Suit on hatchitta for money lent—Evidence Act s 91—Whether a suit maintainable if brought upon an insufficiently stamped document where the defendant admitted the loan* In a suit brought in the Court of Small Causes on a hatchitta bearing a stamp of *one anna* the defendant admitted the loan but pleaded payment The Judge coming to the conclusion that the document sued upon was a promissory note and should have been stamped with a *two anna* stamp refused to admit it in evidence He also came to the conclusion that the plaintiff had no cause of action independently of the document and dismissed the suit *Held* that the plaintiff had a cause of action independently of the document *Held* also that an implied contract to repay money lent always arises from the fact that the money is lent even though no express promise either written or verbal is made to repay it Therefore in a case where the defendant admits the loan and has not repaid it the plaintiff may maintain an action against him for breach of his implied promise or contract entirely independent of any security which may have been given for the advance *Akbar v Sheikh Khan I L R 7 Calc 256* explained. *Golap Chand Marwaree v Mohoboom Kooaree I L R 3 Calc 314* followed. PRAMATHA NATH SANDAL *v* DWARKA NATH DEY

I L R. 23 Calc 851

49 MONEY PAID

1 ——— **Suit for money paid before pupil was allowed to remain in Government school**—*Right of Government to make rules and regulations as to admission to schools* The Government has a right to make rules and regulations as to the terms on which pupils should be admitted into and allowed to remain in their schools Where it is necessary according to the rules that a sum of money should be paid in order to a pupil remaining in a Government school and such sum is paid and the pupil allowed to remain a suit will not lie to recover the money so paid HURRO MOHUN GAEN *v* BONOMALEE MITTER

11 W R 359

RIGHT OF SUIT—*contd*

50 MORTGAGE

——— *Transfer of Property Act (IV of 1882) s 92—Decree for redemption—Omission to execute—Maintainability of subsequent suit on same mortgage—Res judicata—Civil Procedure Code (Act XIV of 1882) ss 13 244* Where a suit for redemption has been instituted and a decree for redemption has been passed thereon but not executed a subsequent suit is not maintainable for the redemption of the same mortgage VEDAPURATTI *v* VALLABHA VALIA RAJA (F B 1902) **I L R 25 Mad. 300**

51 MUNICIPAL OFFICERS SUITS AGAINST

1 ——— **Suit against Municipal Commissioners to recover assessment illegally levied under Mad Act X of 1865**—*Cause of action* A suit cannot be maintained to recover assessment unlawfully levied by Municipal Commissioners under Madras Act X of 1865 BHIMAVARAPU BALARAMAYA *v* HODSON

3 Mad. 370

2 ——— **Suit for injury by Municipal Commissioners under Act XXVI of 1850**—*Remedies given by Government rules* Where a party was injured by an order of Municipal Commissioners under Act XXVI of 1850 issued [illegible]

SAKHARAM SHRIDHAR GADKARI *v* [illegible] THE MUNICIPALITY OF KALLAAN **7 Bom A C 33**

3 ——— **Suit against trustees for distress for unpaid rates**—*Bom. Acts II of 1865 and IV of 1867—Liability of Municipal* [illegible]

(Bombay) or Act IV of 1867 (Bombay) suit the Municipal Commissioner himself or the actual tortfeasor is the proper defendant SHANKAR GOVINDRAM *v* JUSTICES OF THE PEACE FOR BOMBAY **5 Bom. O C 145**

4 ——— **Suit in respect of act done under Beng Act III of 1864**—*Attachment and sale of property for non payment of fine—Suit for damages—Liability of Municipality* The Howrah Municipality prosecuted plaintiff under Bengal Act III of 1864 s 67 and bye laws and procured [illegible] fine which was realized [illegible] property [illegible] Corporation [illegible] the Municipality [illegible] *v* HOWRAH MUNICIPALITY **W R. 222**

RIGHT OF SUIT—*contd*

51 MUNICIPAL OFFICERS SUITS AGAINST —*contd*

5 ———— Suit for damages and injunction restraining Municipality from stopping water supply—*Bombay District Municipal Act (XXVI of 1850)—Bombay District Municipal Act (Bom Act VI of 18 3) s 14 Rules fram d under—Rule 16—Jurisdiction of Civil Courts* The plaintiffs having sued the Municipality of Sholapur for damages and for an injunction re training the Municipality from stopping the supply of water to their hou e the first Court allowed the claim but the Judge in appeal dismissed the suit holding that it was premature and that the ... the ... cipal ... ding ... the ... may prefer an appeal to the Municipality who e decision shall be final *Held* rever ing the decree that the rule mu t be construed as permi sive an l not mandatory It referred to departmental procedure only and did not debar the institution of the civil suit VASUDEVACHARYA v MUNICIPALITY OF SHOLAPUR I L R 22 Bom 384

6 Suit to establish right to build structure forbidden by Municipality—*Bombay District Municipal Act (VI of 1850) s 33* S 33 of the Bombay District Municipal ...

capricious wanton and oppre sive manner The plaintiff was the owner of two houses on each side ...

erection might be an encroachment on private rights subjecting the plaintiff to an action by the persons injured NAGARVALAB NARSI v MUNICIPALITY OF DHANDHUKA I L R 12 Bom. 490

7 ———— Misapplication of fund by Municipality—*Right of tax payer to sue to restrain Municipality from such misapplication* A suit will lie at the instance of individual tax payers for an injunction restraining a Municipality from misapplying its funds VAMAN TATYAJI v MUNICIPALITY OF SHOLAPUR I L R 22 Bom 646

8 ———— Suit for declaration of right to be entered in list of candidates for appointment as member of a Municipal Board—*Jurisdiction—Suit brought against the Municipal Board in its corporate capacity* Where a plaintiff sued for a declaration of his right to have ... would not lie against the Board even if which was not decided it might lie against the revi ing authorit ... alleged ... the list c ... BOARD

9 ———— Suit to have assessment declared ultra vires—*Bengal Municipal Act (Beng Act III of 1884) s 85* A suit is maintain ...

52 OBSTRUCTION TO PUBLIC HIGHWAY

1 ———— Suit for obstruction of highway—*Special damage proof of* The rule of English law that no action can be maintained by one person against another for ob truction to a high way without proof of special damage should be enforced in British India as a rul of equity and good conscience ADAMSON v ARAMUGAM I L R 9 Mad 463

2 ———— Suit for removal of obstruction—*Proof of special injury* In all civil suits for the removal of a public ob truction the plaintiff must show that he himself has suffered some particular inconvenience or injury resulting from the obstruction GEHANAJI BIN KES PATIL v GANPATI BIN LAKSHUMAN I L R. 2 Bom. 469

RAJ NARAIN MITTER v EKADASI BAG I L R. 27 Calc 793

3 ———— Suit for declaration of right to use street and injunction to remove obstruction—*No proof of special damage* A gate was er cted in a public street (by the permission of the Municipal Council) which obstructed the ...

RIGHT OF SUIT—*contd*

52 OBSTRUCTION TO PUBLIC HIGHWAY—*contd*

mission to sue under the Civil Procedure Code s 30

4 ———— Suit to establish right of access to public thoroughfare—*Eas ment—Act XV of 1873 ss 27 32 33—Special damage Municipal Committee* While certain land formed part of a certain public thoroughfare F had immediate access to such thoroughfare and the use of a certain drain The Municipal Committee sold such land to M and constructed a new thoroughfare M used and occupied such land so as to obstruct F s

right to the use of such drain *Held* that having suffered special damage from M s acts F had a right of action against him and that such right of action was not affected by the circumstance that M

would have been bound to provide adequately for his access to the new thoroughfare and for his drainage FAZAL HAQ v MAHA CHAND

I L R 1 All. 557

5 ———— Suit against persons preventing conduct of procession on public highway—*Right to conduct procession* The right to conduct a marriage procession along the public highway can only be questioned by the Magistrate and an action will lie against private persons forcibly stopping such a procession even *Semble* where it is unusual for persons of the plaintiff s caste to conduct one SIVAPPACHARI v MAHALINGA CHETTI 1 Mad 50

6 ———— Suit to establish right to carry tabuts along public road—*Obstruction to public road—Special damage—Public inconvenience* Plaintiffs who were Mussulmans sued to establish their right to carry tabuts in procession

Held on special appeal that plaintiffs could not maintain a civil suit in respect of such obstruction unless they could prove some particular damage to themselves personally in addition to the general inconvenience occasioned to the public The mere absence of the religious or sentimental gratification arising from carrying tabuts along a public road is

RIGHT OF SUIT—*contd*

52 OBSTRUCTION TO PUBLIC HIGHWAY—*contd*

not any such particular loss or injury as would be

KADIR v IBRAHIM VALAD MIRZA

I L R 2 Bom. 457

7 ———— Suit to enforce right to conduct a religious procession along a public road—*Special damage* A civil action will

v *Ibrahim I L R 2 Bom 457* followed ... UDIN v MADHAVDAS I L R 18 Bom. 693

See MOHAMED ABDUL HAFIZ v LATIF HOSSEIN I L R 24 Calc. 524

8 ———— Suit to restrain procession

NAKRISHNA AYYANGAR I L R ... Mad

See SUNDRAM CHETTI v QUEEN PONNUSAMI CHETTI v QUEEN I L R 6 Mad 203

9 ———— Suit for abatement of nuisance—*Suit after refusal of Magistrate to interfere* A person injured by the erection of an ob... precluded from ... by the ... to the ... hat the ... RAM

Marsh ... y 659

10 ———— Special damage—*Lease—Right of lessee—Trespass* The plaintiff a holder of a ten years lease of the share and rights of one of the co sharers of a village sued for the demolition of certain buildings and constructions on a plot of land within the area of the village on the ground ... inconvenience ... and in taking ... by reason of his own inconvenience and also ... lessor had ... The findings ... lease plaintiff was entitled to maintain the action as representing the zamindari rights of his lessor that the obstructions complained of existed when the lease was granted that the roadway mentioned in the plaint was one used by the public in general as a footway and also for vehicle and that the buildings complained of had encroached on the road The suit was dismissed by the first Court but decreed in

RIGHT OF SUIT—contd

52. OBSTRUCTION TO PUBLIC HIGHWAY—*contd*

appeal by the lower Appellate Court. *Held* that *in the absence of damage over and above that which* in common with the rest of the public the plaintiff has sustained his action must fail. Public nuisance is actionable only at the suit of a party who has sustained special damage and the case law of *British India in this respect is the same as the rule* of English law on the subject. Further that the lease to plaintiff failed to show either that the land upon which the defendant had built is included in the lease or that it intended to confer upon the plaintiff any right to question the legality of the erections existing at the time of the lease. *Satku v Ibrahim Aga I L R 2 Bom 457* and *Karim Bakhsh v Budha I L R 1 All 249* referred to. PAMPHAL RAI *v* RAGHUNANDAN PRASAD

I. L. R. 10 All 498

11. ———— **Suit by zamindar for removal of building**—*Obstruction by building—Special damage.* The plaintiff who is the zamindar

was a katcha road used by the village over which the public had a right of way and it had been dedicated as a road for the use and convenience of the general public. The plaintiff got a decree for the removal of the chabutra and the defendant appealed. *Held* that the rule of English law that *a member of the public cannot maintain an action* for obstruction to a public road without showing special injury to himself beyond that suffered by any member of the public does not apply to a zamindar who or whose predecessor *in title* had

it he has a right to the soil in the road which he had never given to the public. *In an action of this*

L C 9th El 104 R v Pratt 4 E & B 860 Rolls v Vestry of St George the Martyr Southwark 14 Ch D 785 and *Goodson v Richardson L R 9 Ch D 221* referred to. TOTA *v* SARDUL SINGH

I. L. R. 10 All 533

12. ———— **Suit to remove obstruction in a public pathway**—*Special injury—Cause of action—Jurisdiction of Civil Court.* In a suit for the removal of an obstruction in a public pathway it was found by the Courts below that the plaintiffs were deprived of the only means of grazing their cattle by the obstruction and that they lost some cows thereby. It was contended on behalf of the defendant ...

was peculiar to them and to their calling and it caused them substantial loss of time and inconvenience and that it was sufficient to entitle the plaintiffs to maintain the action. *Held* also that the death of the cows was too remotely and *indirectly connected with the obstruction to furnish* a cause of action. *Winterbottom v Lord Derby L R 2 Exch 316*; *Ricket v Metropolitan Railway Co L R 2 H L 175*; *Cook & Co v Mayor and Corporation of Bath L R 6 Eq 177*; *Baroda Prasad Mostafi v Gora Chand Mostafi 3 B L R A C 295 12 W R 160*; *Gehanaji v Ganpati I L R 2 Bom 469*; *Raj Koomar Singh v Sahebzada Roy I L R 3 Calc 20*; *Blagrave v Bristol Water Works Co 1 H & N 369* and *Ross v Miles 4 M & S 101* referred to. ABZUL MIAH *v* NASIR MAHOMMED

I. L. R. 22 Calc 551

13. ———————— *Public way obstruction of—Damage peculiar to plaintiff—Special damage.* An action for obstructing a public way is not maintainable if no damage peculiar to *the plaintiff is proved. Mere inconvenience or* a remote danger will not make such an action maintainable. *Winterbottom v Lord Derby L R 2 Ex 316* followed. MAHOMED ALAM *v* DILBAR KHAN (1900)

5 C W N 285

53. OFFICE OF EMOLUMENT

1. ———— **Suit to recover right to officiate at funeral ceremonies**—*Transfer of right to officiate.* A *Birth Moha Brahmin's* right to officiate at funeral ceremonies is incapable of transfer and therefore a suit to recover it will not lie. JHUMMUN PANDEY *v* DINONATH PANDEY

16 W R 171

2. ———— **Right to officiate at a marriage**—*Yajman liability of—Cause of action for fees—Invasion of privilege.* A village joshi who is entitled by hereditary right to perform religious ceremonies at his yajman's house can recover his fees if the ceremonies are performed no matter by *whom they may be performed.* WAMAN JAGANNATH JOSHI *v* BALAJI KUSAJI PATIL

I. L. R. 14 Bom. 167

3. ———— **Action for interfering with right of performing ceremonies**—*Right of yajmans to select purohit.* An action is not maintainable by a purohit against another purohit for interfering with an alleged exclusive right of performing religious ceremonies at a particular place there being no legal obligation upon the yajmans to abstain from employing another. DAMOODUR MISSER *v* ROODURMAR MISSER

Marsh. 181

S.C. POODURMAN MISSER *v* DAMOODUR MISSER

1 Hay 265

RIGHT OF SUIT—*contd*

53 OFFICE OR EMOLUMENT—*contd*

4 ———— **Suit for right to perform pujari duties**—*Right to proceeds of mundar* An action will lie to obtain a binding declaration of a person's right to perform the duties of pujari and to receive the proceeds of a mundar PRAN SHANKAR *v* PRANNATH MAHANAND 1 Bom 12

5 ———— **Suit for an office to which no fixed fees are attached**—*Civil Procedure Code 1882 s 11* Under s 11 of the Code of Civil Procedure (Act XIV of 1882) a suit for an office will lie even though the office be a religious one to which no fixed fees are attached HASHIM SAHEB VALAD AHMED SAHEB *v* HUSEINSHA VALAD KARIMSHA FAKIR I L R 13 Bom 429

6 ———— **Hereditary right to an office**—*Civil Procedure Code s 11—Declaratory decree—Jurisdiction—Emolument* A suit for the establishment of a right to the hereditary title of musicians to a satra will lie under s 11 of the Code of Civil Procedure notwithstanding that the right sought to be established is one which brings in no profit to those claiming it MAMAT RAM BAYAN *v* BABU RAM ATAI BURA BHAKAT I L R 15 Calc 159

7 ———— **Suit by vendee of office to compel trustees to admit him and give him the emoluments** The vendee of a karaima right cannot bring a suit to compel the trustees of a pagoda to admit him to the office and give him the emoluments KEYAKE ILATA KOTEL KANNI *alias* GRANI *v* YADATTIL VELLAYANGOT ACHUDA PISHARODI 3 Mad 380

8 ———— **Suit to enforce agreement**—*Agreement amongst Maha Brahmans as to distribution of offerings—Cause of action* Amongst the Maha Brahmans of a particular village an agreement obtained that some of them should collect and receive offerings during certain months that during those months the others should refrain from receiving any offerings and that in certain other months the other Maha Brahmans should collect and receive the offerings and they should refrain from collecting offerings *Held* that this was a good agreement and sufficient to support an action for damages by the persons entitled to the offerings in a particular month as against the persons who had received those offerings contrary to agreement OOCHI *v* ULFAT I L R 20 All 234

9 ———— **Suit for damages for disturbance in religious office emoluments**—*Right to perform religious worship—Damages for loss of honours and voluntary offerings* Although it is not the duty of a Civil Court to pronounce on the truths of religious tenets nor to regulate religious ceremony yet in protecting persons in the enjoyment of a certain status or property it may incidentally become the duty of the Civil Court to determine what are the accepted tenets of the followers of a creed and what is the usage they have accepted as established for the regulation of their rights *inter se*. A claim to the exclusive right to perform certain portions of the religious worship in a Hindu temple and to restrain a rival sect from [illegible]

[illegible] turbed by the defendants in the performance of [illegible] duties of such office is not enforceable by law KRISHNASAMI TATACHARIAR *v* KRISHNAMA CHARYAR I L R 5 Mad. 313

10 ———— **Suit to establish privilege of administering purohitam to pilgrims**—*Alienability of such right* A suit will lie for the exclusive right to the privilege of administering purohitam to pilgrims resorting to Ramiswaram The privilege claimed was admitted to be capable of alienation or delegation and was therefore no longer the subject of religious sentiment but a mere proprietary right On the merits the plaintiffs were held to have failed to support their claim RAMASAWMY AIYAN *v* VENKATA ACHARI 2 W R P C 21 9 Moo I A. 344

11 ———— **Suit to establish right to receive fees from pilgrims resorting to shrine** The plaintiffs sued to establish his exclusive right to receive fees paid to the purohit by the pilgrims resorting to a temple and to recover a sum of money received by the defendants as fees *Held* that in the absence of any contract between the parties or of any such proof of long and uninterrupted usage as in the absence of a documentary title would suffice to establish a prescriptive right the plaintiff's suit must be dismissed. KRISHNA AIYAN *v* ANANTARAMA AIYAN 2 Mad. 330

12 ———— **Suit for confirmation of possession of land on which places of worship are erected**—*Alleged hostile intent or* In a suit for confirmation of possession of a hill with the places of worship appertaining thereto and the idols set up thereon the alleged cause of action being that defendant intended to lay claim to the offerings made and proposed to call in question plaintiff's possessory rights —*Held* that the plaint disclosed no cause of action whatever [illegible] CHAND CALEECHA *v* PARESH NATH SINGH 12 W R. 83

13 ———— **Suit for damages for disturbance of office of village priest**—*S* [illegible] *for fees not received* A suit for damages may be brought by a person holding the office of village priest by prescription against an intruder who deprives him of the exercise and benefits of that office VITHAL KRISHNA JOSHI *v* ANANT [illegible] CHANDRA 11 Bom.

14 ———— **Suit for a declaration of plaintiff's right to officiate as priests and receive offerings**—*Jurisdiction of Civil Court* A suit will lie in a Civil Court for a declaration of

RIGHT OF SUIT—*contd*

53. OFFICE OR EMOLUMENT—*contd*

the plaintiff s right to officiate in alternate years as prie ts in a temple and receive the offerings to the idol LIMBA BIN KRI HNA v RAMA BIN PIMPLU
I L R 13 Bom 348

15 ———— **Suit for pecuniary benefits from performance of religious services** A claim to certain pecuniary benefits and payments in kind, which a plaintiff *alleges himself* to be entitled to receive from the defendants in respect of the performance of certain religious services is a claim which the Courts of justice are *bound to entertain and if in orde to determine* the plaintiff s right to such benefits it becomes necessary to determine incidentally the right to perform the services the Courts must try and mu t decide that right. KRISHNAMA v KRISHNASAMI
I L R 2 Mad 62

s c TIRU KRISHNAMACHARIAR v KRISHNA SAWMI TATA CHARIAR L R 6 I A 120

See also KAMALAM v SADAGOPA SAMI
I L R 1 Mad 356

and CHINNA UMMAYI v TAGARAI CHETTI
I L R 1 Mad 168

16 ———— **Suit to establish right to offerings**—*Jurisdiction of Civil Court—Code of Civil Procedure (Act XIV of 1882) s 11 expl III* A suit claiming a ri_ht to the regular offerings made out of the funds of a temple which are of a substantial value as emoluments i a suit of a civil nature within the meaning of the explanation *to s 11 of the Code of Civil Procedure Krishnama v Krishnasami I L R 2 Mad 6* referred to *Narajan V thl Parab v Krishnaji Salaskhi I L R 10 Bom 233* di tingui hed KALI KANTA SURMA v GOURI PROSAD SURMA I L R 17 Calc 906

17 ———— **A suit for wasilat in respect of profits derived from a turn of worship whether maintainable**—*Anticipated profits of turn of worship* A suit for wasilat in respect of profits derived from a turn of worship *which are in their nature uncertain and voluntary* is not maintainable *Pamessur Mooker jee v Ishan Chunder Mookerjee 10 W R 45* followed KASHI CHANDRA CHUCKERBUTTY v KAILASH CHUNDRA BANDOPADHYA I L R 26 Calc 356
3 C W N 279

18 ———— **Suit for declaration and enforcement of a hereditary right to officiate as priest**—*Code of Civil Procedure (Act XIV of 1882) s 11—Mesne profits—Su t to have a share in the offerings made to a deity by one member of a family against another based upon an implied arrangement amongst th m* A suit by one member of a family against another for the declaration and enforcement of a hereditary ri_ht to *officiate as priest at the worship performed by votaries* at the foot of a certain tree and so to have a share in the offerings made to the deity is maintainable *Kali Kanta Surma v Gouri Prasad Surma I L R 17 Calc. 906* followed. *Jawahir Mi ser v Bhaggu Misser S D A (1857) Vol I 369* and *Kashi Chundra Chuckerbutty v Kailash Chundra Bandopadhya I L R 26 Calc 356* distingui hed. DINO NATH CHUCKERBUTTY v PRATAP CHANDRA GOSWAMI I L R 27 Calc 30
4 C W N 79

19 ———— **Suit for damages for intrusion on office of chalvadi**—*Suit to recover gratuities received by intruder in office—Caste question—Bom Reg II of 18 , s 21—Suit to establish right to office* Plaintiff was the hereditary hol ler of the office of chalvadi or bearer on public [illegible] brou ht merely for the gratuities as moneys alleged to be received by defendant to the use of plaintiff SHANKARA BIN MARABASAPA v HANMA BIN BHIMA I L R 2 Bom 470

20 ———— **Suit for loss of fees received by Kazi of Bombay**—*Intruder on office* The sums received by the Kazi of Bombay in respect of his office of Kazi are not mere gratuities but are fixed and certain payments annexed to the discharge of official duties and are therefore sums in respect of the privation wh r of by a wrongful intruder an action either for money had and received or for di turbance in the office will l e MUHAMMAD YUSSUB v AHMED 1 Bom Ap 18

SITARAMBHAT v SITARAM GANESH
6 Bom A C 250

21 ———— **Suit for declaration of exclusive right to receive fees in office of chowdhry** In a suit for the establishment of the plaintiff s exclusive right to the office of chowdhry of boats and for the maintenance of their po es sion of that office with which the def ndants interfered by ob tructing the plaintiff in the collection of fees —*Held* that as the payments were voluntary and there was no obligation to pay them exclu sively to the plaintiff the uit could not be main tained RAM DEPHUI v CHUKHOO
1 N W 208 Ed 1873 291

22 ———— **Suit by dismissed holder of land for service**—*Hereditary village office—Title to emoluments* Where an hereditary village officer who had been dismissed from his office sued to recover the land which had formed the *emoluments of the office and which had been en* [illegible]

BADA v HUSSU BHAI I L R 7 Mad. 236

23 ———— **Suit for land appertaining to hereditary office but enfranchised**—*Mad R g VI of 1831—Mad Act IV of 1866—Karman s*

RIGHT OF SUIT—contd

53 OFFICE OR EMOLUMENT—*contd*

inam land—Inam Commissioner's title deed—Title to emoluments of office The lands forming the emoluments of an hereditary village office having been separated from the office by Government were enfranchised and granted by the Inam Commissioner to *V* who had been appointed to and at the date of enfranchisement held the office without possessing any hereditary claim thereto In a suit by *R* who claimed to be of the family of the hereditary office holders to recover the land from *V* —*Held* by the Full Bench (HUTCHINS J dissenting) that *R* could not recover VENCATA v RAMA
I L R, 8 Mad 249

24. ———— **Suit by the holder of the office to recover all the land**—*Inam attached to the hereditary office of nattamgar—Enfranchisement of inam lands in favour of two persons* Inam lands constituting the emolument of the office of nattamgar were enfranchised in favour of the plaintiff and defendant separately In November 1890 the defendant was informed that a pottah for half of the lands would be issued in his name and it was so issued in the following May In April 1891 (after the resolution to enfranchise the lands was come to) the plaintiff was appointed to be the sole nattamgar and he now sued in 1894 for the cancellation of enfranchisement pottah issued to the defendant and for the issue of a pottah in his own name in respect of the lands comprised therein and for possession of the lands *Held* that the plaintiff was not entitled to the relief sought SANKARA SUBBAYAR v RAMASAMI AYYANGAR
I L R 20 Mad 454

25 ———— **Karnam hereditary office of**—*Enfranchisement of endowment—Devolution of land enfranchised* The holder of an hereditary office of karnam had two undivided sons in favour of one of whom he resigned his office Subsequently a revision of the village establishment took place the new karnam was removed from the office and the lands which constituted its endowment having been enfranchised by the Inam Commissioner a title deed in respect of them was issued to him. After his death without issue his nephews sued to establish their right to the land. *Held* that the land passed to the grantee personally and not to his family and consequently devolved on his death as private property The plaintiffs therefore had no right of suit as regarded the property *Vencata* v *Rama I L R 8 Mad 249* followed. VENKATARAYADU v VENKATA RAMAYYA
I L R 15 Mad. 284

26 ———— **Lands constituting emoluments of karnam's office**—*Enfranchisement of the inam in favour of a widow* Lands constituting the emoluments of the office of karnam were enfranchised in favour of a widow who had been in possession since the death of her husband which took place about eighteen years previously They were subsequently sold by her *Held* that the vendee's title was good against the reversionary heir of the husband and the plaintiff had therefore no right to suit to recover them DHARANIPRAGADA DURGAMMA v KADAMBARI VIRRAZU
I L R. 21 Mad. 47

See SUBBARAYA MUDALI v KAMU CHETTI
I L R 23 Mad 47

27 ———— **Inam Commissioner's grant**—*Hereditary office holder—Enfranchisement* A grant of a portion of inam lands by Government on enfranchisement is not illegal because the grantee though a member of the family of hereditary office holders was not himself actually in office at the time of enfranchisement. Such a grant cannot be set aside in a civil suit. TARIYA GOWDU v VONAMO GOWDU
I. L. R 22 Mad. 204

28 ———— **Office of karnam in a zamindari village succession to**—*Mad. Reg XXIX of 1802 s 7—Female claimant—Incapacity of next heir* The karnam of a zamindari village having died leaving a widow his heir the zamindar appointed her to the office of karnam. The nearest male sapinda of the deceased karnam (from whom he was divided) sued to establish his right to the office of karnam *Held* (i) that a woman cannot hold the office of karnam. *Held* further (ii) that when the immediate heir is incapacitated the nearest male sapinda of the deceased karnam is entitled to succeed to the office; he was therefore the proper person to maintain the suit CHANDRAMMA v VENKATRAJU
I L R, 10 Mad 2?8

29 ———— **Civil Court's jurisdiction over suit in respect of an injury caused by exclusion from an hereditary office**—*Bombay Hereditary Offices Act (III of 1874) s 40—Election of an officiator—Free election—Agreement in restraint of free election—Bom Act X of 18?6 s 4—Its application to suits between private persons* The plaintiff and his co sharers in a kulkarni vatan entered into an agreement in 1869 for the performance of the duties of the vatan by the ... agreement would
sev
tha
er
dar
The plaintiff alleged that in 18?? ... instead of electing him to officiate that the defendants instead of electing nominated another person in accordance with the agreement who was confirmed in the appointment by the Collector The plaintiff therefore sued the defendants to recover R100 as damages for breach of the agreement of 1869 *Held* that the agreement could not be enforced by a civil suit and it was opposed to the policy of s. 40 of Bombay Act III of 1874 which contemplates a free election of an officiator by the whole body of registered representative vatandars to whom the Collector issues his notice—an election unfettered by any promises made beforehand by any of the sharers. *Held* also that a suit in respect of any injury caused by exclusion from office or service is barred by the second paragraph of cl. (a) of s 4 of Act X of 18?6

RIGHT OF SUIT—*contd*

53 OFFICE OR EMOLUMENT—*concld*

Having regard to the wording of the several clauses of s. 4 *the bar therein provided is not limited to* suits against Government NARO PANDURANG *v* MAHADEV PURSHOTAM I L R 12 Bom. 614

54 OFFICIAL ASSIGNEE

———— **Suit for unauthorized payment made by assignee**—*Insolvency Act (11 & 12 Vict c 21) s 28 and 29—Fraud* The account of an estate formerly in the hands of a derivative executor who became insolvent and died in 1806 having been pending in Court for many years some of the parties being interested in the original estate and others as the insolvent s creditors a compromise was effected under which a suit brought in 1808 by the Official Assignee representing the deceased insolvent was dismissed by the consent of parties in 1875 Part of a sum of money paid to the credit of the insolvent s estate in pursuance of the compromise was made over *upon the passing of the consent-decree with the knowledge of the assignee but without notice to or the sanction of* the Court to a person who had assisted in taking *the account* From the representatives of the latter he being now deceased the successor in office of the assignee claimed repayment In regard to the facts that he was neither a party to nor had any control over the compromised suit that he owed no duty to the Court in respect of it nor to the creditors of the estate and that he had taken no unfair advantage of the assignee —*Held* that there was no grounds upon which this repayment could be claimed ABDOOL HOSSEIN ZENAIL ABADI *v* TURNER I L R 11 Bom 620 L R 14 I A 111

55 ORDERS SUITS TO SET ASIDE

1 ———— *Order in contested application*—*Improper procedure A has no right of suit against B to set aside an order of Court on an* application in a suit which application has been contested between them and decided in favour of *B* Such a mode of procedure for the purpose of getting an order of Court reversed is not allowed by law NORPOTOM SIKDAR *v* JUGGERNATH SHAW Bourke O C 371

SHIBESHUREE DEBIA *v* MOTHOORANATH ACHARJEE 5 W R 202

2 ———— **Order under s 63 Beng Act VIII of 1869**—*Order releasing property from attachment* A suit will lie to set aside an order passed under s 63 of Bengal Act VIII of 1869 releasing property from attachment WOOMA CHURN CHATTERJEE *v* KADUMBINI DABEE 3 C L R. 146

3 ———— **Order refusing to entertain objection**—*Resumption by Government—Objection by party whose lands have been wrongly resumed* The property of the plaintiff having been included among the lands to which certain resumption proceedings between the Government and a third party related the plaintiff preferred an objection which was disallowed by the Collector The Special Commissioner on appeal declined for want of jurisdiction to entertain the objection *Held that the order of the Special Commissioner could* not constitute any cause of action either against the Government or a third party SHIBOO SOONDUREE DEBEA *v* SECRETARY OF STATE 7 W R 373

4. ———— **Order setting aside sale**—*Civil Procedure Code 1859 ss 56 57* A suit [illegible]

DAN[illegible] 7 N W 183

5 ———— **Order passed in execution of decree of Small Cause Court**—*Order as to liability to attachment* An order passed in execution of a decree of a Small Cause Court with respect to the liability of property to attachment and *sale is not final but may be questioned in a regular* suit in the same manner as a like order might be questioned when passed in execution of a decree of an ordinary Civil Court RAMESHUR KULWAR *v* BEHAREE SETH 3 N W 208 Agra F B Ed 1874 254

6 ———— **Order of Court setting aside a will and vesting minor s property in manager**—*Suit to direct widow to make adoption—Order made with jurisdiction* There exists no right of suit to set aside an order of the Court which has jurisdiction deciding that a will is not sufficiently proved and vesting the management of a minor s widow s property in her guardian No suit can be maintained for an order directing such widow to make an adoption *The Court declined to make a declaratory decree declaring such direction to be a valid direction* PEAREE DAYEE *v* HURBENSEE KOOER 19 W R 127

7 ———— **Order granting certificate under Act XXVII of 1860**—*Suit to annul certificate—Procedure* A suit does not lie to annul a certificate for the collection of debts granted under Act XXVII of 1860 the mode of proceeding provided by the Act being the only remedy IAYANDA AVIDATHA PERINGADI IBRAYI *v* PUDIYA MADATHUMAI PERINGADI AMANATHA 5 Mad 283

RUGHOOBUR DYAL SINGH *v* RAM NARAIN KOLYA 22 W R 312

8 ———— **Order determining title to money deposited in Court**—*Civil Procedure Code ss 7 278 283* A suit will lie to set aside an order such as is contemplated by the proviso to s 272 of the Code of Civil Procedure that is an order determining any question of title or priority as between the decree holder and any other person in respect of money in deposit in a

RIGHT OF SUIT—*contd*

55 ORDERS SUITS TO SET ASIDE—*concld*

Court of Ju tice The mode of inve tigation and the nature of the order to be made under s 272 and the extent to which such an order is final are provided for in ss 278 283 of the Code of Civil Procedure TIKUM SINGH *v* SHEO RAM SINGH
I L R 19 Calc 288

6 ——— **Suit to set aside order of Criminal Court**—*Suit to set aside order of Magistrate under Act XXI of 1841* The proper course for a party dissatisfied with the order of a Magistrate passed with jurisdiction under Act XXI of 1841 to pursue was to appeal against that order and not to bring a civil suit for its reversal OMOOLA KOOWUR *v* SOHUN PATUCK
1 Ind. Jur O S 36

S C OMOOLA KOOWUR *v* SOHUN PATUCK
1 Hay 29

S C SOHUN PATUCK *v* OMOOLA KOOWUR
Marsh. 7

KEDARNATH MOOKERJEE *v* PARBUTTY PEISHKAR
2 W R 267

PRANKISHEN SURMA *v* RAMROODER SURMA
Marsh 214

S C RAMROODER SURMA *v* PRANKISHEN SURMA
2 Hay 86

RAMKISHORE BHUTTACHARJEE *v* BISESHUR BHUTTACHARJEE
Marsh 231

S C BISESHUR BHUTTACHARJEE *v* RAMKISHORE BHUTTACHARJEE
1 Hay 559

56 POSSESSION SUIT FOR

1 ——— **Purchaser from rightful owner suit by**—*Right of suit—Trespa er in po session—Sale deed voidable and not void—Effect—False recital as to consideration—Tran fer by person out of poss ion—Validity—Champerty—Gambling in litigation—Adoption—Proof* It is not enough for a trespasser who seeks to maintain possess on against a purchaser from the rightful owner to make out that the sale deed in favour of the purchaser is voidable at the option of the vendor He must show that it is ab olutely void A sale-deed cannot be challenged by a person who was no party to it when apart from an untrue recital as to consideration there was no other flaw in the transaction The sale deed in this case had been passed in favour of the plaintiff by the rightful owner who was out of possession needy and unable to prosecute his claim against the trespasser without assistance The Judicial Committee held that there was nothing extortionate or unreasonable in the terms of the bargain in this case no gambling in litigation nothing contrary to public policy and that the transaction was a present transfer by the owner to the plaintiff giving the latter a good title on which he was competent to sue ACHAL RAM *v* KAZIM HUSAIN KHAN (1905)
I. L. R. 27 All. 271
s c 9 C W N 477
L. R. 32 I A 113

RIGHT OF SUIT—*contd*

56 POSSESSION SUIT FOR—*contd*

2 ——— **Suit for possession or dispossession after obtaining peaceable possession without execution of decree** If a party in whose favour a decree for possession has been passed peaceably obtains possession without the a
possessec
persons
has not
NEWAZ SINGH *v* KISHUN RAI
6 N W 137

See GOPAL DAS *v* THAN SINGH
I. L R 4 All. 184

3 ——— **Suit for possession of land taken away in execution of decree in boundary suit** A party has no right to bring a civil *suit to get possession of land* which has been taken from him and awarded to his adversary in the execution of a decree in a boundary suit WATSON *v* BEJOY GOBIND BURAL SHAMASOONDERY DEBEA *v* BEJOY GOBIND BURAL
W R 1864 331

4 ——— **Suit for possession after dispossession under decree obtained by mortgagees**—*Cause of action* In the year 1839 the defendant s ancestor had mortgaged a share in a mouzah to the ancestor of the plaintiffs The mortgagee sued to foreclose the mortgage and obtained a decree in execution of which he obtained possession of the share After this some prior mortgagees obtained a decree in the Sudder Court in 1847 to the effect that the disputed property should be taken away from the plaintiff s ancestor and given to the prior mortgagees till their lien was satisfied when he should obtain possession as before The lien of the prior mortgagees was satisfied in 1870 when the defendants obtained possession The *plaintiffs* sued to recover possession
the
sion
of the estate by the defendants
5 N W 153
RAIN SINGH

5 ——— **Suit for separate possession of share of estate** A suit will lie for the separate possession of a share of an estate in proportion to the plaintiff s share GOLOKE CHUNDER CHUCKERBUTTY *v* KALLEE KINKUR CHUCKERBUTTY
1 W R 164

6 ——— **Suit by holder under dur putnidar for share of estate** A patni estate which was the inheritance of five brothers two of whom appropriated the whole of it *Held* that the holder under a kaimi pottah from a dar patnidar of the three ousted brothers could sue to obtain possession of his share of the estate TARA SOONDERY DEBIA *v* SHAMA SOONDERY DEBIA
4 W R 58

7 ——— **Suit by minor for his share of undivided property** A suit cannot be brought on behalf of a Hindu minor to secure his share in undivided family property unless there is evidence of such malversation as will endanger the minor s interests if his share be not separately

RIGHT OF SUIT—*contd*

56 POSSESSION SUIT FOR—*contd*

secured CHOKKALINGAM PILLAI *v* SVAMINAR PILLAI SVAMINAR PILLAI *v* CHOKKALINGAM PILLAI **1 Mad 105**

8 ———— **Suit by minor for partition** —*Prejudice of interests of minor* A suit on behalf of a minor for partition will lie if the interests of the minor are likely to be prejudiced by the property being left in the hands of the co parceners from whom it is sought to recover it KAMAKSHI AMMAL *v* CHIDAMBARA PEDDI **3 Mad 94**

ALIMELAMMAH *v* ARUNACHELLAM PILLAI **3 Mad 69**

9 ———— **Suit by tenant having right to possession, but not right of occupancy** —*Act X of 1859 s 6 and s 23 cl 6* If a tenant has a right to the possession he may sue under cl 6 s 23 Act X of 1859 although he may not have a right of occupancy under s 6 of the Act WATSON & Co *v* DWARKANATH SIRCAR **Marsh 415 2 Hay 533**

DHAJAH ROY *v* SUKHAWUT HOSSEIN **Marsh 492**

S C SUKHAWUT HOSSEIN *v* DHAJAH ROY **2 Hay 597**

10 ———— **Suit for possession by unregistered purchaser after ejectment**—*Beng Act VIII of 1869 ss 26 64—Effect of sale of tenure by shareholder in zamindari—Onus of proof* K the recorded tenant of a mirasi mokurrari tenure died leaving G his son and heir who sold the tenure which eventually came into the hands of the plaintiff's father and afterwards on his death became vested in the plaintiffs but neither they nor their father though they made attempts to do so ever obtained the registration of their names as tenants P one of the two shareholders in the zamindari brought a suit for arrears of rent of the tenure against G and in execution of the decree he obtained in that suit the tenure was sold and purchased by the other zamindar by whom the plaintiffs were dispossessed *Held* that the plaintiffs were not precluded by the fact that their names were not registered as tenants under s 26 of the Rent Act from bringing a suit to recover possession of the tenure The holder of the decree in execution of which the tenure was sold assuming him to be only a shareholder in the zamindari right had no right under s 64 to sell the tenure but only the interest of the person against whom the decree was passed The onus was on the defendant to show that the sale under the decree for rent was of such a nature as to give him priority over the plaintiffs KRISTO CHUNDER GHOSE *v* RAJ KRISTO BANDYOPADHYA **I L R 12 Calc 24**

11 ———— **Suit for possession by purchaser at sale in execution of decree**—*Civil Procedure Code (Act XIV of 1882) ss 11 318—Concurrent remedies* A purchaser at a sale in execution not having applied to the Court for possession under s 318 of the Code of Civil Procedure brought a regular suit to obtain possession of the property purchased *Held* that although a remedy might be open to the plaintiff under s 318 still he was not precluded from bringing a regular suit the remedies being concurrent KISHORI MOHUN ROY CHOWDHRY *v* CHUNDER NATH PAL **I L R 14 Calc 644**

12 ———— **Symbolical possession obtained in execution of former decree**—*Fresh suit against the same defendants to obtain actual possession* A plaintiff who has obtained only symbolical possession in execution of a former decree is entitled to maintain a fresh suit against the same defendant to obtain real possession SHANTAR BISTO NADGIR *v* NARSINGRAV RAMCHANDRA JAHAGIRDAR **I L R 22 Bom 667**

13 ———— **Co defendants**—*Specific Relief Act (I of 187) s —Specific performance suit for —Civil Procedure Code (Act XIV of 1882) ss 13 43—Relinquishment—Res judicata—Parties* Plaintiff had obtained a decree for specific performance of a contract of sale against defendants No 3 to 7 and subsequently brought the present subsequently removed from the category of defendant *Held* that the claim against both the sets of defendants did not arise out of the same cause of action and that the present suit was not barred by ss 13 and 43 of the Civil Procedure Code *Held* also that it was not necessary under s 27 of the Specific Relief Act to bring the previous suit against both the sets of defendants ABDUL MAJID *v* BOIDA NATH DHUR (1901) **6 C W N 314**

57 PRE EMPTION

———— *Compromise of suit for pre emption by means of which property is transferred—Suit for pre emption based on decree in such suit* *Held* that no suit for pre emption will lie the basis of which is a decree for pre emption in another suit ABDUR RAZZAQ *v* MUMTAZ HUSAIN (1903) **I L R 25 All 334**

58 PRIVACY INVASION OF

———— **Easement**—*Suit for injunction—Jurisdiction of Civil Court* The invasion of privacy by opening windows is not a wrong for which an action will lie *Komathi v Gurunada Pillai 3 Mad 141* followed AZIZ *v* AMEERUBIBI **I L R 18 Mad 163**

59 PROPERTY AT DISPOSAL OF GOVERNMENT

———— **Property found by police and no claim being proved, placed at disposal of Government by order of Magistrate under Criminal Procedure Code**

RIGHT OF SUIT—*contd*

59 PROPERTY AT DISPOSAL OF GOVERNMENT—*concld*

1882 s 524 *Quære* Whether a suit lies to recover property placed at the disposal of Government by an order of a Criminal Court under s 524 of the Criminal Procedure Code *In re Gholam Abid Prinsep s Criminal Procedure Code 7th Ed under s 89 Government of Bengal* v *Surwar Jan 18 W R Cr 53 Bulkoore Singh* v *Government 8 W R 207* and *Queen Empress* v *Tribhovan Manekchand I L R 9 Bom 131* referred to SECRETARY OF STATE FOR INDIA v VAKHATSANGJI MEGHRAJJI **I L R 19 Bom. 668**

60 PUBLIC OR PRIVATE RIGHTS

1 ———— **Right to graze cattle**—*Civil Procedure Code ss 31 53—Public right—Amendment of plaint* A suit for an injunction to restrain interference with his right to graze cattle on the bed of a certain tank. The other raiyats of the village in whom the same right vested were originally joined as plaintiffs but the plaint was amended under s. 53 of the Code of Civil Procedure and their names were struck off the record. *A* proved no special damage *Held* that the fact that the other raiyats of the village had similar rights did not make *A s* right a public right in the sense that no action could be brought upon it unless special damage was proved VENKATACHALA v KUPPUSAMI **I L R 11 Mad 42**

2 ———— **Mutwalis rights of**—*Waqf property claim to—Suits relating to public rights —Civil Procedure Code (Act XIV of 1882) s 539* A suit between two private parties claiming certain rights as *mutwalis* over waqf property is not of such a public nature as to come within the purview of s 539 of the Civil Procedure Code which contemplates that there must be some dispute in existence between the parties of such a public nature that the intervention of the Advocate General is necessary to decide if and by whom a suit should be brought to establish a public right *Sajedur Raja Chowdhuri* v *Gour Mohun Dass Baishnav I L R 24 Calc 418* referred to MANIJAN BIBEE v KHADEM HOSSEIN (1905) **I L R 32 Calc 273**

61 PUBLIC WORSHIP SUITS REGARDING RIGHT OF

1 ———— **Suit to remove place of worship**—*Right to erect place of worship Right of way — Allegation of injury* In India the members of a sect are at liberty to erect a place of worship on their own property although it is more or less contiguous to a place already occupied by a place of worship appertaining to another sect. The people of any sect are at liberty to erect on their own property places of worship either public or private and to perform worship provided that in the performance of their worship they do not cause material annoyance to their neighbours. SESHAYYANGAR v SESHAYYANGAR **I L R. 2 Mad. 143**

RIGHT OF SUIT—*contd*

61 PUBLIC WORSHIP SUITS REGARDING RIGHT OF—*concld*

MADARY v GOBERDUN HULWAI **I L R 7 Calc 694 9 C L R 303**

PARTHASARADI AYYANGAR v CHINNA KRISHNA AYYANGAR **I L R 5 Mad 304**

2 ———— **Suit founded on sanctity of place of public worship**—*Suit to restrain procession in public streets* No sect is entitled to deprive others for ever of the right to use the public streets for processions on the plea of the sanctity of their place of worship or on the plea that worship is carried on therein day and night SUNDRAM CHETTI v QUEEN PONNUSAMI CHETTI v QUEEN **I L R. 6 Mad. 203**

3 ———— **Suit to restrain superintendent of mosque from using it for other purposes or obstructing worshippers**—*Suit by worshipper* The worshippers at a public mosque can maintain a suit to restrain the superintendents of such mosque from using it or its appurtenant rooms for purposes other than those for which they were intended to be used and from doing acts which are likely to obstruct worshippers in entering or leaving such mosque ABDUL RAHMAN v YAR MUHAMMAD **I L R. 3 All. 636**

62 REGISTRATION OF NAME

1 ———— **Suit as proprietor of estate to compel entry in Collector s book**—*Right* [illegible] claiming a share in land [illegible]

[illegible] v DARYA SAHEB [illegible]

2 ———— **Suit to compel registration of name**—*Suit of vague and speculative nature.* A suit by a plaintiff who alleges that he is in possession of property praying that the Court will cause the registry to be altered into his name without stating that the proper authorities had refused to make the entry and without joining as defendants the only person who had power to do so was *held* to be not maintainable IBRAI BYARI v KATYDINYA **2 Mad. 363**

3 ———— **Suit to compel registration of name as proprietor**—*Collector in Chota Nagpore—Beng Regs I of 1793 s 9 and VIII of 1793* A Collector in Chota Nagpore cannot be compelled by suit to register the name of any one as proprietor of an estate LALLA BISSEN PERSHAD v COLLECTOR OF HAZAREEBAGH **13 W R. 39**

4 ———— **Suit to compel registration of another person s name**—*Lessee holding as agent of others* A Collector may register as farmer a person to whom a farming lease has been given notwithstanding he holds it in reality as the agent of another and a third person has no right to sue

RIGHT OF SUIT—*contd*

62. REGISTRATION OF NAME—*concld*

to compel the registration of such other person COLLECTOR OF MIDNAPORE v RAMDHONE DUTT Marsh 65 1 Hay 133

5 ———— **Right of suit by a se patnidar against a dar patnidar for registration of name** A se patnidar is not entitled to sue a dar patnidar to compel him to register his name in his sheri ta as the transferee of a se patni tenure but it is open to him to sue for a declaration of his right as a tenant of the dar patnidar MOTILAL SINGH v OMAR ALI 3 C W N 19

63 RESUMPTION SUIT FOR UNLAWFUL

———— **Suit for damage for unlawful resumption by Government** —Government may be sued by any person injured by its acts of unlawful resumption. RAJNARAIN MOOKERJEE v MAHTAB CHUNDER 1 Ind Jur O S 48

64. REVENUE SALE FOR ARREARS OF

1 ———— **Suit for property attached by revenue authorities**—*Act XXXII of 1860 —Effect on suit of failure to deposit the revenue or give security* When a third party objected to the auction sale of certain immoveable property which had been attached by the revenue authorities it was *held* that his right to bring an action to prove that the property was his was not barred by s 184 Act XXXII of 1860 because he had omitted to deposit the money demanded by Government or to file security SHEO PERSHAD SINGH v GOPAL LALL 14 W R 276

2 ———— **Payment of Government revenue by mortgagees in possession to save the property**—*Payment of mortgage money into Court by mortgagors and relinquishment of possession by mortgagees subsequent suit by mortgagees to recover the—Government revenue paid by them by sale of the mortgaged property—Transfer of Property Act (IV of 1882) s 83* The plaintiffs were mortgagees in possession of certain shares in a village under a mortgage which as to the principal amount advanced was a simple mortgage as to the interest a usufructuary mortgage The mortgagees to save the property from sale paid up certain arrears of Government revenue Subsequently the defendant who was the representative of the mortgagors under s 83 of the Transfer of Property Act paid the original sum due under the mortgage into Court The mortgagees with

Government revenue by sale of the mortgaged property *Held* that though the mortgagees might originally have treated the amount paid by them as Government revenue as part of the mortgage money they did not by such payment obtain a lien independently of their position as mortgagees and when once they had abandoned their lien on the mortgaged property by accepting the money paid into Court by their mortgagors and by relinquishing possession of the mortgaged property they could not afterwards revive it and their suit which was for realization of the Government revenue paid by them by sale of the mortgaged property must

Kamti I L R 11 Bom 313 Girdhar Lal v Bhola Nath I L R 10 All 611 Parsotam Das v Jagat Singh All Weekly Notes (1890) 90 Mikka Mal v Sulaiman Shaikh Gardner I L R 2 All 193 Kristo Mohini Dassee v Kaliprosono Ghose I L R 8 Calc 402 and *Nugender Chunder Ghose v Kaminee Dossee 11 Moo I A 241* referred to ANANDI RAM v DUR NAJAF ALI BEGAM I L R 13 All 195

3 ———— **Sale for arrears of revenue** —*N W P Land Revenue Act (XIX of 1873) ss 185 186—Disposal of surplus proceeds—Distribution amongst creditors of defaulters—Suit by one of such creditors against another—Cause of action* An estate which had been mortgaged separately to two different mortgagees was sold for default in payment of Government revenue By the sale a much larger sum than was sufficient to satisfy the arrears of revenue was realized The Collector instead of paying the surplus to the defaulter mortgagor paid therewith one of the mortgagees in full and the other in part The mortgagee who had been paid in part only sued the other mortgagee for the balance due on his (the plaintiff s) mortgage alleging that it was prior to that of the defendant and ought to have been paid off in full *Held* that the suit would not lie The action of the Collector in contravention of the express provisions of s 185 of Act XIX of 1873 gave the plaintiff no cause of action against the other mortgagee KUNJ BEHARI LAL v PARSOTAM NARAIN I L R 21 All 137

65 REVENUE SUIT FOR ARREARS OF

———— **Suit for arrears of Government revenue**—*Act XIV of 1863 s 1 cl 1* In a suit under cl 1 s 1 Act XIV of 1863 for the recovery of arrears of Government revenue the plaintiff was a lambardar and paid the Government revenue and the defendants severally paid rent to him according to the rent roll the net profits after the Government demand and other payments had been made being divided among

RIGHT OF SUIT—*contd*

65 REVENUE SUIT FOR ARREARS OF —*concld*

them *Held* that the suit would not lie under that section MUHKUN *v* JUSRAM 4 N W 165

66 ROAD AND OTHER CESSES SALE FOR ARREARS OF

1 ———— **Omission to appeal to Commissioner**—*Act XI of 1859 s 33—Public Demands Recovery Act (Beng Act VII of 1880) s 2* A suit to set aside a sale for arrears of road and public cesses will lie although no previous appeal to the Commissioner has been made under s 33 of Act XI of 1859 Such a sale is not one for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable within the meaning of that section MOHIBUL HUQ *v* SHEO SAHAY SINGH **I L R 25 Calc 85**

2 ———— **Suit to set aside a sale for arrears of cesses on the ground that no notice was issued under s 10 of the Act whether maintainable in the Civil Court** —*Public Demands Recovery Act (Beng Act VII of 1880) ss 8 and 10—Beng Act VII of 1868 ss 2 and 8* A suit to set aside a sale held for arrears of cesses on the ground that no notice of the certificate under s 10 of Bengal Act VII of 1880 was served upon the plaintiff is maintainable in the Civil Court *Baijnath Sahai v Ramguth Singh I L R 23 Calc 775* and *Saroda Charan v Kista Mohan 1 C W N 516* referred to CHUNDER KUMAR MUKERJEE *v* SECRETARY OF STATE FOR INDIA

I L R 27 Calc 698 4 C W N 586

67 SALE IN EXECUTION OF DECREE

1 ———— **Suit to set aside sale**—*Civil Procedure Code 1859 s 257—Suit by representative of judgment debtor* S 257 Act VIII of 1859 did not bar the representative of a judgment debtor from bringing a regular suit to set aside an execution sale except on the score of its having been irregularly conducted JUMMAL ALI *v* TIRBHEE LALL DOSS 12 W R 41

2 ———— *Suit on ground of fraud—Civil Procedure Code 1859 s 256* S 256 of Act VIII of 1859 did not bar a suit brought by a judgment debtor to set aside an execution sale on the ground that the decree holder fraudulently got the property sold in execution of a previous satisfied decree it only applied to cases of irregularity in the sale proceedings BUDREE *v* LOKEMUN 3 Agra 89

3 ———— *Civil Procedure Code 1859 s 257* An order cannot be said to have been made under s 257 Code of Civil Procedure so as to bar a suit to set aside a sale in execution of decree when the judgment-debtor was not aware of the proceedings SREEMUNTO PURAMANICK *v* OBHOY CHURN MANNA 11 W R 297

RIGHT OF SUIT—*contd*

67 SALE IN EXECUTION OF DECREE—*contd*

4 ———— *Suit to set aside order confirming sale—Omission to claim property on its attachment* The plaintiffs objected to the confirmation of the sale of certain property in execution of decree on the ground that it was their property and they were unaware that it was incumbered otherwise they would have discharged the debt neither did they know the land had been attached and was to be sold in execution The sale was confirmed and they sued to set aside the order confirming the sale *Held* that the suit would not lie HOSSEIN BEG *v* JEEWA RAM

5 N W 139

5 ———— *Right of purchaser under previous private sale—Notice of transfer—Landlord and tenant—Beng Act VIII of 1869 s 26* The plaintiff purchased under a private conveyance from the registered tenant of a permanent [illegible]

[illegible]

tenant for arrears of rent and obtained a [illegible] in execution of which he caused the tenure to be sold, and himself became the purchaser The plaintiff took proceedings under s 311 of the Civil Procedure Code to set aside the sale but his application was rejected on the ground—an erroneous one—that he was not a proper party to take such proceedings and he did not appeal against the order rejecting it *Held* in a suit brought against the [illegible] sale that [illegible] [illegible] rent [illegible] decree and so prevented the sale or he might have [illegible] application [illegible] the [illegible] be in the rent suit as a nullity on the ground [illegible] was not a party to that suit PANYE CHUNDER SIRCAR *v* HURCHUNDER CHOWDHRY

I L R 10 Calc 496

6 ———— *Act X of 1859 s 151—Sale for arrears of rent* S 151 Act X of 1859 barred a regular suit by a judgment-debtor to set aside a sale in execution of a decree for arrears of rent RUTTUN MONEE DASSEE *v* KALEEKI[illegible] CHUCKERBUTTY W R F B 147

7 ———— *Act X of 1859 s 151 and ss 110 111—Dismissal of objections* A suit to set aside a sale in execution of a Civil Court s decree of a saleable under tenure other than that from which the arrears of the rent were due was not barred by s 151 Act X of 1859 The provisions of s 110 Act X of 1859 were applicable in such a case and a party whose objection under s 111 was overruled had a right to bring a suit in the Civil Court JUGGESSUR SUHAYE *v* GOPAL LALL 11 W R 260

8 ———— *Non registration of name—Suit by unregistered holder to set aside sale*

RIGHT OF SUIT—*contd*

67 SALE IN EXECUTION OF DECREE—*contd*

of under tenure. The holder of an under tenure though his name has not been registered as the owner may bring a suit to set aside a sale of the under tenure made in execution of a decree for [illegible]

9 ———— *Illegal sale by Collector* A suit will lie to set aside the proceedings of a Collector who acts without jurisdiction in selling land not within his jurisdiction KHOONOO *v* AOODAL SINGH 8 W R 511

JOKEE LALL *v* NURSING NARAIN SINGH 4 W R Act X 5

10 ———— *Sale under Criminal Procedure Code 1861 s 185* A suit was held not to lie to set aside a sale of property carried out under s 185 of the Criminal Procedure Code 1861 BUKHOOREE SINGH *v* GOVERNMENT 8 W R 207

11. ———— *Suit to set aside sale for irregularity—Beng Act VII of 1880—Civil Procedure Code 1882 ss 311 312* The words in respect of sales in execution of decrees in s 19 of Bengal Act VII of 1880 do not include any proceedings instituted after the sale for setting it aside Ss 311 and 312 therefore of the Civil Procedure Code do not apply to sales under a certificate A suit therefore to set aside such a sale for irregularity is not barred by s 312 SADHUSARAN SINGH *v* PANCHDEO LAL I L R 14 Calc 1

RAM LOGAN OJHA *v* BHAWANI OJHA I L R 14 Calc 9

12. ———— *Fraud—Sale under Act X of 1859—Civil Procedure Code s 244—Act XXIII of 1861 s 11* B obtained an ex [illegible]

[illegible] was the actual purchaser in the name of N An objection was taken that the suit would not lie and that the questions in the suit were such as could have been determined and were determined by the Court executing the decree *Held* that neither s 244 of the Civil Procedure Code nor the corresponding s 11 of Act XXIII of 1861 has any application to proceedings in execution of a decree under Act X of 1859 and that the suit being one to set aside the sale on the ground of fraud was maintainable *Saroda Churn Chuckerbutty v Mahomed Isuf Meah I L R 11 Calc. 376* distinguished BROJO GOPAL SARKAR *v* BUKRUNNISSA BIBI I L R 15 Calc 179

See MOHENDRO NARAIN CHATURAJ *v* GOPAL MONDUL I L R 17 Calc 769

PROSUNNO KUMAR SANYAL *v* KALI DAS SANYAL I L R 19 Calc 683 L R 19 I A 166

BHUBON MOHAN PAL *v* NUNDA LAL DEY I L R 26 Calc 324

and MOTI LAL CHAKRABUTTY *v* RUSSICK CHANDRA BAIRAGI I L R 26 Calc 326 note

13 ———— *Transfer of Property Act (IV of 1882) s 99 Sale contrary to provisions of—Civil Procedure Code (Act XIV of 1882) s 244—Sale by mortgage in execution of decree* Property subject to a mortgage having been sold by the mortgagee as holder of a decree against the mortgagors a separate suit was brought by the mortgagors to set aside the sale being in contravention of s. 99 of the Transfer of Property Act On objection being taken that the suit was not maintainable the matter being one for determination in execution proceedings under s 244 of the Code of Civil Procedure —*Held* (i) that although the sale was contrary to the provisions of s 99 of the Transfer of Property Act that section being for the benefit only of a particular class of persons namely those concerned with a right to redeem mortgaged property such a sale was not void but voidable (ii) that the question being one arising between the parties to the suit wherein the sale was made and relating to execution could not be raised and decided in a suit but should not be raised and tried only in execution proceedings taken under s 244 of the Code of Civil Procedure and the sale set aside if such relief were not for any reason barred (iii) that the sale having been confirmed such confirmation was final and precluded the mortgagors from seeking the relief to which they would otherwise have been entitled [illegible] sale and con[illegible] be precluded [illegible] property on [illegible] for by the [illegible]AYAN PATHUTI *v* [illegible] I L R 22 Mad. 347

14 ———— *Civil Procedure Code (Act XIV of 1882) s 287—Sale in execution subject to mortgage—Suit to set aside sale for re-sale of property free from mortgage lien* The plaintiff having sold property in execution of a decree subject to a certain mortgage lien which had been duly investigated and allowed brought this suit to have the sale set aside and praying for a re-sale of the property free from the mortgage lien *Held* that he was not entitled to the relief sought. His proper remedy was to have brought a suit for a declaration that the alleged mortgage was null and void and to have stayed the sale till the determination of that suit. PARSHOTAM MAUJI *v* CANT[illegible] VINAYAK I L R 23 Bom. 759

15 ———— *Suit to recover property sold on grounds which might have been*

RIGHT OF SUIT—*contd*

67 SALE IN EXECUTION OF DECREE—*contd*

made grounds for appeal against the original decree—Acquiescence in execution proceedings When a party to a dec ee and subsequent proceedings in execution thereof has suffered execution to pro ceed and property to be sold without appealing he cannot sue to recover the property so sold on ground which might have been taken in appeal from the decree or from orders in execution BENI PRASAD KUNWAR *v* LUKHNA KUNWAR

I L R 21 All 323

16 ———— Suit to confirm sale—*Civil Procedure Code 1859 ss 256 257—Sale in execution of decree—Order setting aside sale—Suit to set aside such orders* Certain immoveable property was put up for sale in the execution of *B s* decree and was purcha ed by him. Subsequently on the same day such property was put up for sale in the execution of *S's* decree and was purchased by him *B* objected to the confirmation of the sale to *S* on the ground that *S s* decree had been satisfied previously to such sale and the Court executing the decrees made an order setting aside such sale on that ground *S* thereupon sued *B* to have such order set aside and to have such sale confirmed and to obtain possession of such property *Held* that inasmuch as such order had not been made under s 257 of Act VIII of 1859 but had been made at the instance of a purchaser under an other decree and *B s* decree as a matter of fact had not been satisfied *S s* uit to have such order set a ide was maintainable SANGAM RAM *v* SHEOBART BHAGAT

I L R 3 All. 112

17 ———— *Civil Procedure Code 1859 ss 256 257—Sale in execution of decree—Suit to set aside order setting aside sale* The Court executing a decree having made an order setting aside a sale under Act VIII of 1859 of immove able property in the execution of the decree the purchaser at such sale sued the decree holder and the judgment debtor to have such order set aside and to have such sale confirmed in his favour *Held* (OLDFIELD J dissenting) that the suit was main tainable the provisions of s 257 precluding an appeal from an order setting aside a sale and not a suit to contest the validity of such an order and that the order setting aside the sale in this case being *ultra vires* the auction purchaser was en titled to the relief he claimed DIWAN SINGH *v* BHARAT SINGH

I L R 3 All 208

18 ———— *Civil Procedure Code 1877 ss 311 312—Suit to have execution sale after being set aside confirmed* *Held* (OLDFIELD J dissenting) that a suit by the purcha er at a sale of immoveable property in execution of a decree which has been set aside under ss. 311 and 312 of Act X of 1877 to have such sale confirmed on the groun l that there was no irregularity in the [illegible]

I L R [illegible] All. 554

RIGHT OF SUIT—*contd*

67 SALE IN EXECUTION OF DECREE—*contd.*

19 ———— *Civil Procedure Code 1859 ss 256 257—Sale in execution—Order of attachment and sale notifications not signed by Judge but by Munsarim—Sale set aside—Equitable estoppel* On the 21st August 1876 certain im moveable property belonging to *M* wa put up f r sale and was purchased by *R* On th 20th April 1877 such sale was set aside under s. 256 of Act VIII of 1859 on the ground that the order at taching such property and the notifications of sale had not as required by s. 222 been signed by the Court executing the decree but by the Munsarim of the Court On the 27th June 1877 *M* conveyed such property to *H* who purchased it *bond fide* and for value and satisfied the incumbrances exi ting thereon. On the 15th April 1878 *R* sued *H* and *M* to have the order setting aside such sale set a id and to have such sale confirmed in his favour on the ground that *it had been improperly set aside* under s 256 of Act VIII of 1859 the judgment debtor not having been prejudiced by the irre *gularities in respect* whereof such sale had been set aside *Held* by OLDFIELD J that althou h such sale might have been improperly set aside yet inasmuch as the order of attachment and the notifications of sale could have no legal effect [illegible] ing been signed by the Munsarim of the Court executing the decree and not by the Court as required by s 222 of Act VIII of 1859 and inas much as it would be inequitable after the incum brances of such property had been satisfied and the state of things changed to allow *R* after stan[illegible] by for a year and permitting dealin s with the pro perty to come in and take advantage of the change of circumstances and obtain a property become much more valuable at the price he originally offered *R* ought not to obtain the relief which he sought *Held* by STRAIGHT J that the fact that the Court executing the decree had not si ned the order of attachment and the notifications of sale vitiated the proceedings in executi n *ab initio* and [illegible]

I L R [illegible]

20 ———— *Civil Proced re Code ss 244 2 8 283—Suit to confirm sale after it is set aside—Person no party to proceedings—Specific Relief Act s 42* *M* in whose name [illegible] had been purcha ed at an executi n sal which was improperly set a ide brought a suit to have the order setting aside the sale reversed and the sale confirmed in her favour and for a declaration that the property was not liable to be sold in execution of a decree of the def ndan s against third persons under which it had been attached and advertised for sale *Held* that such a suit could only be main tained under s. 42 of the Specific Relief Act (I of 1877) but that s. 244 of the Civil Procedure Code indicated the intention of the Legislature that such questions should be determined in the execution department and reading together the provisions of ss. 244 278 and 283 of the *Code* the suit was [illegible]

RIGHT OF SUIT—*contd*

67 SALE IN EXECUTION OF DECREE—*contd*

premature and therefore not maintainable MAN KUAR v TARA SINGH I L R, 7 All 533

21. ——————— *Suit to have confirmed a sale set aside by Collector—Transfer of execution of a decree to Collector—Power of Collector—Civil Procedure Code 1882 ss 31, 320 and 588 cl 16—Rules framed by Government under s 3...*
of d...
of a
had been transferred under s. 320 of the Code of Civil Procedure (Act XIV of 1882) The Collector set aside the sale before the date of confirmation on the sole ground that the judgment debtor had subsequent to the sale made full payment of the sum decreed. Thereupon the auction purchaser filed a suit for a declaration that the sale had been improperly set aside and for a confirmation of the sale *Held* that the suit would lie Reading s 312 with s 311 of the Code of Civil Procedure the suit was not barred under the last clause of 312 nor under 588 cl. 16 *Held* also that the rules framed by Government under s. 320 of the Code only restricted the powers of the Court to interfere with the procedure of the execution of decrees transferred to the Collector They did not come in the way of a party bringing a civil suit to establish his purchase *Held* also that the Collector had no power under s. 311 of the Code to set aside the sale and receive payment from the judgment debtor MATHURADAS v PANNALAL I L R 19 Bom 216

22 ——————— **Advance by mortgagee to pay off prior lien on mortgaged property and save the property from sale in execution of decree**—*Transfer of Property Act (IV of 1882) ss 60 68 72 74 75 95—Suit against purchaser of property to recover amount so advanced—Charge on the mortgaged property* Plaintiff s undivided brother had advanced money on a usufructuary mortgage bond to enable the owners of certain property to obtain possession of it from one in whose favour a lien had been decreed to subsist The money not having been so applied the holder of the lien attached the property and applied to the Court for its sale To save the property from being sold plaintiff s said brother further paid the amount of the lien into Court and at about the same time the mortgagor sold the property to defendant Plaintiff s brother had never obtained possession of the property and had since died Upon plaintiff suing to recover (in addition to the mortgage amount liability for which was not disputed) the amount of the lien so paid into Court to

fail. There is no provision in the Transfer of Property Act to support the proposition (involved by the plaintiff s suit) that a second mortgagee may by a transaction between himself and the first mortgagee without knowledge or concurrence on the part of the mortgagor acquire a new right over the mortgaged property *Per* SUBRAMANIA AYYAR J —That as against the mortgagors plaintiff would have been entitled to add the sums paid by him to the prior incumbrancer to the mortgage amount But as the mortgage was usufructuary and plaintiff had never obtained possession he had acquired no charge on the mortgaged property for the money recoverable by him under s 68 of the Transfer of Property Act The amount sought to be added thereto consequently stood on a similar footing and the plaintiff s contention that a charge in respect of it existed in his favour was unsustainable *Nogender Chund v Chose* v *Kumine Dosse* 11 *Moo I A* 241 59 and *Anardi Ram* v *Dur A...Begum I L R* 1... *All.* 1... PERIANNA SERVAIGARAN v MARUDAINAYAGAM PILLAI I L R 22 Mad 332

23 ——— **Suit for declaration of right to have property sold in execution**—*Refusal of Deputy Collector to sell in execution of decree of Revenue Court—Cause of action* Where a Deputy Collector refuses to sell a certain property in execution of a decree of a Revenue Court and the applicant fails to bring a suit within the proper time for a declaration of his right to have the property sold he cannot procure to himself more time by making a second application to the Deputy Collector for execution and having the refusal repeated A suit so brought cannot have its form changed and be treated as a suit to establish the lien which the plaintiff obtained on the property and to bring the same to sale for discharge of that lien PUGHOONUNDUN SINGH v GOPAL CHUND CHOWDHRY 20 W R 17

PUGHOONUNDUN SINGH v COCHRANE 20 W R 18

24 ——————— **Suit by purchaser at execution sale to sue for partition**—*Certificate of purchase by Registrar—Conveyance—Declaration of right to ...—Rules of Court 415 ...* The

right to a conveyance in virtue of a contract he does not hold save as regards the parties to the contract of sale the position of an owner When the sale is confirmed the purchaser is entitled to a conveyance and until he obtains a conveyance the property in the estate purchased does not having

perty purchased has not passed the purchaser is not entitled to maintain a suit for partition In such a suit he could not on partition give a good conveyance to the parties interested in the estate

RIGHT OF SUIT—*contd*

67 SALE IN EXECUTION OF DECREE—*contd*

nor would he be entitled to a declaration of his share in the property JOHUR MULL KHOORBA *v* TARANKISTO DEB I L R 10 Calc 252

25 ———— Suit for refund of proceeds of sale paid to wrong party—*Civil Procedure Code 1859 s 270* No suit lay for a refund of the proceeds of sale realized in execution

26 ———— Suit by purchaser to recover purchase money paid at sale—*Civil Procedure Code (Act XIV of 1882) s 315—Sale of property in execution in which judgment debtor has no interest—Limitation—Accrual of the cause of action* Under s 315 of the Civil Procedure Code a suit will lie to recover purchase money paid at a Court sale for property to which it is found that the judgment debtor has no title The cause of action in such a case does not accrue till the purchaser is deprived of the property which was sold to him GURSHIDAWA *v* GANGAYA I L R 22 Bom 783

27 ———— Sale in execution of decree enforcing mortgage—*Distribution of proceeds of execution sale—Priority of mortgages—Transfer of Property Act (Act IV of 1882) s 80* *A* mortgaged certain property to *B* in July 1874 to *C* in March 1877 and again to *B* in November 1877 *B* obtained a decree directing the sale of the property in satisfaction of his two mortgages and it was sold accordingly Subsequent to the sale

amount received by *B* in respect of *B's* mortgage of November 1877 *Held* that to read the words an incumbrance in s 295 prov (c) of the Civil Procedure Code as an incumbrance or incumbrances so as to give priority to *B* mortgage of November 1877 over *C's* earlier mortgage of March 1877 would be to defeat the intention of the Legislature as expressed in that section and also in s 80 of the Transfer of Property Act and that *C* was entitled to maintain the suit MITTHU LAL *v* KISHAN LAL I L R 12 All 546

28 ———— Recovery of purchase money—*Civil Procedure Code (Act XIV of 1882) s 315—Execution sale—Absence of interest of judgment-debtor—Suit by purchaser to recover purchase-money—Right of suit—Cause of action* A pur

special procedure in the Execution Department

mentioned in s 315 Civil Procedure Code *Munna Singh* v *Gajadhar Singh I L R 5 All 5..* followed In order to afford the purchaser a good cause of action it need not be shown that he had been deprived of the property purchased before the institution of the suit NITYANUND POY *v* JUGGUT CHANDRA GUHA (1902) 7 C W N 105

29 ———— Suit for confirmation of prior sale—*Decree transferred to Collector for execution—Sale held by Collector but afterwards set aside—Purchase by one joint decree holder in his own name—Suit by auction purchaser to have the sale confirmed* Muthara Das and Gappu Lal held a joint decree for money against Jamna Prasad. Mathura Das applied in his own name for execution of the joint decree and certain property of the judgment debtor was attached. That property being ancestral execution of the decree was transferred to the Collector by whom the property was sold The property so sold was purchased by Mathura Das who however did not pay for it in cash but gave a receipt for satisfaction of the joint decree Subsequently this sale was set aside by the Collector under the provisions of s 311 of the Code of Civil Procedure Mathura Das accordingly filed a suit in the Civil Court to have the Collector s order set aside and the sale confirmed in his favour *Held* that the suit would lie but that the plaintiff was not entitled to a decree in it inasmuch as to give the plaintiff the decree which he asked for namely a decree confirming the sale in the plaintiff s sole name without reference to the rights of his co decree holder would be to assist the plaintiff in perpetrating a fraud *Sham Behari Lal* v *Rup Kishore I L R 0 All 29* referred to MATHURA DAS *v* JAMNA PRASAD (1903) I L R 25 All 355

68 SHIP SALE OF

1 ———— Suit for declaration of title against foreign creditor—*Sale by French Court of ship pledged to secure payment of debt—Claim by pledgee to proceeds of sale* *M* pledged his ship in August 1878 to *C* as security for a bond debt of R1,000 repayable by two instalments in February and August 1879 *S* seized the ship in ... by *M* and ... a claim ... the Court ... required

C to produce a copy of an English Court's judgment acknowledging and sanctioning *C's* claim against *M* *C* sued *S* to obtain a declaration of his right to recover the amount due by *M* on the bond *Held* that, whether or not his lien was destroyed by the sale of the ship in French territory *C* was not entitled to any of the proceeds of the sale either at the date of the sale or of his claim in the French Court and the denial by *S* of *C's* right to any of the proceeds of the sale gave *C* no cause of action CHITHAMBARA *v* MUTHAYA I L R 5 Mad 339

RIGHT OF SUIT—*contd*

68. SHIP SALE OF—*contd*

2 ———— **Suit by owners for sum realized by sale of ship**—*Abandonment of French ship to French Consul—Principal and Agent* The Captain of the French ship *C* which had been wrecked abandoned her to the French Consul for the benefit of all concerned The owners assented to this arrangement but afterwards sued the Consul as their agent for the sum realized by the sale of the ship *Held* that when the owners of a foreign ship abandon her to their Consul for the benefit of all concerned they can not afterwards sue him as their agent *Semble* That the owners of a foreign ship when abandoning to their Consul cannot legally enter into a *private agreement* with him with reference to the funds realized by the sale of the ship ROBERT *v* JAQUEHIM Bourke O C 112

68 (*a*) SOCIETY SUIT AGAINST

———— **Civil Procedure Code (Act XIV of 1882) ss 30 539**—*Suit by subscribers of society maintainability of* Some of the subscribers to a society brought a suit on behalf of themselves and other persons interested against the office bearers and members of the society for the removal of the office bearers and for an *account of the affairs of the society No sanction* of the Advocate General under s 539 of the *Code of Civil Procedure or permission of Court* under s. 30 of the Code for bringing the suit *was obtained by the plaintiffs Under the rules* of the society the subscribers as such had no control over the officers of the society or the conduct of the society s affairs and they were not beneficiaries having any claim on the funds of the society *Held* that they had no right to maintain the suit *Per* SIR ARNOLD WHITE *C J* —Even if it is assumed that the suit was maintainable without the sanction of the Advocate General under s 539 of the Code of Civil Procedure the plaintiffs cannot maintain the suit as they were not members of the society and their rights were in no way analogous to the rights of worshippers in a Hindu temple who could maintain a suit in their own right *Per* ABDUR RAHIM *J*—Assuming that the defendants are in the position of trustees of the society liable to be sued for misconduct by persons interested the plaintiffs cannot maintain a representative suit without sanction or leave obtained under s 539 or 30 of the Code of Civil Procedure S 539 is enabling as regards the general public interested in the sense that two persons may sue now *where it would have been necessary before that all should sue* or that some [illegible] the rest [illegible] *I L R 8* [illegible] *Mukim v* [illegible] *9 referred to Subbayya v Krishna I L R 14 Mad 186* referred to D CRUZ *v* D SILVA (1908) I L R 32 Mad. 131

RIGHT OF SUIT—*contd*

69 SUBSCRIPTIONS SUITS FOR

1. ———— **Suit by secretary of charitable institution against subscriber**—*Liability of subscribers to charitable institution. The extent of a subscriber s obligation must depend* upon the nature of the particular charity or other subject for which the subscription is given and in some cases upon what the subscribers said or did when he agreed to subscribe *Quære* Whether (assuming the liability of a subscriber for unpaid subscriptions) the secretary of a charitable institution with the consent of the committee of management is entitled to sue a subscriber for the amount of his contribution KEDAR NATH MITTER *v* ALISAR ROHOMAN 10 C L R 197

2 ———— **Liability of subscribers to a proposed town hall** A suit will lie to recover a subscription promised the subscriber knowing that on the faith of his and other sub [illegible]

I L R 14 Calc 64

70 SUIT BROUGHT IN TWO COURTS

———— **Suit simultaneously brought in different Courts on same cause of action** —*Bar to maintenance of suit—Election* A suit [illegible]

suit but the plaintiff must elect which suit he will proceed with SUBBRAMANYIAN *v* GANAPATHI I L R 2 Mad 123

71 SURVIVAL OF RIGHT

1. ———— **Trustee and cestui que trust**—*Survival in representative of cestui que trust of right to sue* If the money due on a bond belonged to *A* and *B* the nominal plaintiff in a suit on the bond was a trustee for him —*Held* that *A* s son might sue to get the benefit of the decree obtained by *B* JUGGOBUNDHOO COONDOO *v* NIL COMUL SURMAH W R 1864 190

2 ———— **Revival of suit in favour of minor**—*Suit for partition* A suit for a partition of family property was upon the death of the plaintiff revived on behalf of his minor sons with the permission of the Court of first instance and a decree for a partition given The Appellate Court reversed the decree upon the ground that as a partition can be enforced on behalf of minors only when it can be proved to be necessary for the protection of the minor s interest the cause of action did not survive to the minors. *Held* by the High Court, that this was not a universal rule and the Court of first instance having allowed the suit to be revived considering that it had been brought

RIGHT OF SUIT—*contd*

71 SURVIVAL OF RIGHT—*contd*

on grounds which entitled the minors to the partition the competency of the plaintiff to proceed with the suit was not open to objection in the lower Appellate Court PARVATHI *v* MANJAYAKARANTHA 5 Mad 193

3 ——— Suit against agent for account—*Death of agent—Act X of 1859 s 20* A right of suit accruing against an agent for money received and accounts kept falling within the class *mentioned in s 24 Act X of 1859* survives the death of the agent HILLS *v* SHOKHEE MONEE DOSSEE 10 W R 59

4. ——— Malicious prosecution suit for—*Civil Procedure Code s 361—Abetment of suit—Tort—Cause of action survival of as against heir of a deceased wrong doer—Act XII of 1855—Actio personalis moritur cum persona Application of* The plaintiff sued to recover damages from the defendant s father *R* for wrongful arrest and malicious prosecution During the pendency of the suit *R* died and the plaintiff substituted the defendant as his heir and representative The defendant contended that the suit abated Both the lower Courts disallowed the defendant s contention and awarded damages to the plaintiff to be recovered from the estate of the deceased On appeal by the defendant to the High Court —*Held* reversing the decision of the lower Courts that the suit abated on the death of *R* his estate having derived no benefit but on the other hand suffered loss in consequence of his wrong doing *Phillips* v *Homfray L R 24 Ch D 439* followed It was contended for the plaintiff that Act XII of 1855 gave the plaintiff a right to continue his [illegible] t XII of [illegible] brought [illegible] and only [illegible] gainst his heir HARIDAS PAMDAS *v* PAMDAS MATHURADAS I L R 13 Bom. 677

5 ——— Application to revive suit by person whose claim is in conflict with that of original plaintiff—*Civil Procedure Code 1882 ss 361 and 371—Cause of action—Abatement of suit—Substitution of parties* The language of ss. 361 and 371 of the Code of Civil Procedure relating to abatement of a suit show that where it is sought to revive a suit on the death of [illegible]

[illegible] he had been selected as the chela or disciple of the deceased mohant (*b*) that the ceremony of initiation had been duly performed by which he was brought into the brotherhood of his gurus; and (*c*) that the installation ceremony had been performed with the consent of the dasnami and that by virtue *thereof he* became the mohant and exercised the functions of that office and on the death of the plaintiff an application to be substituted in his place was made on grounds which put the applicant into opposition to the original plaintiff and made his claim not dependent on the original plaintiff's case but in conflict with it —*Held* that the right of suit could not be said to survive to the applicant within the meaning of the sections of the Court relating to abatement of suit but that the suit abated by the death of the plaintiff SHAM CHAND GIRI *v* BHAYARAM PANDAY I L R 22 Calc 92

6 ——— Claim to guardianship based on a will does not survive to claimant s [illegible]

[illegible] one *M* thereupon applied for leave to prosecute the appeal as *G* s representative *Held* refusing the application that the appeal must abate by reason of *G's death Her appointment* alleged to have been made under the will was a matter of personal preference and trust A claim based on personal trust could not survive to her representative GANGABAI *v* KHASHABAI I L R. 23 Bom. 719

7 ——— Application for Letters of Administration by Legal Representative of Executor—*Abatement of suit—Civil Procedure Code (Act V of 1908) Order XXII rul 1—Application for Probate by Executor—Death of Executor—* On an application by a sole executor for grant of probate a *caveat* was entered and the matter was set down as a contentious cause Pending the hearing the executor died Thereupon his widow and legal representative applied to have her name substituted for his and to have the petition for probate amended by *substituting a prayer for* letters of administration with copy of the will annexed in place of the prayer for probate *Held* that the application must be refused as the right *to sue had not survived* and the suit had abated SARAT CHANDRA BANERJEE *v* NANI MONEY BANERJEE (1909) I L R. 36 Calc 799

[illegible] TAX

——— Suit to recover tax illegally levied—*Bombay Abkari Act (I of 18[illegible]) s [illegible]—Omission to stay proceedings under* [illegible] Though a person subject to an undue demand may under s. 29 of the Act take steps by which the Collector's [illegible] still his abstention from [illegible]

[illegible] *v* SAKHARAM NAGU I L R [illegible] 519

RIGHT OF SUIT—*contd*

73 TORTS.

1. ———— **Suit for tort amounting to felony**—*Cause of action—Proof of previous conviction in Criminal Court* Where a person brings a suit alleging a state of facts which amount to felony, he must show that he has done his best to procure a conviction on the criminal charge before the Civil Court will entertain such a suit COOYAMULL v SARNO PAUR 2 Ind Jur N S 187

2 ———— **Suit in respect of tort**—*Taking away and detaining property—Remedy by civil action.* In a case where a person took away a cow out of another s field and wrongfully detained it pretending that he purchased it at an auction sale in execution of a decree it was *held* there was a remedy by civil action The plaintiff was not bound to institute criminal proceedings in the first instance and the Civil Court was bound to take cognizance of the suit under s 1 of the Code of Civil Procedure of 1859 SHAMA CHURN BOSE v BHOLA NATH DUTT 6 W R Civ Ref 9

3 ———— **Suit for damages for abuse**—*Failure to take criminal proceedings* The failure of an injured party to institute criminal proceedings does not deprive him of his right to bring a suit in the Civil Court to recover damages for abuse SREENATH MOOKERJEE v KOMUL KURMOKAR 16 W R 83

4. ———— **Suit for property (or its value) attached before judgment and made away with**—*Failure to institute criminal proceedings* A suit will lie for the recovery or for the value of property attached under s 81 Act VIII of 1859 and afterwards made away with by the defendants in collusion with the attaching officer without a criminal prosecution being previously instituted against them CHOITUNNO PARAMANICK v ZUMEEROODDEE SHAIKH 18 W R 27

5 ——— **Suit for tort not compoundable**—*Merger of tort in felony—Law applicable to Hindus and Mahomedans—English law—Right to bring civil suit before prosecuting for offence* Within the original jurisdiction of the High Court of Madras a Hindu or Mahomedan whose civil rights have been infringed by an act which is also a non compoundable offence is not bound to prosecute the offender before maintaining his civil action nor is his right to prosecute his action suspended until the offender is brought to justice ABDUL KAWDER v MUHAMMAD MERA I L R 4 Mad. 410

6 ———— **Suit to recover damages for detention of goods**—*Dismissal of criminal charge for taking same goods* The circumstance that the plaintiff preferred a criminal charge against the defendant for the taking of his goods, which charge was dismissed does not prevent the plaintiff from afterwards suing in the Civil Court to recover damages for the taking or detention of the goods notwithstanding the Criminal Court may have jurisdiction upon a conviction to impose a fine and award it to the protector as compensation ROOPA BEWA v RAMCOOMAR SANDYAL Marsh 248 2 Hay 13
ADRAM v HURBULLUB 2 N W 58

7 ———— **Suit for fine realized after imprisonment in default of payment**—*Imprisonment—Fine.* An accused person was punished by the Magistrate both with imprisonment and fine and was sentenced in default of payment of fine to a further imprisonment. After the accused had undergone both the principal punishment and additional imprisonment he was released and the fine realized from him *Held* that a suit by him to recover the amount of the fine was not maintainable the additional imprisonment not being in lieu of the fine but as a punishment for non payment of it MAKOOLLAH v GUNES 3 Agra 390

74. WITNESS

1. ———— **Suit for expenses of witness in civil case**—*Cause of action* No suit will lie for the expenses of a witness DE SARAN v HURISH CHUNDER BISWAS 5 W R S C C Ref 6

2 ———— **Suit for damages caused by false statement of witness in a suit** No action will lie against a witness for making a false statement in the course of a judicial proceeding CHIDAMBARA v THIRUMANI I L R 10 Mad 87

3 ———— **Slander**—*Privilege of witness—Slander uttered by witness whilst under examination in a judicial proceeding* A witness in a Court of justice is absolutely privileged as to anything he may say as a witness having reference to the enquiry on which he is called as a witness The defendant as a witness and allowed by the Court as relevant to the case The plaintiff alleged that the statement was made maliciously that the defendant bore him a grudge and that it was to give vent to that grudge and to injure his reputation that the statement was made *Held* that the plaint disclosed no cause of action and that the suit had been properly dismissed BHIKUMBER SINGH v BECHARAM SIRKAR. BHIKUMBER SINGH v GOUR KRISTO DAS I L R 15 Calc. 264

4. ———— **Defamation—Verbal abuse**—*Special damage—Witness—Privilege.* The plaintiff was cited as a witness by one *S* in a suit instituted by him against defendant. After plaintiff's evidence had been concluded in which he stated that there was no enmity between him and defendant the defendant was examined by the Court and stated that there was enmity between him and plaintiff and on the Court inquiring to know what was the cause of enmity defendant used words conveying the meaning that plaintiff

RIGHT OF SUIT—*concld*

74. WITNESS—*concld*

descent was illegitimate In a suit for slander instituted by the plaintiff —*Held* by BRODHURST, J that under the circumstances the statement complained of was made by defendant while deposing in the witness box and was therefore absolutely privileged *Per* MAHMOOD J (*contra*) that the question whether or not the statement complained of was made by defendant in course of his deposition or after it was finished and when he was no longer in the witness box had not been tried and the order remanding the case for trial on the merits was right Further that the English law of slander as forming part of the law of defamation and as such drawing somewhat arbitrary distinctions between words actionable *per se* and words requiring proof of special or actual damage is not applicable to this country either by reason of any statutory provision or by any uniform course of decision sufficient to establish such distinctions as part of the common law of British India that whilst the English law of defamation recognizes no distinction between defamation as such and personal insult in civil liability the law of British India recognizes personal insult [illegible] *per se* [illegible] uch [illegible] or protected by any other rule of law is in itself a substantive cause of action and a civil injury apart from defamation and that malice is an element of liability for abusive and insulting language and that such malice will be presumed or inferred unless the contrary is shown that when the defendant is not absolutely privileged and protected by reason of the office or occasion on which he employed such language he renders himself subject to a civil liability for damages irrespective of any plea of justification based upon proving the truth of the statements contained in the abusive and insulting language complained of that the rule of English law as to the privilege or protection of a witness in regard to defamatory statements made in the witness box is based upon a public policy which is equally applicable to insulting and abusive language used by such witness and such statements when made in the witness box are privileged and protected even though made maliciously and falsely so long as they are relevant to the inquiry in the broadest sense of the phrase and that even where such statements have no reference to the inquiry the defendant may prove the absence of malice and that they were made in good faith for the public good. DAWAN SINGH *v* MAHIP SINGH I L R 10 All 425

Nor is a witness liable to be prosecuted for defamation for what he says in the witness box while under examination

RIGHT OF WAY

See ACQUIESCENCE

1 B L R A C 213

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL

6 C W N 31

RIGHT OF WAY—*contd*

See EASEMENT I L R 18 Bom 382
I L R 28 Calc 311
I L R 22 Bom 525

See ESTOPPEL—ESTOPPEL BY JUDGMENT
I L R 4 Calc 892

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY —RIGHT OF WAY
9 B L R 328
I L R 10 Bom 390
I L R 24 Bom 188

See LAND ACQUISITION ACT 1870 ss 16 AND 17
3 W R 27
6 B L R Ap 47

See POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY WATER ETC
2 B L R Ap 9
2 W R Cr 64
I L R 5 Calc 194
I L R 4 Mad 121
I L R 7 Mad 49
14 W R Cr 28
2 C W N 670

See PRESCRIPTION—EASEMENTS—RIGHT OF WAY

See RIGHT OF SUIT—EASEMENTS
I L R 9 All 434

See WRONGFUL RESTRAINT
5 C W N 433

1 ———— **Creation of right of way**—*User—Adverse possession* A right of way need not have its origin in an express grant but may be established by continued user for a certain period constituting adverse possession RAM GUNGA DOSS *v* GOBIND CHUNDER DOSS 16 W R 284

2 ———— *User—Custom—Proof of right of way* A right of way may be created either by grant or by immemorial custom or by necessity and it is necessary for a party seeking to establish a right of this kind to prove its existence and that it is ancient and has been exercised without interruption The determination of the existence of the right is a question depending on the evidence in each case the right being inferred from the evidence IMAMBUNDEE BEGUM *v* SHEO DYAL RAM 14 W R 190

SAVALGIAPA VIRDASAPA *v* BASVANAPA BASAPA 10 Bom 393

Proof of well established and fixed user will be sufficient BHUGWAN CHUNDER CHOWDHRY *v* PROSAD 7 W R 271

3 ———— *User—Presumptive right—Proof of right of way* In order to establish a right of way the person claiming must prove uninterrupted user for a certain length of time and if his right is interrupted must go into Court at once No length of time can give a party such a right as destroys all the ordinary uses of the servient property *e g* a general right to the promiscuous

RIGHT OF WAY—*contd*

use of a whole property for the purpose of driving cattle over it. JOY DOORGA DOSSIA *v* JUGGERNATH POY 15 W R 295

HEERA LALL KOOER *v* PURMESSUR KOOER. 15 W R 401

4. ——— *User—Presumption from long user Quære* —Ought a Court to infer from user alone that a right of way has been conferred by the owner of the land upon the person exercising the user unless that has extended over a period as long as that which the law would allow to the owner for bringing an action of ejectment if absolutely excluded from possession? MOHIM CHUNDER CHUCKERBUTTY *v* CHUNDER CHURN GOOHO 10 W R. 452

5 ——— *User—Actual user within two years—Limitation Act 1871 s 27* In a suit to establish a right of way it is not sufficient for a plaintiff to prove user for twenty years which ended more than two years next before the institution of the suit he must show exercise of the right by actual user within such period of two years. GOPEE CHAND SETIA *v* BHOOBUN MOHUN SEN 23 W R 401

6 ——— *Sufferance* A right of way by sufferance over another's land cannot create a permanent right ASHOOTOSH CHUCKERBUTTY *v* TEETOO HOLDAR W R 1864, 293

FUTTEH ALI *v* ASGUR ALI 17 W R. 11

7 ——— *Permitting cattle to pass over ground between village and public road* The owner of a piece of land between a village and the public road who allows his neighbour's cows to pass over it on the way to pasture does not thereby create a right of easement over the land so as to deprive it of all value by rendering its cultivation impossible GOOROOCHURN GOON *v* GUNGAGOBIND CHATTERJEE 8 W R. 269

8 ——— *User—Evidence of right of way* User during previous ownership is no evidence of a right of way which relates to the land of another OBHOY CHURN DUTT *v* NOBIN CHUNDER DUTT 10 W R 298

9 ——— *User* The finding that a right of way had been formerly exercised is not a sufficient finding to indicate the length of time for which the right had been exercised and is therefore insufficient to prove a right of user KRISHNA CHANDRA CHUCKERBUTTY *v* KRISHNA CHANDRA BANIK 3 B L R A C 211

S.C KRISTO CHUNDER CHUCKERBUTTY *v* KRISTO CHUNDER BURNIC 12 W R 76

10 ——— *Claim of right of way under contract* A party who claims, under a contract the re-opening of a way is not required by Act IX of 1871 s. 27 to prove user for twenty years. KALLARAM DHUR *v* JOOGUL KISHORE SURMAH 23 W R 290

11. ——— *Use limited to season of year* A right of way may be created by use continued for many successive years even though the use is limited to one particular season of the year alone OOMUR SHAH *v* RUMZAN ALI 10 W R 363

12. ——— *Pathway over waste land—Discontinuance during rainy season.* A right of user over a pathway may be established notwithstanding that the path passes over waste land. A temporary interruption, such as during the rainy season cannot affect a right of user MAHOMED ANSUR *v* SEFATOOLLAH 22 W R. 340

13 ——— *User—Easement —Existence of other access to road* Time and user create a right of easement over the property of

[illegible]

14 ——— *Right of user—Existence of other access to premises* A plaintiff's

[illegible]

15 ——— *Easement—Limitation Act (XV of 1877) s 26—User as of right—Prescriptive right* For the purpose of acquiring a right of way or other easement under s. 26 of the Limitation Act it is not necessary

[illegible]

16 ——— *User of twenty years to support servitude—Extent and mode of user—Calcutta Municipal Act (Beng Act IV of 1876)* As establishing his right of way over the defendant's passage the plaintiff relied upon a user of it several times in the year for twenty years prior to the defendant's interruption of it by mehters for the purpose of removing the contents

[illegible]

passage more frequently than they did they were at liberty to do so In and after 1876 instead of the plaintiff's mehters those employed by the

[illegible]

above was neither a discontinuance by the plaintiffs of their user nor an aggravation of the servitude Also that, although a servitude gained for one pur

RIGHT OF WAY—*contd*

pose cannot be used for another the *purposes before* and after 1876 being identical the user proved prior to that year supported a right in the plaintiffs to use the passage for giving access to the servants of the Municipality for the above purpose at reasonable and convenient times. JADULAL MULLICK *v* GOPAL CHANDRA MUKERJI **I L R 13 Calc 136**

S C JUDOO LALL MULLICK *v* GOPAUL CHUNDER MOOKERJEE **L R 13 I A 77**

Affirming the decision of the High Court Calcutta which *held* that where a right of way for a particular purpose is proved to have existed for upwards of twenty years the Court is not bound to confine the right to the precise number of times in the year that it has been exercised but may construe it as a right to use the road at all convenient times for the particular purpose GOPAL CHUNDER MUKERJEE *v* JUDOO LALL MULLICK

I L R 9 Calc 778 13 C L R 146

17 ———— **Proof of right of way**—*Evidence—Particular route* In a suit for declaration of a right of way over the land of another the plaintiff must prove the particular line over which he claims the right Mere proof of a right to pass over the land without proving the particular route will not entitle a plaintiff to a decree PADHANATH SUGRACHARJI *v* BAIDONATH SEAL

3 B L R Ap 118

18 ———— **Nature of right of way** A right of way is ordinarily a right of passing and not a general right to pass from one point to another point GOLUCK CHUNDER CHOWDHRY *v* TAPINEE CHURN CHUCKERBUTTY **4 W R 49**

19 ———— **Mode of exercising right of way**—*Indirect way* If a person has a right of way from one place to another over a particular line he cannot be compelled to use a different and substituted way But where the right is simply to pass from one point to another the party desiring to exercise the right cannot claim to pass in a particular tortuous and indirect course between the two points HAMID HOSSEIN *v* GERVAIN **15 W R 496**

20 ———— **Right acquired by purchaser of house** The purchaser of a house acquires the right to the use of a way to a road which has been enjoyed with the house by the vendor if it is not merely a right to a way of necessity but a particular right over a defined path NUBEEN CHUNDER BULLUB *v* BHOOBUN CHUNDER MUNDUL **15 W R 526**

21 ———— **General right of way**—*Right of thoroughfare for processions* A general right of thoroughfare includes a right of way for marriage or other processions of the like nature unless at the time of the first inception of the right it was restricted to a right of passage and such processions were interdicted RAJ MANICK SINGH *v* RUTTUN MANICK BOSE **15 W R 46**

22 ————*Right to carry marriage and funeral processions* A general right of way was held under the circumstances to include a right to carry marriage and funeral processions LOKENATH GOSSAMEE *v* MONMOHAN GOSSAMEE **20 W R 293**

23 ———— **Right to freedom from obstruction**—*Ownership of soil* A person who has a right of way cannot claim anything more than that the reasonable exercise of his right shall not be obstructed It is only ownership of the land that carries with it the ownership of everything *usque ad cœlum* TOOLSEEMONEY DEBEE *v* JOGESH CHUNDER SHAHA **1 C L R 425**

24 ———— **Road used only by particular section of community**—*Private way* Where there is a road the privilege of using which is enjoyed only by one particular section of a community the road is not a public one SHAM SOONDER BHUTTACHARJEE *v* MONEE RAM DOSS **25 W R 233**

25 ———— **Continuous user**—*Discontinuance—Limitation* A right of way over the land of another must be kept up by constant use HURIDAS NANDI *v* JADUNATH DUTT

5 B L R Ap 66 14 W R 79

26 ———— **Immoveable property**—*Specific Relief Act (I of 1877) s 9* A right of way is not immoveable property within the meaning of s 9 of the Specific Relief Act MANGALDAS *v* JEWANRAM **I L R 23 Bom 673**

27 ———— **Obstruction to right of way**—*User* Suit by members of a joint family to enforce their right to a pathway through a door (which had been blocked up) leading to a joint thakoorbari *Held* that this was not a case in which the plaintiffs claimed the right of user but only complained of the obstruction of a passage belonging to them jointly with the defendants and that the non user for some years by the plaintiffs was not an abandonment of their right CHUNDER KANT CHOWDHRY *v* NUND LALL CHOWDHRY **16 W R 277**

28 ———— **Substitution of new way for old one**—*Non user—Abandonment of right* ... old one with [illegible] to warrant the Court in inferring an [illegible] release the right of resumption is lost the non user need not extend over any defined period PUI BEHAREE ROY *v* TARA PERSHAD ROY **20 W R 188**

29 ———— **Loss of right of way**—*Relinquishment of right in land* The relinquishment of all rights and interests in land exchanged does not necessarily involve loss of right of way over the land KALEE KISHORE ROY *v* DEEN DYAL SEN **4 W R 63**

F 30 ———— **Closing right of way**—*Substitution of another way* The owner of the land over which there is right of way by an ancient path way cannot without the consent of the parties entitled to the right substitute another path and

RIGHT OF WAY—*contd*

shut up the ancient pathway TARINEECHURN CHUCKERBUTTY *v* TARINEECHURN CHUCKERBUTTY
I Ind. Jur N S 6

31. ———— **Grant of land to build dwelling house**—*Implied right to build privy—Way of necessity for sweepers—Caste prejudices—Modification of English law* A plot of land in the centre of the d fendant s oart was granted to plaintiff s predecessor in title on fazendari tenure to build a dwelling upon. A hut was accordingly built thereon. No privy was built with or attached to the hut the occupants of the hut using the oart

originally buil implied the us of a privy whenever the occupants of the hut hould think fit to build one and that therefore the plaintiff was entitled to build a privy and consequently al o to a way of nece sity for a sweeper to have access to the privy when buil The occupants of the old hut had been allowed as a way of neces ity and had always used as a means of access to that portion of the site of the old hut on which the new privy was now being

the new privy The plaintiff now claimed a right of way for his sweeper in a direct line from the outer gate to the new privy thus avoiding the front entrance of the house *Held* that having regard to the class of persons who had lived in the old hut (who were of low ca te) there could have arisen up to the pre ent time no reasonable nece sity for two ways to the site in qu stion and therefore the plaintiff was limited to the old way enjoyed by his predecessor in title *Quære* Whether if the lessees had been persons belonging to one of the higher castes it would not be right to take into considera tion the prejudice entertained by members of such

32 ———— **Place dedicated by owner of land for convenience of occupiers of adjoining houses**—*User of such open space—Covenant or grant presumed—Easement—Public land—Encroachment—Injunction.* The plaintiff and de fendant occupied houses situated in the same lane and oppo ite each other Close to both houses was an open space in which a cross had stood The plaintiff alleged that the said vacant space was originally intended for and had always been used by the occupants of his house and the residents in the lane in common for the purposes of recreation save where the cross stood. The cross had been for many years vi ited by Chri tian worshippers who prayed and worshipped there The plaintiff also allege l that in addition to the general use of the open space he and his predecessors in title and the occupants of his said house had for more than twenty years u ed the open pace as a footway and a way for carriages and other vehicles to approach the said house and to stand and be able to turn there He complained that the defendant had wrongfully re moved the cross and enclosed the greater portion of the said open space and he prayed for a decla ration that he and the occupants of his house were entitled to the use of the said space for purposes of recreation and as a footway and carriageway and for an injunction. The defendant pleaded that the whole of the open space formerly belonged to a Portuguese religious confraternity who were the fazendars of both his property and the plaintiff s that this confraternity had permitted the cross to be erected on the land at which the residents of the houses of the plaintiff and defendant and other ad jacent houses who were then Portuguese used to assemble and worship that the Portuguese having left the locality the cross was removed and the part of the open space which had been enclosed by the defendant had been sold to him by the confrater nity in 1837 He denied the use of the space alleged by the plaintiff. *Held* that the eviden e was not sufficient to establish that the land in dispute had been dedicated to the public but that on the evi dence the Court was justified in presuming and ought to presume a covenant on the part of the fazendari owners of the oart to keep the lane includ ing the upper end of it open for the use of the owners of the houses abutting upon it Such a co venant should be presumed equally in the case of a land owner giving land for building purposes to fa zendari tenants in a perpetual tenure at a fixed rent and in the case of a owner selling land out and out for building purposes. PANCHOPDAS AMTHA BHAI *v* MANEKLAL GORDHANDAS
I L R 17 Bom 648

33 ———— **Easement of necessity**—*Easements Act (V of 1882)—Act I of 1872 s 114 illus (g)—Presumption against plaintiff from failure to produce his title deeds* The plaintiffs were owners of an hotel and the defendant of certain adjacent property The two properties had at one time been united, and at that time the manager of the hotel on behalf of the owner used to obtain water for the purpo es of the hotel from a certain

upon these facts that the plaintiffs were not entitled

RIGHT OF WAY—*concld*

to any right of way over the land in question Owing to the non production by the plaintiffs of their title deed it mu t be presumed as against them that the evidence afforded thereby would be unfavourable to their claim and no right of way in favour of the plaintiffs could be shown to arise other wi e either as an easement of necessity or as an easement the intention to grant which might be in ferred. *Charu Surnokar* v *Dokoari Chunder Thakur* *I L R 8 Calc 956* considered. *Rajroop Kuar* v *Abul Hossein I L R 6 Calc 394 L R 7 I A 240* *Kay* v *Oxley L R 10 Q B 360* *Polden* v *Bastard L R 1 Q B 156* *Worthington* v *Gimson 29 L J Q B 116* *Hinchcliffe* v *Earl of Kinnoul 5 Bing N C 25* *Morris* v *Edgington 3 Taunt 24* *Berkshire* v *Grubb L R 18 Ch D 616* and *Bayley* v *G W R Co L P 26 Ch D 434* referred to WUTZLER v SHARPE I L R 15 All 270

34 —————— *Purchase of land adjoining purchaser s land—Way of access—Way of necessity—Deed of sale construction of* A person purchasing a plot adjoining his own land and having access to the plot through his land cannot acquire a way of necessity over his vendor s land of which the plot formed a part The fact that if the plot had been sold to a third person he would have acquired a way of nece ity does not affect the question Where a portion of an estate is sold a right of way leading to such portion may be created by the use of general words provided that the circumstances existing at the time of the sale were such as to ju tify [illegible] parties. sale we [illegible] rights and accompaniments) —*Held* that the words in themselves apart from the circumstances at the time of the sale did not include a right of way over the vendor s property as conveyed along with the portion of the land sold but if there was an old path leading across the vendor s adjoining ground to the plot sold and the purposes for which the plot was sold and the conduct of the parties were such as to justify an inference that by the use of the e words it was the intention of the parties to convey the right to use the path it would be open to the Judge to find as a fact that such was the intention MUNICIPALITY OF THE CITY OF POONA v VAMAN RAJARAM GHOLAP

I L R 19 Bom 797

35 —————— **Right of private way suit for**—*Special damage proof of whether necessary* In a suit where a right of way is claimed which is not a right of way by the public but a private right of way and an easement or right by pre scription the question as to whether or not there has been proof of special damage is immaterial. BAIJ NATH SINGH v TETAI CHOWDHRY (1901)

6 C W N 197

RIGHT OF WORSHIP

See HINDU LAW—WORSHIP

—————— **Claim to worship in a particular temple**—*Nadar or Shanar caste—Caste who climb palmyra and cocoanut trees and manufacture toddy —Proof of custom to exclude such caste men—Compromise of suit by trustee of temple after ob taining decree—Breach of trust—Civil Procedure Code (Act XIV of 1882) s 375* The respondent as hereditary trustee of a Hindu temple dedicated to the wor hip of Siva at Kamudi a village in his zamindari sued the appellants who were of the Nadar or Shanar caste and repre ented that community and who alleging immemorial usage claimed a right to enter and worship in the temple to exclude them from such entrance and worship on the grounds that the presence of persons be longing to the appellant s caste was repugnant to the religious principles of the Hindu worship of Siva and to the sentim nts of the caste Hindus who worshipped in the temple and that it was contrary to custom for them to enter and worship there The appellants had a temple of their own in the village where they worshipped *Held* by the Judicial Committee (affirming the decrees of the Courts in India) that the fact that the appellants worshipped by themselves in a temple of their own and that their evidence com pletely failed to prove any resort by persons of their caste to the temple in dispute entirely negatived the case of the appellants so far as the assertion of immemorial usage was concerned, and also strengthened the respondents contention that the separation in worship between the two classes was not accidental or voluntary but rested on a deeper ground. The respondent moreover had succeeded in proving that by custom the appel lants were not among the people for whose worship the temple in suit existed. The respon l nt after [illegible] decree in the first Court compromised [illegible] be made in [illegible] the High [illegible] ecree in ac cordance with the compromise [illegible] ed properly in adding as plaintiffs members of the temple community who opposed the applicati n (as the [illegible] then did) and in refusin [illegible]

RIGHT TO ACCOUNT

See HINDU LAW I L R 23 Mad. 271

RIGHT TO APPEAR

See ADVOCATE 5 B L R Ap 70
14 B L R Ap 12
13 W R 60
23 W R Cr 14

See COUNSEL 5 B L R Ap 70
9 B L R 417
I L R 1 Bom 46

See MOOKTEAR I L R 1 Mad 304
I L R 1 Bom 14
7 C W N 524

RIGHT TO APPEAR—*concld*

See MURDER—APPOINTMENT AND APPEARANCE.

See PLEADER—APPOINTMENT AND APPEARANCE.

See PRACTICE—CIVIL CASES—COUNSEL

VAKIL AND COUNSEL.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622.
7 C W N 843

RIGHT TO BEGIN

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE.
I L R 18 Calc 201
L R 17 I A 159

See PRACTICE I L R 32 Bom. 599

1. ——— General rule The rule is

2. ——— Practice—*Suits under Civil Procedure Code 1859* It was held under the Civil Procedure Code of 1859 that the Common Law practice in respect of the right to begin ought to prevail in cases under that Act that practice having been followed up to that time and the Procedure Code making no distinction between suits in the nature of Common Law actions and those in the nature of equity suits. PUNGUNMONEY DOSSEE *v* BRIJO LALL DAY Cor 25

3 ———Small Cause Court references The right to begin in Small Cause Court refer

The right to begin is now specially provided for by s 179 of the Civil Procedure Code 1882.

4. — Civil Procedure Code 1877 s 179—*Suit for mesne profits—Burden of proof* It cannot be laid down as a general proposition con

who have been shown to have no title that the burden of proof is upon the defendants. KRISHNA MOHUN BAISAK *v* KUNJ BEHARY BAISAK
8 C L R 1

5 ——— Suit for partition—*Nucleus of joint property* In a suit for partition of certain property and trading business the defendants who resisted the suit admitted a nucleus of joint property and claimed the right to begin on the ground that the onus was on them to prove that the whole property and the trading business were not joint. *Held* that, unless the defendants

RIGHT TO BEGIN—*concld*

admitted all the allegations or all the material allegations the plaintiff was entitled to begin AGHORE NATH NEOGY *v* PREM CHAND NEOGY
7 C L R 274

I L R 8 Bom. 287

7 ——— Application for review—*Order to show cause* Upon the hearing of an application for review of judgment upon which an ... rty ... be ... uld

I L R 9 All. 61

8 ——— Hearing of case on preliminary issue At the hearing of a case on a preliminary issue the defendant by whom the issue was raised was held to have the right to begin FATMABAI *v* AISHABAI I L R 12 Bom 454

9 ——— Criminal case—*Counsel—Practice—Reference to High Court under s 434 Criminal Procedure Code (Act XXV of 1861)* In a reference to the High Court under s. 434 of the Criminal Procedure Code where counsel appeared and the reference from the Judge impeached the order of the Magistrate the Court called on counsel to support the argument. ANGELO *v* CARGILL.
9 B L R. 417 18 W R Cr 41

10 ———*Case under s 263 Criminal Procedure Code 1872* In a case referred to the High Court under s. 263 of the Criminal Proce ... from ... that ... who ... the Court that there was a case calling upon the prisoner for an answer QUEEN *v* RAM CHURN GHOSE 20 W R Cr 33

11. ——— Reference under s 434, Criminal Procedure Code 1882 Where on

right to begin QUEEN EMPRESS *v* APPA SUBHANA MENDRE I L R 8 Bom. 200

12 ——— Reference to High Court by Presidency Magistrate—*Onus probandi—Practice—Criminal Procedure Code (Act X of 1882) s 432* In a reference by a Presidency Magistrate to the High Court as to whether on the facts stated, any offence has been committed by an accused person it lies on the prosecution to make out that an offence has been committed and under the circumstances the prosecution must begin QUEEN EMPRESS *v* HARADHAN *alias* PAKHAL DAS GHOSH I L R. 19 Calc 380

RIGHT TO POSSESSION

See SALE I L R 36 Calc 336

RIGHT TO USE OF WATER

See EASEMENT I L R 18 Mad 320
I L R 23 Bom 506
I L R 30 Calc 1077

See LANDLORD AND TENANT—NATURE OF TENANCY I L R 28 Calc 693

See POSSESSION ORDER OF CRIMINAL COURT AS TO—*DISPUTES AS TO RIGHT OF WAY WATER ETC* 5 C W N 67

See PRESCRIPTION—EASEMENTS—RIGHT TO WATER

See RAILWAYS ACT SS 7 10 AND 11
I L R 25 Mad 632

1. ——— **Presumption of right**—*User Proof of* No presumptions of law in regard to rights of water are known in this country but proof of ancient reasonable user by particular recognized means is sufficient to give the right BUNDHOO SOOKOOLANY *v* JOY PROKASH SINGH
W R 1864 367

2 ——— **Right to open conduit for water**—*Injury to neighbours* The right to take water is goverend by established use No one can open a new conduit to take additional water to the injury of his neighbours ATHUR ALI KHAN *v* SEKUNDAR ALI KHAN 4 W R 28

3 ——— **Right to surplus water of tank**—*Easement—User—Channel* A right of easement may be acquired in the surplus water of a tank flowing through a defined channel whether natural or artificial. RAYAPPAN *v* VIRABHADRA
I L R 7 Mad 530

4 ——— **Right to use another's canal.** A person has no right to tap another s canal and abstract the water therefrom for his own land unless he has acquired that right by grant or prescription PUN BAHADOOR *v* POODHEE ROY
W R 1864 319

5 ——— **Riparian proprietor right of**—*Lands or embankments* A riparian proprietor may deal with the stream as freely as with any other portion of his land provided only that he must not by so doing sensibly disturb the natural condition of the stream as it exists within the limits of other proprietors whether above or below or on the opposite side MONOOUR HOSSEIN *v* KANHYA LALL 3 W R 218

6 ——— *Natural water course* The right which a riparian proprietor has under certain restrictions to the use of the water of a natural water course has no application to a water course artificially constructed and the mere fact of riparian proprietorship gives no rights whatever over such a stream. BHOOP NARAIN SINGH *v* KERAMUT ALI 6 W R 99

7 ——— *Obstruction to flow of water—Encroachment* The plaintiff and defendant were proprietors of land and gardens on opposite sides of a tidal creek, which sides were

RIGHT TO USE OF WATER—*contd*

protected by walls The defendant the wall on his side becoming dilapidated constructed a fresh one altering its direction and encroaching five feet upon the bed of the stream In a suit for possession of land by demolishing the said wall the plaintiff alleged that he was entitled to the solum on which it was built that his navigation was obstructed and that there was a danger of his screw house falling down It appeared however that the Government and not the plaintiff was the owner of the solum and that the plaintiff neither [illegible]

so as to be an injury to his rights *Held* reversing the decree of the High Court that the plaintiff had *failed to show either damnum or injuria* and therefore had no right of action. KALI KISHEN TAGORE *v* JODOO LAL MULLICK
L R 6 I A 190 5 C L R 97

8 ——— *Easements Act (V of 1882) ss 6 7 17—Natural stream—Surface water* The owners of a tank fed by natural streams which depended for their supply on natural rainfall and surface water sued for an injunction to restrain superior riparian owners from damming the streams or interfering with the supply of water over which the plaintiffs claimed a right of easement The issue as to the ownership of the land on which the streams rose was undecided *Held* (i) The Easements Act only declared the existing law as to easements over water (ii) An easement can therefore be acquired in regard to the water of the rainfall But surface water not flowing in a stream and not permanently collected in a pool, tank or otherwise is not a subject of easement by prescription though it may be the subject of an express grant or contract (iii) It is the natural right of every owner of land to collect or dispose of all water on the surface which does not pass in a defined channel (iv) Riparian owners are entitled to use and consume the water of the stream for drinking and household purposes for watering their cattle for irrigating their land and for purposes of manufacture subject to the conditions (i) that the use is reasonable (ii) that it is required for their purposes as owners of the land and (iii) that it does not destroy or render useless or materially diminish or affect the application of the water by other riparian owners in the exercise either of their natural right or their right of easement if any It was therefore necessary to ascertain where the streams rose and the course source and [illegible] of their tributaries PERUMAL *v* RAMASAMI
I L R 11 Mad 16

9 ——— *Water [illegible] Mamlatdar jurisdiction of—Easement Act (V of 1882) s 7* The law as to riparian owners is the [illegible] England and is [illegible]

RIGHT TO USE OF WATER—*contd*

of like u e What woul l con titute an unreason able diversion of water su h as to disturb the use of the lower riparian owners is a question of fact which the Legi lature has given a Mamlatdar jurisdiction to decide NARAYAN HARI DEVAL v KESHAV SHIVRAM DEVAL I L R 23 Bom 506

10 ——— Proprietor of water course Right of—*Proof of u er by other per ons* The proprietor of a pyne has a right to allow or to deny the use of water flowing through it to other persons unless they have al o a clearly defined right en abling them to control the water and convert it to their own use —a right clearly found to have origin ated in some grant or vali l contract or to have been exercised for o long a period that such title may be pre umed INDURJEET KOOER v LUCHMEE KOOER 14 W R 349

11 ——— Right to discharge water on another s land on lower level—*Drainage* There is no reason why the proprietor of land on a higher level should not for the purpose of keeping his land drained claim a right to have the water which falls thereon run off over adjoining land on a lower level KOPIL POOREE v MANICK SAHOO 20 W R 287

12. *Easement—Em bankment—Drainage—Right to drainage of surplus surface wat r through natural water course* The right of the owner of high lands to drain off its sur plus surface water through the adjacent lower grounds is i cident to the ownership of land in this country Where the defendants had erected a dam across a natural water cour e which was found to interfere with the natural drainage of the surplus rain water of the adjacent lands of the plaintiffs and where the lower Court had ordered that the dam be altogether removed —*Held* that the Court was wrong in taking it for granted that the plaint iffs were entitled to have the whole dam remove l but should have inquired how far the erection of the dam interfere l with the plaintiff s right ABDUL HAKIM v GUNESH DUTT I L R. 12 Calc 323

13 ——— Obstruction to flow of water —*Erect on of bund to stop flow of water* Where water flows in its natural course from somewhere outsid l s land through it an l onwards to other people s land *A* is not entitl l to stop the flow by an embankment across it unless he can make out ome special right to do so Such course is a part of the natural con lition of the land and the flow of the water over it when it occurs is a natural incident CHUMROO SINGH v MULLICK KHYRUT AHMED 18 W R. 525

14 ——— *Claim to erect bund cutting off water from neighbouring lands* A [illegible]

RIGHT TO USE OF WATER—*contd*

15 ——— Deprivation of right to a rise of water by breaking bund—*Claim to repaired bund* Deprivation of the right to a rise of water is an [illegible]

15 W R 216

16 ——— Infringement of right to water—*Suit to remove obstruction and for damages —Cause of action* In a suit to compel defendant to remove an embankment recently constructed on his own land on the allegation that it infringed [illegible]

[illegible] that channel —*Held* that to entitle plaintiff to a decree there must have been some actual infringement [illegible] lefendant [illegible] vere that [illegible] CHURN [illegible] W R 2

17 ——— *Cause of action* In order to maintain an action upon an infringe ment of a right (as where an obstruction is made to a natural flow of water) it is not necessary to show that there has been any subsequent injury conse quent on such infringement RAM CHAND CHUCK ERBUTTY v NUDDIAR CHAND GHOSE 23 W R 230

18 ——— *Water from tank —Onus probandi* Where a plaintiff alleged that [illegible]

19 ——— *Right to raise embankment to diminish flow of water into reservoir* Where parties by agreement in a butwarra re stri ted their rights by the condition that one of [illegible]

[illegible] 10 W R. 94

20 ——— *Erect on of bun l to keep water in reservo r* Water falling on *A s* land and collected [illegible]

PERSHAD 13 W R. 414

21. ——— Right of owner of two pro perties—*Dispersion of rain water* The owner of two properti s may con luct through troughs the rain water accumulating on one property over a water course to the oth r property before it reaches another water-course into which the rain water

RIGHT TO USE OF WATER—*contd*

unless diverted would naturally flow RAMBUT TUN NEOGEE *v* PHOOL SINGH
W R 1864, 147

22 ———— Cessation to make use of water—*Revocation of permission* Where a party who had enjoyed the permissive use of the water of a tank does not use it for four years from the date of its further excavation the permission may be taken to be revoked GOOROO CHURN SOOR *v* SREE CHURN GHOSE 15 W R 308

23 ———— Right to discharge rainfall overland—*Abandonment of right* Exposition of the right of discharging the rainfall on one s land through a water course over another s and of the abandonment of such right KHETTUR NATH GHOSE *v* PROSUNNO GHOSE 7 W R 498

24 ———— Abandonment of right to water—*Construction of new waterway* Where a party suing for the use of a waterway was found to have allowed it to be filled up without objection and another of the same description to be con structed which he had used for a year or two he was *held* to have abandoned his right of user to the former water way JUGUTBUNDHOO CHUCKER BUTTY *v* JUGUT CHUNDER CHOWDHRY
12 W R 519

25 ———— Irrigation channels—*Power of Collector to regulate water supply* In a suit between ryots holding lands under Govern ment in which the Collector of the district was joined as second defendant it appeared that the

I L R 16 Mad. 333

26 ———— Water rights for irrigation

stream flows in a channel down from a property higher up is entitled to the flow of water without

contract with the lower proprietors of acquired by him as a consequence of prescriptive use His common law right is to take for the purpose of

RIGHT TO USE OF WATER—*contd*

irrigation so much water only as can be abstracted without materially diminishing what is to be allow ed to descend What quantity of water can be

taken bears to its entire volume In this suit the upper proprietor s claim having been put too high the real question as to the proportion of his share had been omitted *No issue had raised it* and no

High Court had rightly pointed out that there had

proprietor and the suit ... missed DEBI PERSHAD SINGH *v* JOYNATH SINGH
I L R. 24 Calc. 865
L R 24 I A 60
1 C W N 401

27 ———— *Riparian owners —Irrigation —Relative rights of upper and lower proprietors on the banks of a stream based on custom and prescription—Prescription—Custom — Injunction—Dams construction of—Civil Procedure Code (Act XIV of 1882) s 30—Suit by some of a class as representative of the class—Parties* The plaintiffs prayed for a declaration that the plaintiffs and

cultural land by constructing dams ... place but during the rainy season at a specified place but allowing surplus water to run out by the sides of ... for a perpetual injunc
... riparian
... interfering
... specified
... right and
... construct
... below found
dams at their village ... that the plaintiffs had proved their prescriptive ... the right of
... The
... the prayer
made in the plaint *Held* that the plaintiffs hav ing established their right by prescriptive use they were entitled to the reliefs claimed and that the injunction decreed in their favour was not un warranted by law nor vitiated by vagueness and indefiniteness *Debi Pershad Singh v Joynath Singh I L R 24 Calc 865* distinguished *Held*, also that the plaintiffs having applied for per mission under s 30 of the Civil Procedure Code to sue on behalf of all parties having the same interest in the suit and the permission having been given in fact and notices issued accordingly the mere fact that the order granting the permission was not recorded in the order sheet does not vitiate the proceedings *Dhunput Singh v Paresh Nath*

RIGHT TO USE OF WATER—concld

Singh I L R 21 Calc 180 followed KALU KHABIR v JAN MEAH (1901)
I L R 29 Calc 100

28 ———— *Easement—Prescription—Prescriptive right to the use of water storage of water in another s tank for the purposes of irrigation—Presumption of right from long enjoyment —Injunction* Through an opening at the north western corner of a tank water flowed in and by another opening at the south eastern corner water flowed out into two channels The plaintiff and his predecessors in title used from time immemorial the water of the tank through the e openings and channels for irrigating their lands *Held* that a presumption arose that this enjoyment had an origin conferring a right to the use of the water *Pameswur Persad Narain Sing v Koonj B hari Pattuk I L R 4 Calc 633* relied upon *Held* also that the plaintiffs were entitled to an injunction restraining the defendant from clo ing up either of the openings *Arkwright v Gell 5 M & W 203 Birmingham Dudley and District Banking Co v Ross L P 3 Ch D 99 Wood v Waud 3 Exch 748 Burrows v Lang* [1901] 2 Ch 502 *Greatrex v Hayward 8 Exch 291 Kisto Mohun Mookerjee v Juggurnath Roy Joogee 11 W R 23* and *Toolsee Dass Kobeeraj v Bhyrub Lall Tewaree 8 W R 311* referred to MADHUB DASS BAIRAGI v JOGESH CHUNDER SARKAR (1902)
I L R 30 Calc 281

RIGHTS OF PARTIES

See PARTIES

———— ascertainment of—

See SECURITY TO KEEP THE PEACE
I L R 34 Calc 935

RIOTING

3 C W N 603
I L R 26 Calc 630

See CHARGE TO JURY—SPECIAL CASES—RIOTING I L R 21 Calc 955

See CRIMINAL PROCEDURE CODE s 221 (?)
9 C W N 599

See CRIMINAL PROCEDURE CODE s 437
5 C W N 72

See JURISDICTION OF CRIMINAL COURT—OFFENCE COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT
I L R 19 Bom 105

See KIDNAPPING 6 C W N 209

See MAGISTRATE JURISDICTION OF—COMMITMENT TO SESSIONS COURT
I L R 24 Calc 429

See PENAL CODE ss 71 146—148

See POLICE ACT (V OF 1861) ss 17 19
I L R 28 Calc 411

RIOTING—contd

See PRIVATE DEFENCE RIGHT OF
I L R 24 All 143
I L R 35 Calc 368 443

See SENTENCE—CUMULATIVE SENTENCES

See SENTENCE—GENERAL CASES
8 W R Cr 3
12 W R Cr 72

See UNLAWFUL ASSEMBLY

See WARRANT OF ATTACHMENT
I L R 29 Calc 244

———— counter charges of—

See CRIMINAL PROCEEDINGS
I L R 20 Calc 537

———— giving provocation with intent to commit—

See PENAL CODE s 153
I L R 18 Bom 758

See RELIGION OFFENCES RELATING TO
I L R 26 Mad 554

1 ———— Requisites for offence—*Penal Code ss 447 453—Common object* It is necessary before persons can be convicted of rioting etc under ss 447 and 453 of the Penal Code to ascertain clearly that they have taken such a share in the transaction as will bring them within the criminal charge and it must appear on the evidence that they had a common object which common object they were going to carry out by unlawful means QUEEN v GHOLAM MAHOMED
22 W R Cr 17

2 ———— Sudden quarrel—*Assembly for*

FABRE TONNERRE 24 W R Cr 36

3 ———— Proof of offence—*Penal Code s 156—Manager of indigo factory* In order to convict the manager of an indigo factory under s 156 of the Penal Code it must be shown by legal evidence (i) that a riot was committed (ii) that the riot if committed was committed for the benefit of the accused and (iii) that the accused had reason to believe that a riot was likely to be committed BRAE v QUEEN EMPRESS
I L R 13 Calc 338

4 ———— *Penal Code s 155*

POY 3 W R Cr 54

5 ———— *Penal Code ss 154 155 15—Employment of persons to commit riot or hold unlawful assembly—Non resident partner* To constitute an offence under s 157 of the Penal Code it must be proved that the accused has hired

RIOTING—*contd*

or engaged or employed other persons for the purpose of an unlawful assembly and it is not sufficient to show that some of the accused s ser vants have been taken from a district where men have a well known character as lathials and had been in his service some time before the riot was perpetrated A non resident partner or sharer who has taken no active part in the management of the estate cannot like a resident sharer be con victed under ss 154 and 155 of the Penal Code *In the matter of* RADHA NATH CHOWDHRY
7 C L R 289

6 ———— Armed parties—*Attack—Pri vate right of defence* Where both parties are armed and prepared to fight it is immaterial who is the first to attack unless it is shown that that party was acting within the legal limits of the right of private defence *In re* KALEE BEPAREE
1 C L R 521

7 ———— Offering obstruction to per sons wrongfully distraining—*Power of dis traint* The law confers (certain conditions being first complied with) on landholders and their authorized agents power to distrain the move able property of their tenants for the recovery ... such cases ... bility and ... e attempts ... rent is in ... is not an offence nor where made by several persons does it constitute rioting ANONYMOUS 8 Mad Ap 11

8 ———— Attempting to stop what rioters thought an illegal procession In the case of a very serious riot in order to stop a procession which the ... there was no evidence that the proces ion was illegal and that if it were the accused were bound to invoke the aid of the tribunals charged with the enforcement of the law ANONYMOUS
7 Mad Ap 35

9 ———— Common object—*Persons com ing armed with sticks on purpose to fight—Affray* ... were not improperly convicted of rioting their com mon object being to assault their opponents. The other party only consisted of four persons It was not found wha object they had in common with the first party The fight did not occur in a public place *Held* that they were not properly con vi ted of rioting *Held* also that had the fight

RIOTING—*contd*

occurred in a public place it might have been held that the common object of both parties was to commit an affray QUEEN *v* MUZHUR HOSSEIN
5 N W 208

10 ———— Unlawful assembly—*Penal Code s 143—Resisting trespass* A disturbance having been created with reference to the posses sion of certain chur land the Sessions Judge on appeal found that certain persons had unlawfully trespassed thereupon and that the accused had been justified in re isting the trespass by force Inasmuch however as he considered the accused ... were not members of an unlawful assembly *In the matter of* KALLEE MUNDLE 10 C L R 278

11. ———— Forcibly getting possession of cattle seized for trespass—*Penal Code s 147—Act III of 1857 s 11* The pri oners hav ing been part of an assembly of more than five persons whose common object as apparent from ... under ... Act III of 1857 QUEEN *v* BOKOO SHEIKH
W R 1864 Cr 21

12 ———— *Penal Code (Act XLV of 1860) ss 141 and 147* A party of persons con isting of some five peadas and a number of coolies sufficient for the work to be done went to a spot on a river flowing through the lands of M for the purpose of either repairing or erecting a bund across it to cause the water to flow down ... The river ... Having arrived at the spot about ... until the afternoon ... lathies ... not an unlawful assembly ... ence by T's people with the channel of the ... justified them in coming to stop the work ... show and use of force in compelling them to ...

RIOTING—*contd*

Held that the pri oners had been rightly convicted *Queen v Mitto Sing 3 W R Cr 41 Shanker Singh v Burmah Mahto 23 W R Cr 25* and *Birjoo Singh v Khub Lall 19 W R Cr 66* referred to and commented on GANOURI LAL DAS v QUEEN EMPRESS I L R 16 Calc 206

13 ——— *Right of private defence of property—Causing grievou hurt in furtherance of common object—Penal Cod (Act XLV of 1860) ss 9 99 14 149 and 325* The ac cuse l receiving information that the complainant s party were about to take forcible possession of a plot of land which was found by the Court to be in the posse sion of the accu ed collected a large number of men some of whom were armed and went through the village to the land in question While they were engaged in ploughing the com plainant s party came up some of them being armed and interfered with the ploughing A fight ensued in the course of which one of the complain ant s party was grievously wounded and subse quently died and two of the accused s party were hurt *Held* tha if the accused were rightfully in posses ion of the land and found it necessary to protect themselves from aggression on the part of another body of men they were justified in taking such precautions as they thought were required and using such force or violence as was necessary to prevent the aggression *Held* also that under such circumstances they could not rightly be held to be members of an unlawful assembly *Queen Empress v Narsang Pathahbai I L R 14 Bom 441 Birjoo Singh v Khub Lall 19 W R Cr 66* and *Shanker Singh v Burmah Mahto 23 W R Cr 25* followed. *Ganouri Lal Dass v Queen Empress I L R 16 Calc 206* distinguished. PACHKAURI v QUEEN EMPRESS I L R 24 Calc 686

PACHKAURI v EMPRESS 1 C W N 423

14. ——— *Rights of true owners against person in wrongful possession—Affray evidence as to nature of* When a party is in possession of lan l for four or five days though it may be in wrongful posse sion another party al though claiming to be the rightful owner is not entitled to go in force to turn him out much less is he entitled to take armed men with him for that purpose In an affray specific evidence as to the acts of each fighter cannot be expected but only general evidence as to the accused taking part in it and persons who as in this case punted the boats on which the fight took place and in whose interests the fight on the boats took place were held to be just as blameworthy as the men who struck the blows. MOHER SHEIKH v QUEEN EMPRESS I L R 21 Calc 392

15 ——— *Right of private defence—Penal Code s 146—Unlawful distraint* A landlord who had not tendered to his tenants such a pottah as the latter was bound to accept und r the Madras Rent Recovery Act distrained his cattle for arrears of rent the assi tance of the police having been procured for the purpose The tenant with the assistance of eleven other persons forcibly obstructed the removal of the cattle which had already been actually seized and driven for some yards They were charged with the offence of rioting and convicted. *Held* that there was no right of private defence of property and that the conviction was right QUEEN EMPRESS v RAMAYYA I L R 13 Mad 148

16 ——— *Penal Code s 154—Liability of own r or occupier of land on which an unlawful assembly is held* It is not neces sary in order to render the owner of land on which a riot takes place criminally liable that he should be aware of the likelihood of such an occurrence That his karinda should have taken an active part in the riot is sufficient to warrant the conviction of the owner under s 154 of the Penal Code QUEEN EMPRESS v PALAG SINGH I L R 12 All. 550

17 ——— *Penal Code (Act XLV of 1860) s 154—Liability of owner or occupier of land on which a riot takes place or unlawful assembly is held—Evidence necessary to constitute an offence.* In ord r to establish an offence under [illegible]

must always act upon proof and not on mere sur mises *Brae v Queen Empress I L R 10 Calc 338* referred to TARAKANT DAS v EMPRESS 4 C W N 691

18 ——— *Right of private defence of property—Causing hurt in furtherance of common object—Penal Code (Act XLV of 1860) ss 147 323* The party of the accused accom panied by *R* went armed with lathies to fish in a tank in which *R* had a two annas share The com plainant who with some other co sharers repre [illegible]

victed of rioting and voluntarily causing hurt under ss. 147 and 323 of the Penal Cod *Ganouri Lall Das v Queen Empress I L R 16 Calc 206* followed. *Pachkauri v Queen Empress I L R 24 Calc 686* referred to ANANT PANDIT v MADHUSUDAN MANDAL I L R 26 Calc. 574

19 ——— Dacoity—*Penal Code ss 24 147 391—Want of dishonest intention.* Where [illegible]

owner of the cattle but for the purpose of prevent ing the killing of the cows.—*Held* that they could not properly be convicted of dacoity but only of riot. QUEEN EMPRESS v RAGHUNATH RAI I L R 15 All. 22

RIOTING—*contd*

20 ——— **Forcibly taking possession of wife by husband** A husband or those who aide l him cannot be convicted of kidnapping for taking away his own wife but they are guilty of rioting if they take possession of her by force and violence and in the darknes of night QUEEN v ASRUP W R 1864 Cr 12

21 ——— **Forcible entry on land cultivated by trespasser**—*Plea of right to possession—Trespass on land* A plea of right to possession is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespas er who is in possession and opposes the entry APPAVU NAYAK v QUEEN I L R 6 Mad 245

22 ——— **Rioting armed with deadly weapons**—*Culpable homicide—Grievous hurt* Persons found guilty of rioting may if the circum stances warrant it be convicted of the several offences of rioting armed with deadly weapons culpable homicide and grievous hurt QUEEN v HURGOBIND 3 N W 174

23 ——— **Procedure**—*Trial of case of affray between opposite factions* In a trial arising out of an affray or faction fight the members of each faction should be tried separately The state ments of the members of each faction can then if desired be taken on solemn affirmation and be made evidence against their opponents but if they de cline to give evidence on the ground of implicating themselves they cannot be compelled to do so QUEEN v MAHOMED HOSSEIN 1 N W Ed 1873 293

24. ——— **Landholder s responsibility** —*Owner or occupier of land on which riot takes place liability of—Agent—Manager—Acts of com mission as well as omission—Knowledge—Penal Code (Act XLV of 1860) s 154* The accused was the sole proprietor of village A A serious riot involving loss of life took place at village A and the accused s *naib* instead of doing anything to prevent or suppress the riot accompanied the rioters and stood close by while the riot was going on after which he ab conded. The accused who had no knowledge that a riot was likely to be com mitted was convicted under s. 154 of the Penal

[illegible]

ance of the acts of his agent or manager I AM PINI J—There seems to be no ground for holding [illegible]

contrary the provi ions of the section impose on non resident landholders and their agents the duty of maintaining the public peace and preventing un lawful assembly and riots on their estates and render the former liable for any dereliction in the discharge of this duty *Queen Empress v Payag Singh I L R 12 All 550* followed. The Queen v *Surroop Chunder Paul 12 W R Cr 15* *Taralant Das v Empress 4 C W N 691 Queen Empress v Hurnath Roy 3 W R Cr 51 In the matter of Radha Nath Chowdhry 7 C I R 59* referred to AMEER ALI J—Owners of property are made responsible by law for the negligence of their agents or managers, but not for their criminal acts A charge of neglect a sumes that the agent is not directly concerned in the commi sion of the offence If he is so concerned it ceases to be neglect—it is a crime It would be straining the law to make the absent owner who has himself no knowledge of the occurrence liable for not giving information of a riot that has taken place if his agent takes part in it and as a rioter actually taking part in it does not as a matter of course give notice of it KAZI ZEAMUDDIN AHMED v QUEEN EMPRESS (1901) I L R 28 Calc 504 s c 5 C W N 771

25 ——— **Landholder s responsibility and stale prosecutions**—*Penal Code (Act XLV of 1860) ss 154 155—Riot—Landholder s respon sibility—Stale prosecutions for such offences* [illegible] Prosecutions for offences under ss. 154 155 of the Indian Penal Code should be instituted without delay—having regard to the object of the law laid down in those sections which is to impress [illegible] obliga[illegible] lies com[illegible] in those warnin[illegible] not only to persons concerned but to others. Where such a prosecution was instituted more than two years after the riot or unlawful assembly to [illegible] related was [illegible] special [illegible] nce as [illegible] hat the [illegible] ould be [illegible] 1909) [illegible] C W N 245

26 ——— It is a question for the Crown to determine whether a prosecution under s 154 or s 155 Indian Penal Code should be discontinued in view of the fact that the riots which gave rise to the prosecution occurred a long while ago SARAT CHANDRA SHAH CHOWDHRY v EMPEROR (1902) 7 C W N 201

27 ——— **Right of private defence**—*Indian Penal Code (Act XLV of 1860) s 11—Riot—Act XLV of 1860 ss 96 et seq* Of two parties each of which claimed title to certain trees one party went to cut down the trees and went armed with *lathis* apparently with the intention of resisting anticipated opposition on the part of the other claimants The other party attempted to stop the cutting down of the trees and a fight ensued in the course of which several people were injured *Held* that the first party were [illegible]

RIOTING—*contd*

of rioting and whatever their title to the trees was could not claim that they had acted in the exercise of the right of private defence EMPEROR v KADHU SINGH (1902) I L R 24 All. 298

28 ——————— *Common object omission to find—Failure of the common object charged—Appellate Court—Defective charge—Prejudice—Criminal Procedure Code (Act V of 1898) ss 423 537 sc (a)—Private defence of property in possession of assailants—Penal Code (Act XLV of 1860) ss 8 99 141* *Held* by WOODROFFE and MOOKERJEE JJ (RAMPINI J dissenting) that

petitioners was to take possession of some property by criminal force or to enforce a right or supposed right on it and the Appellate Court found that the opposite party had been trying to encroach upon the land decreed to the petitioners and that the occurrence was the result of the complication which the opposite party was trying to introduce by stealthy
of the Court
charge had
cused were
v *Asgar Ali I L R 27 Calc 990* followed Where the charge did not specify the property the taking possession of which was stated to be the common object of the unlawful assembly and its specification would have altered the whole complexion of the case —*Held* by the majority of the Court that the omission had prejudiced the accused and was not cured by s 537 cl (a) *Behari Mahton v Queen Empress I L R 11 Cal 106* *Sabir v Queen Empress I L R 22 Calc 276* and *Chunder Coomar Sen v Queen Empress 3 C W N 605* followed Where the petitioners were maintained in possession of certain lands under s 145 of the *Criminal Procedure Code including the homestead of A* and the opposite party unlawfully attempted to take possession of some huts standing thereon whereupon the petitioners came with an armed body and demolished the huts and on being resisted *by the opposite party wounded some of them* —*Held* by the majority of the Court that they were justified in taking precautions and using such force as was necessary to prevent aggression by the opposite party *Pachkauri v Queen Empress I L R. 24 Cal 686* followed *Ganouri Lal Das v Queen Empress I L R 16 Calc. 206* distinguished PORESH NATH SIRKAR v EMPEROR (1905)
I L R. 33 Calc 295

29 ——————— *Entry on land in possession of another—Temporary occupation—Unlawful assembly—Private defence right of—Penal Code (Act XLV of 1860) ss 99 101 104 147* The petitioners went with three ploughs on land to which the complainant had the right of possession and of which he was in possession till such entry and began to plough up the land to uproot some castor plants and throw them away While they were thus in actual but temporary occupation the complainant and his party went on the land and tried to unyoke the cattle whereupon a riot took place *Held* that the petitioners were not justified in entering on the land in ploughing it uprooting the plants and throwing them away that they were members of an unlawful assembly the common *object of which was to enforce a right or* supposed right for the exercise of which they were

Queen Empress I L R 24 Calc 686 *Poresh Nath Sircar v Emperor I L R 33 Calc 295* and *Queen Empress v Tirakadu I L R 14 Mad 126* referred to The observations of HOLLOWAY J *7 Mad H C Proceedings Ap XXXV* cited and approved JAIRAM MAHTON v EMPEROR (1907)
I L R. 35 Calc 103

30 ——————— *Common object established different from that laid in the charge—Common object not to enforce but to maintain the*

agrees in essential particulars with that laid in the charge Where the common object set out in the charge was to assault *the complainant and his* party who were cutting the paddy or their land and thereby to forcibly oust them but the common object established by the facts found by the Sessions Judge was to maintain possession of the land by the accused —*Held that the common object in* the charge had not been substantially made out and that the conviction under s. 147 of the Penal Code was therefore bad Where the accused who were found to be in possession of the disputed land went upon it in a large body armed with *lathis* prepared in anticipation of a fight and where reaping the paddy grown by them when the complainant's party came up and attempted to cut the same whereupon a fight ensued and one man was seriously wounded and died subsequently —*Held* that on the facts established the

one accused under the circumstances caused simple hurt and another a fracture of the skull which ended fatally —*Held* that the former was within his right of private defence but that the latter had not proved facts bringing the case under s. 103 (4). SILAJIT MAHTO v EMPEROR (1909)
I. L. R. 36 Calc. 865

31 ——————— *Right of private defence—Use of excessive violence by some members*

RIOTING—*contd*

of the assembly—Responsibility of other members continuing in it and aiding and abetting—Indian Penal Code (Act XLV of 1860) ss 99 147 148 and 326 If the accused are justified in resisting the theft of the crops they cannot be considered as members of an unlawful assembly with the common object to assert a right to the disputed land and crops because some members thereof may have exceeded the right of private defence but if some of the members continue in it after the others have exceeded the right by the infliction of unnecessary violence and aid and abet the latter they also must be considered as having exceeded the right *In the matter of Kalee Mundle 10 C L R 278* referred to Where the accused three of whom were armed with a sword a *garasa* (scythe) and a *lobanda* (iron shod stick) respectively and the rest with *lathi* went in a large body to a certain disputed land where the labourers of the opposite party were reaping some *musouri* crop and attacked them fatally wounding one and severally injuring another it was *held* that the accused who ordered the attack and those who used the sword *garasa* and *lobanda* had exceeded the right of private defence and so also the others who continued in the unlawful assembly thereafter and aided and abetted the former BAIJNATH DHANUK *v* EMPEROR (1908) I L R 36 Calc 296

32 ——————— *Right of Private Defence—Protection of Zamindar s right to property—Excessive hurt by one member of an unlawful assembly—Criminal liability of the other members thereof—Penal Code (Act XLV of 1860) ss 147 $\frac{3}{1}$–$\frac{6}{5}$* Where the tenants were found to have held their lands on the *batai* system under which harvested crops should be taken to the village *khalihan* but it appeared that they went in a large body armed with *lathis* with the avowed intention of removing them to their own houses and were making up the crops already cut into bundles whereupon the zamindar s watchmen remonstrated and a number of their *amlas* went to the spot armed with *lathis* and swords and a fight took place owing to the interference of the leader of the tenants in the course of which some of the tenants received slight incised wounds and one of them a severe one inflicted by one of the accused and where it further appeared that the zamindar s people had four days before the date of the occurrence sent an urgent appeal to the police for protection against a serious breach of the peace which seemed imminent —*Held* that inasmuch as the common object of the accused was to protect the zamindar s right over the crops and there was no specific finding by the Sessions Judge that their intention was to use more force than was necessary or that they had in fact used excessive force they acted in the exercise of the right of private defence and were not guilty of rioting *Held* also that as there was nothing to show that the grievous hurt caused by one of the accused was not his own individual act the others were not guilty under ss $\frac{3}{1}$ $\frac{ }{ }$ of the Penal Code Each case of this kind must be decided on its own particular facts *Baijnath Dhanuk v Emperor I L R 36 Calc. 296* distinguished RAM KHELAWAN SINGH *v* EMPEROR (1909) I L R 36 Calc. 827

33 ——————— Common object of unlawful assembly implied finding of—*Necessity* [illegible]

common object of an unlawful assembly was stated in the charge to be to enforce a right or supposed right and there was no dispute as to the common object in the lower Court which did not therefore discuss the question or come to any express finding in so many words on the point it was *held* that they had impliedly found the common object of the assembly to be the same as stated in the charge and that the accused had been in no way prejudiced *Sabir v Queen Empress I L R 22 Calc. 276* *Poresh Nath Sircar v Emperor I L R 33 Calc 295* distinguished DASARATHI MAHAPATRA *v* PACHU SAHU (1908) I. L. R. 36 Calc 158

RIPARIAN PROPRIETOR

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—CHURS OF ISLANDS IN NAVIGABLE RIVERS 5 C L R 154
6 B L R. 255, 343

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—RIVERS OR CHANGE IN COURSE OF RIVERS 2 Hay 541
3 Agra 18
11 B L R 265
L R I A Sup Vol. 34
L. R. 6 I A 211
I. L. R 13 Mad 369

See ACCRETION—RE FORMATION AFTER DILUVIATION 5 B L R. 521
13 Moo I. A. 467

See BOMBAY IRRIGATION ACT
I L R 28 Bom. 105

See INJUNCTION I. L R. 27 Mad. 409

See LIMITATION ACT 1877 s. 26 (1871 s. 27) I. L. R 1 Mad 335

See MADRAS FOREST ACT s. 10
I. L. R. 20 Mad. 279

See MAMLATDAR S COURTS ACT (BOM. ACT III OF 1876) s. 4
I. L R. 25 Bom. 395

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY
I L. R. 18 Mad. 158

See RIGHT TO USE OF WATER
3 W R. 218
6 W R. 99
L R. 6 I. A 190
I. L. R. 11 Mad. 16
I. L. R. 23 Bom. 506
I. L. R. 24 Calc. 865
L. R. 24 I. A. 60

RIPARIAN PROPRIETOR—*contd*

See RIGHT TO USE OF WATER.
I L R 29 Calc 100

1. ——— **Private proprietorship**—*Bed of flowing stream* The bed of a flowing stream may be the property of a private person JUGDISH CHUNDER BISWAS v CHOWDHRY ZUHOORUI HUQ
24 W R 317

2. ——— **Riparian owners**—*Easements Act (V of 1882) 7 illustration (J)—Stream—Usufruct—Right to use and consume water without material injury to other like owners* With respect to riparian owners the law is that each such owner has a right to the usufruct of the stream which passes through his land. The right is not an absolute and exclusive right to the flow of the water in its natural state but to the flow of the water and the enjoyment of it subject to the similar rights of all the proprietors of the banks on each side to the reasonable enjoyment of the same gift of Providence *Embrey* v *Owen 6 Exch 353* followed S 7 illustration (J) of the Easements Act (V of 1882) shows that a riparian owner has the right to use and consume water for irrigating the land abutting on a natural stream provided that he does not thereby cause material injury to other like owners. DINKAR v NARAYAN (1905)
I L R 29 Bom. 357

3 ——— **Water rights for irrigation where stream flows through separate estates**—*Relative rights of upper and lower proprietors on the banks to the use of the water—Action to enforce rights—Absence of proof of damage.* A riparian owner where a stream flows in a channel down from a property higher up is entitled to the flow of water without interruption and without substantial diminution caused by the upper proprietor who may for legitimate purposes withdraw so much of the water as will not materially lessen the downward flow on to his neighbour s land. In order to support an action by one riparian owner to restrain another from diverting the water beyond his riparian tenement it is not necessary that the plaintiff should prove that he has suffered any damage. AIYAVU MOOPPAN v SAWMINATHA KAVUNDAN (1905)
I L R 28 Mad 236

4 ——— *Watercourse—Riparian proprietors—Ordinary and extraordinary use of water—Irrigation—Reasonable use—Injunction mandatory and perpetual—Pleading—Proof* The use of the water of a water course for purposes of irrigation is not a primary use so as to entitle an upper riparian proprietor to consume the whole of the water for such purpose without regard to the effect such use may have on proprietors lower down the water course *Held* that the use of the water for purposes of irrigation was artificial or extraordinary even when it was found that the country was dry rocky and parched and that it was absolutely necessary that the lands which were paddy lands should be irrigated from the water course in order to produce paddy The authorities reviewed by

RIPARIAN PROPRIETOR—*concld*

MOOKERJEE J—An upper riparian proprietor having erected a dam across the water course so as to cut off completely the supply of water to proprietors lower down a mandatory injunction was granted to compel the restoration of the water-course to its natural form and the wrong doer perpetually restrained from obstructing the water course or effacing it BELBHADAR PERSHAD SINGH v SHEIKH BARKAT ALI (1900) 11 C W N 85

5 ——— *Irrigation—Prescription—Custom—Vicinity—Limitation—Limitation Act (XV of 1877) s 26 and Sch II Art 47* A riparian owner claiming a right to irrigate his lands from the river flowing past his land by putting up dams therein must not interfere with the rights of the lower riparian owners. *Miners* v *Gilmour 12 Moo P C 131 Swindon Waterworks Company* v *Wilts and Berks Canal Navigation Company L R 7 H L 697 McCartney* v *Londonderry and Lough Swilly Railway Co [1904] A C 301* referred to Any such interference would be unreasonable and inconsistent with the rights of others, unless allowed in pursuance of some arrangements arrived at between the parties interested or by the successful acquisition of a prescriptive right. *Kalu Khabir* v *Jan Meah I L R 29 Calc 100* referred to An upper riparian owner can acquire an easement to irrigate his land apart from the mode of acquisition mentioned in s. 26 of the Limitation Act *Rajrup Koer* v *Abul Hossein I L R 6 Calc 394* But if he relied on custom he must prove that it was ancient continuous peaceable reasonable certain compulsory and consistent with other customs regarding the right to irrigate from the river Art 47 of Sch. II of the Limita

I L R 35 Calc 851

RIPARIAN RIGHT

See RIPARIAN PROPRIETOR.

See SECURITY TO KEEP THE PEACE.
I L R 34 Calc 935

RISK

——— **exception from**—

See MARINE INSURANCE
I L R 36 Calc. 516
13 C W N 425

RISK NOTE

See RAILWAY ACT (IX OF 1890) s. 72.
I L R 30 Calc 257
I L R 18 All. 43

RIVAL HÂTS

See HÂTS.

RIVER.

See ACCRETION

See FISHERY

RIVER—*concld*

——— changing its course—

See JURISDICTION—SUITS FOR LAND—RENT I L R 23 All 282

——— fordable, meaning of—

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—CHURS OR ISLANDS IN NAVIGABLE RIVERS 6 B L R 343
3 W R 95 219
6 W R 123
7 W R 513

——— obstruction in—

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I L R 14 Calc 656
I L R 20 Calc 665

——— strewing branches in for fishing purposes—

See PENAL CODE s 277
I L R 2 Calc 383

ROAD OWNERSHIP OF

——— Site of road—*Presumption* There is nothing in this country which prevents the operation of the rule of law that where a road has been for many years the boundary between two properties and there is no evidence that the owner of either property gave up the whole of the land necessary for it the site of the road must be presumed to belong to the adjoining proprietors half to to one and half to the other up to the middle of the road MOBARUCK SHAW *v* TOOFANY
I L R 4 Calc 206 2 C L R 446

ROAD AND PUBLIC WORKS CESS

See ABWABS I L R 38 Calc 683

ROAD AND PUBLIC WORKS CESS ACT

See BENGAL CESS ACT (IX OF 1880)

ROAD CESS

See MINES I L R 34 Calc 257
See SALE 10 C W N 969

——— sale for arrears of—

See SALE FOR ARREARS OF ROAD CESS
See HINDU LAW—LEGAL NECESSITY
I L R 36 Calc 753

ROAD CESS ACT (BENGAL ACT X OF 1871)

See BENGAL CESS ACTS (BENGAL ACTS X OF 1871 AND IX OF 1880)

ROAD CESS ACT (BENGAL ACT IX OF 1880)

See BENGAL CESS ACT (BENGAL ACT IX OF 1880)

ROAD CESS DEPARTMENT

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 I L R 34 Calc 207

ROAD CESS PAPERS

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD CESS PAPERS

ROAD CESS RETURN

See LANDLORD AND TENANT
11 C W N 211

——— false return of—

See PENAL CODE s 177
13 C W N 191

ROBBERY

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF AND MODE OF DEALING WITH EVIDENCE
I L R 13 Mad 426

1 ——— Theft and causing hurt with intention When in committing a theft there is an intention and an attempt to cause hurt the offence is robbery QUEEN *v* TEEKAI BHEEB
5 W R Cr 95

2 ——— Theft with grievous hurt By the infliction of grievous hurt theft becomes robbery and all parties concerned in the offence are liable to punishment QUEEN *v* HUSHRUT
6 W R Cr 85

3 ——— Want of dishonest intention —*Theft* The accused was convicted of robbery but the Magistrate found that the property taken was not taken with any dishonest intention *Held* that the conviction was bad ANONYMOUS
5 Mad Ap 39

4 ——— *Penal Code (Act XLV of 1860) ss 390 391—Dacoity—Hurt caused to persons not for the purpose of committing theft—'For that end' meaning of—Splitting up of graver offence into smaller offences in order to give himself jurisdiction.* It is not open to a Magistrate to split up a graver offence into a number of smaller offences which when [illegible]

s 390 Indian Penal Code [illegible] KAFILUDDI MANJHI (1900) 5 C W N 373

ROMAN CATHOLIC CHURCH

See CHURCH I L R 17 Mad 447

ROYALTY

See MINES I L R 34 Calc 257

——— suit for—

See LIMITATION ACT (XV OF 1877) SCH II ART 116 12 C W N 731

RULE AGAINST PERPETUITY

See WILL I L R 29 Mad 477

RULE TO SHOW CAUSE

See PRACTICE—CIVIL CASES—RULE TO SHOW CAUSE I L R, 9 Calc 735

See PRACTICE—CRIMINAL CASES—REVISION I L R, 21 Calc 827

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE I L R 4 Calc 20
I L R 25 Calc 798

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT
5 C W N 377, 383

See RIGHT OF REPLY
7 B L R Ap 57

1. ——— "To show cause" meaning of —*Alleging and proving cause* The term to

[illegible]

3 ——— Power to grant rule—*Sufficiency of affidavit* A Re order refused an applica [illegible]

insuffi i nt the Court cannot grant a rule to show cause unless it is satisfied that the rule should be made absolute if no cause be shown COMPTOIR D ESCOMPTE DE PARIS v CURRIE & Co
3 B L R Ap 153 12 W R 413

4 ——— *Case where object of application for rule may be granted if not opposed* The High Court can grant a rule to show cause only in cases in which the arguments advanced in favour of the party asking for the rule are such that if not displaced by the opposite side the rule would be made absolute *In the matter of the petition of* OMRAO BEGUM
13 W R 310

5 ——— Rule obtained by person not party to suit—*Practice* The Court will not make a rule absolute obtained by a person who is not a party to the suit GRANT SMITH & Co v STEEL 1 Ind Jur N S 60

6 ——— Service of rule in foreign territory—*Rule nisi for contempt of Court—Sufficiency of service* On the 1[illegible]th of December 1869 a rule nisi for the attachment, for contempt of Court of the defendants *U G* and *T* was granted. The rule owing to one of the defendants keeping out of the way was not drawn up and served until the [illegible]

that the rule was served in time and that the service of it in the Gaikvad s territories with the consent of the Gaikvad was valid service *Quære* Whether the service would have been valid if such consent had not been obtained HARIVALLABHDAS KALLIANDAS v UTAMCHAND MANIKCHAND
7 Bom. O C 172

7 ——— Appearance to show cause—*Waiver of service of rule* A person appearing to discharge a rule thereby waives all objections to the formality of the service of the rule upon him HARIVALLABHDAS KALLIANDAS v UTAMCHAND MANIKCHAND In re GOPALRAV MYRAL
8 Bom O C 236

8 ——— Grounds for granting rule—*Practice—Discretion of Court hearing a rule* Although rules to show cause are frequently granted on particular grounds the form of any rule granted would ordinarily be such as to leave the action which the Courts should take in case the conviction is set aside to the discretion of the Court which hears the rule Where a rule was granted to show cause why the conviction should not be set aside and the case sent back for re trial and it came on for hearing before a Bench other than that which had granted it —*Held* that the terms of the rule did not prevent the Bench hearing it from discharging the accused MILAN KHAN v SAGAI BEPARI I L R 23 Calc 347

RULES AND REGULATIONS OF DIVORCE COURT IN ENGLAND

——— Rule 158—

See DIVORCE ACT s 3[illegible]
I L R, 19 Bom. 293

RULES AND REGULATIONS UNDER 2 & 3 WILL. IV C 51.

See PRACTICE—CIVIL CASES—ADMIRALTY COURTS I L R. 22 Calc 511
3 C W N 67

RULES MADE UNDER ACTS

——— Act XXIV of 1839, rules under—

See HIGH COURT JURISDICTION OF—MADRAS—CIVIL.
I. L. R 26 Mad. 266

——— Act XXIV of 1839 rules 18 and 20 of agency Rules under—

See REVISION—CIVIL CASES—GENERAL CASES I. L. R. 16 Mad. 229

RULES MADE UNDER ACTS—*contd*

———— Act XXIV of 1839 rules 20 and 31 of Agency rules under—*Ganjam and Vi aga patam Agency Courts Act (XXIV of 1839)—Validity of Agency Rules Nos XX and XXXI passed under the Act—Application to High Court to direct Agent to review his decision Maintainability* In a suit in the Court of the Senior Assistant Agent to the Governor in Vizagapatam a decree was passed in favour of the plaintiff for possession of certain villages On appeal to the Court of the Agent this decree was reversed Plaintiff thereupon filed a petition in the High Court praying that the Agent might be directed to review his judgment The petition was filed under Rule No XX of the Agency Rules which is as follows — All decrees passed by the Agent on appeals from decrees of his subordinates shall be final the Sudder Court having the power on special grounds to require him to review his judgment as directed by them A preliminary objection was taken to the hearing of the petition on the grounds (i) that the latter part of Rule No XX is *ultra vires* and (ii) that even if it be not *ultra vires* the application should have been presented to the Governor in Council under Rule No XXXI and not to the High Court *Held* that Rule No XX is not *ultra vires* and that Rule No XXXI has no application to a case of this nature *Maharaja of Jeypore v Papayyamma I L R 23 Mad 329* referred to MAHARAJAH OF JEYPORE v JAMMANADHORA (1901)
I L R 24 Mad. 345

———— Act XI of 1846 rule 35 of rules made under s 3—

See HIGH COURT JURISDICTION OF—BOMBAY—CRIMINAL.
I L R. 25 Bom 667

———— Act XI of 1846—Rule 44 of rules made under s 3—

See APPEAL IN CRIMINAL CASES—ACTS—ACT XI OF 1846
I L R 15 Bom 505

———— Act XV of 1882 rules made under s 9—

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—RE HEARING I L R 27 Bom 563

———— Bankruptcy Act (English) of 1883 rule 230 made under does not apply to India—

See INSOLVENCY ACT (11 & 12 VICT c 21) s 40 I L R 26 Bom. 623

———— Ben. Act IX of 1880—

See BENGAL CESS ACT (BEN ACT IX OF 1880) I L R. 28 Calc 637

———— Bengal Tenancy Act (VIII of 1885) s. 189—

See REVIEW—POWER TO REVIEW
I. L. R. 25 Calc 146

RULES MADE UNDER ACTS—*contd*

———— rule 1, Ch. VI—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622
I L R 21 Calc 935

1 ———— Bengal Tenancy Act (VIII of 1885), s 189 rule 3 in Ch I of Rules made under—*Notice to quit service of—Suit for ejectment against more than one tenant* In a suit [illegible]

[illegible] MIK (1901) I. L. R 28 Calc 690
s c 6 C W N 67

2 ———— rule 3—*Service of notice—Giving of notice* Rule 3 Ch I of the Rules made by the Local Government under cl 2 of s 189 of the Bengal Tenancy Act is intended to apply only to those cases where the Act speaks of the service *of a notice and not merely of the giving of a notice* [illegible]

[illegible] intended to be only directory and not mandatory MADHUBRAM v DOYAL CHAND GHOSE
I. L. R 25 Calc 445
2 C W N 108

———— rule 25—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s. 622
I. L. R 23 Calc 723

See VALUATION OF SUIT—APPEALS.
I. L. R. 23 Calc 723

———— Bombay District Municipal Act (Bom VI of 1873)—

See RIGHT OF SUIT—MUNICIPAL OFFICERS SUIT AGAINST I L. R. 22 Bom. 384

———— Bombay Land Revenue Act (V of 1879) s 314 rules 101 and 111, cl. 3 (a)—*Survey settlement meaning of* The accused was [illegible] with di[illegible] earth[illegible] le 101 [illegible] s. 214 of the rules made by Government [illegible] (g) of the Bombay Land Revenue Code (Act V of 1879) The Magistrate convicted the accused under rule 111 cl 3 (a) and sentenced him to a fine of one rupee *Held* that rule 101 is not such a rule as can be legally made under s. 214 (g) of the Code It is not a rule for the administration of a survey settlement Such a settlement is a settlement of the land revenue and relates only to such matters as are referred to in Ch VIII of the Code and not to boundaries or boundary marks, which are dealt with in Ch IX QUEEN EMPRESS v IRAPPA I. L. R. 13 Bom. 291

RULES MADE UNDER ACTS—*contd*

——— **Bombay Municipal Act (XXVI of 1850)**—*Rules whether ultra vires* Rules made under Act XXVI of 1850 which purport to give the managing committee of the Municipal Commissioners power to try offenders against such rules or to levy fines upon them are *ultra vires* and illegal Rules of the Municipalities of Balsa Surat Malcolm Pet and Ahmedabad referred to and commented on How far a rule partially *ultra vires* and partially *intra vires* can be enforced as to the latter portion considered. REG *v* YENKU BAPUJI 8 Bom. Cr 39

——— **Civil Procedure Code 1882 s. 287 rule 1**—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURTS I. L. R. 14 Bom. 369

——— **s 320**—

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE I L R 19 Bom 216

1. ——— *Meaning of "with effect from the 31st October 1880* Held that effect cannot be given to the rules prescribed by the Local Government under s 320 of Act X of 1877 unless an order for sale has been made on or after the 1st October 1880 HAFIZ UN NISSA *v* MAHADEO PARSAD I. L. R. 4 All. 116

2. ——— *Civil Procedure Code Amendment Act (VII of 1888) s 30—Rules framed by the Local Government under s 320 of Act XIV of 1882 as amended by s 30 of Act VII of 1888 effect of—Sale in execution of decree—Confirmation of sale—Collector's power to confirm or set aside a sale* The rules framed by the Local Government in 1890 in exercise of the powers conferred by s 320 of the Code of Civil Procedure as amended by s 30 of Act VII of 1888 are not retrospective in their operation so as to give the Collector the power to confirm a sale held before the date of issue of the rules Nor do the rules authorise the Collector to set aside a sale On 27th July 1889 the property in dispute was sold by the Collector in execution of a decree which was referred

[illegible]

execution of a decree transferred to him In April 1890 the auction purchaser again applied to the Court for a confirmation of the sale This application was rejected on the ground that under the new rules framed by Government the Collector alone had the power to confirm the sale *Held* that the rules in question had no application to the present case the sale having been held before the rules were promulgated The Civil Court was therefore competent to confirm the sale *Held* further that even if the rules did apply they did not empower the Collector to set aside the sale or extend the time given by the decree to the judgment-debtor to redeem GANPATRAM MOTIRAM *v* ADAMJI I. L. R 15 Bom. 322

See BAI AMTHI *v* MADHAB MANOR. I. L. R. 15 Bom. 694

See NARAYAN *v* RASULKHAN I. L R. 23 Bom. 531

3 ——— *Transmission of decree to Collector for execution—Power of Local Government to make rules for regulating procedure of Collector—Rule providing for appeal from Collector to Commissioner—Rule No 17 of XIX of 17th November 1883 validity of—Civil Procedure Code Amendment (Act VII of 1888) s 30—Act XIX of 1873 (N W P Land Revenue Act) s 243* The authority conferred upon the Local Government by s 320 of the Civil Procedure Code prior to the amendment of that section by s 30 of the Civil Procedure Code Amendment Act (VII of 1888) to make rules for regulating the procedure of the Collector in executing decrees transmitted to him included power to make a rule providing for an appeal from the Collector's orders Cl XIX of rule 17 which was added to the rules (No 671 of 30th August 1880) published in the N W P and Oudh Gazette of the 14th September 1880 by a notification in the Gazette of the 17th November 1883 and which made the order of a Collector confirming a sale appealable to the Commissioner of the Division was therefore not *ultra vires* of the Local Government *Madho Prasad v Hansa Kuar I L R 5 All. 314* referred to. S. 243 of the N W P Land Revenue Act (XIX of 1873) does not apply to such orders passed by a Collector TAKADDUS FATIMA *v* BALDEO DAS I. L. R. 12 All. 564

——— **Court Fees Act**—

See COURT FEES ACT s. 20 I. L. R 17 Calc. 281

See COURT FEES ACT (VII of 1870) ss. 28 30 6 C. W N 785

——— **Criminal Procedure Code s. 16**—

See BENCH OF MAGISTRATES I. L. R. 16 Mad. 410
I. L. R. 20 Calc. 870

——— **Dekkhan Agriculturists Relief Act, s. 49**—*Conciliation Agreement notice of to parties thereto—Service of such notice through a Subordinate Judge—Ultra vires—Procedure.* The rule that a notice to parties to a conciliation

RULES MADE UNDER ACTS—*contd*

agreement should be served through a Subordinate Judge framed by the Local Government under s 49 of the Dekkhan Agriculturists Relief Act (XVII of 1879) and published at page 682 Part I of the *Bombay Government Gazette* is not *ultra vires* and a notice so served was *held* to be a good notice JOTIRAM MANIRAM *v* DEVRA ISHWARAPA
I L R 10 Bom. 189

——— Income Tax Act (II of 1886) s 38 rule 16 made by Local Government under—*Production and admissibility in evidence of income tax papers* Rule 16 of the rules made by the Local Government under s 38 of the Income Tax Act (II of 1886) does not apply to the production of income tax papers in a Court of Law in a suit between two partners. *Lee v Birrell 3 Camp 337* and *Mayne s Commentary on the Criminal Law pp 86 87* cited JADOBRAM DEY *v* BULLORAM DEY I L R 26 Calc 281

——— Legal Practitioners Act (XVIII of 1879) s 27—

See PLEADER—REMUNERATION
7 C W N 300

——— Legal Practitioners Act (XVIII of 1879) rules 31 and 35 of rules made under for Madras—

See PLEADER—REMUNERATION
I. L R 26 Mad 654

——— Madras Abkari Act—

See MADRAS ABKARI ACT (1866) ss 29 50
I L R 11 Mad 250
I L R 12 Mad 450

——— Opium Act (I of 1878)—

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—GENERALLY
I L R 19 Bom 626

——— Port Act (X of 1889)—

See PORTS ACT s. 6
I L R 17 Mad 118 397

——— Railways Act (IX of 1890)—

See RAILWAY COMPANY
I L R 23 All. 367

——— Reformatory Schools Act (V of 1876)—

See REFORMATORY SCHOOLS ACT 1876 s. 22
I. L R. 15 All. 208
I. L R. 21 Mad 430

——— VIII of 1897—

See REFORMATORY SCHOOLS ACT 1897 ss. 8 and 16
4 C W N 225
I L R 27 Calc 133
I. L. R. 21 All. 391

RULES MADE UNDER ACTS—*concld*

——— Scheduled Districts Act (XIV of 1874) rules 2 and 11 of Kumaon rules of 27th July 1894—

See LEGAL PRACTITIONERS ACT ss 6 and 8
I L R 24 All. 348

——— rule 17 of Kumaon rules—

See APPEAL—ORDERS
I L R 22 All. 405

——— Stamp Act (I of 1879)—

See STAMP ACT 1879 s 3 cl. 4
I. L R 8 Mad. 87

See STAMP ACT 1879 s. 3 cl. 10
I L R 8 Mad. 532
I L R 11 Mad. 377
I L R 14 Mad. 33
I L R 13 All. 66
I. L R 18 Calc. 39

See STAMP ACT 1879 s 61
I L R 18 Calc 39

——— Stamp Act 1899 rule 16 of Rules of 17th February 1899—

See STAMP ACT 1899 SCH. I ART 1
I. L. R 23 All. 21

RULES OF BOARD OF REVENUE.

—*See* PRE EMPTION CONSTRUCTION OF—WAJIB UL ARZ
I L R 17 All. 447

See PRE EMPTION—RIGHT OF PRE EMPTION
I L R. 16 All 40
I. L. R. 17 All. 226

——— darkhast rules—

See GRANT—POWER TO GRANT
I L R. 26 Mad. 743

RULES OF HIGH COURT, BOMBAY

——— rule 6—

See PRACTICE—CIVIL CASES—COMMISSIONER FOR TAKING ACCOUNTS.
I. L R. 9 Bom 250
I L R. 13 Bom 368

——— rule 10, cl. (r)—

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS
I L R. 18 Bom 65

——— rules 17 18 25—

See HIGH COURT RULES
I L R. 32 Bom. 14

——— rule 64—

See WITHDRAWAL OF SUIT
I. L R. 15 Bom. 160

——— rule 183—

See EXECUTION OF DECREE—MODE OF EXECUTION—COSTS.
I L R. 17 Bom. 514

RULES OF HIGH COURT BOMBAY—*concld*

——————*Costs—Order for payment to the attorney of taxed costs against heir or representative of client—Attorney and Client—Civil Procedure Code Ch XIX* Rule 183 of the High Court Rules provides that an attorney when he has taxed his bill or costs against his client may obtain an order in Chambers for payment of the sum allowed on taxation and such order may be executed under Ch XIX of the Code of Civil Procedure *Held* that the heirs or representatives of the client are not included in the words of this rule and the attorney s claim cannot under it be enforced again t them ASSUR PURSHOTAM *v* PUTTONBAI I L R 16 Bom. 152

In re PREMJI TRIKUMDAS I. L. R 17 Bom. 514

——— rule 190 of 1885—*Civil Procedure Code 1882 s 549—Practice—Appeal—Security for costs—Costs of the appeal* The rule (190 of the High Court Rules) that an appellant shall with the memorandum of appeal deposit in Court the sum of Rs.500 as security for the costs of respondents in the appeal is one which though possibly not without exception is generally applicable to all cases independently of any consideration as to what the costs of the appeal will amount to AHMED BIN ESSA KHALIFFA *v* ESSA BIN KHALIFFA I L. R. 13 Bom. 458

——— rule 208—

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—RE HEARING I L R 12 Bom 408

——— rule 577—

See SPECIFIC RELIEF ACT s 45 I. L R 27 Bom 307

——— High Court Civil Circular Order 18 cl. (1)—

See PLEADER—APPOINTMENT AND APPEARANCE I L R 22 Bom 654
I L. R. 23 Bom 657

RULES OF HIGH COURT CALCUTTA

See ATTORNEY I L R 35 Calc 915

See INSOLVENCY ACT s 36 7 B L. R. Ap 61

See INSOLVENCY ACT s. 40 13 B L. R. Ap 9

See LEGAL PRACTITIONERS ACT s. 7 13 C W N 415

See LIMITATION ACT 1877 s. 4. 1 C L. R 291

See MANDAMUS I. L. R 35 Calc 915

See PRACTICE—CIVIL CASES—PAPER BOOKS 14 B L R Ap 11
I L. R. 17 Calc. 289
I. L. R. 17 Calc 57, 60 note

RULES OF HIGH COURT, CALCUTTA—*contd*

——— Rules Original Side, 70 71 72—

See BARRISTERS 13 C W N 605

——— Bellchambers Rules and Orders—

——— rule 71—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622 7 C W N 843

——— rule 365—

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR I L. R 24 Calc 437

——— 515A—

See LETTERS PATENT 1865 CL. 12 I L R 34 Calc 619

——— 515A 515B—

See LETTERS PATENT 1865 CL. 12. 11 C W N 663

——— rule 605 is *intra vires*—

See INTEREST—MISCELLANEOUS CASES—MORTGAGE 6 C W N 769

——— rules 615 617—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTIONS OF LAW 6 C W N 41

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR I L. R. 28 Calc 272

——— rule 697—

See PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION I. L. R. 20 Calc 879
I L. R. 26 Calc 404

——— General Rules and Orders Part II Ch V s 14 (a) S 14 (a) Part II Ch. V of the General Rules and Circular Orders of the High Court commented on. BAKHIR MOHAMMED *v* DOORGA CHURN SHAHA I. L R 10 Calc 39 13 C L. R 200

——— Part II Ch. VIII rule 17—

See LIMITATION ACT 1877 SCH. II ART 168 I. L. R. 23 Calc 339

See REVIEW—POWER TO REVIEW I. L. R 23 Calc 339
I. L. R. 24 Calc. 350

——— rule of 30th January 1865—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE 9 B L. R. 6

——— rule of 4th April 1866— *Proceeding in a civil case.* The proceeding by way of mandamus is a proceeding in a civil case within the meaning of the rule of 4th April 1866.

RULES OF HIGH COURT, CALCUTTA —concld

JUSTICES OF THE PEACE FOR CALCUTTA v ORIENTAL GAS COMPANY
8 B L R 433 17 W R 364

——— rule of 11th July 1871—
See MANAGER OF ATTACHED PROPERTY
8 B L R Ap 23

——— rules 50 and 52 of 6th June 1874—
See INSPECTION OF DOCUMENTS
I L R 1 Calc 178

——— rule 12 of 1st May 1875—
See SUMMONS 15 B L R Ap 12

——— rule 4 of 22nd June 1875—
See PROBATE—POWER OF HIGH COURT TO GRANT AND FORM OF
I L R 1 Calc 52

——— rules made under s 287 of the Code of Civil Procedure—
See SALE IN EXECUTION OF DECREE—IMMOVEABLE PROPERTY
5 C W N 497

——— rules of Appellate Side Rule II Ch. III, Column 1—
See HIGH COURT JURISDICTION OF—CALCUTTA—CIVIL
I L R 29 Calc 498

——— rule 1 of Ch V and rules 1 and 6 of Ch VI—
See REFERENCE TO FULL BENCH
I L R 25 Calc 896

——— rule 5 of Ch V of Rules of Appellate Side—
See REFERENCE TO FULL BENCH
I L R 27 Calc 839
4 C W N 645, 656

——— Rules and Orders, Appellate Side 86 162—
See PRACTICE—CIVIL CASES—PLEADER APPEARANCE OF
I L R 15 Calc 706

——— rules 341 436—
See REGISTRAR OF HIGH COURT
I L R 16 Calc 330

RULES OF HIGH COURT, MADRAS

See SMALL CAUSE COURT PRESIDENCY TOWNS—PRACTICE AND PROCEDURE —LEAVE TO SUE
I L R 18 Mad 236

——— rules 4 and 5 of 1866—*Right of vakils in matters of ordinary original civil jurisdiction—24 & 25 Vict c 104* The 4th and 5th

RULES OF HIGH COURT MADRAS—concld

rules of Court of 1866 are within the powers conferred on the High Court by the Letters Patent of 1865 and the provisions of the Letters Patent relating to the admission and powers of Advocates Vakils and Attorneys are authorised by 24 and 25 Vict c 101 *In the matter of the petition of the* ATTORNEYS
I L R 1 Mad 24

——— rules 39, 43 44, 47—
See PRACTICE—CIVIL CASES—INSPECTION OR PRODUCTION OF DOCUMENTS
I L R 21 Mad 490

RULES OF HIGH COURT N W P

See JUDGMENT—CIVIL CASES—FORM AND CONTENTS OF JUDGMENT
I L R 9 All 93

1 ——— Admission of appeals under Letters Patent N W P cl 10—*Limitation —Rules of Practice of High Court of 21st May 1873* It must be assumed that rule 1 of the Rules of Practice adopted by the High Court for the North Western Provinces on the 21st May 1873 [illegible]

NAM DAS I L R [illegible]

2 ——— Rules of Court of 22nd May 1883—*Practice—Pleader—Vakalatnama—Pleader handing over his brief to another—Civil Procedure Code 1882 ss 36 37 39 635* The rule of Court dated the 22nd May 1883 and authorizing legal practitioners in certain cases to appoint other legal practitioner to hold their briefs and appear in their place was passed to facilitate the work of the Court and for the convenience of the pleaders practising before it and was fully within the powers conferred upon the High Court by s. 635 of the Civil Procedure Code MATADIN v GANGA BAI
I L R 9 All 613

——— rules 1 and 4 (18th January 1898)—
See LEGAL PRACTITIONERS ACT 1879 s 36
I L R 31 All 59

——— rule 83 (18th January 1898)—
See JUDGMENT—CRIMINAL CASES
I L R 21 All 177

RULES OF PRESIDENCY SMALL CAUSE COURT MADRAS

——— Rule 4?8 of the Rules of Procedure of the Presidency Small Cause Court is not *ultra vires* MUHAMMAD KHUMARALI v RANGA RAO (1901)
I L R 24 Mad 654

RULES OF PRIVY COUNCIL

——— rules of 31st March 1871—

See PRIVY COUNCIL, PRACTICE OF—ADMISSION TO PRACTICE
I. L. R. 16 Calc 636

RULES OF SUPREME COURT BOMBAY

See LIMITATION ACT 1877 SCH II ART 84 (1871 ART 85).
I L R 1 Bom. 253

——— rule 389—

See SEQUESTRATION 8 Bom O C 135

——— *Forthwith meaning of* An ord r commanding an act to be done forthwith is sufficiently in conformity with the rule that requires the time within which an act ord red to be done is to be performed to be speci fied in the order HARIVALLABHDAS KALLIANDAS *v* UTAMCHAND MANIKCHAND 8 Bom. O C 135

RULES OF SUPREME COURT CALCUTTA

——— Plea side—*Rule 176* Rule 176 of the Rules and Orders on the plea side of Supreme Court was still in force in 1871 KAILAS CHANDRA BOSE *v* BHUBAN CHANDRA BOSE
8 B L R. Ap 18

RULES OF [illegible] CUTTA—*contd.*

——— under [illegible] & 25 Vict, c. 1 [illegible]—

See [illegible]

RULING CHIEF

——— [illegible] 188 [illegible]—[illegible] of the [illegible] A suit for the [illegible] brought in the Court [illegible] Agra against the [illegible] obtained the [illegible] in Council to [illegible] ostensibly in [illegible] of the Code of C[illegible] the conditions [illegible] existed. Held [illegible] MAHARAJA OF JEYPORE [illegible]

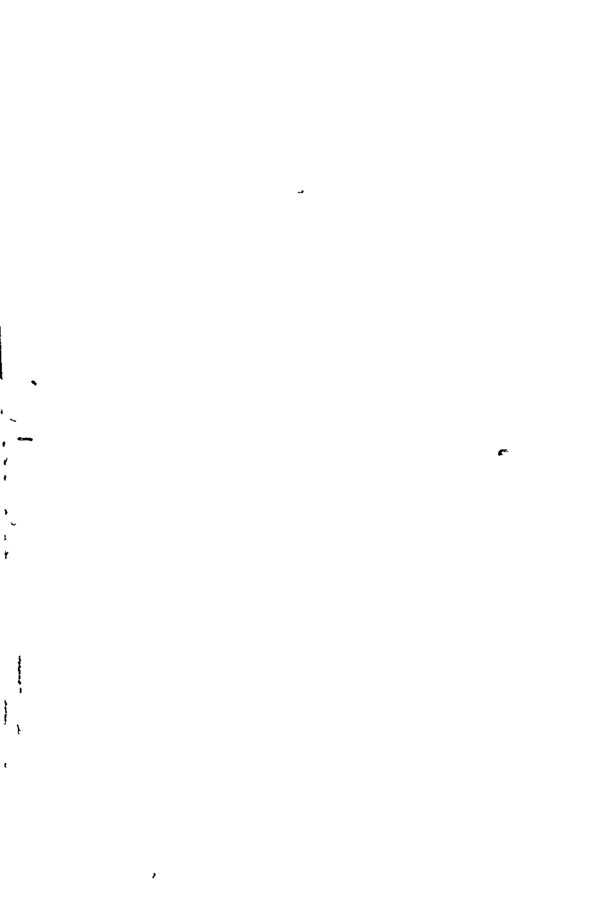
RUNNING WATER

See [illegible]

RYOT

See [illegible]

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING INDIA
8 HASTINGS STREET



A

DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS, 1862—1909,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1836—1909,

WITH AN INDEX OF CASES,

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B D BOSE

OF THE INNER TEMPLE BARRISTER AT LAW ADVOCATE OF THE HIGH COURT CALCUTTA
AND EDITOR OF THE INDIAN LAW REPORTS CALCUTTA SERIES

IN SIX VOLUMES

VOLUME V S—Z

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING INDIA
1913

Price Eight Rupees
English Price Twelve Shillings

TABLE

OF

HEADINGS, SUB HEADINGS AND CROSS REFERENCES

The headings and sub-headings under which the cases are arranged are printed in this table in capitals, the headings in black type and the sub-headings in small capitals The cross references are printed in ordinary type